

# Top 10 Mistakes

to Avoid in Your  
Indiana Accident Case

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### **About This Guide**

We offer this free guide as a courtesy to anyone who feels he has been harmed by the actions, or inactions, of another person. This guide will provide you with basic information to give you a better chance of obtaining fair compensation for your injuries.

Also, please keep in mind that at Burton & Simkin, we are always available to discuss your personal injury or medical malpractice concerns. Initial consultations are free. And, if we decide to accept your case, there is no fee except upon collection.

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## **Burton & Simkin**

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### **Not Legal Advice**

Nothing presented in this booklet should be construed as legal advice for your particular case. These are suggestions and insights. Only after you have agreed to hire Burton & Simkin and we have agreed in written form to accept your case shall we offer legal advice.

## **Summary:**

### **Top 10 Mistakes to Avoid in Your Indiana Accident Case**

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# Top 10 Mistakes to Avoid in Your Indiana Accident Case

## Delaying or Not Seeking Medical Attention...

**Most people would prefer** not to go to the doctor or hospital. However, when you have been harmed by the fault of another person, it is very important to seek prompt medical attention for your injuries. If you decide to bring an accident claim, the documentation of your injuries in hospital and doctor records will be the strongest evidence available to prove to an insurance company (and if need be, a jury) not only what injuries you sustained, but your pain, as well.

**Oftentimes, a person** will go to the doctor for the first few weeks or months following an accident and then, even though he continues to have pain and symptoms from his injuries, only returns for treatment months later. It may be that the person feels the treatment is not helping. The insurance company for the responsible person will invariably seize upon a delay or gap in treatment to try to discredit or downplay your claims. The insurance company will tell you, if you did not see a doctor for a three-month period, then you must not have been hurting enough to warrant medical treatment, and we shouldn't have to pay for any treatment you received after the delay. A delay or gap in treatment will also permit the insurance company to attempt to blame a subsequent accident or event for aggravating the original injury and to try to deny payment for additional medical treatment and damages.

## Not Following a Doctor's Recommendations for Treatment, Missing Appointments, Including Physical Therapy Sessions...

**It is very important for you** to comply with your doctor's recommendations. Failure to do so will leave you vulnerable to a charge that you did not recover as quickly or fully from your injuries as you might have because you did not follow your doctor's orders.

**Similarly, failing to** keep doctor's appointments, including physical therapy appointments, is something that insurance companies and their lawyers will focus upon in an effort to undermine your claims. It may become difficult to make it to all appointments, especially if you require treatment over several months or even years. Arranging transportation, time off from work, and juggling other obligations, on top of hurting from your injuries, can lead to feeling overwhelmed. If you must miss an appointment, always call to cancel, rather than simply failing to show up. If possible, reschedule or make up any missed appointment.

## Agreeing to Sign an Authorization Granting the Insurance Company Access to Your Medical Records...

**A blanket authorization will** allow an insurance company to obtain not only your records related to the collision, but all of your past records which they will scrutinize for any past treatment you received that might serve to weaken your claim.

**For example**, you may have had a prior shoulder injury which required surgery, but for which you have had no treatment for years. If you are in an auto collision and suffer a neck injury, the insurance company may well focus upon your prior unrelated shoulder injury and contend that the symptoms caused by the collision are not new but merely a continuation or aggravation of the former problem. This is a common tactic in their efforts to evade responsibility.

**While you may** become obligated to disclose prior injuries or medical conditions if a lawsuit is filed in your case, it is not to your advantage to do so unless it is required.

**You will need** to provide copies of your medical records and bills and documentation to support any other aspect of your claim for your accident-related injuries. However, signing a medical records authorization is not a condition of bringing a claim.

## Agreeing to Give a Recorded Statement to the Other Person's Insurance Company...

**Such a statement** is only likely to hurt your claim, as the insurance adjuster is trained to try to get you to say things that they can later use against you, when you seek to settle your case. This is not a condition of receiving a settlement.

**For example**, the description of how the collision occurred you give the adjuster may (unknown to you) differ in some way from what you told the investigating police officer. The insurance company will seek to exploit any inconsistencies in the statements you give of the events surrounding the collision. The fewer opportunities you provide for the insurance company to find such inconsistencies, the stronger your claim will be.

## Waiting Too Long to Contact a Lawyer...

**Important rules determine** how long after an accident a person must bring a claim. A lawyer skilled in representing persons in personal injury matters can properly advise you on how these rules apply to your situation. As a general rule, in Indiana, a lawsuit must be filed within 2 years of the date of the accident; otherwise, the claim is likely to be forfeited. Further, if the claim involves a government entity (perhaps because a government-owned vehicle was involved or improper road signs or design played a role in causing the collision), it will also be necessary much earlier to serve a notice of potential claim on the correct entities.

**Also, early involvement** of a lawyer can be crucial to the proper investigation of an accident, including taking statements from witnesses, gathering and preserving evidence, and taking photographs. Waiting until the two-year deadline is close to expiring before contacting a lawyer may affect the lawyer's ability to properly investigate your claim and discover and locate all of the persons potentially at fault in causing your accident. Additionally, a lawyer can offer important guidance regarding a variety of matters relating to your claim including the submission and payment of medical bills, medical treatment, ways to document how the injuries have disrupted your life, lost wages, and other matters.



## Hiding Past Accidents from Your Lawyer...

**When you bring** a lawsuit as a result of an accident, your life becomes an open book. The insurance company for the other person and his lawyers are entitled to gather information regarding you in just about any area of your life, even if that information would not be admissible in court. You might believe that a prior accident in which you were involved has no relevance to your present accident claim and this might very well be the case. However, it is very important that you reveal any such accident to your lawyer because your opponents are likely to discover it on their own and, more importantly, they will seize upon your failure to reveal the prior accident and charge you with attempting to conceal the information.

**A claim of concealment** such as this can serve to undermine the credibility of your statements regarding the current accident and your injuries.

## Hiding Past Injuries from Your Lawyer...

**As with past accidents**, it is important to be very upfront and honest with your lawyer regarding all past injuries you may have suffered, even those you believe are totally unrelated to the injuries you sustained in the current accident. In order for your lawyer to properly distinguish unrelated past injuries from your current injuries, the lawyer must be aware of the past injuries in the first place. You should assume that the lawyer who is representing the other person will discover, through your medical records or otherwise, any past injuries.

**For such information** to first come out in your sworn testimony, without you having first discussed it with your lawyer, is likely to be very damaging to your claims. Your credibility with all persons involved in your claim—attorneys, insurance adjusters, doctors, other medical providers, and jurors (should the case go to trial)—is of the greatest importance.

## Hiding Problems with Your Tax Returns...

**You may have a claim** for lost income as a result of the injuries that you sustained in an accident because of time you were unable to work or as a result of medical treatment. Serious injuries may limit your ability to return to your prior job duties or, in some cases, any work at all.

**In order for your lawyer** to properly assist you in bringing a claim for your loss of income, it is important that your income records and tax returns support such a claim. If you bring such a claim, the insurance company and its lawyers will be entitled to copies of all of your income records, tax returns, and employment-related records. It is strongly advisable that you immediately acknowledge to your lawyer any problems that may exist with your tax returns, including underreporting of your income or mistakes of which you are aware. You should assume that your opponents will pore over all of your records very carefully.

**If you conceal** such problems from your lawyer, he will be poorly equipped to assist you if such problems are revealed. And, your credibility on other aspects of your claim will be damaged.

## Misrepresenting Your Activity Level...

**The extent to which your injuries** have affected your daily activities is one of the most important parts of your claim. These activities may include employment, house and yard work, recreational activities, and ability to care for children or other persons. It is very important that you be honest with your lawyer and the opposing party regarding how the injuries have affected your ability to engage in regular activities.

**If you make claims** of impairment to these activities that are not supported by your medical records and other evidence, including witness testimony, you will be vulnerable to a charge of exaggerating your injuries. In some cases, insurance companies hire investigators to photograph or film a person engaging in activities he alleges he is unable to do. Any misrepresentation of your activity level can serve to undermine the legitimacy of your claim.

## Settling the Case Too Quickly, for Too Little Money...

**The insurance company** for the other person may approach you and offer a quick settlement. The money, perhaps several thousand dollars, might seem like a lot at the time.

**However, if you:** (1) are still receiving medical treatment for your injuries, (2) have not yet fully recovered from the injuries, or (3) do not yet know the full extent and permanency of your injuries, you are vulnerable to settling your case for far less than you may be entitled.

**At Burton & Simkin,** we obtain the necessary medical, economic and other information necessary to properly assess the full value of a client's case. Only after such an assessment has been made, do we recommend approaching the insurance company to discuss a possible settlement. If the insurance company is not willing to pay a fair settlement, then filing a lawsuit is likely to be necessary.

## 6 Frequently Asked Questions

### ❖ How Can I Tell if I Really Have a Case?

**Key Considerations:**

- ❑ You have suffered injuries to yourself or damage to your property
- ❑ The injuries are another party's fault
- ❑ Harm may be non-physical in nature, including adversely affecting your emotional well-being
- ❑ Ask a lawyer

### ❖ What Will My Lawyer Need from Me?

**Key Considerations:**

- ❑ Any police accident reports
- ❑ Any notes you have relating to the accident, your medical treatment and your injuries
- ❑ Notes of conversations you have had with others involved
- ❑ All related medical records
- ❑ All related medical bills
- ❑ Photographs of any damage to your vehicle and your injuries
- ❑ Estimates to repair damage to your vehicle
- ❑ Records of other damages, such as lost income, including pay-stubs, tax returns and a statement from your employer regarding your rate of pay and time missed from work
- ❑ Names of witnesses and contact information, if available
- ❑ Insurance companies involved and contact information, as well as any correspondence you've received from or sent to them
- ❑ Any notice from your own insurance company (health or auto) regarding an obligation to reimburse them from any settlement or verdict for receive for payments made on your medical bills.

## ❖ How Much Time Do I Have to File a Claim?

### **Key Considerations:**

- ❑ In Indiana, you have 2 years from the date of the accident to file a lawsuit
- ❑ If your claim may involve a government entity, additional rules may also require filing special notices
- ❑ It is vital to contact an attorney immediately

## ❖ How Much Can I Expect to Receive if My Lawsuit is Successful?

### **Key Considerations:**

- ❑ Medical and related costs resulting from your injuries
- ❑ Lost income due to the injuries
- ❑ Decline in your quality of life
- ❑ Emotional distress or embarrassment. Damage to relationships
- ❑ Damages to restore your position to what it was before your injuries
- ❑ Disability or Disfigurement

## ❖ Is Money Collected from My Lawsuit Taxable?

### **Key Considerations:**

- ❑ Money received from a settlement or jury verdict is not considered income since it is designed to restore your position, not improve it
- ❑ With few exceptions, the money you receive is not taxable

## ❖ How Can I Help My Lawyer Win My Case?

### ***Key Considerations:***

- ❑ (See first question) Make good notes, keep records, take photographs and get contact information on witnesses
- ❑ Be available. Return calls promptly and keep all appointments in a timely manner
- ❑ Take an active interest. Read all documents. Answer questions truthfully
- ❑ Alert your lawyer to any changes in your situation: address, medical condition, marital status, contact information
- ❑ Comply with your doctors' recommendations for the treatment of your injuries
- ❑ Do not miss medical appointments; reschedule or make up any missed appointments



## What We Do For You

### It's About Responsibility...

Someone:

- ❑ A Car or Truck Driver
- ❑ Doctor or Hospital
- ❑ Nursing Home
- ❑ Property Owner
- ❑ Product Manufacturer

...has harmed you. At Burton & Simkin, we help you hold them responsible.

### What Burton & Simkin Will Do for You...

If we accept your personal injury or medical malpractice case, the following is a list of some of the services we typically perform for our clients in such cases:

**Handle all contact** with insurance adjusters; acting as a buffer between you and the insurance company for the person who harmed you.

**Thoroughly investigate** your claim to discover all potential persons or entities at fault for causing you harm.

**If a government agency** may be at fault for causing you harm, special rules have to be followed in order to preserve your right to bring a claim against that agency. We will make sure such rules are followed.

**Help get your medical bills paid** while your case is pending by obtaining medical payments coverage from available insurance or to request doctors, hospitals and collection agencies for additional time to get the bills paid.

**Interview witnesses** and take their statements.

**Secure evidence** that may be important to your case.

**Hire an investigator** (if appropriate).

**We are not a referral firm.** Many law firms advertise that they represent personal injury clients, but actually refer such cases to other attorneys, usually in other cities. At Burton & Simkin, if you contact us for representation and we accept your case, with very few exceptions, we will be your attorneys.

**Make sure all areas** of your damages (the ways in which you've been harmed) are properly evaluated and your ability to make claims for these damages strengthened. Such damages might include:

- ❑ Existing medical bills;
- ❑ Future medical bills;
- ❑ Existing lost earnings;
- ❑ Future lost earnings;
- ❑ Pain, suffering and loss of enjoyment of life (to date);
- ❑ Pain, suffering and loss of enjoyment of life (future);
- ❑ Spouse's loss of companionship;
- ❑ Out of pocket expenses (for mileage to doctor's visits, etc.);
- ❑ Scarring or disfigurement (some injuries cause lacerations or require surgery that leave scars)
- ❑ Other (For example, wrongful death and other cases might involve other types of damages).

**Advise you as to the reasonable value** of your claim and formulate a strategy to recover money damages from the insurance company or jury. If an insurance company has already made you an offer and we don't think we can substantially improve upon it, we'll tell you. We're not interested in taking your case unless we think we can help you; that is, to increase the net amount you receive from the insurance company or a jury, after our fees and expenses are deducted.

**Keep you up to date** on the status of your case, including the prompt return of your phone calls and emails.

**If your medical bills** have been paid by your own insurance (health or auto) and you have to reimburse the insurance company, we can typically negotiate this repayment at a significantly lower amount.

**Personal injury or medical malpractice cases** can take a long time to resolve. Especially if the person or company that has harmed you (more often, their insurance company) refuses to take reasonable responsibility for their actions. Our attorneys and staff are experienced in offering support and guidance to our clients and their families at every stage of a case.

**Hire expert witnesses** (if appropriate). In order to most effectively prove your case, it may be necessary to involve a doctor, engineer, economist, vocational rehabilitation specialist, or other specialist. At Burton & Simkin, we have the knowledge and resources to enable us to retain well-qualified and experienced expert witnesses on your behalf.

**Tell your story to a jury.** While most cases can be resolved by way of a settlement, some cases cannot. This typically occurs when the insurance

company maintains that their insured is not responsible for having harmed you, or (perhaps more typically) refuses to pay you a reasonable amount of money to compensate you for your damages. If, after consulting with the attorneys at Burton & Simkin, we together decide that your case should go to trial, our attorneys will present your case to a jury, using our years of experience to effectively prove why the person who harmed you is at fault and persuade the jury to award you fair compensation for your harms.

## Burton & Simkin Cases

### Sample Settlements and Verdicts\*

**\$1,200,000 Settlement** *(Wayne County)*

Failure to diagnose colon cancer, resulting in death.

**\$570,000 Settlement** *(Wayne County)*

Failure to diagnose meningitis, resulting in brain injuries.

**\$565,000 Verdict** *(Randolph County)*

Multiple Fractures to leg, causing compartment syndrome and nerve damage

**\$500,000 Settlement** *(Wayne County)*

Wrongful death as result of auto & semi collision

**\$435,000 Verdict** *(Wayne County)*

Head injuries caused by auto collision.

**\$251,500 Settlement** *(Wayne County)*

Negligent shooting of a paintball gun resulting in eye injuries.

**\$250,000 Settlement** *(Randolph County)*

Hip and wrist fractures sustained in an auto collision.

**\$250,000 Settlement** *(Union County)*

Fall in nursing home resulting in cervical fractures.

**\$250,000 Settlement** *(Henry County)*

Fractures of thoracic vertebrae and leg fracture caused by auto collision.

**\$225,000 Settlement** *(Wayne County)*

Wrongful death of driver at railroad crossing

**\$225,000 Settlement** *(Wayne County)*

Fractures of cervical vertebrae caused by auto collision.

**\$100,000 Settlement** *(Wayne County)*

Nerve injuries to arm sustained by bicycle rider struck by auto.

**\$100,000 Arbitration Award** *(Randolph County)*

Knee ligament injuries caused by auto collision.

**\$90,000 Settlement** *(Wayne County)*

Leg injuries sustained by motorcycle rider struck by auto.

**\$70,000 Verdict** *(Wayne County)*

Facial injuries and lost pregnancy caused by auto collision.

**\$65,000 Verdict** *(Fayette County)*

Injuries to neck and back sustained in auto collision.

**\$65,000 Settlement** *(Wayne County)*

Knee injuries sustained by horseback-rider struck by auto.

**\$42,000 Settlement** *(Wayne County)*

Facial injuries and scarring caused by dog bite.

**\$25,000 Verdict** *(Henry County)*

Broken wrist sustained by auto driver caused by driving over faulty railroad tracks.

**\$20,000 Verdict** *(Fayette County)*

Injuries to neck and back sustained in auto collision.

**\*Important note:** There is no guarantee of recovery in every case because each case has its own specific factual and legal circumstances. Each of the cases presented were resolved as a result of their specific factual and legal circumstances.

Attorney fees and case preparation expenses were deducted from each recovery, thereby reducing the amount actually received by the client.

## Selected Case Descriptions\*

### **\$1,200,000 Settlement** **Failure to diagnose colon cancer, resulting in death.**

Our client's family doctor obtained results of a blood sample which showed the client to be anemic. The client was then 56 years old. The doctor failed to provide the abnormal lab results to our client. The doctor further failed to provide appropriate follow-up care, including referring the client for a colonoscopy. The client continued to see the doctor at numerous office visits over the next two and one-half years, exhibiting additional symptoms that are commonly associated with colon cancer, including weight loss and bloody stools. The client was finally diagnosed with advanced colon cancer, which was later found to be terminal.

### **\$565,000 Verdict** **Multiple fractures to leg, causing compartment syndrome and nerve damage.**

Our client was injured by another customer in a fight on the sidewalk in front of bar as he and his friends were trying to leave. There had been fighting inside of the bar only minutes before including involving the client's girlfriend and an off-duty female bartender. The bar's security video showed the bartender running through the bar out the front door with several persons trailing her including the client's attacker, in pursuit of the client's group. The bar owner argued that the bartender was acting outside the scope of her employment. The attacker and his friends maintained that the client had ambushed him as he exited the bar. Our client sustained multiple fractures of his leg below the knee as he and the attacker fell to the sidewalk. He refused medical attention at the scene and did not go to the hospital until 8 hours later by which time he had

developed massive swelling to his leg. After multiple surgeries, client was left with permanent nerve damage and a dropped foot. After a one-week trial, the jury returned a verdict of \$565,000.

**\$251,500 Settlement**  
**Negligent shooting of a paintball gun resulting in eye injuries.**

Our client, age 16, was shot in an eye with a paintball fired by another boy. The shooting took place after our client and the other participants in a paintball game had removed their eye protection, as the game had been concluded. The shooting occurred at the home of a third boy, whose parents failed to supervise the participating boys or advise them concerning safety. Our client sustained serious eye injuries for which he required multiple surgeries and was left with permanent vision loss.

**\$250,000 Settlement**  
**Hip and wrist fractures sustained in an auto collision.**

Our client was a passenger in a vehicle which was t-boned at an intersection by a driver who apparently had a stroke and lost control of his vehicle. Our client underwent multiple surgeries for displaced fractures of a hip and to repair a fracture of a wrist. The surgeries also left significant scarring to our client.

**\$250,000 Settlement**  
**Fall in nursing home resulting in cervical fractures.**

Our client was an 86-year old patient at a nursing home. He had suffered a stroke causing total incapacity on one side of his body, however, he



was not mentally impaired and was still able to speak. Nursing home records indicated that the client had poor sitting balance and was prone to falling backward and was at a high risk for falls. During the course of a physical therapy session, the therapist left our client sitting unattended on a therapy mat table while he went to get a wheelchair which he had placed on the opposite side of the room. Unable to support himself in a sitting position, our client fell backward from the table to the floor striking his head. As a result of the fall, our client sustained fractures of the first and second cervical vertebrae for which he required a fusion surgery, and was in critical care for several weeks. Our client lived for only 5 months following the fall. Significantly, our client never spoke again following the surgery, most significantly with his wife of over 60 years.

**\$250,000 Settlement  
Fractures of thoracic vertebrae and leg fracture  
sustained in an auto collision.**

Our client was a passenger in a vehicle which left a county road and plunged into a steep creek bed at the location of a series of three severe turns – each of which is nearly 90 degrees in nature. The only sign posted by the County to alert drivers of the hazardous nature of these turns was a single “s-curve” sign posted approximately one-half mile prior to the turns. Within a few weeks of our client’s accident, the County posted six large arrow signs, two each on the outside of each of the three turns. Evidence existed that the County was aware of a number of prior accidents at the same location. A Burton & Simkin attorney deposed the County Highway Superintendent who admitted that the portion of the roadway in question was “a dangerous curve section” and he “wouldn’t want to drive at over 10 miles an hour going around them, if that.” An expert highway engineer retained by Burton & Simkin was prepared to

testify that the signs posted by the County prior to the accident were both improper and inadequate. Our client sustained unstable burst fractures of two thoracic vertebrae, which required surgery, and for her to wear a halo brace (immobilizing her head, neck, and back) for approximately three months, and a fracture of her leg, as well.

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