

Your Rights in an Auto Accident, Michael Barrett

Narrator: Good Morning and welcome to Your Legal Rights. My name is Greg Noble and I'll be hosting this morning's webcast. We are privileged today to have Michael Barrett of Wilentz Goldman & Spitzer here with us to talk about your rights in an auto accident. Before we get started today, I just want to point out that today we're talking about general legal guidance, very general principles will be discussing today. We are not giving legal advice. The point of our discussion is not to give you specific legal advice. We encourage you to consult a lawyer if you have specific legal advice questions relative to your situation. We hope today to give you an overview of the auto, personal injury area this morning. We will be taking questions and we encourage you to email them. I understand there is ways on the website to email us questions and we'll be happy to take those as they come in. Right now, I'd like to introduce Michael Barrett and begin our discussion this morning and thank him for being with us. Michael, welcome.

MB: Good morning.

Narrator: I think it would be helpful, Michael, to give the audience the benefit of your experience in terms of, you know, where you come to sit, where you sit today and then your experience in this area.

MB: Greg, well I'm a partner here at Wilentz Goldman & Spitzer. I have been here for 20 years. In those 20 years, I have been representing individuals who have been hurt in various kinds of accidents and many of those situations have involved automobile accidents. I have practiced routinely and try these cases in courts in New Jersey; in Middlesex, Monmouth and Union Counties and virtually every County in the State of New Jersey.

Narrator: Well we are happy to have you here today and we know that you are going to provide a lot of useful incites for our viewers.

MB: I'll try.

Narrator: Michael, what is the first thing that you should do when you're in an auto accident. We've all been, its sort of a crisis situation. It's not fun, we know but from your perspective what's it you'd be thinking once you clear away the emotion and the frustration of the event. What are the first things that should be running through your mind.

MB: Well, you're right, Greg, nobody expects or anticipates being in an automobile accident. It's something that happens typically without warning and it's the last thing you expect to happen. General rules of thumb, general guidances, once it happens, once you have your senses to check your passengers, check yourself to see if there's any injuries in your car and once you've done that, call for help. If you've got a cell phone, call the local police, call 911, get some help to the scene, stay in your car to the extent that you can and wait for help to arrive.

Narrator: Why is a police report, what's the rule that the police play in coming to an accident scene?

MB: A police report is really of critical importance in almost every automobile accident for several reasons and you may, people sometimes run across a situation where another driver will say to you, well let's not get the police involved and I don't want to tell my insurance company about this and the damage doesn't look to be too bad and I'll, you know, go get an estimate done and I'll write you a check and I'll pay for it. Promises have been made to people along those lines and promises like that have been broken on a routine basis. A police report does several things. Number one, it makes a record of what happened. It makes an official record of what happened. When a policeman arrives at the scene he has an opportunity to speak to the people who are involved in the accident, to speak to any witnesses who may have seen the accident and right at the scene, before anybody has an opportunity to give it further thought and perhaps to think of excuses or, you know, ways to avoid responsibility, the officer has a chance to speak to people right away to record what they say so there is an official record of the accident and down the road we'll talk about your dealing with your insurance company. Inevitably the first thing they're going to ask you for is a copy of the police report.

Narrator: Michael, why is having an official record important? I mean, why not just trade insurance information, not call the police and go on with your day? I mean, why do you think that someone might need that?

MB: Well, again, when you're involved in an automobile accident it's most likely that you'll be with a stranger, somebody you don't know and, again, if that stranger who's caused that accident. You don't know anything about that person. You don't know anything about their driving record. You don't know whether they have insurance or if they don't have insurance. Even if they produce an insurance card for you that can be deceiving. We have come across many situations where people have produced insurance cards at the scene of the accident and, for example, they're insurance has been expired. So when you buy your policy, if you buy your policy on January 1st your insurance company is going to give you a card to keep in your car but if you don't pay your premium over the next few months, they are going to cancel the policy so that, you know, if the card that somebody gives you doesn't necessarily reflect the fact whether he's insured or not and in the event that something like that does go wrong, again it's essential that there be an official record and the first thing that your insurance company is going to ask you for is a copy of the police report.

Narrator: How important is it to have, this is sort of a basic question but we all need to be reminded of things from time to time. How important is it to have all the documents that you need in your automobile, your insurance and your registration. How could that impact an accident scene if you don't have these documents?

MB: Well you want to make sure you keep your own documents handy and you want to keep them in order and the best thing to do is to keep them separately in some type of container your registration, your insurance information and of course you should have your drivers license on you and, you know, people tend to collect clutter in their glove compartments and there's nothing worse then if you're in an accident and a police officer is asking you for your information, you don't produce your registration, you don't produce your insurance card. What that's going to do unfortunately is get you a ticket. The police officer will be duty bound if you can't find your documentation to give you a summons and even if you have a registration, even if you have an insurance card, what's going to happen is you're going to have to appear in Municipal Court to answer the summons

Narrator: Sure.

MB: which could entail sitting in a Municipal Court on one or two occasions for several hours, you'll have to show your documentation to the judge at that point and the judge is going to dismiss the charge of failure to have a registered vehicle or failure to have an insurance on your car but he's then going to give you another citation for failure to produce the documentation to the police officer. So, even if you have insurance, if you have a registration unless you can produce proper documentation for the police officer, you're going to end up with a fine one way or the other.

Narrator: So it sounds like its important before you even get in your automobile to make sure that all your affairs, insurance and paperwork is in order.

MB: Be organized.

Narrator: Be organized.

MB: It pays off in a situation where something unexpected happens.

Narrator: Sure. I'm going to ask you a question now that the folks have always asked me. I think it paints an interesting picture and I'm curious to hear what you think about it. You get in an auto accident and it's an emotional event and there are times when you feel you're at fault and maybe in an honest moment of emotion you say Oh, I'm sorry that was my fault I wasn't looking or someone that you get in the accident with says something like that to you. How damaging can those and I'm sorry to think like a lawyer but how damaging can those statements be and do you have any recommendations as to what to say or not to say in an auto accident context?

MB: Well generally at the scene of an accident you're right. Emotions tend to be high and especially if someone is hurt or it looks like it's a more serious situation then the best advice is to really cooperate with the police officer. Generally we advise people to avoid discussing how the accident happened with for example the other driver or a witness at the scene. But certainly you should cooperate with the

police officer and if the police officer questions, you know, what happens you should be as cooperative as you can. Now, it's kind of a two edge sword because what you tell the police officer may end up being the basis for a summons, a traffic summons against you so again you should be cooperative with the police officer but, again, be careful for example about fixing blame upon yourself because if you do so it could end up being held against you in court or if the other driver decides to bring a claim against you at some point in the future, certainly any statements you make at the scene can find their way into the courtroom before a judge and a jury in a civil case.

Narrator: It sounds to me that before the officer comes you want to sort of keep to yourself and not get in too much conversation with the other driver and once the officer comes and discussion is generated and at that point you may have to be as honest as you can.

MB: Yeah, I mean the officer, when the officer arrives he or she will take control of the scene for sure and at that point in time you really shouldn't have any contact at all with the other driver but certainly before the officer arrives, especially if it's a situation where it appears that the other driver is hurt then certainly you want to do what you can in the interim until the emergency people arrive to do what you can, certainly at scene for anybody who is hurt.

Narrator Let me shift gears for a second. We've gotten the police involved and it's always a good idea. We have our paperwork organized. We're sort of along the process here of this crisis. The next question that always pops up and people always ask me and I defer to individuals like you who do this work. When do I report it to my insurance company? You know it's a minor fender bender, I'd rather not report it, have my rates go up. I just kind of want to do this, you know, man to man and not get the insurance companies involved. Can you give us your thoughts on that process and what you would generally recommend as guidance?

MB: The general rule of thumb is to report any accident of any significance to your insurance company for several reasons. Number one, the policy you have with the insurance company clearly requires you to do so and if you violate that policy insurance companies are known to do what they can to not look after you in the future if different types of issues arise. People sometimes believe that their automobile insurance rates are going to rise if they report an accident to their insurance company. It's not true. Automobile insurance rates are not based on that but are based on situations where you're found to be at fault for the happening of the accident and at some time in the future you're found to be at fault for happening of an accident and if your insurance company pays money on a claim for property damage or for injuries, certainly that does have a potential to have an impact upon your rates but if an accident happens, the general rule of thumb is report it to your insurance company. It's a very simple procedure. They usually have 24 hour toll free claims numbers set up. You can look them up. They're in your policy. They'll ask you a few questions about how the accident happened, they'll ask you if there's a police report and maybe nothing will come

of it. If it's a relatively minor situation where there's only a few hundred dollars damage it might not amount to anything but, again, you're on record to protect yourself. You've got your police report, you reported it to your insurance company. It's up to you if you want to make a claim to get the damage repaired so if, for example, if you've got a \$500 deductible for property damage and you know you backed up into another car and your car is damaged and their car is damaged and you choose that you've got \$300 damages to your car you know, it doesn't make any sense to seek reimbursement from your insurance company because the amount of your claim is less than the amount of your deductible so you're probably gonna have to absorb that cost on your own to get your own car fixed but, again, the other driver, there's been another driver involved at this point, the other driver who could potentially pursue some type of claim against you in the future for property damage perhaps for bodily injury and you have an obligation to get under your policy to report those types of situations to your insurance company immediately and immediately means within a reasonable period of time. Certainly within a few days after the accident happens.

Narrator: So just to backup for a second. It sounds like what your saying is if you don't, if I get in a car accident and I don't report it to my insurance company and I'm later, you know a year and a half later sued for bodily injury, is it fair to say that the insurance company could say look, you know you didn't let us know we're not going to step in for you here. Can that happen?

MB: There is that potential.

Narrator: Ok.

MB: Who needs that headache. I mean they may or may not take that position but insurance companies in the past have had many occasions where they have refused to protect their insured by saying that the insured, their client, did not report an accident, did not cooperate with the insurance company. They perhaps could say that the nonreporting deprived them of the opportunity to investigate the accident to see if there were any witnesses, to see if it was the fault of the other driver so yeah, I mean certainly there's a can of worms that you might open if you decide to kind of take a chance and not report an accident to your insurance company.

Narrator: Do you know what the insurance company does when they investigate a claim? In other words, I remember just from my own experience being involved in an accident and I had to give several telephonic statements to the insurance company. Typically what do they do if you are seeking reimbursement for, you know, property?

MB: It really depends upon the seriousness of what's involved and how deeply they'll investigate a claim. For, take an example, a situation which involves damage to your car and no bodily injury involved. Typically what the insurance company will do is to ask for a copy of the police report. Again, the importance of there

being a police report regardless of who's fault the accident was and number two, they'll typically ask you for a written statement. They'll send you a form you fill out what happened, you sign it, you swear to it, you send it back to them. On occasions some insurance companies will send out an investigator or sit down with you and ask you what happened and write down the information that you provide to them and ask you to sign the bottom of it and that's typically what your involvement would be in any investigation that the insurance company did. They may choose to do further investigation. They may choose to interview witnesses who are listed in the police report. Depending upon how serious they view the accident they may choose to go out to the accident scene and to take photographs of the accident scene. They may choose to take photographs of the accident vehicles. All of these things could be relevant later on down the road if an issue arises as to whose fault an accident was.

Narrator: Ok. Let's go back to the accident scene. Your car has had significant damage done to it and the first question that pops into your mind is who's going to pay for this. Do I have to pay for it? Is his insurance company going to pay for it or is mine? How does that sort itself out in terms of what you've seen?

MB: Sometimes it results in a lot of confusion to people who are involved especially for the first time and the first thing to look at is to look at your policy, your own policy that you purchased from your insurance company and see if you have something that's called collision insurance. If you have collision insurance under your policy, your insurance company subject to whatever deductible that you have in your policy, typically it's \$500, will have an obligation regardless of who's fault the accident was to have your vehicle examined typically at a body shop of their choosing and they will determine whether or not the vehicle can be fixed at a certain price or if the vehicle should be totaled. Now their obligation is to fix the vehicle if it can be fixed. If they choose to total the vehicle they have to pay you the cash value of the vehicle minus your deductible but if the accident is the fault of yourself, that's where it ends. If your car gets fixed or your car gets totaled and if the accident is your fault, you have to absorb the \$500 deductible. If the accident is the fault of the other driver in that circumstance, what your insurance company will do is approach the insurance company for the driver who was responsible for causing the accident. They will, if the other insurance company is satisfied that it was the fault of their insured, the other insurance company will reimburse your insurance company for the full amount of the damages to the car or the total value if the vehicle is totaled and at that point in time your insurance company will return to you your deductible. Ok if it's \$500 it's \$500. The process typically takes about two to three months before you get your deductible back. Now that's a situation where you've got collision coverage on your car. If you don't have collision coverage on your car, at that point it comes down to whose fault was the accident. If the accident was your own fault nobody's going to compensate you for the value of your vehicle. The other insurance company is not going to compensate you and you have no collision coverage under your own policy. Conversely, if the accident was the fault of the other driver, you can approach and contact the insurance company for the other driver. They will

typically ask you for a copy of the police report and if they are satisfied that the accident was the fault of their driver, they'll pay you typically for the damage to the vehicle or total the vehicle. On the other hand, if you approached them and they came to the position that we believe the accident was your fault and not the fault of our driver they're not going to pay you anything for your property damage and if you want to pursue it further, you are going to have to bring a complaint against them in court.

Narrator: So the value of having collision insurance is no matter who's at fault you're car is going to be either repaired or totaled

MB: That's correct.

Narrator: Then you would only be out the deductible.

MB: You'd be out the deductible if the accident was your fault. If the accident was the fault of the other driver, you'll get that deductible back but it may take a couple of months until you'll get it back.

Narrator: Let's turn now, we've gone from probably the least important thing to the most important thing, the person. If you're injured, who pays for all of the medical bills and hospital bills and prescriptions and things of that nature.

MB: Well that's where you've all heard the term no fault law, the New Jersey no fault law. That's where this becomes important. The no fault law in New Jersey for medical expenses essentially says that regardless of whose fault an accident is your own insurance company pays for the hospital expenses, the doctor expenses, the x-ray expenses, all the expenses that are reasonable and necessary as a result of an automobile accident. That is traditionally been the case in New Jersey for 25 years and your rights again to have medical expenses paid depend upon the selections that you make in that coverage booklet that comes to you every year when you renew your insurance policy. In New Jersey, drivers have a choice between a number of different medical expense coverages. You can buy different deductibles. There's a \$500 deductible, there's a \$1,000 deductible, there's a \$5,000 deductible. You have the right if you choose to do so to try to coordinate that coverage with your health insurance coverage so that you can accept a higher deductible and a lessened cost for your insurance so you have to read your policy coverage book and see what the premiums are for the different coverages and, again, that's called the standard coverage. The standard coverage typically is that you're covered up to \$250,000 in medical expenses, up to \$250,000. There's typically a \$250 deductible. The insurance then pays for 80% of your expenses up to the sum of \$5,000 and it pays 100% over \$5,000 up to \$250,000 if those types of expenses have occurred. Now there are less expensive alternatives that are available. As I say, you can buy higher deductibles and things of that nature. You can also buy today something that's called a basic policy which is different than a standard policy and a basic policy provides that if you're involved and you're hurt in an accident regardless of whose fault the accident is, you have

