

TOP 11 ARGUMENTS INSURANCE COMPANIES USE AGAINST YOU TO DEFEAT YOUR PERSONAL INJURY CASE

Excuses used by insurance companies to avoid fair and reasonable settlements because they believe your injuries were your fault

By Michael A. Schafer, Attorney at Law



The Schafer Law Office

440 South Seventh Street, Ste. 200
Louisville, Kentucky 40203

(502) 584-9511

www.mikeschaferlaw.com

TOP 11 ARGUMENTS INSURANCE COMPANIES USE AGAINST YOU TO DEFEAT YOUR PERSONAL INJURY CASE

Excuses used by insurance companies to avoid fair and reasonable settlements
because they believe your injuries were your fault

If you have been injured in a car accident many insurance companies may try to lower the value of your claim with carefully formulated arguments or scripts or even get rid of your claim all together. Here are some of the more frequently used:

1. The condition of your vehicle caused the injury

Your car was not equipped with a headrest, seatbelts, rearview mirror or other safety devices. It is your responsibility to make sure your car has these items. Your car had bald tires, breaks that didn't work, tail lights that did not work, etc. The car was not well maintained. Failure to have them will be argued as the primary cause of your injury. In other words your car was an accident waiting to happen.

The car was equipped with seatbelts, but the Plaintiff didn't use them. If the seatbelt could have prevented your injury, it will be argued. They will attempt to decrease the value of your case with this argument.

2. Using your medical history against you.

You were on medication at the time of the accident. It will be argued that this impaired your reaction time and ability to avoid the accident.

You had hearing or vision problems and weren't wearing your glasses or hearing aid at the time of the accident. If you had the accident could have been avoided. This will be argued as the cause of the accident.

You had other physical problems such as epilepsy, headaches, sickness, etc., which impaired your driving ability and perception and reaction time.

3. Using your perceptions/recollections against you

You didn't notice the other car until impact or immediately before impact and therefore was not paying attention.

Your recollection of time of day, accident timing, speeds and distances are grossly inaccurate and indicate inattentiveness or incompetence in driving. This at the very least diminishes your credibility if there are inconsistencies (You should always use terms such as approximate when talking about these).

You exaggerated the other car's speed and other facts surrounding the accident. This diminishes your credibility and makes you look like an unreliable or unbelievable witness.

You had difficulty describing events surrounding the accident in detail or your testimony does not match the facts of the accident as described by the police officer or other witnesses.

4. Making you the bad guy & blaming you for the accident

You had warning of the danger of the oncoming accident with sufficient time to avoid the accident if you were paying attention.

You could have avoided the accident if you were not speeding or going too fast for the road/weather conditions.

You made an unnecessary and unexpected stop.

You made an unsafe lane change without using a turn signal.

You were not at/in the intersection first if there was a dispute as to who had the right of way.

If you and the other car were in the intersection at the same time, it was your fault because their driver disagrees with you.

The other driver was acting as any "reasonable person" would have, driving at a safe speed for the conditions and therefore was not negligent, and the other driver's actions were not a probable cause of the accident. In other words it could not have been the other driver's fault.

You ran the red light.

5. Shifting the blame to some other cause

An act of God or an unknown person was responsible for the accident.

The accident was “unavoidable”.

There was an “emergency” that excused the other driver’s negligence.

“Nobody knows for sure” or “We are not going to pay”

No independent witness was found who could corroborate your version of the accident. You can’t win a swearing contest.

A witness cannot be found (the Plaintiff, not the Defendant has a legal duty to prove by a “preponderance of the evidence” each element of his case.)

The witnesses contradict your version of the facts or confirm the other driver’s version.

The physical evidence (lights, brakes, tires, skid marks, etc.) was lost and it was necessary to have it examined by an expert to substantiate your version of the facts.

6. Mistakes

The investigating police officer made errors in the accident report or conclusions that dispute your version of the accident.

The police was not called to the scene (inferring that it was just a minor accident and you could not have been injured).

7. Claiming that you are not really injured and / or minimizing your injuries

There was no complaint of pain or injury at the scene of the accident by you.

There is nothing in the police report to indicate that you complained of pain at the accident scene.

There were no physical signs or injury at the scene of the accident like cuts, bruises, etc.

You did not request an ambulance.

You did not go to the emergency room on the day of the accident or in the day following the accident.

You told the other driver or other people at the scene that you felt “ok”

You made a statement to the insurance company that you were not injured in the accident.

You did not receive medical treatment for several days following the accident.

There is no medical opinion substantiating medical causation between the accident and your complaints.

Shortly after the accident, your physical/health condition returned to “normal” (what it was before the accident). You acted like you always do.

Your complaints to your doctor were minimal.

Accordingly to medical records your complaints to your doctor were bizarre, exaggerated and lengthy.

According to medical records your complaints to one doctor were different then your complaints to other doctors(s).

You had full range of motion at the medical examination.

You were observed moving normally and without pain.

Your family doctor’s opinion is that the injuries are minimal.

The doctor did not prescribe physical therapy or any other treatment for you.

Your injuries are totally “subjective”, that is there is no proof of the injury from x-rays, orthopedic tests, other tests or observation.

You received very little treatment for a very short time period after the accident.

You only received chiropractic care and massage after the accident.

You are malingering or the your subjective complaints are not supported by objective findings of injury. In other words you are faking your injury.

You were examined by a doctor recommended by the insurance company (“independent” medical exam) and was found to be uninjured and not in need of any treatment.

You had a chronic injury or condition (such as arthritis) as documented in the past medical records.

8. Minimizing the severity of the accident

The property damage to either or both vehicles involved was minimal, therefore you can't be hurt. The damage repair estimate shows only \$1,000.00 or less of damage to your car.

Your car was equipped with shock-absorbing bumpers, headrests, seat belts, etc. which made impact injuries impossible or improbable.

No one else involved in the accident had injuries.

The other driver claims they were only going 5 mph or less.

Your airbags never deployed so the forces of the crash had to be minor.

9. Using your medical history against you

You made mistakes in recalling your medical and / or employment history to the insurance company. This makes it look like you are hiding something and are not trustworthy.

You had prior complaints of pain to the same area of your body before the accident.

You received medical treatment to the same areas of your body before the accident.

You had seen a chiropractor or massage therapist before the accident.

You had a subsequent injury, which was the cause of continual problems instead of the accident in question.

You had no complaint of pain at the physical examination by your doctor.

10. Minimizing financial impact caused by your injuries

Your doctor did not recommend time off of work yet you took time off work.

No doctor has stated that you would lose work time in the future.

You had a poor attendance record at work prior to accident.

You would have been terminated or laid-off even without the accident.

You had no job at the time of the accident and can't substantiate that you were applying for any employment.

Your earnings (w-2 and tax records) indicate a smaller earnings history than you have claimed.

You were paid in cash for prior employment and can't document your past earnings.

11. Pulling out all the stops – other common Defenses

The cost of treatment was excessive and the period during which you were treated was excessive in light of the "standard" or "customary" charge and time for such services.

The injuries should have healed within 3-6 months, so any treatment after that is excessive or unnecessary.

You went to work contrary to your doctor's advice and thereby aggravated your injury. This was the cause of the prolonged period of disability and / or treatment.

Your doctor is no longer in the area or otherwise unavailable.

You allowed the "Statute of Limitations" period to expire, thereby forfeiting possibility of recovering anything for your claim.

You were partially at fault and should recover less under the rule of "Comparative Fault".

You have a history of filing lawsuits for the purpose of collecting compensation.

You have a history of mental illness or emotional problems making you unreliable.

There are many other arguments that insurance companies can use to avoid paying a fair and reasonable settlement for your injuries. These are some of the arguments I have seen used or have been told by colleagues that have been used. It is the insurance adjustor's job to find as many of these defenses and arguments as possible for the purpose of defeating or minimizing your claim. Once you give a statement, and provide any information that might support one or more of these "arguments it can be very, very difficult to later change the insurance company's mind – even if their argument is totally untrue! Information you give to the insurance company early on in the claim can hurt you later. You should be very careful when speaking to the insurance adjuster. It is very important that you speak with your attorney before you give a statement to an insurance adjuster. Your attorney will be able to give you an idea as to the questions you will be asked and to prepare you so that you are on a level playing field with the insurance adjuster.

The above list is provided so that you are aware of insurance company arguments. This is important information to have when speaking with an adjuster. You must tell the truth, but being aware of common arguments can help you avoid these pitfalls.

Also, just because these arguments are used doesn't mean you are going to lose your accident case. Many of these arguments can be used to your advantage. Just because the insurance adjuster makes the argument, do not give up hope. A fair settlement or trial victory can still be achieved in your case.

