

HAD AN ACCIDENT?



GET PAID

FOR YOUR DAMAGED VEHICLE

— YOUR —
ACCIDENT LAWYER

— BY WARNOCK MACKINLAY LAW —

Expert Attorneys **Nathaniel Preston** and **Quinton Riches** Teach You

How To Get Maximum Value For Your Damaged Vehicle

Advice included in this book:

- Things you should and should NOT tell the insurance company, and details on the schemes they use to trick you.
- How to best avoid getting ripped off by 'captivated' body shops that don't have your best interest in mind.
- Understand how to find the true value of your vehicle without getting scammed by so-called independent appraisers.
- Learn about websites and valuation tools you should avoid, since they do not give you an accurate representation of your vehicle's value.



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In addition to this book, you can access other helpful information through our web site: www.youraccidentlawyer.com, and our Facebook page <https://www.facebook.com/warnockmackinlay>. We also provide a newsletter containing useful information that you can sign up for through our website.

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Printed in the United States of America

ISBN: Pending

Publication Year: 2020

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A portrait of Brenda Hamilton, a woman with long dark hair and bangs, smiling. She is wearing a black top with a pattern of small gold dots. Her hands are clasped in front of her. In the top right corner, there is a white square containing the letters 'W' over 'M' separated by a horizontal line.

W
—
M

A SPECIAL THANKS TO

BRENDA HAMILTON

Warnock MacKinlay Law acknowledges and appreciates the expertise, research, and background provided by Brenda Hamilton, a paralegal of thirty years in accident law in creating this book.

WELCOME TO WARNOCK MACKINLAY LAW, PLLC.

WE'RE HERE TO HELP.

If you or a loved one has been in an auto accident, you're probably having a difficult time. Your vehicle is damaged. You can't get to work. Worse, you might even be injured.

Suddenly you have a lot to worry about, and no idea where to start.

That's where the expert legal team at Warnock MacKinlay Law can assist you!

We've put together this booklet to help you through the property damage process. We want you to make the right decisions to get yourself back on your feet, and receive the money you deserve for your damaged or wrecked vehicle.



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INTRODUCTION

Insurance companies employ a variety of schemes to avoid or reduce payments on your damaged or totaled vehicle. It is impossible to explain in detail each and every one of their wrongdoings. However, there are some things you should watch for carefully to make sure your insurance company is paying you the adequate amount for your vehicle. For example, when you contact the insurance company by phone and they inform you that the call is being monitored for alleged “quality control and/or training purposes”, this is obviously illegal, because it violates your personal privacy rights. The insurance company may ask you to specifically describe the accident and provide them with a tape-recorded statement. ***You should never do this*** without the guidance and input of a licensed attorney, and law firm such as Warnock MacKinlay Law PLLC.

Sometimes an insurance company may ask you to disclose personal information such as your social security number, which has nothing whatsoever to do with your claim. It simply provides them with an avenue to investigate your personal life which again, has nothing to do with the accident. The insurance company will advise you that they are investigating the claim and looking into it, but they are simply buying time and trying to find a way to not pay you for the compensation to which you are entitled.

Another area that is very important to watch out for and of which most people are not aware is that insurance companies work with “captivated” or “designated” body shops and often use replacement parts that are used rather than new, or are not even manufactured for your specific vehicle. You have the right to go to a body shop of your choice, and you should choose one that is independent from the insurance company.

In the event your vehicle is a total loss rather than just damaged, the insurance company will try to get you away from using independent sources to determine value, and will tell you they will use an independent appraiser. However, just like the body shop, the independent appraiser is simply a captivated company that works with the insurance company.

You should also refuse to sign any forms, documents, or contracts authorizing the insurance company to obtain private medical records, employment information, or other items you consider personal. If it is necessary that you have a rental vehicle to replace your damaged vehicle, there are a number of ways the insurance company will try to avoid paying those charges.

These are just a few warning tips, many of which are discussed more thoroughly in the following booklet.

I personally became an attorney for these exact reasons – to assist other persons with unforeseen problems. I have witnessed so many issues involving vehicles, I could write a book about it. In fact, I have, and here it is for you.

Nathaniel B. Preston, Attorney at Law

CHAPTER 1

Repair vs. Total Loss



So you've been in an accident. Now what? Well, it's important to get your vehicle back on the road. However, not all of them can be repaired.

Here's what will happen. After the accident, either your insurance company or the insurance company for the at-fault party will examine your vehicle. They'll calculate several things, for instance:

- The costs associated with a repair; and
- The cost of a rental car; and
- Any additional costs charged for taking the vehicle apart.

If they add all these costs up and find that it's close to, or more than, what the vehicle is worth, then they will consider it a "total loss." In other words, it has no value except for scrap metal. Usually, if the repair estimate is within 60-75% of the vehicle's value, then they'll designate it as a total loss, because they know that they will find more damage when the vehicle is taken apart, which will add to the costs. The insurance company that's handling your property damage claim will normally make this decision.

CAN YOU OVERRULE A TOTAL LOSS DECISION?

If you're the owner of the vehicle, it's your right to overrule a "total loss" decision. But you do so at your own risk. Here's why:

If you keep the vehicle after the insurance company declares it totaled, you'll get paid the actual cash value of your vehicle, minus the "value of the salvage" (minus your deductible, if it's your insurance company), which is how much it's worth to an auction company.

You won't get this money right away. First, you'll have to take your title to the Motor Vehicle Division and apply for a "salvage title," which is a public record showing that your vehicle has been damaged to the point where it should be considered salvage.

Only after you complete this, and any other requirements set by the insurance company, will you receive your total loss payment, and only then only then are you free to do what you want with your vehicle.

Remember: If your vehicle has been declared a total loss, but has a loan, or lien, the lender may not let you keep it. The total loss check will go to the lender, up to the amount of your loan. If the check is not enough to pay off the loan, even after the salvage reduction, the lender may not let you keep the vehicle. This is because the wrecked vehicle was the security on the loan, and after the wreck, the loan may no longer be secure. The lender, under your loan contract, may also have the right to force the total loss and override your decision to retain the vehicle.

Safety Caution: If the lender allows you to keep your totaled vehicle, be sure to have it professionally inspected for safety. The last thing you want to do is risk injury if your vehicle has not been fully repaired to proper safety standards.

CHAPTER 2

Total Loss

Let's say that your vehicle has been deemed a total loss. What happens next?

UNDERSTANDING ACTUAL CASH VALUE AND FAIR MARKET VALUE.

Your vehicle might be totaled, but it's still worth money. The next step is to figure out how much. The assessed value of the totaled vehicle is called the Actual Cash Value (ACV). The ACV is what the vehicle was worth before the accident (purchase price minus depreciation). It's calculated by comparing similar vehicles in your area that have an identical or close year, make, model, condition, and mileage. Another item to consider is the Fair Market Value (FMV). This is the amount that an interested buyer might be willing to pay for the vehicle. Mileage, history, condition, and other items factor into this amount. Practically speaking, the FMV and ACV can often be interchangeable for valuing your vehicle.

FINDING OUT WHAT YOUR VEHICLE IS WORTH.

An insurance company may pay the ACV or FMV. Once the insurance company makes you an offer, though, be sure to find out yourself what your car is worth. There are a few simple steps you can take to accomplish that:

First, go to www.autotrader.com and enter your vehicle's year, make, model, and mileage, and search for vehicles within 100 miles of your home ZIP code. Compare those values with your own vehicle; also try similar websites, as well as the local newspaper.

Second, after you've determined the vehicle's value, repeat the same steps at www.nadaguides.com, which usually provides an accurate value estimate.

Important Note: Don't rely too heavily on websites provided as tools for car dealers, such as Kelly Blue Book. They normally don't reflect accurate ACV or FMV numbers, and often these figures are not accepted by insurance companies.

Third, a calculated value assumes that all parts of the vehicle are in good and working order. Unfortunately, recent repairs or additions don't normally increase your vehicle's value, so that new engine, or those new tires won't get counted by the insurer in their offer on a dollar-for-dollar basis. They could probably help provide a minor increase or adjustment, but that's about it. Okay, I've determined my vehicle's value. Now what?

NOW IT IS TIME TO FIGURE OUT WHO'S GOING TO PAY YOU FOR YOUR VEHICLE.

If you were not at fault, and don't have personal collision coverage under your own insurance policy, you have to wait for the other driver's insurance company to complete their investigation and compensate you for your vehicle. However, if you caused the accident, then your only option is to use your own collision coverage, with your own insurance company. Hopefully, you purchased "collision coverage."

If all things are equal as to what is being covered, you may want to go with your own insurance company for handling the claim. They are legally obligated to deal with you fairly and in good faith, because you're paying for coverage. They will usually handle your property damage claim on a fairly quick basis. The other driver's insurance company doesn't owe you that same obligation.

ONE MORE IMPORTANT NOTE: ARIZONA STATE LAW PROHIBITS INSURANCE COMPANIES FROM RAISING RATES BASED ON AN ACCIDENT THAT WAS NOT YOUR FAULT. THEY CANNOT RAISE YOUR PREMIUMS JUST FOR MAKING A CLAIM.

HERE'S WHERE THINGS GET A LITTLE MORE COMPLICATED.

Most of the time, the insurance company pays claims based on the terms of the insurance policy, minus your deductible. However, insurance companies will sometimes set limits on what they will pay. For example, let's say you upgraded your stereo system or added accessories or aftermarket upgrades, like saddlebags on a motorcycle, or a custom paint job. The insurance companies may not pay for non-factory-installed equipment, and the value of all those updates to you might be much higher than what is covered.

If you don't have anything that might significantly reduce your coverage, however, your own coverage might be the best option. If anything, you won't have to wait for the at-fault insurance company to complete its investigation to handle your claim.

BE CAREFUL!

Any insurance company has a duty to treat you fairly, but you also have a duty to mitigate your damages. All that means is that you must actively attempt to keep your damages as low as possible.

If you have insurance coverage and the other driver's insurance company is still investigating the accident, it's your responsibility to start handling the claim through your own insurance. If you don't do this, your insurance may not pay the other charges that can accumulate. These additional charges can include towing fees, storage charges, or additional days for your rental vehicle.

YOUR COVERAGE OR THEIRS?

The primary problem with using your own coverage is your responsibility for the deductible. If the vehicle isn't deemed a total loss, you'll have to pay your deductible to a repair shop. Even if it is deemed a total loss, the payout will not include the amount of the deductible. However, if the accident wasn't your fault, you should be able to recover the deductible directly from the at-fault driver's insurance, once a reasonable investigation is complete.

There are other benefits to using the at-fault driver's insurance. If they've accepted responsibility and are ready to take care of your vehicle, let them. They'll determine the value and handle the total loss, and you won't have to pay the deductible when it is finally repaired.

That being said, if you don't agree with the amount the at-fault insurance company offers you, you still have options. You can switch over to your own insurer, compare values, and choose the highest one.

Also, if your insurance policy doesn't include rental car coverage, the other company may put you in a rental vehicle while they handle your claim.

Caveat: In all my years of practice, rarely is a car owner happy with the repairs or value the insurance company puts on your vehicle. That vehicle is very special to you, but to the insurance company, it is simply one of millions of claims. Sadly, they typically do not care about you, personally.

CHAPTER 3

Total Loss Coverage

At this point, you're probably wondering what damages are going to be covered by the insurance company. It really depends on which driver's insurance is handling the claim.

If you were at fault, your insurance company will handle the claim, but only if you have collision coverage. This collision coverage is for damages to your vehicle. If you were not at fault, you can choose between the other driver's insurer or your own.

WHEN YOU USE YOUR OWN INSURANCE COMPANY.

If it's your insurance, your policy will outline the process. Usually, your insurance company will pay for the Actual Cash Value (ACV). (If you disagree with the ACV, your insurance will probably also have an appraisal process.) If your vehicle is less than one or two years old, some policies will provide for a newer model or a newer replacement vehicle. Policies usually won't have an explicitly stated value, unless it's for a unique, classic, or custom vehicle.

Also, remember that many insurance policies do not cover personal property that's lost or damaged in the accident. This could include motorcycle helmets, upgraded stereo equipment, and aftermarket upgrades like wheel and lift kits. You will need to file a claim with the at-fault party's insurance company to be compensated for these items.

WHEN YOU CHOOSE TO USE THE AT-FAULT PARTY'S INSURANCE.

If you were not at fault for the accident, you are likely dealing with the other driver's insurance company.

In this case, that company is required to replace the damaged property, or pay the reasonable value by replacing it with a similar or comparable vehicle. What they're paying is essentially the fair market value, which takes into consideration the year, make, model, mileage, condition, and upgrades. It's often interchangeable with the ACV.

GETTING THE RENTAL VEHICLE.

If you're not at fault for the accident, the other driver's insurance company is also responsible for your rental car. It has to be comparable to your damaged vehicle. So, if your truck was wrecked, you are entitled to rental truck.

However watch out. Insurance companies sometimes try to give you a rental with the same number of seats. That doesn't necessarily mean you'll get a rental vehicle comparable to your vehicle. Remember: They are required to put you in the car closest to what you would have been driving if an accident hadn't occurred.

(There is one potential exception here, and it's for motorcycles. Finding motorcycles to rent is often difficult, and often riders' injuries prevent them from being able to ride a motorcycle.)

If the at-fault insurance company can't provide you a rental car, they have to pay you. It's called a "loss of use" fee, which is the normal rental cost for your vehicle. Determine this cost by comparing rates at local businesses for vehicles that are the same size as yours. The insurance company has to pay you this rate until one of two things happen: they make a total loss offer, or your vehicle repairs are complete.

MORE ABOUT THE TOTAL LOSS OFFER.

Let's say your vehicle is declared a total loss. The insurance company comes to you with an offer, but you don't agree with it. What do you do in this situation?

You can dispute the offer and here's how you can fight the company's low offer:

If you dispute it through the at-fault driver's insurer, usually, you can't get the vehicle appraised. In that situation, you need to request a copy of the insurer's valuation, which is their breakdown of how they reached the dollar amount offered to you.

Review the valuation yourself. Look it over carefully for any mistakes. If you find any, you can argue for an increase in value. This could be incorrect mileage, or missing features, inaccurate conditions, or different comparable vehicle costs in your area.

That last common mistake is important. Check each comparable vehicle that the insurance company used to obtain your valuation, and do your own research. Call the owners or dealers of the listed comparable vehicles and see if there were any details that could show that it is not comparable to your vehicle. Making these calls can reveal significant defects that makes the insurance company's appraisal defective.

Another option is to dispute the loss offer through your own insurance. Try to negotiate with them using the same tactics you would for the at-fault driver's insurer. Obtain your company's valuation documents and examine them just as you did for the adverse insurance documents.

With your own insurance, you also most likely have an appraisal clause. It usually isn't a good idea to invoke this because of the cost of getting your own appraisal -- not unless the value offered is more than \$500 too low.

UNDERSTANDING THE "NON-DISPUTED AMOUNT".

The non-disputed amount is what the insurance company originally offered before the appraisal. You don't have to agree with it, but you can demand to be paid that amount upfront and still dispute the claim for what you believe is still owed to you.

Essentially, if you're unhappy with the offer while deciding what to do, you can demand the non-disputed amount from the insurance company in writing.

Please note that they might require you to sign over your vehicle's title. They might also withhold the salvage value (see Chapter 2) from the non-disputed amount.

IF YOU DECIDE TO PROCEED WITH AN APPRAISAL...

The best thing to do is to read your policy, especially if you think the value is too low and you want to go ahead with an appraisal.

Most insurance companies require you to notify them in writing that you want an appraisal, and who you want to do it. At that point, the insurance company will get their own appraiser, and then both appraisers have to choose an "umpire" or final decision maker.

If your appraiser and their appraiser can't agree on the value, then the umpire decides. You'll then be required to pay for your appraiser, as well as half the umpire's fees.

This process usually takes one to two months and may cost more money than what your claim is worth. But remember ... during this time, you can ask your insurance for the non-disputed amount.

CHAPTER 4

Upgrades



Let's talk about upgrades to your vehicle.

Many people add extras to their vehicles. Maybe it's putting in a new sound system. It could be adding a lift kit, or maybe the whole vehicle gets a custom paint job. But these upgrades don't always add value to your vehicle — at least, not the amount you paid for them.

The value of this upgrade depends on the insurance company. If you were in an accident that wasn't your fault, your policy may either limit payments for upgrades, add-on items, or dictate how much they'll pay for them.

If your policy isn't that specific, then the insurance company will need to pay the fair market value (FMV) of the upgrades. Here's the thing: The FMV for the upgrades is the amount of value they add to the vehicle. It's not necessarily the amount you paid for the upgrades on a dollar-for-dollar basis.

Suppose you added a lift kit. If trucks with the same year as yours were worth \$2,000 more with a lift kit than one without, then \$2,000 is your FMV for the lift kit. . It wouldn't matter if you paid \$500 or \$5,000 for yours.

The at-fault driver's insurance is required to pay for your upgrades -- but they'll only pay for the added value, not what the upgrades cost. Also, upgrades often don't add value; sometimes it's the opposite. Making a vehicle a low-rider, for example, could decrease its value.

Custom paint jobs are similar: They're often very personal, and very expensive, but they usually don't make a vehicle more valuable. Even stereo systems don't usually add value -- at least not the amount you may have spent on them. You can always request to remove the system yourself and keep it. It may be more valuable to you than the insurance company. If they allow you to remove the stereo, for example, they may make a deduction for no stereo and reduce the FMV.

WHAT ABOUT GUARANTEED ASSET PROTECTION?

Guaranteed Asset Protection ("GAP") is a type of insurance coverage that pays you the difference

between the value of the vehicle and what you owe your lender on the vehicle. GAP plans only work if your vehicle is (a) considered a total loss, and (b) your loan amount is more than its Actual Cash Value (ACV). The GAP is a legal document with unique terms that specify payment amounts. We'll explore this a bit more, but keep in mind that your contractual terms may differ.

Most often, GAPs are sold by car dealerships, but they can also be purchased through some insurance companies. They can be used for both new and used vehicles. (**A new vehicle's value decreases significantly the moment you drive it off the lot.**) For example, if you purchased a new vehicle at a car dealership at \$20,000.00 and you financed the entire amount, you probably owe more money on the vehicle than it is worth. The minute it is driven off the lot, its value depreciates 10% or more. Therefore, in this situation, GAP insurance could be quite important.

If you have GAP coverage and your vehicle is totaled, start the process right away. It can take a lot of time - sometimes as long as 30 to 45 days to process the claim. You'll probably get some paperwork that asks for certain documents to help the claim. These can include:

- A copy of the police report;
- Proof of total loss from the body shop/insurance company;
- A copy of the loan payoff statement from your lender; and
- A complete payment history from your lender (used to verify any unpaid payments or late charges).

Start requesting these documents early, because they may take a while to arrive. It will help speed up the process. Once the GAP claim has been processed, the GAP insurer will pay the remainder of your loan.

GAP coverage will usually take care of the full difference between the loan and your vehicle's actual cash value. It won't cover the deductible, but it only applies if you're using personal collision insurance and not the other driver's insurance. Also, GAP coverage won't cover any late payments or late fees on your loan. It'll only pay for the amount that would have been owed if all payments were made on time.

CHAPTER 5

Repair Issues

You've been in an accident. Now you need to get your vehicle fixed. What do you do?

The good news is, you have options. You can choose your own body shop, or you can have the insurance company choose one for you. There are benefits to each choice. Let's discuss your options in more detail.

USING PRIVATE BODY SHOPS.

Private shops make their money from individuals like you, and not from insurance companies. So, they will definitely look for any additional work that needs to be done -- especially to damage not visible from the exterior. In other words, they will usually offer you better service.

One key benefit to a private body shop is that you can choose what parts to use: original manufacturer's parts or the best parts available. This can help restore your vehicle to the proper condition.

Let's say you want to fix your vehicle instead of writing it off as totaled. You can make repairs with reconditioned parts, which could bring the repair cost down enough that your car won't be totaled.

USING DESIGNATED REPAIR PROVIDERS.

A body shop designated by the insurance company is called a designated repair provider (DRP). If a DRP works on your vehicle, the insurance company will guarantee that the repairs will be carried out within industry standards. They'll also require that any additional repairs bring your vehicle up to standard. These repairs will last a while, because they'll be guaranteed for the duration of the time you own the vehicle. Because of the DRP's relationship with the insurance company, changes to the original estimate will often be automatically approved by the insurer. This eliminates the need for re-inspections, which can slow everything down. However, choosing a DRP leaves you less ability to have personal input on the repairs. The insurance company's DRP is usually going to help the insurance company -- not you.

CHAPTER 6

Diminished Value



WHAT DOES “DIMINISHED VALUE” MEAN?

THIS IS REALLY IMPORTANT!

You’ve been in an accident, and your vehicle is damaged and repaired. Chances are, your vehicle’s value has gone down. The difference between what it was worth before, and what it’s worth after the accident is called the “Diminished Value” (DV). It is the reduced value of your vehicle after it has been wrecked and repaired.

You may at times recover the amount of money (DV) back. It just depends on the insurance company. However, insurance companies do not like to pay for Diminished Value. In fact, they hate to pay for DV, and they will fight for every penny.

It is important to remember that people can easily find out a vehicle’s repair history. Between websites like CarFax and experienced pros who can check part numbers and inspect vehicles, a prior wreck can be discovered, and can affect the amount you can get for it - even if it looks and runs like new.

MORE ABOUT THE AT-FAULT OBLIGATION.

Let’s say the accident wasn’t your fault. In that case, whomever was at fault is obliged to pay for your Diminished Value claim. Hopefully, the other driver has insurance. You’ll be dealing with their insurer to make the claim. If they don’t have insurance, then the chances of getting the DV are minimal. There are exceptions, though. If the driver is independently wealthy, or was on a job-related errand when the accident happened, they would typically be covered by additional insurance, or have personal assets to pay your claim.

SOME POLICIES HAVE LIMITS.

The insurer handling your claim will have policy limits in place, which will be set limits to the total amount they will pay for an accident claim. These are determined by the amount of property damage liability coverage that the at-fault driver had at the time of the accident.

The property damage liability limit will cover anything and everything related to all of the not-at-fault vehicles in the claim (not just your vehicle), including:

- Repair costs;
- Total loss payments;
- Rental car fees;
- Loss of use;
- Damaged/destroyed personal property; and
- Diminished value.

In Arizona, the law currently provides that everyone must have a minimum of \$10,000 in property damage liability coverage (this, of course, is subject to change), but it will not necessarily get you your full DV. For example, if the at-fault driver only has the \$10K minimum coverage, but repairs cost \$8,500, towing and storage costs \$300, and rental cars cost \$1,000, then that leaves just \$200 for the DV claim.

The DV appraisal will probably cost more than that.

Caveat: Always check the current law on coverages required to be carried in Arizona.

Before you spend any money on a DV claim, make sure to check that the remaining property damage coverage limit is going to be enough to cover your DV.

Now ... Here's where it gets a little more complicated.

USING YOUR OWN COLLISION COVERAGE.

If your vehicle was repaired through your own collision coverage (not the at-fault driver's coverage), then you can insist that your insurer allow you to get your DV claim paid by the at-fault driver's insurance company before your insurance is reimbursed for its expenses. They'll contest this, and you may have to fight for it. If you have a personal injury attorney, they should help you protect your rights.

One final note: If the accident was your fault, you will not be able to recoup these costs. Some policies cover DV, but they are very rare.

CHAPTER 7

Establishing Your Diminished Value Claim



You've been in an accident, but now the dust has settled, and you have questions. You may be wondering: "What will my Diminished Value be?"

Your diminished value amount is established by a qualified appraiser. They will:

- Review the ordinary value of your vehicle;
- Inspect your vehicle after repairs are made;
- Review the repair invoice; and
- Provide an expert opinion on the reduced value.

The cost of an appraisal can vary. Usually, it's between \$200 and \$500. You can find cheaper one-size-fits-all options online, but they are susceptible to mistakes, and they don't carry as much weight as an appraisal that comes with an in-person inspection. It's usually better to go with a qualified appraiser.

WHAT CAN INFLUENCE YOUR DIMINISHED VALUE AMOUNT?

- Your vehicle's age: A newer vehicle will lose more value than an older vehicle. (Some insurers will even claim that there is no DV for vehicles older than seven years.)
- The vehicle's original and current value, had there been no accident: This would include the vehicle's condition, mileage, and any upgrades. Certain vehicles, such as luxury or high-priced brands and newer-model vehicles, will have larger DV claims.
- Repair quality: The appraiser will check to see if repairs are visible to the naked eye. For example: Does the paint work match up? Is it faded or discolored on the older parts of the vehicle?
- Original equipment manufacturer or aftermarket parts: Were the parts used for the repair original unused parts, or were they aftermarket parts? The insurer's guaranteed repair facility will likely have used aftermarket parts to save money. However, these will increase the value of your DV claim.
- Repair costs: The higher the cost, the higher your DV. \$1,000 in repairs won't get you a significant DV claim, but \$5,000 in repairs might.

- Previous accidents and repairs: These can reduce or even negate your DV claim. Many insurance companies will claim that the DV was caused by a previous accident, and that the second accident did not contribute.

It is likely that insurers will dispute your diminished value claim. Different companies use different methods for handling them. For example, some use a flat 10% rate for the cost of repairs, which they multiply by a factor that accounts for your vehicle's age. Needless to say, this won't give you an accurate diminished value.

Other companies simply deny all diminished value claims altogether, because they believe the amount of the claim is too low for most people to consider hiring an attorney.

The bottom line? Be prepared for a dispute, and be prepared to demand that the insurance company give an expert appraisal to support their decision.

CHAPTER 8

Coordination of Insurance Coverages

The sooner you process your claim, the sooner you get paid. Insurance companies have 30 days to investigate and decide who was at fault. Sometimes they're allowed to take longer, if they have a good reason. Usually, delays come from waiting on a police report, or an inability to locate a driver or a witness. Once they've decided who's at-fault, then you can move forward with your claim.

Remember: If the accident was not your fault, your insurance company cannot raise your rates. It's against Arizona law (see Arizona Revised Statutes Section 20-263). They can only raise your rates if they raise all policyholder's rates, or if the accident was your fault.

DO YOU WANT TO GET YOUR DEDUCTIBLE BACK?

If so, fortunately you have options. However, they only apply if you were not at fault.

The at-fault driver's insurance policy should pay your deductible back after the investigation is complete and they have accepted liability. Your insurance company should request the return of the deductible on your behalf, and you should get it after a waiting period.

You can also make a claim directly to the at-fault insurer. If you do this, be sure to include the following information before signing any property damage release:

- Your calculated loss of use (# days without your vehicle or rental vehicle x cost of similar rental vehicle)
- Rental reimbursement costs
- Personal property costs
- Diminished value claims

While it is not typically recommended that you sign a property damage release, if you do sign one, be sure you are only releasing the at-fault party from any liability pertaining to your property damage claim and NOT your bodily injury claim. Reviewing a release with a lawyer is always recommended so that your legal rights are protected.

If you use an attorney, be sure they're seeking your deductible as well as the above-bulleted costs, and any other property damage items not covered by your insurance.

Here is where the situation becomes a little more complicated. You could find that the insurance company doesn't have high enough coverage limits to cover your repairs, or your total loss value. Arizona law currently requires \$10,000 minimum coverage per accident. The at-fault driver might either be using the minimum coverage or they might have higher coverage.

For instance, if your vehicle was totaled, and your total loss value (including tax and license fees) is \$15,000, someone with minimum coverage will only pay out \$10,000. Know that this will be all that will be paid to cover your vehicle, your rental, and any other personal property that was damaged or destroyed.

If this happens, you should use your own collision coverage, if you have it. Otherwise, you won't get the full amount of your property damage claims. This amount includes:

- The value of your vehicle or repairs
- The cost of a rental car
- Costs associated with loss of use
- Personal property claims

Let's say you were in a three-vehicle accident, and you were not the only driver not at fault. If your property damage claim, along with the other not-at-fault driver's claims, adds up to more than the policy limit, then the limit amount will be split between you and the other not-at-fault drivers. In that case, if you have your own collision coverage, you should use it.

YOU DON'T HAVE COLLISION COVERAGE?

If you did not purchase collision coverage, you have a couple of options:

First, you can accept the reduced or prorated amount. If you do this, you can also file suit against the at-fault driver to recover the excess damages. The problem is, these lawsuits usually cost more than they're worth. If you do wish to file a lawsuit, make sure that you do not sign a property damage release.

Second, you can also choose not to settle with the insurance company. The risk here is that they won't pay until the lawsuit is finished, which can make for a very long wait for you.

Third, you can demand the insurer pay the non-disputed amount with no property damage release, and preserve your right to sue the other driver for the unpaid amounts.

CHAPTER 9

Order of Insurance Payout

You might find yourself in a situation where there is not enough insurance coverage for your property damage claim. Everyone's arguing: the insurance company adjusters, company adjusters, private adjusters, and attorneys. As for you, you have rental reimbursements, loss of use costs, and a diminished value claim. What happens next? Who gets covered first?

There's a lot going on behind the scenes at insurance companies, which makes this process complicated. We'll do our best to break it down for you. Consider this example:

MEET JANE.

Jane gets rear-ended by a truck. Her car (bought only a couple months prior) has an actual cash value of \$25,000, but sustains \$9,000 in damage. However, only has minimum coverage: \$10,000 property damage liability. On the other hand, her total claim is \$15,000: \$9,000 for repairs plus \$1,500 for a rental car and \$4,500 in diminished value.

Jane does have personal collision coverage on her own insurance, which also includes rental coverage. So, her insurance company pays \$10,000: \$9,000 for repairs and \$1,500 for the rental, minus her \$500 deductible.

Now Jane's insurance company wants their \$10,000 from the truck's insurer. It's their right to get that money; it's a process called subrogation. Jane, meanwhile, is also owed her \$500 deductible, and her \$4,500 DV claim.

So, who gets how much of the money?

Normally, the first money to go from the \$10,000 limit will be Jane's deductible. That leaves them \$9,500. Then, her insurance will want to prorate the remaining amount between the two of them. If it gets prorated, Jane only gets about two-thirds of her DV claim (about \$3,000), and the insurer would get about two-thirds of their payout (about \$6,500).

Both insurance companies will want to do this. It benefits them both. The truck's insurer can close the file on the claim quickly, with the least amount of effort.

Effectively losing \$1,500 of her own money, Jane doesn't benefit (from it)?

THIS IS NOT THE WAY IT SHOULD BE.

An experienced attorney should be able to correctly argue for the money you deserve. Jane's insurance company has the right to get their money back, and they are obliged to deal with her fairly and in good faith, by helping her get back her DV claim and deductible. That's how it should be, but more often than not, they won't do this voluntarily.

Here's how this payout should go: First, Jane would get her \$500 deductible back. Then, she'd get her \$4,500 DV claim. After this, her insurance company would get the remaining \$5,000 from the truck's \$10,000 limit policy. The company risks a bad-faith legal claim if they get paid before Jane gets paid. Her insurance company also risks a bad-faith claim if they wrongly or improperly apply or reduce her collision coverage. Both of these claims have serious financial consequences for them.

There are other benefits to insisting the truck's insurer pay Jane first.

Diminished value claims are almost always highly disputed. But since the claim is against the truck's insurer, they can only legally dispute the amount of the claim. The truck's insurer is going to pay out the full \$10,000 regardless, so they don't care who it goes to.

Now Jane has the full amount of her diminished value claim paid without it being disputed.

Jane's insurance company can't dispute the amount of her diminished value claim, because they don't have the standing (her claim is against the other insurance company), and it would be acting against Jane's best interests. If they dispute it, they subject themselves to liability for interfering with Jane's rights of recovery.

CHAPTER 10

Avoiding Abandoned Titles

If your vehicle gets towed, make sure to get it back as soon as you can. The Motor Vehicle Division, on behalf of tow yards and storage facilities will send a notice to the address on your registration. You then have 30 days to remove your vehicle, or else they can apply for an “abandoned title.” This means they can actually get the title for your vehicle transferred to them in a very short time. You’ll also get a \$500 fine, which will impact the registration and license of the driver named on the title. In other words, if you don’t act quickly, all of a sudden you no longer have ownership of your vehicle, rather the tow company owns it.

You don’t want this to happen. This is why you should mitigate your damages.

MITIGATING YOUR DAMAGES IS A LEGAL DUTY YOU OWE TO THE INSURANCE COMPANY, WHICH SIMPLY MEANS THAT YOU, AFTER CONSIDERING ALL OF THE CIRCUMSTANCES, MUST TAKE EACH AND EVERY REASONABLE STEP TO KEEP YOUR COSTS AS LOW AS POSSIBLE. YOU DEFINITELY SHOULD USE YOUR INSURANCE TO DEAL WITH THE PROPERTY DAMAGE AND YOU MUST TOW AND/OR STORE YOUR VEHICLE IF YOU ARE FINANCIALLY ABLE TO DO SO.

If you fail to mitigate your damages, then the insurance company might be justified in paying you less. Why? Well, it’s because the insurance company can claim that you did not fulfill your legal obligation to keep your costs low (otherwise known as “failing to mitigate your damages”). Therefore, the insurance company will attempt to only pay you what it would have owed had you fulfilled your duty in keeping your costs low and mitigating your damages.

Fortunately, you can avoid this. One way is to use your own collision coverage as soon as possible. Mitigate your damages by having your insurance company start the claim right away. Your coverage should take care of everything except the deductible.

Most of the time, your insurance company will be repaid by the at-fault insurer after they determine who’s at fault (as long as they have coverage).

WHAT IF YOU DON'T HAVE COLLISION COVERAGE?

A few different scenarios can happen. We will break them down.

First, if you don't have personal collision coverage, and the at-fault insurer accepts liability, the vehicle will be released to them. They'll take care of moving it from the tow/storage yard to a body shop of your choice. If it's been totaled, they'll move it to their storage-free lot.

Second, if the at-fault insurance company refuses to accept liability, or if you don't know who the at-fault insurer is, then it's crucial to mitigate your damages. Get the vehicle out of the tow yard however you can.

If you do know who the at-fault insurer is, they get up to 30 days to investigate. Insurers can sometimes get an extension, if there is a good reason: trouble getting a police report, difficulty locating a driver, or witness, etc.

Most of the time, investigations don't take the full 30 days, but insurance companies aren't required to complete them any sooner.

DON'T LET YOUR VEHICLE BE ABANDONED.

Write down the abandonment date for your vehicle, and keep it handy. If it's coming up and fault hasn't been accepted by the insurer, or if the collision was your fault, you can do a few things to keep it from being abandoned. If the vehicle is totaled, ask the tow/storage yard if they'll accept the vehicle as payment. They don't have to, but they often do. Sometimes they'll accept it as partial payment, and you'll have to pay the remainder. This can also help you avoid the \$500 fine.

Another thing you can do: Move the vehicle somewhere else, like your home, or a body shop. You'll have to pay any tow/storage yard fees, and for the vehicle to be moved.

Remember, and as a word of caution, do not leave the vehicle at the tow/storage yard. Eventually, and unfortunately, the tow company will become the owner of your vehicle, and in addition, you will receive a fine.

Remember also, the law in this area can change quickly and dramatically. Therefore, talk to your lawyers at Warnock MacKinlay Law to make sure you are up to date with the legal status of your claim.

CHAPTER 11

Rental Coverage



Your vehicle is wrecked. That means you need a rental. If your insurance is handling the claim and you have rental coverage, they'll pay for the rental. There are a couple of ways this is done.

One way is direct billing with the rental car agency. The rental car agency just submits the bill to the insurance company. Keep in mind that the rental car agency may need a credit card from you to cover extra charges, like gas or damages.

Another way is for the insurance company to repay you for the rental car. You'll pay for the rental car yourself and your insurer will reimburse your charges. Remember: The insurer will not ordinarily pay for extra insurance on the rental car. Make sure to check with your insurance carrier to see if it will cover damage to the rental.

HOW LONG CAN YOU KEEP THE RENTAL CAR?

It can vary. Most insurance companies have a limit on what they will cover.

If you are using your insurance, they'll normally limit you to 30 days, with a certain amount for each day (such as \$30). That doesn't mean you get to keep the car that long, though. Your policy will usually limit your rental car to the duration of your repairs, or until a total loss offer has been made.

If you have rental coverage, your insurer should offer you a rental as soon as you tell them about your accident. If not, ask them, and they should make arrangements right away.

If the at-fault insurer is handling the rental, there are still limits in place, but they'll be similar: you'll keep the rental for the duration of your repairs, or until they make a total-loss offer.

The at-fault driver is responsible for their own rental car. If you're at fault and you have rental coverage, your insurance will pay for it. However, if you don't have rental coverage, the rental costs fall on you.

WHEN CAN YOU GET THE RENTAL CAR?

If you have rental coverage, your insurer should offer you a rental as soon as you tell them about your accident. If not, ask them, and they should make arrangements right away.

If you weren't at fault and you don't have collision coverage, then you'll usually need to wait until the at-fault driver's insurance has accepted liability for the accident. Only then will they provide a rental, by either direct billing or reimbursement. You'll still need a credit card for the rental agency. You are able to keep the rental for the duration of repairs, or until a total-loss offer is made.

One common challenge is finding a replacement before the rental car authorization expires. This often happens if you have been injured in your accident. Yes, you are reading that right. It's not even your fault, and all you want to do is get better, but now you have to make a tough financial call.

In this case, unfortunately, your options are limited. You can continue to pay for your own rental, you can buy another vehicle, or you can just be without a vehicle until you can afford it.

If you decided against a rental car, and the accident was your fault, your insurance company will not pay you back for the money they saved. However, if you weren't at fault, the at-fault insurer is required to pay your "loss of use" costs. This is the fair rental value for a comparable vehicle. It needs to be paid from the date of the accident until repairs are done or your total loss offer was made, or paid.

Before your claim is settled, notify the at-fault insurer in writing that you are seeking loss of use. Check with local rental agencies to figure out the daily rate for a comparable vehicle. Be sure to factor in taxes. Once you have those numbers, ask for that amount from the at-fault insurer. Use the company's rate to support your claim.

CHAPTER 12

Miscellaneous Provisions



STATUTE OF LIMITATIONS

Under Arizona law, you only have a certain period of time to make a claim or file a lawsuit against the responsible party. Those time limitations are known as the "Statute of Limitations". These time limitations vary from state to state and case to case, but in Arizona, an automobile property damage claim can be filed against a private individual within two (2) years from the date of the collision that caused the damage. If the matter is not resolved or a lawsuit is not filed within that period of time, the deadline expires and your claim is terminated without any compensation.

There are many instances where different Statute of Limitations apply, which are generally less than the two (2) years, such as if you are in an accident involving a governmental vehicle, whether that be City, County or State. In that instance, the Statute of Limitations is one (1) year and in addition, a Notice of Claim must be filed against the entity within 180 days of the accident. Thus, if you had an accident with a governmental vehicle and it is not resolved well before 180 days after the accident, you need to see an attorney to file a Notice of Claim and a subsequent lawsuit against that governmental agency. Otherwise, your claim is expired. Therefore, it is critical that you always determine what the deadline is for your particular claim and your particular accident. Otherwise, as indicated, if the "statute" expires, your claim is gone.

If your personal negotiations are not going well with the adverse insurance company, then we would recommend you see an attorney as soon as possible to protect your rights, file the proper notices and claims on your behalf and do the investigative work regarding your accident.

POLICE ACCIDENT REPORT

At the scene of the accident, the police officer will talk to the parties involved in the accident, as well as any witnesses and will sometimes take photographs of the scene of the accident and any injuries and damages.

In addition, the officer will usually provide you with an accident card or accident exchange sheet which gives you the information on the adverse driver, along with his or her insurance information. However, it will not explain how to obtain the total accident report as prepared by the investigating officer.

Typically, you can send a letter to the investigating officer's employer (for example, the City of Phoenix Police Department) and provide them with the following: accident report number, the accident location, the date of the accident, the respective driver's name, and the name of the investigating officer, if you know it. They should then return to you a copy of the report. However, oftentimes it takes thirty (30) days or more for the report to get filed with the proper office.

It is important to get the accident report immediately, subsequent to the accident. If there are errors in the report, then you can work on correcting those errors. If your version of the facts differs from the police officer's version of the facts, an attorney or investigator on your side can talk to the witnesses, obtain camera footage and so forth.

CAR TOWED FROM SCENE OF ACCIDENT

If your car was removed from the scene of the accident by a tow vehicle, it was probably taken to a storage yard owned by the tow truck company. That yard will charge you each day for storing the vehicle and the cost of the towing. This adds up quickly and is expensive. In order to have your vehicle released by the tow company, you will need to pay the bill in full at that time. If you fail to do that, then after thirty (30) days the tow company can file for an abandoned title and actually obtain title to your vehicle for failure to pay the storage fee.

This area is much more complex and detailed than can be explained in a few sentences, but we want you to be aware of what can happen. We would strongly recommend you see an attorney at Warnock MacKinlay Law if you have additional questions in this regard. In any event, the quicker you retrieve your vehicle from the tow company, the lower the charges and the lower your exposure.

BENEFITS OFFERED TO CLIENTS OF WARNOCK MACKINLAY LAW

Warnock MacKinlay Law and its attorneys will seek fair compensation for each and every one of our clients if they have been wrongly injured or their vehicle damaged by any of the following:

- ✓ AN AUTOMOBILE ACCIDENT
- ✓ A MOTORCYCLE ACCIDENT
- ✓ A TRUCKING ACCIDENT
- ✓ A BICYCLE ACCIDENT
- ✓ A PEDESTRIAN ACCIDENT
- ✓ A NEGLIGENT DRIVER
- ✓ WRONGFUL DEATH OF A LOVED ONE
- ✓ AN IMPROPERLY DESIGNED ROADWAY
- ✓ ANY INJURY YOU SUSTAINED WHERE YOU FEEL SOMEONE ELSE WAS NEGLIGENT OR AT-FAULT

This booklet is intended to provide general guidelines to assist you in dealing with property damage issues once you are involved in an accident. It is not intended to provide specific legal advice. You should seek advice from qualified independent attorneys such as those at Warnock MacKinlay Law at (602) 610-1166, who practice personal injury, wrongful death, and property damage law only. This booklet is written according to statutes and laws that are in effect today, and being mindful that new laws could take place at any time. Any legal question you might have should also be referred to your attorney.

MORE ABOUT ATTORNEY NATHANIEL PRESTON



Nathaniel Preston (“Nate”) has helped recover millions of dollars for injured victims. His commitment to clients is unparalleled among personal injury lawyers. His fluency in Spanish creates an even more effective advocate as he pursues injured victims’ rights. While at Arizona State University College of Law, Nate was a Pedrick Scholar Honor Student and the recipient of the Cali Excellent for Top Student Award. Before concentrating his practice solely in the area of wrongful death, personal injury and catastrophic accidents, Nate’s experience has been broad and invaluable to the clients he represents today.

Prior to Warnock MacKinlay Law, Nate clerked for the law firm of Baker and McKenzie, one of the world’s largest and most prestigious law firms. As a law student, Nate was instrumental in advancing the rights of injured victims and establishing case law precedent while working at the Arizona State University Civil Justice Clinic.

Nate brings into the practice of law the same grit and determination he had as a varsity football player at BYU and an Eagle Scout in the Boy Scouts of America.

Nate is a member of the State Bar of Arizona, District of Columbia Bar and the Arizona Trial Lawyer’s Association. He is also admitted to practice in the State Courts of Arizona and the United States District Court of the District of Arizona.

A fun and interesting fact about Nate is that he has traveled to over 40 countries and is an expert with flying drones and drone photography.

MORE ABOUT ATTORNEY QUINTON RICHES



Quinton has successfully handled hundreds of personal injury cases, including wrongful death claims, various animal attacks and dog bites, pedestrian and car accidents, premises liability cases and many others. Quinton believes in fighting for those who are injured and works hard to prevent insurance companies from taking advantage of his clients in their vulnerable state. The personal injury and legal process can be daunting, especially for those who have never had to deal with such issues. Quinton and his qualified team are ready to jump in and fight to get clients get what they deserve, which allows his clients to focus on their recovery while knowing the rest will be handled.

Prior to his time at Warnock MacKinlay Law, Quinton worked at a prominent law firm in Arizona and another large, multinational law firm in Beijing, China. While in Beijing, he performed legal due diligence for a multi-billion-dollar merger and acquisition across countries, requiring his background in finance, understanding of complex Legal issues, and Chinese. He has successfully transitioned his detail-oriented focus and background to civil litigation, focusing on victims who have been injured.

Outside of work and fighting for his clients, Quinton enjoys boxing, hiking, traveling, and spending time with his family. Quinton is supported by a loving wife who recently gave birth to their first child. Quinton is native to Arizona and enjoys being able to give back to and help the community.

— YOUR —
ACCIDENT LAWYER
— BY WARNOCK MACKINLAY LAW —



ATTORNEY
NATE
PRESTON

Attorney Nate Preston is a prominent attorney in the personal injury field in Arizona. Mr. Preston is the co-founder and Managing Partner of the law firm Warnock MacKinlay Law PLLC, and is fluent in Spanish.

ATTORNEY
QUINTON
RICHES

Attorney Quinton Riches was a sought-after attorney graduating from UCLA College of Law. Mr. Riches currently practices solely in the area of representing injured clients. He is also fluent in Mandarin Chinese.



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