

# Top Michigan Auto Accident Attorney Mistakes

By [Steven M. Gursten](#) – Managing Partner at [Michigan Auto Law](#)

There are so many confusing laws that can trap the unsuspecting personal injury lawyer and harm auto accident cases in Michigan, even when the people these lawyers represent are truthful, honest and do the right thing. As a Michigan lawyer who specializes in auto accidents, I am sharing five mistakes typically made by other attorneys who sometimes handle auto accident cases. This article is intended to help Michigan personal injury lawyers properly protect a client and prevent insurance companies and defense lawyers from destroying legitimate cases and hurting good people.

## Mistake #1: Failure of an attorney to communicate with client

The best way to for attorneys to avoid mistakes in a lawsuit is through excellent communication with your client. And the best advice remains the simplest: Tell clients to call you if they have a question, and certainly before doing something that can have a major impact on a personal injury case.



For example, with the growing popularity of the Internet for sharing pictures and profiles, defense lawyers hired by insurance companies are looking at what accident victims are posting on social networking sites like Facebook, MySpace, Classmates.com and LinkedIn. For example, one of our Michigan attorneys has seen clients who are disabled with closed-head injuries or herniated discs posting pictures of themselves skiing or hiking. These pictures are completely innocent, and were taken before they were ever injured. But it's the allegation of fraud that can be fatal. Good defense lawyers live by the adage of, "Let's throw everything against the wall and see what sticks." The accusation of fraud can be enough for suspicious jurors who are ready to assume the worst about a person, especially after being exposed to 30 years of insurance company propaganda on insurance abuse.

To prevent such a situation, I advise clients to avoid using MySpace and Facebook. If this activity cannot be avoided, remind them to be cognizant of what they post and think about how it can be used against them in a [personal injury lawsuit](#). An attorney should also review all of the client's accounts and even keep tabs on the friends' social networking sites to make sure they're not posting messages or images that would be unflattering to a group of strangers. Remember, defense lawyers can learn what their loved ones are saying and posting about them as well, especially if they're asked to testify.

Take 10 minutes and Google your client. In one of my car accident cases, my client suffered severe personal injuries. But a few days before mediation and unbeknownst to me, he created a Web site offering dog grooming services, which nearly destroyed his case. The Web site was created for his wife's business, and intended for after the case resolved. But the plaintiff's name was on it and the defense lawyer accused him of working and being far less disabled than he truly was. With that, it's not only the defense attorney's job to poke holes in our clients' cases. Good personal injury lawyers find the red flags and address issues before cases are destroyed.

At the beginning of each case, I make it a point to stress to the client to always tell the truth. Many clients hide information, such as a prior drunk driving arrest or poor school grades, because they are embarrassed. Understand that in this world of computers and social security numbers, everything can be discovered.

Our attorneys tell our clients that if there's any basis of truth to a question being asked, admit it. There's no reason why a client cannot disclose something, and then explain the circumstances behind it. Remember, many things can be kept out of court as irrelevant and unduly prejudicial — as long as a victim admits to them and testifies truthfully. It's far better to discuss a concern with your client before the lawsuit is filed than to it is to be exposed in front of a jury.

## **Mistake #2: Lawyers waiting too long to refer a case to a specialist**

Aside from advising car accident victims to take the proper steps during litigation, referring attorneys must also take caution with first-party and third-party cases alike. Understandably, many personal injury attorneys would rather settle cases themselves. But even with the best of intentions, they often wait too long to refer them. This creates several reoccurring problems that can be detrimental to a car accident case:



### **1. Critical documents to prove liability in Michigan truck accident cases can be destroyed within months.**

A trucking company is only required to keep the bulk of their records concerning a truck accident — no matter how serious the injuries or even if someone was killed — for a very short period of time. It cannot be emphasized enough to lawyers unfamiliar with truck accident law that there's only a [limited window to retain log books](#). The destruction of these and other incredibly important pieces of evidence in serious truck accident cases is not only legal, but commonplace, and it's to be expected. As chairman of the Interstate Truck Litigation Group for the American Association for Justice, I have seen far too many examples of inexperienced lawyers failing to secure critical documents, in turn costing their clients millions of dollars.

### **2. Lawyers often miss the one-year statute of limitations for Michigan no-fault and first-party cases, believing they have the full three years normally allowed for third-party cases.**

Attorneys who handle auto accident cases part-time or practice out of state often fail to recognize that there is a one-year time limit to apply for benefits in Michigan. Michigan no-fault law (also called a first-party or [personal injury protection \(PIP\) case](#)) covers important benefits such as wage loss, medical bills, replacement services, mileage and attendant care based upon the severity of the injuries. But if an unknowing attorney — who is not familiar with the most recent laws, or assumes Michigan law is similar to a non no-fault state where medical expenses can be added to a tort lawsuit — refers a case after the statute has expired, none of these vital benefits will be available to the client. In turn, the client will be forced to pay for them out of pocket. So please remember that in Michigan, medical bills are generally not part of the requested relief in tort cases. They are paid by the car accident victim's insurance carrier. And if an attorney misses the one-year statute of limitations, it could be a malpractice issue.

### **3. When auto accident cases are referred too late, critical and completely debilitating injuries are frequently missed, and documentation of injuries is disregarded.**

Sometimes car accident victims don't understand how serious their injuries are, and therefore, do not seek appropriate treatment. Treatment for personal injuries from auto accidents is not only necessary for proper recovery, but creates a record of the injuries, which is necessary to meet Michigan's high injury threshold law for recovering damages in an auto accident case.

Additionally, all car accident injuries (even minor ones) must be documented on the Michigan no-fault application for benefits. According to [Ross v. Allstate](#), a person who suffers injuries in an automobile accident but who fails to give specific notice of each of those injuries to his no-fault insurance company within one year, can later be barred from having the insurer pay medical bills.

### **4. Attorneys who do not handle car accident cases may not understand what documentation needs to be submitted to the insurance carrier to ensure the injured person is obtaining all benefits available under the Michigan No-Fault Act.**

For example, when a client has a surgery and an attorney fails to tell the client that [Michigan attendant care benefits](#) might be available, and what information needs to be obtained from their treating physicians and sent to their insurance company to ensure the client receives those benefits, it could be an issue of malpractice. Keep in mind that it's a lawyer's duty to advise clients of all no-fault benefits that are available as well as how to properly submit reasonable proof to their insurance companies.

### **5. Attorneys that don't refer cases regularly may not understand the complicated interplay between the Michigan No-Fault Act, ERISA, worker's compensation and Medicaid.**

This lack of understanding could result in the wrong insurer paying for medical benefits, which could mean the injured person must repay the cost of his or her medical benefits out of pocket. In some situations, the auto accident attorney can be required to pay. A lien taken by any of the above carriers could affect a first or third-party case.

### **Mistake # 3: Forgetting to obtain pictures and video of your client’s injuries, surgeries and car damage**

One of the biggest problems our [auto accident lawyers](#) face — especially because many of our personal injury cases are referred to us by other attorneys a year or two after a car crash has occurred — is that accident victims do not take photos of their injuries. Taking photos is critical. Pictures are objective, credible evidence, and they help to correlate a car accident with the occupant’s trauma; especially when the defense later contests that the collision wasn’t severe enough to cause the claimed injuries. Additionally, taking photos and videos of injuries is compelling. It makes the injuries real, believable and vivid.



Our accident lawyers advise that anytime an accident victim has a surgery or a visible injury, take pictures or send a professional photographer to document the injuries.

It’s also important to remember to take pictures of car damage. Crash repair estimates are often misleading and don’t reflect the full amount of vehicle damage. As a lawyer specializing in helping people in serious automobile accidents, I can say it’s always helpful having pictures of vehicle damage.

Additionally, videos are great tools to illustrate to a jury or an insurance company adjuster just how difficult normal tasks, hobbies and activities can be for someone in the days and weeks following major trauma or surgery, such as bathing, getting dressed or doing laundry. If your client has problems carrying out everyday activities, they may likely be entitled to make an attendant care claim. Michigan attendant care benefits are sometimes referred to as nursing services.

Why take pictures? According to Michigan law, victims of automobile accidents must show impairment — not pain — by proving “[serious impairment of body function](#).” That means that a person can be in pain every day, but if he or she cannot show how life is different after the accident, it’s unlikely the case will be successful. Pictures and video help to document impairments.

### **Mistake #4: Auto attorneys not counseling client on first impressions**

Our personal injury lawyers believe everyone is entitled to their own opinions and beliefs. But we need to remind auto accident victims with pending personal injury lawsuits to remember that some opinions, whether political, religious or social, can offend or turn off jurors who do not share the same views. We have tried countless injury cases over the years, and if there’s one universal truth about winning trials, it is



this: Juries tend to help people they like, and tend to punish people they do not like. Plaintiff lawyers in personal injury lawsuits must keep this in mind.

Consider the recording your client leaves on their cell phone or answering machine. An insurance adjuster will likely be calling them repeatedly, and if he finds something questionable or offensive, it can affect how that insurance adjuster handles the claim.

On another note, a client of mine neglected to change his message after his car accident, leaving his professional business voicemail greeting, even though he wasn't working because he was disabled. The defense lawyer used the message against him in court, implying that he was still working and soliciting business. As I said, you never know who is listening.

Outside of phone messages, lawyers must instruct [accident victims](#) to always think about the overall impressions they're leaving, because if a defendant insurance company decides to conduct video surveillance, a jury will see facets of a plaintiff's life that might have the potential to offend people. This includes bumper stickers reflecting opinions on polarizing issues, lawn signs, and other ways that people express opinions and beliefs. Remember, complete strangers may one day be sitting in judgment on your jury. Why have your client risk offending people who will be asked to return proper compensation for your client's accident?

For the year to year and a half after a car accident or truck accident, it's vital for accident lawyers to think about the impressions your clients are making.

### **Mistake #5: Attorneys allowing a client to apply for Social Security Disability without legal consultation**

People injured in car accidents and collecting no-fault insurance benefits are frequently told by their insurance companies and claims adjusters that they must apply for [Social Security Disability \(SSD\)](#). But attorneys must be aware that it's a big mistake for an auto accident victim to consider a Social Security Disability application or SSD claim as separate from his or her [personal injury automobile auto accident case](#). For example, if your client is accepted too soon, it could literally wipe out the entire economic recovery in the third-party case.

In almost all cases, especially when a no-fault insurance company asks a victim to apply for Social Security Disability, he has to. But what happens next, such as appeals and other actions that an auto accident victim needs to apply, is very case-specific. This must be discussed, so you can point your client in the right direction to minimize the impact on his existing auto accident case, and to avoid costly mistakes.

The practice of insurers requiring their clients to apply for Social Security Disability has led to abuse, of which our Michigan auto accident attorneys have become all too familiar: Some insurance company adjusters threaten auto accident victims who want to return to work, as well as people who do not qualify, to apply for SSD as a requirement to keep receiving their no-fault

insurance benefits. They urge these accident victims to then re-apply and keep appealing if they are not awarded disability benefits.

The reason [Michigan insurance companies](#) are requiring their own insureds to apply is simple — it saves them money. But there is no basis under Michigan law to have a person apply for Social Security Disability benefits and then be forced to appeal after a denial, just because a no-fault insurance company adjuster is trying to cut costs.

As discussed in this article, there are numerous circumstances that could negatively affect your auto accident case. Again, the best way to avoid mistakes in a lawsuit is through excellent communication between the auto accident attorney and client.

For more information on handling auto accident cases in Michigan visit the [Attorney Guide for Pursuing Auto Accident Injury Claims in Michigan](#). [Michigan Auto Law](#) is the largest law firm exclusively handling Michigan car accident, truck accident and motorcycle accident cases throughout the entire state. The firm is headquartered in [Southfield](#) at 26555 Evergreen Road, Suite 1530, (800)777-0028.

Steve Gursten is recognized as one of the nation's top experts in serious car and truck accident injury cases and automobile insurance no-fault litigation. Steve has received the largest jury verdict for an automobile accident case in Michigan in four of the past seven years, including 2008.

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