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## What should I Do After I Witnessed a Car Crash?

By Megan Irish and Christopher B. Dolan



### This week's question comes from Kevin who asks:

*I recently witnessed a car crash where a truck ran a red light and hit a woman in a small SUV. The truck completely ran the red and hit the woman. She had the green light, and I saw that the pedestrians walking her way had 8 seconds on their countdown. I stayed at the scene and gave the injured woman my contact information, but I couldn't stay long because I had my little boy with me and did not want to stand on the street for long. I also told her I saw that the truck ran the red and hit her, but I wondered what else I could have done to help. What do you think is helpful to do when you see a car crash?*

Dear Kevin,

Thanks for staying and telling the injured person what you saw. In terms of what you can do as a witness, there are many things. First, make sure you are safe to stop at the scene of a collision. If it is not safe, you can call 911 and report the crash and provide a statement about what you saw. You can describe where you were and what you observed. Sometimes the investigating officer will call you back and conduct complete interview about the collision. They will refer to you as a witness in the traffic collision report and summarize your statement to them in the report. Be honest and as straightforward as you can be. Provide any specific details you can. However, if you can stay at a scene and speak to the people involved, that is great too. When you observe a collision, here are a few things to look for:

look at where pedestrians are walking, and cyclists are riding. Can you see the traffic signal light, and if so, what color is it for whose direction of travel? Are there protected turn lights for left-hand turning vehicles, and if so, what color are they? Can you see the count down for pedestrians crossing the street? if so, on what number is it? Was the driver avoiding any hazards? If so, what is it, where did it come from, and where did it go? Was the hazard also involved in the collision? Where are the involved vehicles stopped? Can you note the license plates? Are the drivers involved staying at the scene or trying to leave? Do you have a camera on you? Can you safely take some photos? Or a video?

If you can take pictures, try to capture the locations where the vehicles came to rest. Take photos of any debris that came off the cars, and any skid marks associated with the collision. Take pictures of the license plates of the vehicles involved in the crash, and the people who were driving the cars. If you have time and can capture the color of the light before it changes, that can be helpful too. Watch the traffic lights cycle through. Are there any problems with them, such as the same color showing for both directions at once? If that happens, then definitely try to get a video and bring it to the attention of the people involved in the collision, as they will need to try and get a video to provide to their insurance. Although this is a long list of things to remember to do, this information can be helpful when explaining who had the green and who had the red lights. If a person is badly injured, they may leave the scene in an ambulance, and they will not be able to relate what happened to the police. Any statements you provide can be helpful to the investigating officers and or insurance companies to understand how the collision occurred and who was at fault.

Determining who was at fault is crucial to establishing liability for a matter. Liability is the legal term for who is responsible for the collision and whose insurance company need to cover the costs of the repairs to the vehicles and the injury to the people. Liability is frequently 'disputed,' meaning insurance companies

cannot determine who caused the collision. Therefore, they wait on making any payments until they can establish more evidence to prove one vehicle was responsible for the other. For instance in the collision you observed, where one car ran the red light it will be necessary for the person who had the green light to prove they had the green light to the other driver's insurance. The parties typically dispute red light-green light cases, and an independent witness statement, such as your own, can be very helpful. The insurance companies will call you after a collision and your statements will help the at-fault driver's insurance take responsibility for the damages to the injured party.

It is significant that you stayed and relayed what you observed. Your statement was likely beneficial to the drivers involved and appreciated by those involved in a collision.

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## California Laws Mandate Pool Safety for Children

By Chris Dolan



### James from Marin County asks:

*I just bought a house built in the 50's. I have undertaken a significant amount of renovation both inside and outside. The home has a nice yard and a pool. The pool needs some work, and I am concerned because sections of the fence around the yard have fallen into despair. My neighbors have small kids and I want to be responsible and make the pool safe as I undertake the work. What guidelines do I have to make the pool safe?*

Summer is upon us and each year it's important to revisit safety laws and best practices in regard to residential swimming pools and spas. Drowning is California's second leading cause of death for children aged 1-4 and even nonfatal drowning injuries can result in long-term disabilities from irreversible brain damage. Since most drownings in young children occur in home swimming pools, it is especially important that owners of residential pools take proper precautions to keep unaccompanied children out and, in case a child does enter a pool unaccompanied, to prevent injury by the suction of pool pumps and filters.

To this end, the state of California has long set very clear requirements for pool safety, embodied in the Swimming Pool Safety Act, California Health and Safety Code (CHSC) Sections 115921 through 115829. As of January 1, 2018, the state legislature has updated these requirements in the hopes of further reducing home pool drownings. This column will spell out the differences in the updated law so that residential pool owners have the latest and most complete safety information available.

As a preliminary matter, the Swimming Pool Safety Act applies only to in-ground and aboveground structures over 18 inches deep intended for swimming or recreational bathing situated on the property of a single family home. CHSC Section 115921 provides a non-exhaustive list of regulated structures, including swimming pools, portable and nonportable hot tubs and spas, and nonportable wading pools; for the purposes of this column, I will refer to all such structures as "pools."

One significant impact of the new amendments to the Swimming Pool Safety Act is that it extends state pool safety requirements to single family homes in all municipalities, eliminating previous exclusions for homes within municipalities that issued their own, potentially conflicting, local swimming pool ordinances. Since the state now mandates all municipalities to participate, the amendments provide for state reimbursement of any resulting added costs incurred by local governments. It is important to note that this law still does not apply to public pools, pools at multifamily residences, or hot tubs equipped with compliant locking safety covers.

The main effect of the new amendments, however, is to double the required drowning prevention safety features needed to secure a permit to build or remodel a pool at a single family home. Since 1997, permits issued for pool construction have required residential pools to be equipped with at least one of seven drowning prevention safety features; on implementation of the new amendments, each pool construction must now include two of these enumerated safety mechanisms for extra

protection in case one fails. As before, drowning prevention safety features must be inspected by a local building code official pursuant to final approval of the permitted pool construction, as well as building inspection reports conducted for real estate transfers. CHSC Section 115924 requires every pool construction contractor to inform consumers of the Act's requirements.

CHSC Section 115922 provides an updated list of eligible drowning prevention safety features: (1) a total pool enclosure isolating of the pool from the home; (2) removable mesh fencing in conjunction with a self-closing, self-latching gate capable of being locked with a key; (3) a manually or power-operated safety pool cover compliant with American Society for Testing and Materials (ASTM) Standard F1346-91; (4) a continuous audible exit alarm on any door providing direct access to the pool; (5) a self-closing, self-latching function with raised release mechanism on any door providing direct access to the pool; (6) an alarm meeting ASTM Standard F2208 placed in the pool to sound upon accidental or unauthorized entrance into the water; or (7) other protection independently verified to provide at least the same degree of protection.

Specifications for approved fencing and gates can still be found in Section 115923; critically, enclosures must be a minimum height of 60 inches, with no more than two inches between the bottom of the enclosure and the ground, no gaps that would permit passage of a sphere of four inches, and no outside surface with features that could serve as handholds or footholds for a child of 5 years old or less to climb over. Also preserved from previous iterations of the Swimming Pool Safety Act, Section 115928 continues to require every new or remodeled pool to have at least two hydraulically balanced suction outlets per recirculation pump secured with anti-entrapment grates and separated by at least three feet that prevent a child being sucked into a vacuum that would be caused by a single drain.

Following California's comprehensive pool safety regulations is a vital step toward preventing hundreds of unnecessary deaths and disabilities caused by accidental drowning. Here's to a safe and happy swimming season!

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## Commercial Trucks on California Highways: Are Truck Drivers Specially Trained?

By Chris Dolan and Eric St. John



### This week's question comes from Steve, who asks:

*I'm originally from Southern California and now live in the Bay Area. I often visit family in Los Angeles and drive interstate 5. depending on traffic conditions, this drive can take me 7-8 hours. During my years of going and visiting my parents, I have seen several commercial truck accidents and have become concerned to the point where I try to stay far back or far ahead of any commercial truck. Some trucks can move rapidly into lanes, and I have seen some trucks swerve back and forth, almost causing a car crash. Are truck drivers specially trained? Is there a California hotline I can call to report bad truck drivers? What should I do if I am involved in a truck accident? Should I get a truck accident lawyer?*

Hello Steve,

Thank you for your questions. You are right to feel concerned about driving around commercial trucks, and I encourage you to continue practicing the safe driving habits you describe. It is reasonable to feel the need to keep your distance from commercial trucks. In California, more than 3,000 truck accidents result in injuries every year, and approximately 300 Californians die annually in collisions with large trucks. The sheer weight and size of commercial trucks make them formidable figures on highways and the drivers in control of them should be held to a high standard to maintain safety on our roadways.

So, what are these safety standards?

The California Department of Motor Vehicles (DMV) and the US Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) regulate commercial trucks in California. FMCSA was established in 2000 with the primary mission of preventing commercial motor vehicle-related fatalities and injuries. The FMCA holds commercial drivers to a higher standard than ordinary drivers because of the risk of injury and death that comes with operating a large truck.

FMCSA requires any commercial truck driver to obtain a Commercial Drivers' License (CDL) before they can operate commercial trucks on the road. To apply, CDL applicants must pass medical testing, vision testing, have their driving record checked, and complete 15 hours of behind the wheel training. To get a CDL, applicants must pass skills and knowledge tests geared to these higher standards. California DMV imposes additional requirements for applicants of a CDL in California.

How are truck drivers held accountable for failing to adhere to the higher safety standard?

It is vital for professionals and commercial truck drivers to be held accountable. Accountability occurs through the FMCSA and local authorities. Drivers with a CDL must adhere to the standards set forth by these regulators because failing to stick to these standards raises the risk of serious injury and death.

If you witness unsafe driving by a commercial vehicle, you can submit a complaint to the FMCSA Safety Violation Hotline (1-888-DOT-SAFT) (1-888-368-7238) from 5 am-5 pm PST, Mon-Fri. The FMCSA also has a portal for the public to report unsafe driving through the National Consumer Complaint Database. Search up <https://nccdb.fmcsa.dot.gov> to file a complaint online.

Or you can call the California Highway Patrol and file a report with them. Also, many commercial trucks will have a phone number or website on the back of their vehicle to file a complaint about their driving directly to their employer.

What should you do if you are in a truck accident?

The first thing you should do, if possible, is getting to a safe location off the road and away from moving traffic to prevent further injury. You should call 911 as soon as possible.

Make a report of what happened to the police. Collect the insurance information of the truck driver and other drivers involved.

Document everything at the scene of the accident. Take photos and video of the scene and any damages and injuries. Keep track of bills, costs, repairs, and medical costs. The more detailed your records are of costs, bills, repairs, etc., the better off you will be in obtaining compensation for those damages.

Avoid discussing the accident with others, including insurance adjusters. Some insurance companies may reach out to you and ask you for a statement. You do not have to speak with the insurance company, and it is best that you leave that up to an experienced truck accident lawyer who is aware of pitfalls and can advocate for your rights.

After getting in an accident with a large truck, who's to blame may seem straightforward. But, several different parties can be liable for a truck accident, including a negligent truck driver, a trucking company, or even a manufacturer who produced faulty parts. One of the most critical steps in obtaining compensation is to thoroughly investigate the causes of the incident to identify all responsible parties and uncover evidence of their wrongdoing.

Once insurance companies identify the at-fault parties, the work of obtaining compensation begins. Despite what insurance companies may portray, truck accident victims' damages can go far beyond just their medical bills. Compensation is determined from economic and non-economic damages depending on the circumstances of the injuries and how it impacts the victim(s). Trucking and insurance companies have enough money to compensate you for your injuries, but they also have a big budget to spend on legal representation so they will not have to.

When someone is seriously injured, or a loved one is killed in a truck crash it should not have to be an uphill battle to get the support needed to recover. Unfortunately, these large insurance and trucking companies have made the path to recovery a challenge. If you are ever in a truck accident, you should find a lawyer who knows how to negotiate with these companies and navigate you through the legal process to put you in the best position possible to have a healthy recovery.

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## Do I have to Sign an Arbitration Agreement?

By Chris Dolan and Taylor French



of the consumer. That company, which is likely to be engaged more often in disputes requiring a hired arbitrator, will likely not propose or consent to using that arbitrator in the future. If the arbitrator has ruled in favor of the company, the company will probably return with future business. This dynamic has the potential to influence the arbitrator's decisions. Unfortunately, consumers often do not realize they are facing these risks when signing a contract containing an arbitration clause until a dispute arises, and it is too late.

The situation you describe in which a patient shows up to a doctor's appointment and they immediately hand them a pile of paperwork to review, fill out, and sign is particularly problematic. As the patient frantically attempts to fill out all the forms with their medical history, contact information, and insurance information, they may quickly sign an arbitration agreement slipped into the pile of paperwork. They may not have a moment to consider and understand its implications properly. An arbitration clause could be as short as a single sentence, which could cause the patient to look over it in its entirety when skimming through various contracts. However, despite the pressured conditions under which parties sign arbitration agreements, they are often deemed enforceable, and patients are compelled to attend an arbitration.

Given the potential disadvantages that a consumer may face in an arbitration, it is always important to take a moment to thoroughly review and consider any agreement that includes an arbitration clause. If the above-described conditions are not those you are willing to face during an arbitration, perhaps consider taking your business elsewhere.

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**This week's question comes from Anonymous who asks:**

*I had a doctor's appointment the other day, and there was an arbitration agreement in the intake paperwork packet. What is arbitration, and am I required to sign this agreement?*

Dear Anonymous,

Thank you for your question. Arbitration is an out-of-court method of dispute resolution wherein a neutral decision-maker makes rulings of law and fact and ultimately decides the outcome of a particular case. In other words, arbitration is essentially a paid private trial. In recent years, it has become more common to see clauses in service contracts requiring that the parties participate in arbitration if a dispute arises because businesses view arbitration as a means to avoid costly and lengthy litigation. Arbitration is binding, meaning the decision made by the arbitrator cannot be appealed, with very few exceptions, which limits the time the dispute can continue.

Arbitration keeps the details of the dispute out of the public record, which appeals to businesses who want to maintain a particular reputation within the community.

While arbitration is not inherently bad as a means of alternative dispute resolution, issues arise when attending arbitration is mandatory instead of voluntarily and mutually agreed upon by the parties. For several reasons, agreements in service contracts requiring that the parties attend arbitration are controversial. First and foremost, they strip individuals of an important constitutional right – the right to a trial by jury. Once signed, the consumer can no longer opt for a jury trial despite its likelihood of being more advantageous or impartial.

Signing an arbitration agreement may put the consumer at risk of having a disadvantage during arbitration because a supposedly impartial arbitrator chosen or proposed by the business may have a prior existing relationship with the company. Imagine a scenario in which an arbitrator has decided against a particular company in favor



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