



NEWS YOU CAN USE FROM THE FIRM YOU CAN TRUST

May 2010

THIS IS A TEST

- 1) If my car is new and still being financed, then I guess I have full coverage; after all, my finance company will require full coverage. **True or False?**
- 2) If my car is really old and is paid for, then I don't need full coverage; all I need is liability coverage because the value of the car isn't worth the cost of the premiums. It is cheaper to self insure. **True or False?**
- 3) Since everyone is required by law to carry liability insurance, all I need is liability coverage. The other driver's insurance will cover me if their driver is at fault. **True or False?**
- 4) If I have good health insurance, then I don't need uninsured/underinsured motorist coverage or Personal Injury protection (*huh? What's that?!*) because my health insurance will cover me. **True or False?**
- 5) If I am a bicyclist or a pedestrian and I get hit by an uninsured driver, I guess I am just out of luck. **True or False?**
- 6) My agent told me I have good insurance, so I know I have full coverage on my car. **True or False?**
- 7) I know what it means to have full coverage on my car. **True or False?**
- 8) If I get hit and it is the other driver's fault, and if the other driver has insurance, then the other driver's insurance has a duty to take care of me. **True or False?**
- 9) If I get hit and it is the other driver's fault, and if the other driver has insurance, then I should not use my coverage because my rates will go up and it is not fair to make my insurer pay for the other driver's negligence. **True or False?**
- 10) If I get rear-ended, then it must be the fault of the driver who rear ended me. I am likely to win that case if I have to go to trial. **True or False?**



WHAT TO DO IF YOU ARE IN A COLLISION

Although we hope it will never happen, odds are that you will be in a collision one day. If that happens, follow these procedures to keep a bad situation from getting worse.

- ◆ If they are creating a hazard for you or others, **move your vehicles**. Before you do so, however, make a quick note about where the vehicles made contact, where they ended up, etc., so that if there is a dispute about who was at fault, you have as much information as possible to help recreate the scene. A quick photograph with a cell phone camera may come in handy; take it.
- ◆ **Always get the identities of witnesses**. At first it may seem silly, especially if the other driver seems friendly and helpful. Later, however, the other driver may recall things differently. If the witnesses have been dismissed without being identified, you may be at a loss for help.
- ◆ **Always call the police**. The police may or may not issue citations, and if the wreck happens on private property, you may think calling them is unnecessary. Call them anyway. They can verify important information and make a record which may be critical later.
- ◆ **Gather information from the other driver**. Make sure to get the license plate and driver's license number of the other driver, as well as their address, date of birth and insurance information. If the police do not respond or if they believe the collision is minor, then you may be asked to fill out a "blue form" and file the information with the Department of Public Safety.
- ◆ **Get medical attention if you need it**. Do not feel too embarrassed to seek help.
- ◆ **Report the collision to your insurance company promptly**. Most companies require you to notify them and certain coverages may be jeopardized if you do not.

Answers on next page.

THESE ARE THE ANSWERS

1) Answer: False. Your finance company probably requires you to have collision coverage and comprehensive coverage. Those coverages pay for the property damage to the car but not for the damage to the human bodies inside the car.

2) Answer: False Whether the car is old or not, the human bodies in the car are precious. Even if you drop the collision and comprehensive coverage, you should carry uninsured/underinsured motorist coverage and Personal Injury Protection coverage to help protect the people in the car.

3) Answer: False Estimates say that 19-25 % of all drivers do not carry liability coverage; you will need uninsured motorist coverage for those cases. A higher percentage carry only the minimum amount of coverage which is often not enough to pay for all of the damage which that driver causes; you will need underinsured motorist coverage for those cases. There may be a dispute about who was at fault and the other driver's carrier may not pay; you will need collision coverage for those cases. Even if the bad driver's insurance does pay, the insurance company typically will not pay for your injuries until you are ready to sign a release. Do not do so until you know the extent of injury and have gotten essentially well. This may take a while and you will need Personal Injury Protection coverage in those cases. The collision may even be your fault. You will need liability and Personal Injury Protection and collision coverage in those cases.

4) Answer: False Health insurance coverage does not pay for lost earnings, pain and suffering, physical impairment, or scarring. Your passengers may not have health insurance; your UM/UIM and/or PIP will cover your passengers. Health insurance may be restrictive and not pay for tests or therapy that you need or for the providers you want.

5) Answer: False Your PIP and/or UM/UIM covers pedestrians and cyclists who are hit by cars. It also covers you while you are a passenger in someone else's car.

6) Answer: False The only way you know the extent of your coverage is to read your declarations page of your policy.

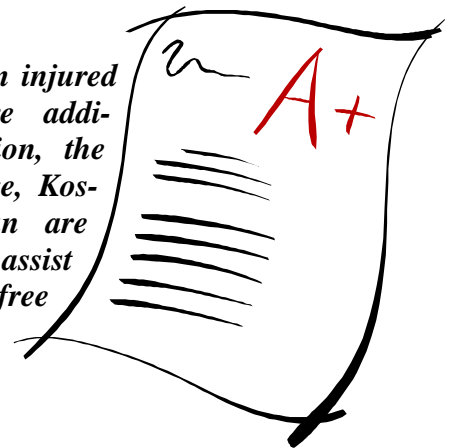
7) Answer: If True, congratulations. Many drivers do not have a clear picture of their coverages, and what their coverages will or will not do for them, until they have been in a wreck. By then, it is too late to make changes.

8) Answer: False The Insurance Code requiring auto liability insurance companies to investigate and handle claims promptly for "all people." The Texas Supreme Court has interpreted "all people" to mean "only the named insured." The other driver's insurance company is supposed to get a release from you, in favor of their own insured. The insurance company does not have to be nice to you, investigate your claim promptly, return phone calls, or pay you what your claim is worth. (Allstate vs. Watson) They can sneak in a release of your bodily injury claim when you sign a release for your property damage. (Williams vs. Glass) Their job is to protect the person whom they insure, not you.

9) Answer: False See the answer to No. 3 above. If you do not use coverage for which you paid, then you are simply making a gift to your insurance company.

10) Answer: False Your chances may be as low as 50/50 if you go to trial. Juries do not like lawsuits or the people who bring them. Juries do not like holding other people liable for driving the same way Jurors drive. Jurors often identify more with the defendant than the injured plaintiff. Jurors often decide it was "just an accident" in which case the plaintiff who brings the lawsuit has to reimburse the defendant who rear-ended the plaintiff for the court costs incurred by the defendant.

If you have been injured and you desire additional information, the lawyers at Judge, Kostura & Putman are available to assist you, please feel free to contact us.



MEDICAL IDENTITY THEFT

Medical identity theft occurs when other people use your personal information to get medical treatment, prescription drugs or even surgery. It is even possible for someone in the medical industry to use your information to submit false bills to your insurance company.

Medical identity theft can hurt you financially like traditional identity theft, but it can also hurt your health. If your records get mixed in with an imposter's records it can lead to improper treatment for you. Also, if the imposter uses up maximum amount of benefits available on your health plan, then you may be unable to access the care that you need.

There are several indicators that you have fallen victim to medical identity theft. For example, you might start to receive bills and collection

notices for medical services you did not receive. You could try to submit a legitimate bill only to have your health plan deny it because you have reached your limit for benefits, or you could be denied health insurance because of a condition that you do not have.

Prevention is key to protecting yourself from identity theft. Be sure not to give out any personal information to people you can't positively identify as your current providers. Be sure to keep your medical information in a safe place, shred any statements or records, and destroy any labels on your prescriptions before you throw them out. It is a good idea to periodically order a copy of your credit report and review it for any discrepancies. Closely examine all Explanation of Benefits you receive to make sure all of the claims match services that were actually provided.

If you suspect you have been a victim of medical identity fraud, file a police report right away. You should also immediately alert the credit bureaus to the possible fraud, as well as your health care providers.

For more information about medical identity theft you can visit the World Privacy Forum at www.worldprivacyforum.org/FAQ_medicalrecordprivacy.html

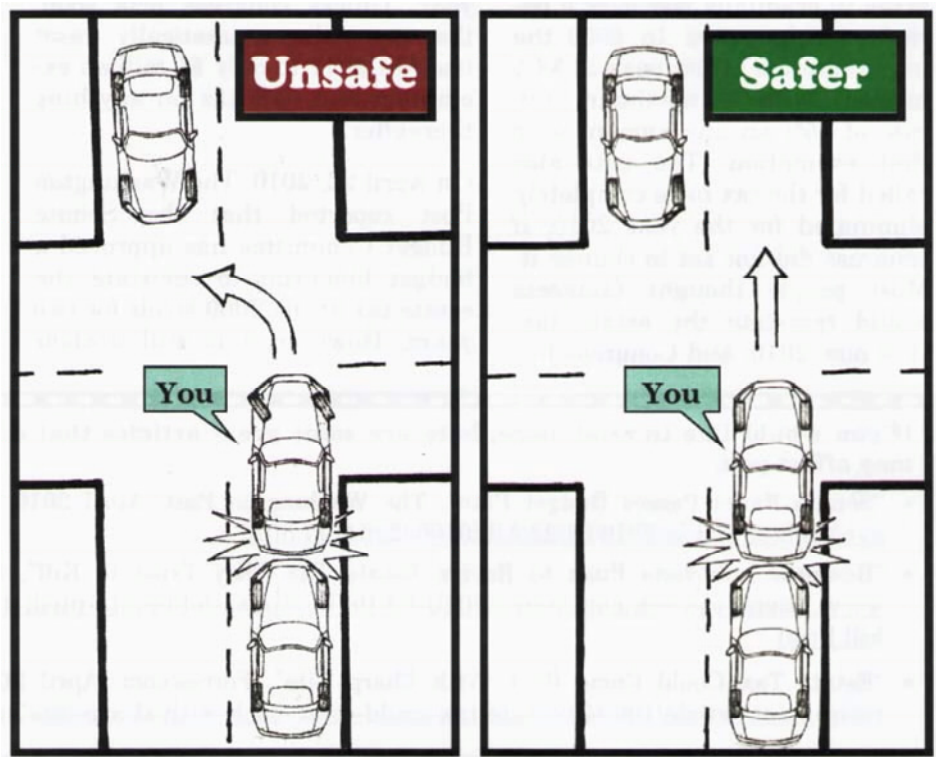
or the Federal Trade Commission at www.ftc.gov/idtheft

SAFETY TIP



When preparing to make a left turn and while waiting at an intersection for traffic to clear, many drivers cock their vehicle's wheels to the left in preparation for the turn. **DON'T!** If you are hit from behind, your vehicle will be pushed forward and to the left, into the path of oncoming traffic.

Instead, keep your wheels facing straight ahead while you wait. If you are hit from behind, your car will be propelled forward but should stay in its own lane. You may end up with quite a jolt but you will avoid the deadlier head-on collision.



HEALTH CARE REFORM BILL CREATES NEW WHISTLEBLOWER PROTECTIONS

The **Patient Protection and Affordable Care Act of 2009** (H.R. 3590) that the House approved on March 21, 2010, creates new whistleblower protections for health care workers and strengthens the coverage of the False Claims Act [31 USC §3729, *et seq.*] * ‡

Section 1558. This provision in the new law prohibits retaliation against an employee who provides or is about to provide to an employer, Federal Government,



or a state Attorney General, information that the employee reasonably believes to be a violation of Title I of the Bill. The provision also protects individuals who participate in investigations or object to or refuse to participate in any activity that the employee reasonably believes to be a violation of Title I of the bill. Title I contains a wide range of rules governing health insurance, including a prohibition against denying coverage based upon preexisting conditions, policy and financial reporting requirements and prohibitions against dis-

crimination based upon an individual's receipt of health insurance subsidies. Accordingly, §1558 will likely protect a broad range of disclosures.

The new law carries significant procedural protections, consistent with Consumer Product Safety Improvement Act of 2008, including:

(1) A 180-day statute of limitations;

(2) A requirement to initially file the complaint with OSHA, which will investigate the complaint and can order preliminary reinstatement;

Continued on page 5

WHAT ABOUT ESTATE TAX?

In 2001 the tax cuts imposed under President Bush called for the exemption under federal estate taxes to gradually rise over a period of eight years. In 2009 the tax exemption hit its peak at \$3.5 million, with a maximum tax rate of 45% on any amount over that exemption. The cuts also called for the tax to be completely eliminated for the year 2010, if Congress did not act to change it. Most people thought Congress would reinstate the estate tax. It is now 2010, and Congress has

made no move so far to reinstate the estate tax. So we find ourselves with no estate tax at all for this year. Unless Congress acts soon, the tax will automatically reset itself in 2011 to only \$1 million exemption and 55% tax on anything thereafter.

On April 22, 2010, The Washington Post reported that the Senate Budget Committee has approved a budget blueprint to reinstate the estate tax at the 2009 levels for two years. However it is still unclear

when the whole Senate will take up this budget resolution or if the House will even consider this budget resolution within the year.

As a result, if you are working on an estate plan, design it for the expected maximum exemption, stay in touch, and keep informed. If you have any questions about your own Estate Planning please feel free to contact us. Stan M. Putman, Jr. has over 20 years of experience in wills and estate planning.

If you would like to read more, here are some articles that discuss the Estate Tax and how it may affect you:

- "Business Lobbyists Push to Revive Estate Tax They Tried to Kill". Businessweek. March 2010. <http://www.businessweek.com/news/2010-03-08/business-lobbyists-push-to-revive-estate-tax-they-tried-to-kill.html>
- "Estate Tax Could Come Back With Sharp Bite". Forbes.com. April 2010. <http://finance.yahoo.com/focus-retirement/article/109340/estate-tax-could-come-back-with-sharp-bite?mod=fidelity-managingwealth>

‡ The statutory language is vague, and subject to court interpretation.

*Thanks to Jason M. Zukerman of the Washington, D.C. bar for his early analysis of this important new law.

HEALTH CARE REFORM BILL (CONT.)

(3) The option to litigate the claim before the Department of Labor Office of Administrative Law Judges or to remove the claim to federal court 210 days after filing the complaint;

(4) The right to try the claim in federal court before a jury; and

(5) A broad range of remedies, including reinstatement, back pay, special damages, and attorney's fees.

Similar to the Sarbanes-Oxley Act, the causation standard and the burden-shifting framework are very favorable to employees. An employee can prevail by producing a preponderance of the evidence that her protected activity was a contributing factor in the unfavorable action. A contributing factor is "any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision." Once a complainant meets her burden by a preponderance of the evidence, the employer can avoid liability only if it proves by clear and convincing evidence that it would have taken the same action in the absence of the employee engaging in protected conduct, a heavy burden.

Long-term Care Facility Employees

Long-term care facilities that receive more than \$10,000 in federal funding in the preceding year must notify all officers, employees, managers, and contractors of the facility that they are required by law to report any reasonable suspicion of a crime to at least one law enforcement agency. Failure to report a suspected crime can

expose an employee, manager, or contractor to civil fines of up to \$200,000.

A long-term care facility is prohibited from engaging in retaliation against an employee "because of lawful acts done by the employee." Facilities violating the anti-retaliation provision may be subject to a fine of up to \$200,000 and exclusion from federal funds for up to two years.

Standardized Complaint Forms

Nursing homes are required to implement a standardized complaint form, and each state must develop a complaint resolution process to track and investigate complaints and to ensure that complainants are not subjected to retaliation.

False Claims Act "Original Source" Definition.

The old False Claims Act provided finders-fee incentives only to whistleblowers who could satisfy the confusing and difficult "original source" standard. The health care reform bill simplifies the definition of an 'original source' to include an individual who either:

(1) Prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or

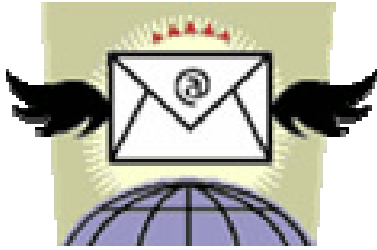
(2) Has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and has voluntarily provided the information to the Government before filing an action under this section."



The lawyers at **JUDGE, KOSTURA, & PUTMAN, P.C.** have been providing cutting edge representation of and protection for state and federal whistleblowers for more than 30 years. If you are working for an employer that is breaking the law, or if you have been subjected to an adverse employment action because you have reported violations of law to appropriate law enforcement authorities, contact us.

Your information will be held in strict confidence until you decide to "go public." There is no charge for initial consultation with one of our attorneys. Appropriate cases are handled on contingent fee basis with sliding scale fee and expense reimbursement plans available.

We're on the Web!



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Practice Areas

- **Serious Personal Injury & Wrongful Death:**
Representation of persons injured through the negligence of others through automobile collisions, trucking industry collisions, dram shop cases, driving while intoxicated injuries, wrongful death, burn injuries, attack by vicious animals, premises liability, and other injuries.
- **Employment Litigation:**
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- **Probate:**
Probate or administration of estates for the families of deceased persons.
- **Estate Planning:**
The creation of wills, trusts, powers of attorney and other estate planning documents and measures
- **Business and Commercial Law:**
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- **Professional License Defense:**
Representation of health care, design, legal, and other professionals in defense of regulatory board disciplinary actions.

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Judge, Kostura & Putman, P.C., is dedicated to providing legal services primarily in the State of Texas. Our lawyers bring over 80 years of combined experience to the practice. We are trial lawyers that represent individuals, families, and small businesses in a broad spectrum of civil matters. We do not represent insurance companies. We do not handle tax or family law or criminal matters.

Judge, Kostura & Putman, P.C., combines experience and leadership to achieve results for our clients. Our size enables us to get to know our clients personally and professionally.