

WNED LAW LINE TRANSCRIPT

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Good morning, and welcome to the Lawline.

For the next half hour, you'll have the chance to discuss your questions and problems with a qualified attorney. Our broadcast is made possible by grants from the Erie County Bar Foundation and the Lawyer Referral and Information Service of the Bar Association of Erie County. If you have a question for our guest call us now at 845-7044, that's 845-7044 and now here's the host of the Lawline Mike Desmond.

DESMOND: And welcome to the Lawline here on WNED-AM, 94.5 HD2, WNED.ORG and were out there on a . . . I know were out there on a iPhone but I have to find out whether we are out there on an Android. Were going to be talking about auto accidents today. Bill Moore is here. Bill glad to have you here.

MOORE: Thanks for having me Mike.

DESMOND: Let's define. . . everybody says, O I was in an accident. How many of them are accidental? I mean what if the other driver is drunk for example is that an accident or do you get into another field of law if you're drunk or of if the other driver is drunk?

MOORE: Well I think we generally just call it an auto accident Umm depending on the situation especially if you are dealing with a drunk driver umm, an accident is an accident. So, any type of automobile contact, automobile upon automobile would be considered an accident. So. . .

DESMOND: And you have very little control over what the other guy does?

MOORE: Absolutely. You're not sitting in his car seat. So. . .

DESMOND: Does it make a difference if you didn't, by the time this get's to a potential lawsuit or so forth that you didn't do something that you should have done? You didn't clean off your rear window on those occasional snowfalls we get around here or it doesn't matter if the tires are good. You want to represent somebody who has few problems.

MOORE: Well, everybody's going to have problems. Obviously we would like to have as few problems as possible, but you're going to run into them and it's best to know what the problems are and then diffuse your problems.

DESMOND: O you could obviously try to prevent them by making sure your registration is up to date, your driver's license. . .

MOORE: Absolutely.

DESMOND: . . . is up to date. If your kid is driving that he or she is on your insurance coverage.

MOORE: Correct.

DESMOND: That your car is inspected.

MOORE: Right.

DESMOND: I would think that whatever happens those are among the first things that you ask your prospective client.

MOORE: Well you want to be sure that the car is in good working order mechanically. That there were no issues with your car, your client's car rather at the time of the accident. And oftentimes it doesn't quite matter depending on the type of accident that it is. Say for instance a rear end automobile collision. It's not going to make much of a difference, because you're stopped and there's not much you can do to avoid it.

DESMOND: I was rear ended in an accident a number of years ago and I could see the guy coming and there wasn't a thing I could do and that's very frustrating.

MOORE: Absolutely.

DESMOND: Do you-Does your client have to be able to prove that he or she was following the Vehicle and Traffic Act or is that very hard to do? That they stopped at the light, that they stopped at the at the stop sign. That sort of thing.

MOORE: Well in a rear end situation that you are talking about Mike?

DESMOND: For example?

MOORE: Ok, umm absolutely. They stopped pursuant to the Vehicle and Traffic Law. Sometimes you get rear ended when you are not stopped. You get somebody who is going a bit faster than the posted speed limit and umm rear ends you. Umm, you just need to establish that you were umm, going the proper speed limit and if your. . . the vehicle involved is stopped itself that you stopped and acted pursuant to the law.

DESMOND: Now you just mentioned something that is interesting. You're following the speed limit. Well, speed limits are fine, but what four months a year around here speed limits are almost irrelevant when that white stuff starts coming down. Do you also have to prove that what's the legal term, driving. . . umm driving to fast for conditions? Umm, you had to prove that you were driving within the conditions of that hour.

MOORE: Yes, reasonably under the situation. Umm, everybody is going to be judged based upon the circumstances surrounding the accident. If you have a defendant we are certainly going to look at the weather conditions. Were going to look at the weather to see if they had knowledge of the weather conditions that day. How they acted pursuant to the conditions and whether their actions were reasonable under the circumstances.

DESMOND: Here on the Lawline today William Moore is here and we are talking about car accidents and I suppose the things you could do to protect yourself and the things you have to do afterwards if you are in an accident and if you have a question were at 845-7044. Jim Nowicki will put the call through. Umm, one of the issues in these sorts of things is that if you've done everything you could to protect yourself. You may have taken a defensive driving course. Your car is safe and something goes wrong and you get the call I've been in an accident. What do you do as the lawyer immediately?

MOORE: Well the first thing I do is obviously to start taking the facts down because good investigation goes a long way in an auto accident. You want to get all of your investigation done as soon as possible, because the conditions of a roadway and witnesses recollection of an accident can change. So we want to know the roadway. We want to have photographs and we want to have witness recollections on paper and sworn to if possible so we have them preserved for a later time when they are going to become relevant. So a good investigation first goes a long way.

DESMOND: Now let's say you're talking to you client or you're talking in a situation like this. What advice do you give people-they are in the accident, they're at the intersection. What do you tell them to do and what do you tell them not to do?

MOORE: Well if somebody were to call me from the accident scene and say, Bill.

DESMOND: These days they probably do.

MOORE: It does happen, and they say Bill, I was just in an accident and I just want to be careful what do I do? I say, well tell me what happened and based upon the circumstances it's always good to contact the police if there's damage. The police will come and they will assess the situation. If the other driver was at fault, or violated a portion of the Vehicle and Traffic Law they'll issue a citation. So you want to be sure they contact the police, if they have a telephone or a camera, or a telephone with a camera rather take some pictures of the scene. Take some mental notes of what the weather conditions were like. Look around to see if there's any witnesses and get their names. You want to do all of your due diligence at the scene so that when you meet with me, I can take that information and if there is a claim process it forward.

DESMOND: Obviously, you want them to exchange driver's licenses, registration, insurance cards right there.

MOORE: Correct. You want to get their information. You don't want to assume that everything's fine and then drive away. Always exchange information even if it seems like a light fender bender and there is nothing to it.

DESMOND: I would think that's one of the issues here that you really don't know if you're hurt unless rural metro is there and they're putting your prospective client on a stretcher which is a little different situation but you don't really know if you've been hurt.

MOORE: Right, that's what I was going to get at before I coughed there. What you want to do is to be sure that you get the information so that you have it. Usually in an auto accident sometimes it takes a couple of days to really start to feel it, umm, before your body really starts to react and if you haven't exchanged the information and you don't have the other driver's information you might be kicking yourself now what do I do because you don't have it and then you're stuck. But if you have the information then you can call the insurance companies, call me and we could make a proper-we could file the proper paperwork as applicable to the situation.

DESMOND: Ok, now let's start about the complications. It's an Ontario license plate.

MOORE: Ok.

DESMOND: Is there anything differently that you should do with an Ontario plate, a New Brunswick plate, or a Pennsylvania plate?

MOORE: Just get all the same information. They have insurance up there-they have insurance requirements up there. I've handled many cases involving Canadian drivers and they have a certain policy requirements pursuant to their insurance up there. So. . . a good practice to follow is just to get the information and they we will go from there.

DESMOND: What about an extreme situation? The other driver breathes on you and you say uh oh! We got a problem here. Do you want to make sure the cops show up?

MOORE: Call the cops. Any. . . any thought that the other driver is intoxicated or under the influence of some type of drug you obviously want to get the police involved.

DESMOND: Worse nightmare, 3:00 AM on a street corner somewhere and there's nobody in sight and you've just had an accident. And you look around-I would say it would be a bad idea to drive away say to the police station? If you know where one is?

MOORE: If you are saying if you're alone?

DESMOND: Yeah.

MOORE: Well depending if your car is drivable, uhh, you want to do what you can to assess the situation to see if it is safe to drive and then if the car is drivable I don't see a reason why you can't get back on the road and carry on. If there's no property damage and there's no injury you should be ok.

DESMOND: Just so long as you exchanged the paperwork and maybe taken a picture or two?

MOORE: Sure.

DESMOND: One of the things that Buffalo has we have now more than one hundred fifty surveillance cameras in the city that the city runs, and the NFTA has cameras, UB has cameras they're cameras all over the place. Can you as a lawyer go to the city of Buffalo and say I want to see the video of this intersection at this point on this day and try to get the video tape of the instant replay of what happened?

MOORE: Yes, you know if there is a blue light camera at the intersection and you're aware of it again, it comes down to that initial investigation. So you call me, we find out where the accident was find out if there was a camera there and you want to get right on that and get a copy of that video because those are rotating videos, they're on a loop and they erase after a period of time.

DESMOND: And what about increasingly cars, and trucks, and trains I suppose have what everybody calls "black boxes" and they keep track of-I mean my car doesn't have one unless it has something in the trunk, but it's supposed to keep track of what a car does the way black boxes in airplanes do. Can you, once you become someone's lawyer ask for that black box or the readings from it?

MOORE: Yea, through the course of discovery if were dealing with a pretty serious car accident where the cars are just undrivable you can request that information from the defendant. . . the defendant's attorney through the course of what we call discovery.

DESMOND: How long does that information stay there?

MOORE: Well, if the car isn't driven afterwards then the box should be intact and the information would be intact.

DESMOND: But if they can drive it?

MOORE: Well if they can drive it. . .

DESMOND: I mean they may be driving away with one headlight, the right front fender might be shot you know that sort of thing.

MOORE: Right. I'm pretty certain that the information stays with the box for a period of time, but to be honest with you I don't know what the process is in terms of how long until it erases itself.

DESMOND: I just raised a question that I don't know the answer too. At what point in the condition of your car should you not drive away from the scene?

MOORE: Well if your car could pose a danger on the roadway don't drive away. You're going to know if you can drive away or not and if the police are there, they're going to let you know whether you could drive away or not. If your headlights are gone or if you have a fender hanging off or rubbing on one of your tires that's a pretty good indication that you're not going anywhere. But if you just have some minor damage to the vehicle and its drivable certainly the police won't make you tow the vehicle.

DESMOND: Although probably if you have a camera you should take some pictures of your own car at that point.

MOORE: It's always a good idea to take pictures like I said at the scene because insurance companies are going to want to know whether there is any preexisting damage and if you can get the vehicles in the exact same condition as they came to rest after the accident.

DESMOND: Sometimes they haven't moved.

MOORE: Right, it's going to make a big difference when it comes down to a claim if you have a serious injury and a lawsuit commences.

DESMOND: Does it make a difference what you tell the police if they come to the scene?

MOORE: Yes, yes it does. You know you always want to be sure that you speak with the police because I've had plenty of cases where one side has spoken to the police but the other side has not and it makes a difference on what the police record and in those instances it's usually a case where my client is being trucked away in an ambulance and doesn't have the opportunity to speak with the police. So in that instance, I have my client, usually before they even talk to me to get a copy of the police report and go back to the station and ask to speak to the officer who wrote the report so that they could get an amended report with their version.

DESMOND: Would the police report say that the other driver wouldn't talk or couldn't talk, or would that make a difference also? If you're being hauled away in an ambulance and the cop said you wouldn't talk. Well, that's not exactly what happened, right?

MOORE: I don't think I've come across one where they've said that. But certainly if you have a driver who is not cooperative they are going to note that. You know, they will also give you the opportunity speak if you can, but oftentimes they are just looking to create a record

and then move on and it is incumbent upon you as the driver that if you have a different version of how the accident happened, it is extremely relevant for liability in the case that you get that before the police officer so that they can amend their report.

DESMOND: Here on the Lawline Bill Moore is here today and we are talking about auto accidents and every driver's nightmare in that crash. And if you have a question were at 845-7044. Ok, you get the call. I would think that as a lawyer the first paperwork that needs to be signed is making this person your client.

MOORE: Correct. The retainer agreement.

DESMOND: Well, I would think that you can't get some of the information that you have been talking about if this paperwork doesn't exist. You can't ask for a copy of the bluelight camera. . .

MOORE: Right, right. Well you have to have your client-they've obviously have to retain you, they have to trust you and retain you. Then, the next step is to sign authorizations that allows you to get their medical records and any other necessary documents relevant to an accident.

DESMOND: Now this assumes for the moment that they're only one person in each car and only a two car accident?

MOORE: Right.

DESMOND: Is it more complicated if there is more than one person in both of the cars?

MOORE: It can be. For insurance purposes certainly.

DESMOND: Does it make a difference if everybody in your client's car signs on with you? Or. . .

MOORE: Well, then we are dealing with a conflict. . . there could be a potential conflict of interest there. Let's say for instance that, my dri-I have a driver who was in an accident, and there's an issue whether my driver bares some responsibility. In that situation, if my driver has passengers that also want to sign with me, there could be a potential conflict of interest between the parties so the passengers would have to get separate attorneys.

DESMOND: Jim, you're on the Lawline with Bill Moore what is your question?

CALLER #1: My question is when you have these accidents and in some cases you fear arrest and some you don't, could you speak to what the parameters are for whether or not a person is going to get arrested? Thank you.

MOORE: Well, whether or not someone is going to get arrested usually deals with extreme violations of the Vehicle and Traffic Law. One of the most common reasons for arrest at the scene is drunk driving. If you're dealing with a normal automobile accident where someone rear ended someone and there's no alcohol or drugs involved, certainly the police is not going to arrest that party.

DESMOND: O wait a minute arrest or issue tickets?

MOORE: Well there's a distinction there. They may issue tickets for the rear ending or following too closely, which is a violation of the Vehicle and Traffic Law, but they will not

arrest you. You'll have to show up at a later date go to court and deal with that ticket in front of a judge.

DESMOND: Now I would think that if you're the lawyer for the guy in the other car I mean this is catnip situation that the driver you are suing was drunk, going too fast, driving too closely, or doing something really dumb. I mean, I would think that effects what happens.

MOORE: Absolutely. If you've have-Are you talking in terms of an arrest situation?

DESMOND: Anything.

MOORE: If you have a defendant driver who have done all of the above which you just cited, you're in trouble. There's not much you could do from a liability standpoint there. Except cross your fingers.

DESMOND: Does it affect the insurance coverage if you're pursuing the driver who was arrested or ticketed or whatever, and you're suing that driver. Does it affect the insurance coverage that your driver has if the other driver misbehaved in some way?

MOORE: It shouldn't. But oftentimes what you'll find is-say for instance you're driving your own car and through no fault of your own you are in an accident. Your insurance regardless of fault is responsible for your loss wages and medical expenses. That's called no-fault law. Ok, what's going to happen is as you pursue the claim your insurance will send you too doctors and such to have you examined as you go about your claim. I have client's who say that after an accident that's not their fault, their insurance rates do go up, and they take issue with that because they weren't at fault. But I don't know if that's a way the insurance companies get their money back, but you do find that their insurance rates can go up.

DESMOND: Well I was thinking more along the lines of. . .

MOORE: Although they should not.

DESMOND: O well, a lot of things shouldn't happen. If the insurance company for the other guy says, you're drunk, I'm not covering you. Does that affect your ability to get a recovery for your client?

MOORE: If my client's drunk?

DESMOND: No, if the other driver's drunk and the insurance company says well you're on your own as far as their guy.

MOORE: Well, there would still be coverage there. That's their insured and that's what the insurance coverage is for. So they just can't walk away from the situation.

DESMOND: Do they try?

MOORE: They can try and many insurance companies try to walk away from drunk drivers, but it's about getting the right attorney involved and we can fight that type of situation.

DESMOND: What about, we get a lot of faxes from (cough) various police agencies about this. What if the other guy doesn't have a driver's license anymore, or if the car is unregistered, or uninsured, or any of that?

MOORE: That just all goes too tickets, liability, unlicensed operation of a motor vehicle. It doesn't help their case. It helps your case as a plaintiff.

DESMOND: Except, you need to know that there is enough money to pay medical bills for example.

MOORE: Yeah, but again that would go through your own insurance company.

DESMOND: Ok, you've been hired. You've filled out all of the forms. You're going through the discovery process. What will the other driver do as this case goes along?

MOORE: If you get into a situation where you bring a lawsuit, the other driver is then served with the lawsuit papers. Hopefully they turn them over to their insurance company and then their insurance company would hire an attorney to represent them through the process. And then we would go back and forth in what is called discovery and exchange your medical records, and records relevant to the accident, and that would lead up to what is called depositions where parties testify about the accident.

DESMOND: I've been deposed yes. Umm, I would think that one of the things you tell your clients is don't talk to them without me.

MOORE: Absolutely. Whenever I meet with a new client hopefully they have not talked to anybody because no matter what happens after an accident, you can be sure that the other insurance company is going to call you and they will call you with the nicest adjuster they have to you know, try to get on your best side and get your version of the accident. Now, obviously they want to get your version of the accident but there is also a motive behind that and the motive is to get you tied into a story early on that is on tape, or sworn too, so that they potentially can use that later on. And, as an attorney I do not allow that, or I would sit in with my client when they make that statement.

DESMOND: Now, this is an increasingly multicultural city and area. We have people from everywhere here and I keep tripping on new groups that I didn't know about.

MOORE: Right, right.

DESMOND: If you're from somewhere else and you're in an auto accident. You have to be absolutely at sea as to what is happening. Do you get people who come in and someone said you've got to see Mr. Moore who doesn't speak English fairly well. I mean, these are people who must get lost in the process.

MOORE: Well, it could make it very difficult if you have a language barrier, but I've had that happen on multiple occasions. I have clients who are from all over the world who have transplanted here to Buffalo. And umm, if there is a language barrier I get the right person on there, sometimes a family member to help us bridge the gap there in terms of the language barrier. And that's helpful. I've had clients who-from the Sudan where they call family members across the United States and then we have a telephone call and we do the translation and on we go. It makes it easier.

DESMOND: I would think easier, but I would think a lot of these immigrants have no concept of the American legal system.

MOORE: Right, and that's what our job is-is to let them know what their rights are, what they can expect after an accident like this, especially if they are seriously injured. And umm, give them essentially a lay of the land.

DESMOND: Here on the Lawline today is Bill Moore and we are talking about auto accidents. We have a few more minutes if you have a question were at 845-7074. Now I would think immigrants would have a greater problem with this, but people in general they've never gone near a court in their life. The only time they have dealt with a lawyer is when they bought their house. . .

MOORE: Right, right.

DESMOND: .or something like that.. . .

MOORE: Right, right.

DESMOND: .or something like that. You must have to walk people through this whole process and explain that this could go a lot longer than you think?

MOORE: That's true, very true. A lot of people expect a quick turnover in cases.

DESMOND: The TV show only runs an hour.

MOORE: Right. And it's not like Law and Order it's not resolved like you said in one hour. That would be great, but these cases especially if you are dealing with a serious accident and serious injuries where there is going to be implications on the person's work life, capacity, and uh it's going to take a long time to recuperate. We just can't turn them over in a couple of weeks or a couple of months. To properly compensate your client and get the best possible outcome, you will need a full picture before you can evaluate the case, because you are not doing your client any service if you're just quickly turning the case around. You need to know exactly what exactly the injuries are, how they expect them, how long they are going to impact them, and whether or not it is going to affect their work life or capacity.

DESMOND: I've heard stories of people who say, I don't want to settle this, I want my day in court. Do you ever get that?

MOORE: Absolutely. But it's up to the attorney to give an accurate picture of what's that going to mean for them. Sometimes you're going to have a limited policy on the part of the defendant. Say you have a defendant who only has a \$50,000 policy. Depending on what the offer is, sometimes you just go to court and you just do it. If the insurance company offers a couple thousand dollars that's easy go to court. But if they're close to where the policy is sometimes they're court expenses involved and at that point you need to conduct a cost-benefit analysis for your client and explain it to them to show them that maybe it is in your best interests to resolve this because regardless it's going to cost you more to go to court than what they are offering you right now. And remember that it is the insurance company that's pulling the strings.

DESMOND: What about the situations where the injuries really are non-existent, but you've lost your car and you need your car to get to work. Can you at least get another car, not a new car necessarily but another car out of this or is that your insurance?

MOORE: Well you could go through the car that hit you, or go through your own insurance. It really depends on the situation of how fast you want it done, and I have clients who go both ways depending on the liability in the case. If it's a clear cut case of liability, and the other driver is clearly at fault then you shouldn't have a problem getting a rental. Certainly

these things. . .could go faster but hopefully the insurance companies would work a bit easier with you, but this is not a perfect world.

DESMOND: Don't we wish this were a perfect world. Here at the Lawline today Bill Moore has been here and we've been talking about auto accidents. Next week we are going to be talking about appropriation art and Les Greenbaum will be here again. That's next week here on the Lawline. Bill, glad to have you here.

MOORE: Thank you very much and if you have any questions I'm at Lipsitz Green Scime Cambria.

DESMOND: I'm Mike Desmond and thank you for listening to the Lawline. Stay tuned for Left, Right and Center.