ACCIDENTS HAPPEN

Guide to NJ Auto Accident Claims

Joseph M. Ghabour

Disclaimer:
This book is not intended to serve as legal advice. The content of this book is for information only. In fact, no book can be a substitute for competent legal advice. If you have a legal issue, you should consult with an attorney for proper legal counsel.

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Introduction

My name is Joseph M. Ghabour and I wrote this book for one simple reason: being injured in any type of accident can be a challenging ordeal, to say the least, and I wanted as many people as possible to understand how to obtain compensation for their injuries.

In helping my clients to understand their cases and the law, I've come to see just how powerful a little knowledge can be. In my practice, as well as in this book, my intention is to give people the knowledge they need to empower themselves and—no less importantly—to put their minds at ease.

Of course, this book is not intended to substitute for the individual counsel of an experienced personal injury attorney—no book, in fact, could fulfill such a function. If your injuries are serious and your property damage substantial, you must immediately seek a consultation with a qualified personal injury attorney. However, if your property damage and injuries are minor, this book will help you protect your interests and receive compensation, even without legal counsel.

Over the years, I've had the pleasure of getting to know—and, in certain cases, working with—a number of talented, knowledgeable and compassionate attorneys. Having come to respect their integrity and expertise, I wanted this book to reflect the wisdom of their years in the law, as well as mine. To that end, I've asked a number of them to write their own chapters, which appear in this book and include brief introductions of their authors.

This book is divided into three parts. Part I, entitled "Prevention and Preparation," begins with a chapter on car insurance. All too often we purchase our automobile insurance without understanding the coverage that we have

acquired. Understanding the various types of coverage—those that are required by law and those every driver should possess—will help you use your money wisely and achieve the greatest degree of protection for yourself and your family.

The second chapter covers auto accidents--the most common causes of accidents and how to avoid them in the first place. Safe driving not only reduces the likelihood of accidents, but increases the odds of a successful claim should an accident occur.

Part II—"Presenting a Successful Claim" is comprised of three chapters. I've invited a good friend, Benjamin Glass, a nationally recognized trial lawyer, to write a chapter on the issue of misleading lawyer advertising. His chapter on lawyer advertising will assist you in culling the pretenders from the truly qualified attorneys, those who will actually deliver the level of representation that you need to achieve justice on behalf of you and your family. Ben has graciously made this material available, out of his commitment to the rights of the legal consumer.

The following chapter in Part II takes the form of "A Letter To Your Doctor," which explains how to document your injuries in a way that the insurance company computer will best understand. This documentation is going to serve as the foundation of your case, and securing adequate compensation will depend on whether the insurance company understands the full extent of your injuries and the medical care you need to recover. I wrote this chapter as a way to facilitate a conversation between you and your physician on the all-important subject of injury documentation.

The final chapter in Part II, "The Insurance Adjustor is Not Your Friend," provides advice on speaking with insurance adjustors and negotiating your personal injury settlement. Though this information is primarily intended

for those involved in minor accidents, in which the victim can effectively negotiate on his or her own behalf, the insights it offers are no less important to consider for those who hire a professional advocate.

Finally, Part III—"The Litigation Process"—opens with my chapter, "Intro to Auto Accident Litigation." It is an unfortunate reality that many serious automobile accident cases will require litigation in order to obtain adequate compensation for the victims' injuries and property damage. Although your attorney will be your primary source of information on the litigation process, this chapter will give you some insight into what you will face as an individual plaintiff, as well as a number of tips on how to deliver a compelling testimony. Understanding the litigation process at this level will help you make an informed decision to proceed with litigation, and give you a better understanding both of what to expect during the process and how to use the system to your best advantage.

Giving an honest, consistent, and effective deposition is one of the victim's most important responsibilities during litigation. Accomplished California trial attorney and friend David Miller has written an invaluable guide to doing just that. Following his recommendations will all but guarantee a successful deposition. Part III ends with a partial glossary of personal injury litigation terms—a handy reference that you might consult if confronted with unfamiliar legalese—provided by good friend and exceptional trial attorney Christopher M. Davis.

I sincerely hope the information and understanding you gain from this book will help serve to protect the well being of you and your family at what can undoubtedly be a difficult time.

Kindest regards,

Joseph M. Ghabour, Esq.

Part I: Prevention and Preparation

Chapter One--Auto Insurance

Auto Insurance: A Brief Introduction

For most of us, insurance is a necessary part of modern life. By buying the right type of insurance, in the right amount, and in the right way, we do ourselves a tremendous favor. In case of a car accident, having the right insurance can be critical to surviving the financial hardships that an auto accident can bring to you and your family. The right insurance can protect your property with the repair or replacement of your car and protect your well-being by helping to assure that you get the best and immediate medical care for your injuries.

In this chapter, we will answer some of the most common questions regarding insurance relevant to auto accidents:

What is insurance?
Why buy car insurance?
The different types of car insurance?
Insurance you must buy?
Insurance you should I buy?
Optional Insurance Coverage?
What determines the cost of insurance?
Shopping for insurance?

What is insurance?

You probably have an intuitive understanding of what insurance is and how it works. You may even have had extensive experience in buying insurance and in dealing with insurance companies. But few people—expert or novice—stop to ask themselves what insurance actually is. So what does it mean to buy insurance, really?

Buying insurance is paying someone to assume risk for you.

Risk is…well, risky. Everyone is willing to assume some risk in their lives. After all, it's difficult to imagine life without a little risk. But some risk is too great to bear. Insurance is a way to manage these types of risk by shifting the burden to somebody else in exchange for money. This may sound a bit abstract, but understanding how insurance works at this level gives us a solid foundation for addressing the issues and answering the questions that we've laid out for ourselves in this chapter.

Key Terms

Before we proceed, let's review some key insurance lingo that will help us make sense of the different types of car insurance and the way they differ.

Policy: Your policy is the legal contract you sign with the insurance company. In exchange for premium payments, the insurance company promises to pay for claims that fall within the terms of the contract.

Policy limit: Your policy limit is the maximum amount that the insurance company is obligated to pay under your policy.

Premium: Your premium, in short, is the cost of a policy, which is usually specified in a certain dollar amount

over a given period of time. As you might expect, purchasing a policy with a higher limit will mean paying a higher premium.

Coverage: Coverage guarantees that the insurance company will pay for a certain type of claim. Any given policy usually contains multiple coverages, e.g., Theft, liability, fire. If you are "covered" for it, you can expect the insurance company to pay if it were to happen.

Policyholder: The policyholder is the person who purchased the policy.

Insured: The insured is the individual or individuals who are covered under a particular insurance policy contract. The insured is in many cases the policyholder, but others—the policyholder's family, for example—may also be the insured under the terms of the policy.

Deductible: With certain types of insurance, the policyholder—that's you—will have to pay a certain amount before your insurance will pay the rest. This amount is referred to as a "deductible." High deductible policies are less expensive because you're assuming more financial risk. Likewise, low deductible policies will mean higher premiums as a way of compensating for the fact that the insurance company is promising to pay a greater amount of money in the event of a claim.

Claim: A claim is a demand that a policyholder makes to the insurance company for payment. The payment must be for expenses or losses that fall within the terms of the policy, resulting from something for which the policyholder is covered.

Why Buy Car Insurance?

There are three reasons. The first is that a minimum amount of insurance is required by New Jersey law, and in

virtually all other states. The second is buying insurance is smart. For most of us, our car is the single greatest source of risk in our lives. Because driving is such an integral part of our day-to-day experience, it's easy to forget what driving actually entails: conveying a steel box at high speeds filled with explosive liquid, and on roads filled with other such vehicles operated by other very, very fallible human beings.

More than anything else you own, your car is by far the most likely cause of significant injury to yourself or others, and the most likely reason why you'd be sued for significant sums of money—in most cases far more than you'd be able to afford. A sound principle to abide by is to only risk what you can afford to lose. For the vast majority of people, the type of losses that are commonly the results of car accidents represent risks that are too great to assume themselves. Nobody wants to be a victim, and buying insurance soundly is one of the best means of ensuring that this doesn't happen.

The third reason is a matter of our duty as responsible citizens. Insurance isn't just about protecting ourselves. It's also about protecting others *from us*. We all make mistakes, but, unfortunately, driving means that seemingly minor errors—momentary lapses in judgment and attention—can irreversibly alter another's life, and even end it. I believe that we must be responsible for our actions and accountable for our mistakes. Buying insurance is the best means of ensuring that we are able to take full responsibility for any mistakes we make on the road.

The Different Types of Car Insurance

In this section, we'll cover the types of insurance that would protect you in the case of a car accident. As we discuss the various types of coverage, you will probably notice that different policies occasionally overlap in what they cover. To a certain degree, redundancy is a good thing—it gives you an extra layer of protection. In other cases, redundancy is unnecessary and expensive. I hope by the end of this chapter you'll have a better understanding of how to provide yourself with ample yet cost effective protection.

Liability Coverage

Liability coverage is very likely the most important type of car insurance to have, and to have in the right amount. Liability insurance covers another driver's bodily injury, lost wages and pain and suffering, for which you are responsible—or, to use a technical term "legally liable." It also covers property damage, whether to the vehicle or to other personal property. The mere fact that you were involved in an accident in which the other driver suffered an injury or damage to his or her vehicle does not mean that you are liable for those losses. You are only responsible for the losses that are determined to be the result of your negligence. Your liability insurance would pay for any legal judgments against you, but only up to the limit of your policy. It would also pay for an attorney to defend you in the lawsuit. If the limit of your liability insurance were less than the claim against you, you may be held personally responsible for any judgment in excess of your policy limits. This is why having an adequate policy limit is paramount for your financial security.

There are two principal types of liability insurance: single limit and split limit. In a single limit policy, the insurance company promises to pay up to a specified lump sum of money for all liability that result from a single

accident. Simple enough. A split limit policy, on the other hand, is a bit more complicated. There's not one limit, but three: one for all the bodily injuries you cause to a single person, another for all the injuries you cause in a single accident involving more than one person, and a third for all property damage you cause in a single accident.

Split limit policies are common in New Jersey. For example, you might see your policy provides for 25/50 coverage. This means that the maximum liability coverage for one person injured in an accident is $25,000, and the most your insurance company would pay for all injuries, regardless of how many people were involved, is $50,000.

Let's say…

You were involved in an accident through no fault of your own, and the other driver had a 25/50 split-limit policy. This means that the insurance coverage, regardless of the nature and extent of your injuries, would be $25,000.

On the other hand, let's say…

You were driving with three other people in your car when the same driver hit you. The most any of your passengers could recover from the other driver would be $25,000, and the total the insurance company would pay for all injuries to your car's occupants would be $50,000. If one person's accidents were particularly severe, he or she may recover $25,000, leaving another $25,000 to be divided among the other injured passengers. However, in many states you are indeed able to "stack" this coverage. This question should be reviewed with your attorney.

Uninsured and Underinsured Motorist Insurance Coverage (UN/UIM)

In my mind, these types of coverage are equally as important as liability insurance for protecting yourself and your family. Unfortunately, many consumers fail to maximize this relatively inexpensive insurance coverage. In a perfect world, every driver would be

adequately insured, making this type of insurance completely unnecessary. The unfortunate reality is that the vast majority of people either have no liability insurance or a policy that is inadequate to cover another's potential losses from even moderate accidents.

If you're injured in an accident caused by a driver who has no insurance whatsoever, or if you are the victim of a hit-and-run, your "uninsured motorist" insurance coverage would pay for your injuries. Since hit-and-runs are a common type of accident covered by uninsured motorist policies, let's take a moment to get clear on the legal definition. "Hit" means there must be direct contact with the offending vehicle. If, for example, the car in front of you makes an unsafe lane change and you turn to avoid it, striking a tree, your uninsured motorist insurance would not cover your losses. If, on the other hand, the other driver came and identified himself after colliding with your car, there is no "run," in which case his liability insurance would come into play. But if the driver carried no insurance, you would be covered under your uninsured motorist policy.

If, on the other hand, the other driver did in fact have insurance, but whose limit was below the value of your injuries, your "underinsured motorist" coverage may pay some of the difference, depending on your policy limit.

Underinsured motorist coverage doesn't work the way most expect. The total amount of money you can recover from an accident with an underinsured driver is equal to your UN/UIM policy limit. Your compensation equals your policy limit minus what has been paid by the defendant's insurance.

Let's say…

You get into an accident and sustain an injury of $150,000.00 but the responsible driver has an insurance policy of only $50,000. Fortunately, you carry an underinsured motorist policy of 100,000.00.

Here's what most people think would happen:

You can simply "stack" your UN/UIM policy on top of the driver's liability insurance, allowing you to recover the full value of your injuries: $100,000 + $50,000 = $150,000.

Here's what would actually happen:

Since the total amount you can recover is your policy limit, and the other driver's liability insurance contributes $50,000, your UN/UIM policy would cover you for another $50,000: $50,000 + $50,000 = $100,000.

Remember that these types of coverages allow you to collect the value of your injuries from your own insurance company. **That means that their interests would be served by arguing that you were at the least partially at fault, and that the injuries you suffered are in fact less severe than you maintain.** When you make a claim under your uninsured or underinsured motorist policy, your interests are truly adverse to those of your insurance company, and they will try very hard to pay you as little as they possibly can.

Personal Injury Protection Coverage (PIP)

Personal Injury Protection Coverage (PIP) is insurance coverage for injuries sustained by you or other persons covered by your policy. It covers what insurance companies call "reasonable and customary" medical services for injuries you sustain in an accident, up to the limit of your PIP coverage. PIP will cover your injuries regardless of who was at fault in the accident. We'll compare regular health insurance with PIP a bit later in this chapter as well as discuss PIP in further detail.

Threshold Election

Under New Jersey Law, your ability to sue the driver at fault for an accident is dependent entirely on your threshold election. When you purchase a standard auto insurance policy, you must make a choice about the rights you will have if you are injured in an automobile accident.

The choice you make affects how much your insurance will cost and what claims will be paid in the event of an accident. The choice you make regarding your right to sue another driver applies to you, your spouse, children and other relatives living with you who are not covered under another automobile insurance policy. It also applies to your uninsured motorist coverage and, more likely than not, to your underinsured motorist coverage.

There are two Threshold types—the Unlimited Right to Sue (or Zero Threshold as it is more commonly known) and the Limited Right to Sue (or Verbal Threshold).

The Unlimited Right to Sue allows you to sue the negligent driver for pain and suffer arising from any injury—whether severe or not. Of course, the value of your case will still be determined by the type of injury you have, the length of treatment and the final prognosis.

The Limitation on Lawsuit Option only allows you to sue the negligent driver for your pain and suffering if you sustain one of the permanent injuries listed below:

- loss of body part
- significant disfigurement or significant scarring
- a displaced fracture
- loss of a fetus

- permanent injury (Any injury shall be considered permanent when the body part or organ, or both, has not healed to function normally and will not heal to function normally with further medical treatment based on objective medical proof.)
- death

Of course, you should keep in mind cost in threshold election. The Limited Right to Sue is substantially cheaper than the Unlimited Right to Sue, so you must make a decision as to what you can afford. Also, the law does not allow you to sue the insurance company or its agents for the threshold or coverage you elect. So do your homework.

Comprehensive insurance (a.k.a. Theft and Fire)

Comprehensive insurance is usually an option available on your auto insurance policy that covers loss of your vehicle due to theft or fire. If your car stolen, and you have Comprehensive insurance, your insurance policy will pay for the cost of your car, minus the deductible you carry on your policy. Because Comprehensive coverage requires your insurance company to pay you for the cost of your vehicle, your interests once again are adverse to those of your insurance company. They will try very hard to pay you as little as possible to replace your car. Also, it's important to note, that if you are struck by an animal, e.g., a deer, your comprehensive insurance coverage would pay for the car's damage.

Collision insurance

Collision insurance, which you buy from your car insurance company, covers any damage to your vehicle as the result of colliding with another object. This covers any car damage caused by an accident, and—like PIP—it doesn't matter who is at fault. Collision insurance typically requires you to pay a deductible up front in the event of an

accident. A deductible, remember, is an amount of money that you have to pay, specified in your policy, before your insurance kicks in. As with all deductibles, if you'd like to pay less money to repair your car, you'll have to pay more for your insurance. Collision coverage does not cover collisions with animals. Comprehensive coverage does.

Umbrella policies

In addition to their primary liability insurance, many people buy personal umbrella policies. These provide a second layer of liability protection, offering valuable security at a very reasonable cost. Your umbrella policy protects you if you're sued for an amount in excess of your liability insurance limit and would kick in once your liability insurance had been exhausted. However, to purchase an umbrella policy, your must have a certain amount of liability insurance—how much depends on the specific insurance company—and you must agree to maintain this minimum level.

Insurance You Must Buy

Auto insurance in New Jersey is mandatory. The penalties for driving while uninsured carry severe penalties, including loss of license for a substantial period of time and possible jail time. Not to mention a hefty fine. The type and cost of coverage in New Jersey can vary significantly depending on the type of policy you obtain. In New Jersey, you have the option of purchasing a standard policy or a basic policy. As their names dictate, one is a policy with "standard" coverages while the other is "basic" in nature. The differences between both policies are rather significant.

Basic Policy

One of the biggest complaints of drivers in NJ is that auto insurance costs too much. The Automobile Insurance Cost Reduction Act mandated that a Basic Policy be available to all drivers in NJ, to provide basic coverage.

But, the saying "you get what you pay for" really does apply to the basic policy.

The basic policy does not require liability coverage. Simply stated, if you are involved in an accident and are at fault, your assets, including your earnings, are at risk. You will be responsible for the pain, suffering and other personal injury and economic damages that you cause. Your insurer will not be required to hire an attorney to defend you in a lawsuit and you will have to pay for an attorney to defend the case. This can be very expensive. Any judgment obtained against you must be paid by you. The victim can garish your wages and seize your assets to pay the judgment obtained. In short, everything you work very hard for can be taken from you in an instant. The basic policy does allow you to obtain up to $10,000 in liability coverage for an additional fee.

Another major drawback to the basic policy is that it does not offer uninsured or underinsured coverage, not even for an additional premium. Comprehensive and Collision coverages are also not available.

The basic policy also offers Personal Injury Protection (PIP) to cover your injuries in an accident. PIP is no-fault coverage that kicks in if you are injured, even if the accident is your fault. The basic policy starts with a basic limit of $15,000 to cover your medical expenses resulting from an accident, with options up to $250,000 for an additional premium.

Standard Policy

The standard by far in purchasing auto insurance in NJ is the Standard Policy. Under this policy, the law requires liability insurance with a minimum limit of $15,000 for a single death or injury, $30,000 for death or injury to more than one person, and $5,000 for property damage. You can, and should always, opt for more liability coverage. The standard policy provides for up to $250,000 PIP coverage and provides for underinsured and uninsured motorist coverage. It also allows you to opt for

Comprehensive and Collision coverages for additional premiums.

Special Policy for Medicaid Recipients Only

The Special Policy is a new initiative to help make limited auto insurance coverage available to drivers who are eligible for Federal Medicaid with hospitalization. Such drivers can obtain a medical coverage-only policy at a cost of $365 a year. This is also called a "dollar a day policy" and it covers pretty much nothing. No liability coverage, No underinsurance/uninsured coverage, no comprehensive coverage, no collision coverage---you get the point. It only provides emergency treatment immediately following an accident and treatment of serious brain and spinal cord injuries up to $250,000. It also provides a $10,000 death benefit. If you are at fault in an accident and are sued, you are on your own. You will have to hire an attorney to defend you and you will be responsible for payment of any judgment.

I personally think that is policy is completely irresponsible—both for it to even be offered and for people to opt for it. Only when the insured is involved in a catastrophic accident—one requiring emergency medical treatment immediately after the accident—will this policy be useful. And even then, once you are released from the hospital, you are on your own. I see this as an easy moneymaker for insurance companies. The policyholder pays approximately $365 per year for a policy that is not likely to ever be used. And of course, common sense dictates—if insurance companies have a high risk, do you think the policy would only cost $365 per year? It's cheap because insurance companies don't carry much of a risk.

It is because of policies like this that it is very important for you to have sufficient underinsured/uninsured coverage.

Insurance You Should Buy

In this section we will discuss in more detail the types of coverage that I believe are necessary for every driver to have. The question of what precise policy limit is appropriate is a complex and intrinsically personal one, but I'll do my best to give you information that is both specific enough to be helpful and general enough to apply to the majority of people.

Liability

With the exception of the Basic Policy, a minimum amount of liability insurance is required by New Jersey law and virtually every other state. The important question is whether merely buying the minimum amount is enough. The answer? Absolutely not—not for anyone. New Jersey's legally required bodily injury insurance limits of $15,000 (one claimant) and $30,000 (all claimants) are woefully inadequate to protect your financial assets. These limits have gone unchanged for the past 30 years, while medical costs have grown exponentially.

Let's say…

You run a stop sign and crash into another car. The driver is taken to the hospital for surgery where she stays for over a month. She undergoes rehabilitation and physical therapy, and is unable to work for two years. Even if the driver earns less than $50,000 a year, the total claim could easily hit $1,000,000. Now compare this to the $15,000 of liability insurance required by law.

This scenario may sound extreme, but it's not. The above scenario, in fact, is a moderate one. When imagining a car accident, the majority of people envision the kinds of minor fender benders that many of us have experienced and walked away from unscathed: no serious injuries, only mild damage to the vehicles—nothing that would entail hospital bills or lost wages. The reality, however, is often a great deal more severe.

The precise amount of liability insurance you should buy depends largely upon the extent of your assets. Those with extensive wealth are far more likely to be sued for large sums of money. Understanding car insurance means not only peering into the minds of insurance adjusters, but lawyers as well. Personal injury attorneys are far more likely to go after the assets of high net worth individuals, providing them with a greater payoff if they win on behalf of their client, rather than simply advising their clients to settle for the limit of the other driver's insurance policy.

Let's say…

An attorney accepts a client with injuries whose "value" exceeds $150,000, though the other driver—who was at fault—had a liability limit of only $50,000. Would the attorney immediately advise her client to accept the other driver's policy limit? Very unlikely, at least not until she has performed an "asset check" on the other driver, looking for assets that might be available to satisfy a potential judgment. In other words, how much money the other driver has will go a long way in determining whether the attorney decides it's worth all the time and energy to go after personal assets in order to secure for her client the full cost of their injuries.

In the scenario above, it is easy to see that the result could be financially catastrophic for the defendant. But this result could be avoided with an adequate liability insurance policy. You may have heard that you should buy a liability policy with a limit that more or less equals your total assets, the idea being that you are "covering" your assets in doing so. If your insurance equals or exceeds your net worth, so the thinking goes, you'll never have to worry about having to pay a lawsuit judgment out of your own pocket. This is nonsense, and it's based on a complete misunderstanding of how insurance and personal injury

law work. There's nothing that says that someone couldn't sue you for more than your policy limit, requiring you to pay the difference. Your liability insurance is the first line of defense, and a good one at that, but your personal assets remain vulnerable beyond your policy limits.

There is no secret formula to tell you how much liability coverage is enough, but there is a sound principle that can help you make an informed decision. And the principle is this: within reason, and within the confines of your budget, you want the highest possible ratio between your policy limit and your total assets. The smaller your assets look in comparison to your liability coverage, the more likely an attorney would advise her client to settle for your policy limit, leaving your personal assets untouched.

But what about a driver with few or no assets? My advice is to buy a liability policy with as high a limit as you can reasonably afford. Generally, attorneys will not pursue an individual with no assets—the payoff isn't worth the effort—but we should remember that a New Jersey judgment has a life of twenty years and can be renewed. A judgment, though not as serious as a bankruptcy, can affect your financial life for years to come.

For drivers who finance or lease their vehicles, your financing company will require a minimum amount of liability coverage. You should check with your financing and leasing agreement to see the minimum coverages you are obligated to maintain while the car is financed or leased.

Uninsured and Underinsured Motorist Insurance Coverage

These types of coverages, in my mind, are nearly as indispensable as liability insurance. I realize that some resent having to buy these policies, feeling that it's unfair to pay for something that is rightly someone else's responsibility. Many people assume that when one's underinsured motorist insurance pays for injuries someone else caused, it absolves the negligent driver from having to

take financial responsibility for their actions. The other driver fails to buy insurance, causes an accident and doesn't suffer the consequences. However, this is not actually the case. By accepting payment for your injuries under your uninsured motorist policy, you give your insurance company the right to sue the person at fault for the money it was obligated to pay you—a right that insurance companies often exercise.

And while this type of principled objection is understandable—I certainly believe we all have a duty to carry adequate insurance—it runs up against an unavoidable reality: there are simply too many drivers on the road either without insurance at all, or with policy limits that are negligible in comparison to a modest personal injury claim. Moreover, suing another driver for their personal assets is a time consuming and uncertain process, and one to avoid if at all possible. Uninsured and underinsured motorist coverage saves you from the protracted and occasionally fruitless ordeal of a lawsuit and gives you the resources you need to recover from your accident.

As with liability insurance, a good rule of thumb when it comes to uninsured and underinsured motorist coverage is to buy a policy with the highest limit reasonably available. This critical coverage, after all, is about protecting you and your family.

Personal Injury Protection Coverage (PIP)

Personal Injury Protection Coverage (PIP) is beyond important if you are injured in an accident. PIP pays for your medical bills up to the limits of your policy. Pretty standard, right? Well, did you know that PIP will pay for your medical bills if you are *walking* down the street and are struck by a car? Yes, walking! If you are riding a bicycle and are struck by a car, YES…you guessed it--PIP pays again. Irrespective of fault, if you're injured in a car accident, PIP will pay for your medical expenses.

You may be wondering, "Why should I buy medical coverage from my car insurance company when I already have health insurance?" The answer is that there are important differences in what PIP and most health insurance cover.

One important benefit of PIP is that it will cover treatment for injuries you sustained in an auto accident, up to the limit of your coverage with minimal deductibles and co-pay. This coverage is available regardless of who is at fault in the accident.

Under New Jersey's Standard policy, your PIP coverage is $250,000, although you can (but never should) opt for lesser coverage for a reduction in premium. The savings *are not* substantial. Under the Basic Policy, PIP coverage is $15,000, but you can (and always should) opt for more coverage for an additional premium.

Let Say….

You elect $15,000 of PIP coverage. Your insurer is only obligated to pay medical bills up to $15,000 unless you suffered "certain injuries" which are discussed below. If you have ever been injured or hospitalized, you know that $15,000 is not sufficient to cover basic diagnostic tests and doctor fees, never mind the cost of a hospital stay. The good news is if you suffer certain injuries, the law requires your insurer to cover you up to $250,000 even if you opted only for $15,000 of coverage. But, what are certain injuries? The law says that "certain injuries" are *permanent or significant brain injury, spinal cord injury or disfigurement or for medically necessary treatment of other permanent or significant injuries rendered at a trauma center or acute care hospital immediately following an accident and until the patient is stable, no longer requires critical care and can be transferred to another facility in the judgment of the physician.* That definition does not cover the injuries typically found in motor vehicle accidents, that will cost more than $15,000 to treat but are not considered permanent injuries. In short, the "permanent" injury must require immediate treatment at a trauma center or acute

care hospital. It is for this reason that I recommend you obtain $250,000 in PIP coverage. The last thing anyone needs is to be injured in a car accident and to have your own insurance company say, "the policy limits have been exhausted."

One of the additional benefits of PIP is the minimal deductible and co-pays. For example, if you have a $250,000 PIP limit with a $250 deductable and a 20% co-pay of the first $5,000, the most you will be out of pocket is $1,250.00. Medical providers who accept to treat you under your PIP policy are bound to accept a certain fee for work performed as per a statewide PIP schedule. They cannot charge you for the difference between what PIP pays and what they would normally charge, called "balance billing." The most out of pocket expense you would incur would be your deductable and co-pay and nothing else. Also, any medical provider who is penalized for not following the insurance company's precertification policy cannot charge you the penalty.

Another advantage of a PIP policy is that it comes with few provisions and exclusions compared to the pages and pages of fine print that usually comprise your average health insurance policy. That means that PIP typically covers medical services that most health insurance policies do not—often including chiropractic care, dental care and others. What's more, you're not limited to a single provider. There are no "in-network" or "out-of-network" doctors. You can go to any doctor that is willing to follow PIP procedures. The reason why PIP is broader in terms of the care and providers it will cover is that the situation in which it becomes active is narrower. Your health insurance will cover any illness or injury, regardless of when or how it was caused. PIP insurance, on the other hand, will only pay for injuries sustained in a car accident.

To summarize, a driver should have liability insurance in proportion to his or her assets and adequate to cover the cost of a possible personal injury claim.

Uninsured/Underinsured Motorist Coverage should be as high as reasonably possible for protection against the large number of uninsured or inadequately insured drivers on our highways. The good news is that many relatively high limit insurance policies are reasonably priced in relation to the valuable protection they offer.

Optional Insurance Coverage

In my opinion, one can still have ample protection without buying the following policies, depending on one's assets and circumstances. For some they are necessary, but not for everyone.

Comprehensive and Collision insurance

Buying comprehensive and collision insurance coverage really depends on how much your car is worth and how much money you would be willing to pay if it were damaged in an accident or stolen. If totaling your car wouldn't be a financial catastrophe, and if the premiums you would pay feel more burdensome than the risk of damage to your car, it likely means that you can confidently skip comprehensive and collision insurance. Of course, if you are financing or leasing your vehicle, your financing company will require both comprehensive and collision coverages to protect its collateral (your car).

Umbrella policies

Umbrella policies are best suited to high net worth individuals who have considerable assets to protect. Remember that purchasing an umbrella policy requires a significant amount of underlying liability insurance. For certain people, this type of policy makes a great deal of sense, but for other's—those with fewer assets, who are less desirable targets for lawsuits—merely buying the amount of liability insurance necessary to consider purchasing an umbrella policy is an unnecessary expense. If you make more money than your auto insurance policy covers, you

should have an Umbrella policy. The cost is minimal compared to the peace of mind you will have knowing you are well covered.

What Determines The Cost of Insurance?

The cost of car insurance—our focus in this section—is influenced by a number of variables, but it's calculated by a simple equation. The "rate" of insurance, as it's called in the industry, is the result of multiplying the "base rate" by your individual "rating factor." The base rate is the price of an insurance policy without taking into account anything about the person buying insurance, and each policy limit has a different base rate. For example, $200,000 of liability coverage might have a base rate of $600.

Your rating factor, on the other hand, is a numerical measure of how likely you are to get into an accident, or, at least, how likely insurance companies *think* you are to get into an accident. And that's what we're interested in here. On the basis of nationwide statistical trends, insurance companies have identified a number of characteristics that correlate with high accident probability. Together, they determine your rating factor, which in turn sets the cost of your premium.

Who you are

Just about everything insurance companies do is based on statistics, and statistics show that your likelihood of getting into an accident depends to a significant extent on who you are. For the purposes of car insurance, "who you are" boils down to three things: your age, gender, and marital status. First, the question of age: regardless of whether you chalk it up to inexperience or developmental immaturity, young drivers get in far more accidents than their older counterparts. And it probably comes as no surprise that, when it comes to gender, males are involved in more collisions than females. Finally, and—I'll admit—a bit strangely, married people get in fewer accidents than their single friends. That means that young, single, male

drivers, who get into the most accidents of any group, typically pay the most for car insurance. Married women, on the other hand, generally enjoy the lowest premiums.

Your driving record

If you have a spotless driving record—no tickets and no accidents in which you were at fault—your rating factor will naturally be lower than someone with a number of blemishes.

Where you live

As you would probably guess, there are more accidents in cities than in rural areas—more cars, more traffic, as well as more break-ins and theft. That's why urban drivers, on the whole, are stuck with higher rating factors.

How much you drive.

The more you drive, the more time you spend in your car, and the more time you spend in your car, the higher the probability of getting into an accident over a given period of time.

The car you drive.

From the perspective of an insurance company, who has to pay for your car repairs, denting your Ferrari is a great deal different than getting into a fender bender in your old truck. If you drive an expensive car, it'll cost more for comprehensive and collision insurance.

Aside from the cost of repairs, the car you drive can impact your rating factor in other ways as well. One variable is the theft rate—how often your make and model is stolen. If your car is a favorite among thieves, it'll likely cost more to obtain comprehensive coverage. Another consideration is the safety of your vehicle. A high safety rating and a good safety record on the road mean that the injuries you might suffer in an accident would likely be less severe than if you are driving a car that was rumored to flip or crumple like tin foil.

Shopping for Insurance

To my way of thinking, there's a right way and a wrong way to buy insurance. The wrong way, unfortunately, is the approach we are most accustomed to taking when comparison-shopping: we call an agent or go online and ask for a quote for car insurance. The agent or the online system gives a quote and we look for the cheapest price between company A and company B. We do this based on the assumption that the product is essentially the same regardless of where one buys it. This focus on price makes a great deal of sense when you are buying cloths or food—not when you are buying insurance. After all, a can of Coke is the same can of Coke in store A or store B. Why would I want to pay more for the same can of Coke? The problem is that insurance is different than most of the things we buy.

Insurance, first of all, is not a thing—it's a contract that we purchase. Simply looking for the lowest price means we're ignoring what's actually in the contract. Our assumption tends to be that if we buy a car insurance policy, it will cover us in the event of an accident. But if matters were that simple, insurance contracts would be far shorter than they actually are. Most policies include lists of limitations and exclusions, which create holes in the coverage. And if an insurance company offers a policy that is far cheaper than those of its competitors, there's probably a reason: more holes. Of course, that doesn't mean that there aren't good deals out there. It simply means that seeking the best value requires that we balance both the prices and the specific terms of the policies that we consider. More often than not, you get what you pay for.

So, what's the best way to shop? Figure out what coverage you want, at what limits and then ask each company for a quote based on those exact coverage and limits. Don't just say I want car insurance. Do you homework first. Figure out what your potential exposure may be in the event of an accident, how much risk you are

comfortable with, how much money you can afford to pay for car insurance and then look for insurance using those variables. Tell the insurance company: I want X Coverage and Y Limits. Then, and only then can you compare apples to apples. And each company will rate you differently, so while company A may charge you $1,100 for a policy, company B may charge you $900 for the same coverage. So shop around. And remember—insurance is a contract. You pay the premium and the insurance company covers you, so make sure you know what you are buying.

Chapter Two--Auto Accidents

Causes of Accidents & How to Avoid Them

The vast majority of automobile accidents are caused by drivers' negligence. At least one of the drivers was partially if not entirely at fault, and could have avoided the accident by exercising greater attention and caution. Accidents, in other words, are nearly always the result of drivers' mistakes.

In my years as a personal injury attorney I've learned that, while every accident is unique, a small handful of contributing factors show up again and again, at least one of which is virtually guaranteed to have been at play in a given collision.

In this chapter, we'll take a look at the most common causes of accidents and how to avoid them. However, simply because you drive responsibly—avoiding these common driving errors—does not mean that another driver, acting irresponsibly, will not crash into you. But it does mean that, should you get into an accident, it will be easier to demonstrate that the other driver was at fault and that you deserve full compensation for your injuries and damage to your vehicle.

Cause #1: *Excessive speed*

An obvious one: driving too fast causes accidents. The faster we drive, the quicker our reaction time needs to be—the less time we have to apply the brakes and to swerve out of the way, and the less time we have to scan our surroundings, which whiz by us faster and faster as our speed increases. When we drive too fast, any errors we make in driving are magnified. A second of inattention is more dangerous at higher speeds—the car covers a greater distance while the driver is distracted. If we over-correct in our steering, we veer further from our intended path the faster we're traveling. Excessive speed also contributes to the severity of the accident. The force with which two cars collide is a function of two things: their mass, or size, and their acceleration—that is, their speed.

What to do: *Obey the speed limit*

There have certainly been times when I've felt that the speed limit in a certain area was unnecessarily low, and I know that "going with the flow of traffic"—an important consideration, without question—can mean driving a bit above the posted limit. However, speed limits are not arbitrary—they're backed by research and decades of statistical analysis. On the whole, speed limits are well calibrated to minimize accidents, but they're only effective if followed.

Furthermore, if you get into an accident when you were going the speed limit while the other driver wasn't, this fact will work in your favor, helping you to establish the other driver's role in the crash and, in turn, getting you the compensation you deserve.

Cause #2*: Drunk Driving*

Fortunately, it's now common knowledge that drunk driving is exceptionally unsafe, both for the intoxicated driver as well as for the others who share the road. When under the influence of alcohol, our coordination, response time and judgment become increasingly less reliable the more alcohol we consume. Drunk driving accounts for a significant percentage of fatalities resulting from automobile accidents nationwide. If you were to get into an accident while driving drunk, even if the other person was clearly at fault, the other driver's insurance company would have an easy time defeating your claim for compensation.

Furthermore, the costs of a DUI arrest are great, both emotionally and financially. Emotionally, there is the shame of being arrested, of having to go to court, of dealing with the Motor Vehicle Commission (MVC), and of telling your family, maybe even your boss. Even if you decide not to fight the charges against you, your finances will still take a big hit. The initial costs are the fines, penalties and surcharges. There is also a program fee for

enrollment in the alcohol classes and you will have to pay the MVC to reinstate your license.

What to do: *Don't drive drunk, and steer clear of drivers you suspect to be under the influence.*
Of course, don't drink and drive—that's obvious. However, it's equally important to give plenty of space to any driver you think may be drunk. Is the car weaving? Driving well below the speed limit? If so, do whatever's necessary to safely get out of their way.

Cause #3: *Distracted driving*
Driver distraction is one of the most common causes of car accidents. What constitutes a distraction? Changing a CD, looking for a song on an iPod, tuning the radio, fishing around for something in the glove box, talking to a passenger—these are common sources of distraction. But by far the most common, as I'm sure you've guessed, is the ubiquitous cell phone. Whether we are talking or texting, our cell phones occupy our minds, diverting our mental energy from the task of driving.

As you know New Jersey recently passed a law requiring drivers to use hands-free devices. Problem solved, right? I'm afraid not: studies show that using headsets in no way diminishes the distraction of talking while driving. In fact, research actually points to increased distractibility as a result of hands-free devices.

What to do: *Hang up and drive*
I certainly sympathize with people who like to talk on their phones in the car. Driving can be tedious, especially if you're caught in traffic or driving your daily route for the umpteenth time. It's tempting to use our phones to pass the time or get work done. I wish it weren't so, but I'm afraid the research on this point is incontrovertible: cell phone use significantly impairs our driving and is one of the most common contributing factors to automobile accidents.

If your mind is driving along with the rest of you, you'll be a better, safer driver. And this can have a significant impact on your chances of a successful claim. If I told you that two people got into a car accident and one of them was talking on their cell phone and the other wasn't, what would you be tempted to assume? All other things being equal, insurance companies and judges tend to make the same assumption.

Cause #4: *Driving while tired*

Sleep deprivation slows reaction time, diminishes coordination, lessens attention and impairs judgment. Sound familiar? Too little sleep can impair drivers no less severely than alcohol. And, like talking on a cell phone, being tired—ranging from mild sleepiness to extreme sleep deprivation—impairs our ability to drive safely more than we are apt to realize at the time.

What to do: *Sleep first, drive later.*

Drunk driving carries a considerable stigma in our society, but tired driving—though equally dangerous—does not. You wouldn't drive drunk, so don't drive while exhausted. If it takes conscious effort not to slip into unconsciousness, if it's a struggle to keep your eyes open, if you find yourself nodding off, however momentarily, then pull over as soon as possible, take a nap and then get back on the road.

Cause #5: *Driving aggressively*

In the movie *Groundhog Day*, Bill Murray gives the following advice to his companion: "Don't drive angry. Do not drive angry." Aside from the fact that he's talking to a groundhog, his advice is actually quite sound. In fact, the banner of "aggressive driving" covers most of the driving practices and habits that frequently cause accidents.

We all know what driving aggressively usually entails: tailgating, waiting to the last second to merge, cutting

other drivers off, swerving across lanes, laying on the horn, accelerating rapidly, refusing to let other cars in, the list goes on. But the problem with aggressive driving extends beyond the aggressive driver. It affects how others drive as well, potentially igniting road rage or making others nervous, neither of which bode well for safety on the road.

What to do: *Drive defensively*

Driving defensively simply means being cautious, being on the lookout, so to speak. It means putting a few car lengths between you and the car in front of you—obeying the "three second rule." It means using your peripheral vision, checking your blind spots, glancing in your mirrors, using your turn signal before changing lanes and—more often than not—it means slowing down.

Cause #6: *Ignoring bad weather*

In most accidents involving bad weather, the driving conditions in themselves were not the cause of the accident, but rather the drivers' failure to take the weather into account. Inclement weather usually results in, among other things, poor visibility and slippery roads. First, the issue of visibility: the question is not whether we can see, but how much. The less we are able to see, the quicker our reaction time needs to be. Even on a clear night, for example, our visibility is diminished—our headlights cannot follow the curves of the road. What we can see is limited to the angle and range of the beams, giving us visual access to far less of our environment than we get during the day. And it goes without saying that rain, snow and fog significantly limit visibility.

Next, the question of driving surface. A slippery road means uncertain breaks and maneuverability, a dependable recipe for a crash. Contrary to what most people assume, rain and snow are often the most dangerous just after they begin to fall—the oil and dust that has not yet been washed away combines with water to form a slick layer on the road.

What to do: ***Respect the weather***

Of course, the best thing is to avoid driving in bad weather, but I know from experience that it not always possible to do so. If you have to drive come rain, sleet or snow—or, for that matter, fog or dark of night—drive cautiously and take the appropriate measures. Respecting the weather also means driving far below the speed limit on occasion.

In the snow, defrost your windshield before driving, put chains on your tires, and slow way down. In the rain, check your windshield wipers, defrost your windshield and, again, reduce your speed. In fog, many drivers make the mistake of turning on their high beams in the hopes that they'll be able to see better. In actuality, the intense light of one's high beams reflects off the water droplets in the air, bouncing back into the driver's eyes, further obscuring the scene around them. If you have to drive in bad fog, use your low beams and—you guessed it—slow way down.

Cause #7: ***Neglecting your car***

There's an old saying: a driver is only as good as his car. Though, in a sense, we could easily say the reverse, there's more than a grain of truth here.

Of course, a car that breaks down on the road or highway might certainly cause an accident, but the dangers posed by a neglected car are often more subtle. As the condition of a car deteriorates, it becomes less and less dependable and responsive—tires can't grip the road as well because the tread has eroded; brakes are less effective as the brake pads wear down; brake lights, turning signals, headlights and other warning lights can fail, exposing you to dangers arising from not being able to see, and from other drivers not being able to see you or tell ahead of time when you're going to turn.

What to do: ***Take care of your car***

You should continuously monitor the overall condition of all aspects of your vehicle to assure your own safety and the

safety of others on the highway. This includes things like keeping the tires properly inflated, replacing windshield wipers regularly, and checking the oil level. However, most of us don't have the expertise to do everything on our own. A simple safety inspection at your local dealer or by a qualified mechanic is an inexpensive step towards ensuring that your car is safe to drive.

Cause #8: *Driving an unfamiliar vehicle*

If you are at all uncomfortable or unfamiliar with the car you are driving, you are much more likely to make mistakes or drive erratically. And if you are not driving well, you're more likely to get into an accident.

What to do: Get to know the vehicle

If you are driving a car you are not used to—a friend's car, a car you just bought, or a car you have not driven in awhile—it is important that you take a moment to remind yourself where everything is before you start to drive: emergency brake, transmission, turning signals, windshield wipers, headlights, high beams, hazard lights and so on. To get an overall feel for the car, just grip the steering wheel and put your foot on the brake. Also make sure that the seat and steering wheel are adjusted properly for you.

Taking a few seconds to do this is especially important if you are used to driving a car with a different kind of transmission. If, say, you are driving an automatic when you are accustomed to a manual, spending a minute or two to familiarize yourself with the car can make the difference between getting where you are going safely and slamming on the brake in a frantic search for a non-existent clutch.

Cause #9: *Trusting other drivers*

Many of the accidents I've dealt with over the years have involved one driver putting too much faith in another. Think about making a left turn on a yellow light, one of the most common accident scenarios. The driver sees the light turn yellow, thinks he sees the oncoming cars decelerate, and plows through the intersection on the

assumption that none of the cars coming at him will do what he himself has probably done on many occasions: speed up to make it through the intersection before the light turns red.

Other drivers will do what they want, not what we want them to do or what we think they're going to do. They see what they see, not what we assume they see, nor even necessarily what is right in front of them. There are a lot of inattentive, inexperienced and plain ole bad drivers out there. And there's only one thing we can do about it.

What to do: *Drive like no one knows what they're doing*

I can think of no better principle to remember or any better advice to abide by. It's part of the reason why we should put ample room between ourselves and the vehicle in front of us, for example. It's the reason why we should always be wary of the cars around us—we may be driving in someone's blind spot who doesn't have the wherewithal to check, nor the presence of mind to signal a few seconds in advance, before coming into our lane. People make mistakes—that's what causes accidents. But if we give them a wider berth on the road, we give ourselves a little bit more time to get out of their way.

What to Do After An Accident

You just got into an accident. Your adrenaline is pumping, and in the grips of "fight or flight" response your instincts may be telling you to drive away, to get out of your car and run, or to scream at the other driver. You may be furious, scared, or confused, but it's important to keep your wits about you. What you do at the scene can have a critical impact on the success of your claim. This chapter provides you with a guide to what to do in the event of an accident. Not only will we discuss what to do at the scene, but we will also cover important steps that you should take in the days that follow.

It's an unfortunate irony that there are few circumstances less conducive to thinking clearly—but few where it is more important—than the scene of an accident. However, the more familiar you are with the best course of action under these circumstances—the more you rehearse these steps in your mind—the more likely you will act appropriately and effectively despite the shock and daze that inevitably accompany a crash.

Of course, the extent of your injuries will determine whether or not you are able to follow the steps described below. This chapter is written with a moderate accident in mind, including damage to both vehicles, but whose drivers are able to safely get out of the car, despite possible injuries.

Stop

The first thing to do is stop your car, if the collision has not already forced you to a stop. The law requires that you stop if you are involved in an auto accident, no matter how minor. If you drive away, you can be charged with a "hit and run" even if the accident was not your fault. Hit and run penalties can be severe, including loss of drivers license, fines and jail, depending on the damage or injuries involved. If possible, move your vehicle to a safe location,

out of traffic, so as to avoid further collision. Turn on your hazard lights and set flares or cones if you have them.

Check yourself, your passengers and the other car's occupants for injuries

Take a second to tune in to your body, noting any pain, discomfort, numbness or tingling. Nothing is more important than your physical well being, and in a serious accident this should be the first thing you do. Moving your car, or yourself, may be impossible, and may exacerbate any injuries. If there are other people in the car, check to make sure they are okay. If you are able to get out of your car, and if you are at a location in which it is safe to do so, check the other car's occupants as well. Do not attempt to move a person who is seriously injured, as it could cause permanent damage or paralysis, unless their lives are in immediate danger.

Call 911, if necessary

New Jersey law requires that you call the local, county or state police if the accident caused a death or injury or damage in excess of $500.00. In all but the most minor accidents, it's also a good idea to call the police from the standpoint of building a successful case: the police report provides insurance companies with proof that the accident took place, and it can be a tremendous asset in your claim if the police officers' account of the facts are on your side. Once an operator picks up, speak clearly and calmly. Help can be delayed if the location is not clearly communicated. Use landmarks, road signs or mile markers to specify the accident location. Be sure to mention any injuries you or anyone else has suffered.

Keep calm, do not admit fault

As much as you possibly can, remain calm while talking to the other driver and don't say anything that could be construed as an admission of fault. A harmless apology, made in an attempt to placate the other driver's anger, can be twisted by an insurance company lawyer into a

confession that the accident was the result of your negligence.

How you feel towards the other driver after the accident—enraged, indignant, sheepish or remorseful—isn't necessarily a reflection of who was actually at fault. I've heard of drivers who were clearly in the wrong but acted as though they were innocent victims of another's recklessness. And I've known others who apologized profusely in spite of having done nothing wrong. Regardless of who you feel is at fault, it's best to avoid discussing with the other driver the details of the accident and how it happened, no matter how much you may be tempted to do so. Do not argue with another driver or passengers—nothing good can come of it. At the same time, keep an ear open to what the other driver says and write down any admission or apology as quickly as possible.

Collect information

Whether or not an officer is called to the scene and files a police report, it's critical for you to collect your own information. *At the end of this chapter, I've included forms that you should photocopy and put in your glove compartment.* Filling out these forms following an accident will ensure that you record the important information that we'll consider below.

From the other driver: Make sure to write down the other driver's name, address, driver's license number, license plate number, insurance company name and policy number. And provide your information as well. Also take a moment to observe the other driver's demeanor, and look for any signs that he or she is under the influence of alcohol or drugs: the smell of liquor, slurred speech, flushed face, or bloodshot eyes. Also note whether the driver is wearing eyeglasses. If it turns out that the driver needs prescription glasses, but wasn't wearing them at the time of the accident, this fact can help you establish fault.

From witnesses: It's hard to overstate the power of an eyewitness account, especially from an impartial person.

There's a brief window of time following the accident in which you're likely to find a witness who is willing to get involved—most people who saw the accident will leave the scene fairly quickly. When talking to potential witnesses, emphasize how helpful their involvement would be, and collect contact information—name, address, phone number—from to anyone who would be willing to offer their testimony. If the witness cannot remain on the scene, make sure you give their information to the police officer so he can interview them at a later date.

From the scene: Paying careful attention to the scene of the accident can alert you to decisive factors that could easily be overlooked, including by the police officer. If the accident occurred at an intersection or on a city street, make note of any malfunctioning traffic signals or missing, damaged, or obscured stop signs. You may also want to observe the other vehicle to see if any obvious mechanical problems are apparent. Malfunctioning headlights, blinkers or other car parts could later prove to be significant. If you have a camera on your cell phone—or if you had the foresight to put a disposable camera in your glove compartment—take pictures of the damage to your vehicle and any relevant factors at the accident scene, including any objects with which the vehicles collided. If you don't have a camera, return to the scene as soon as possible to take photos.

Cooperate with the police

Once the officer arrives, be courteous and cooperative. It's important to keep in mind that one of the officer's primary duties at the accident scene is to fill out a report. From the perspective of an insurance company, the police report represents the authoritative record of the accident. The facts that find their way into the police report, as well as those that are left out, can prove significant in terms of you and your lawyer's ability to secure fair compensation for your injuries. So, as before, do not say anything that might be construed as an admission of fault. Give the officer all the information that you feel may be relevant, and be sure

to include why you think the accident happened, what you think the other driver did wrong, and what, if anything, you did to avoid the collision.

The police officer will ask you whether you're injured. If you suspect injury, make sure that you say so. How you answer this question can powerfully shape the future discussions you have with the other driver's insurance company regarding the nature and extent of your injuries. Although insurance companies recognize that many injuries sustained in an auto accident don't manifest symptoms until hours or days after the incident, they may still use your original statement of no injury against you.

If you feel you require medical attention, don't be shy, and don't let concerns about the cost sway you. Tell the police officer to call for an ambulance immediately. Your physical well-being may be at stake, and toughing it out may have devastating consequences if your injuries are not properly diagnosed and treated. Finally, before you leave the scene, ask for the officer's name and for any information you will need to secure a copy of the police report.

Call a tow truck if necessary

If you have any suspicion that the damage to your vehicle renders it unsafe to drive, have your vehicle towed to your home or to your chosen repair facility. You do not want to risk further injury to yourself or others by driving a vehicle that is potentially unsafe.

Write an account of the accident

Your memory of the accident is a valuable source of information, but it becomes less and less reliable as time passes, and important details can be forgotten. So, as soon as you can, sit down and write a detailed account of the accident, being careful to leave nothing out. To help you do this, I've created the *Diary for the Injured: A Workbook for Recording your Injuries and Losses*, an easy-to-use tool designed to ensure that all critical information regarding the accident is recorded. If you haven't already, I highly recommend acquiring a copy.

This record could make an important contribution to the success of your case.

You may have gotten into an accident that you feel was clearly the fault of the other driver, and it's tempting to assume that because the truth of the situation was so obvious, there's little need to be so meticulous in collecting information and making records. The reality, however, is that claims can be denied for virtually any reason, no matter how unmistakable the other driver's negligence was at the time of the accident. It's impossible to know exactly what will later proved to be significant in the success of your claim. By taking these steps, you are helping to ensure that you will be able to obtain the financial resources you need to fully recover.

See a doctor

If you sustained an injury in your accident, no matter how minor you think it is, see your doctor immediately—this is one of the most important pieces of advice I can offer, not only for your health, but also for the success of your claim. As I mentioned, many of the most common injuries from auto accidents don't become symptomatic until hours and even days later. Damage to soft tissue occurs immediately, but you may not feel it for some time. So, if you suspect an injury, even if you're not sure, see your family physician at once, and in person. That way the doctor can give you a full evaluation and document your injuries.

And don't just see a doctor, but *listen* too. Your condition can become chronic and permanent if not properly treated, and your physician is the best judge of the necessary treatment. If your physician recommends physical therapy and on-going care, listen and follow those recommendations. Sadly, I've seen a great many people ignore their doctor's directions, taking the attitude of "it'll heal on its own," only to find that their injury becomes more painful and debilitating as time wears on.

Document your injuries

When it comes to receiving fair compensation from insurance companies, documentation is everything. Records, we might say, are the language of insurance adjusters, and to get what you need to fully recover, you have to learn to speak their language. But now, more and more, the work of insurance adjusters is being delegated to computers, and in a later chapter we'll discuss the computer programs currently being used by the industry to evaluate your case. If the required documentation is not entered into the program, and in terms that the computer can understand, the program will not properly evaluate your injury and you will be denied fair compensation.

Keeping in mind the way these programs "think," I've created forms that you should ask your physician to fill out, and forms that you should fill out yourself. Both you and your doctor are responsible for documenting your injuries, but each of you is looking at the situation from somewhat different, though equally important angles. Your physician is responsible for recording the nature of your injury, any diagnostic procedures you undergo, and all care and treatment you receive—in other words, from a medical perspective. Your job is to record the ways in which your injuries impact you from a personal perspective: the pain you feel, the activities you can no longer engage in, and any other ways in which the injuries have impacted your life.

To help you, your doctor and your attorney ensure that the full extent of your injuries are understood and well documented, I urge you to use *Diary for the Injured: A Workbook for Recording your Injuries and Losses*, which I mentioned above. In addition to helping you record important details of the accident, it is also designed to help you document your injuries. It contains both specific questions regarding your symptoms and a convenient format for tracking them over time.

Report the accident to your insurance company

You have an obligation under the terms of your automobile insurance policy to immediately report, truthfully and completely, any automobile accident you are involved in. However, in the event of a serious accident, involving injuries and extensive property damage, I suggest that you immediately consult with an experienced personal injury attorney before contacting your insurance carrier. Why? Because your insurance company is not always on your side. It all boils down to money. If you are seeking compensation under the other driver's insurance policy, then your own insurance company can be a powerful ally. If, however, the situation requires that your insurance carrier cover some of your losses, then suddenly their interests are counter to your own. While still honoring the terms of your policy, they are now looking to pay you as little money as possible. And when your insurance company is no longer on your side, you need someone who is, someone who can level the playing field, someone who can advocate for you and protect your interests. The problem is that it is not always clear ahead of time which insurance company is going to pay for what, and that's why I recommend consulting with an attorney in the event of a serious accident.

I also recommend speaking with an attorney before discussing the accident with the other driver's insurance carrier. Think about it. You intend to show that the other driver was at fault and that their insurance should pay for your medical treatment, property damage, and pain and suffering. The other driver's insurance company wants nothing of the sort. They would much prefer to show that you were at least partially at fault in the accident, and that they should therefore only pay for only a certain percentage of your losses.

However, if your injuries are minor and you feel that you can represent yourself without the benefit of legal counsel, you will want to begin communication with the responsible party's insurance carrier as soon as possible in order to facilitate the resolution of your claim. Later in this book, we will discuss the most effective approach and the

most helpful mindset to adopt when dealing with the responsible party's insurance carrier. For now, suffice it to say that the adjuster's job is to limit the compensation you receive, a fact that you would do well to keep firmly in mind.

Make a report to the Motor Vehicle Commission (MVC)

According to NJ Law, every driver involved in an accident resulting in injury or death or property damage in excess of $500.00, regardless of fault, must make a report to the police by the quickest means possible and within 10 days of the accident.

Part II: Presenting a Successful Claim

Chapter Seven—Finding the Right Attorney

Finding the Right Lawyer for Your Case and The Truth About Lawyer Advertising

This chapter is written by and appears in this book through the courtesy of two exceptionally talented and dedicated trial attorneys, Benjamin W. Glass and Sandra Rohrstaff. Mr. Glass is a sought after professional speaker and is America's premier authority on effective, ethical and outside-the-box marketing for lawyers. Ben is a Certified Trial Attorney, and the former editor of both the Superior Court Digest*—a publication summarizing trial court opinions in the Superior Court of the District of Columbia—and the* Journal of the Virginia Trial Lawyers Association. *Ms. Rohrstaff is a dedicated trial attorney and educator of both the public and her fellow attorneys. She is currently serving as President of the Virginia Trial Lawyers Association, on whose Board of Governors she has served since 1996.*

Lawyer Advertising Is Out of Control

Yes, lawyer advertising is out of control. What do I mean by that? I mean that it's now virtually impossible for your average consumer to distinguish between lawyers who have the necessary qualifications to assist them with their case and those who do not. I mean that it has perpetuated myths about lawyer qualification that take consumers ever further off track in their search for the right attorney. If you listen to their advertising, for example, you'll conclude that all lawyers are maximally qualified in every area. Not so. In this chapter, I hope to show you how lawyer advertising has run amok and to expose the myths for what they are. Finally, I'll give you a step-by-step system for weeding through the nonsense and trumped up claims and finding a lawyer who is right for you and your case. No decision is more important for the success of your claim than whom you choose to fight on your behalf.

It wasn't until 1977 that lawyers were allowed to advertise. Before that time, in order to find out anything at all about a lawyer, you had to go talk to one. Then, two lawyers in Arizona got bold and began advertising "low prices." Other lawyers tried to put a stop to this – probably so that they could keep ripping off people with high fees. The bar association tried to ban their ads. Their case went all the way to the Supreme Court of the United States. The Court ruled that lawyers could advertise. When the Court said "[T]he only services that lend themselves to advertising are the routine ones; the uncontested divorce, the simple adoption, the uncontested personal bankruptcy, [and] the change of name," it obviously could not have predicted what was to come.

Almost 30 years later, lawyer advertising has gotten out of control. When Bextra®, a leading pain medication, was pulled from the market recently, I was inundated, within hours, with emails and faxes encouraging me to "Buy Bextra® Ads" because, as one email put it:

Bextra® is being pulled from the market today. The time to advertise is now. I can help. There will be lots of competition for these cases—we can run ads immediately.

The problem was that I have no experience handling a defective drug case; yet, this lawyer (yes, it was a lawyer who sent the ad) was soliciting me to buy ads so that I could, I guess, refer those cases to him (for a big fat referral fee). Sometimes they even offer to pay me to advertise in order to get "local recognition." They still want the cases, though.

I looked through the *Yellow Pages* the other day at the lawyer ads. There were 72 pages of lawyer ads. Some ads covered two pages! One showed a horrendous scene of an overturned car with a helicopter flying overhead. One had a picture of a snarling tiger on it. The headline on another

was "Cash! Cash! Cash!" Just turn on the TV. All lawyer ads seem to say the same thing:

If you've been in an accident, call me. Quick! Right now! I can get you the money you deserve. It costs you nothing. I care about you!

I turned back to the Yellow Pages, looking for something that might actually *help* a consumer figure out if she really needed a lawyer and, if so, how to choose the right lawyer for her case. I was looking for solid information, not slogans. Instead, I found nothing but these meaningless mottoes:

"No Fee if No Recovery"
"Free Initial Consultation"
"Member of "Million Dollar Roundtable"
"Best Civil Lawyer in XYZ County"
"28 Years Combined Experience"
"Former prosecutor"
"Member of the American Bar Association"
"Former Judge"
"Largest Verdict in The City
"We come to you"
"You May Be Entitled to Cash for Your Pain"

Just What Are Those Ads Really Saying?

At best, these slogans are meaningless. At worst, they're misleading. Let's take a closer look:
"No Fee if No Recovery"—generally, this means that there will be no attorney fee payable to the attorney if your case is not settled or won. This does not mean that there will be no fees at all. There are many costs involved in a case, from filing fees to expert witness fees and, generally, the client will remain responsible for those costs.

"Free Initial Consultation"—offered by almost 100% of personal injury, medical malpractice and worker's

compensation attorneys. Standard practice. May take place in person or over the phone.

"*Member of "Million Dollar Roundtable" or "Million Dollar Advocate Club"*—technically means that the attorney has settled or won a case for $1 million or more sometime in his life. Remember, though, that one way to get a million dollars in a case is to screw up a $5 million case. It is **consistent results,** not one lucky result, that count.

The "Best Civil Lawyer in XYZ County"—an unethical and meaningless statement, since no one can prove this statement, even if it refers to a poll of local residents.

"28 Years Combined Experience"—meaningless. There could be seven lawyers in the firm, each with four years' experience, and none with any experience with your case. You need to ask the right questions. Some law firms have been disciplined for including the "experience" of their now-dead "founding fathers."

"Former prosecutor"—most likely irrelevant, but might be important if you are charged with a crime.

"Member of the American Trial Lawyer Association"—there is no such organization. They are probably referring to the Association of Trial Lawyers of America—but how active can they be if they get the name wrong?
"*Member of the American Bar Association*"—meaningless. All it takes is a check.

"Former Judge"—meaningless. And, if used to suggest that the lawyer has influence over current judges, highly unethical.

"Largest Verdict in The City"—may be important, may be meaningless. Usually considered unethical to state this

without an appropriate disclaimer. But it's consistent results that matter, not who obtain the largest verdict.

"We come to you"—meaningless. Everyone does this for the right case, but no one does it for every case. (Although there have been firms known to send a courier right over – with a contract for you to sign. Anyone who signs an attorney contract or fee agreement without having personally met the attorney and asking the right questions, has only himself to blame.)

"You May Be Entitled to Cash for Your Pain"—ridiculous. Makes it sound like this is a Lawsuit Lottery or that you are "lucky" to have been injured.

"Quick Settlements in 30 Days"—ridiculous. If your case is so small that it can be settled in 30 days, then do it yourself and save the fee!

How in the World Can a Consumer Tell the Difference Between One Lawyer and Another by Looking at These Ads?

Now that you have a sense of how opaque lawyer advertising can be, you can probably understand why I find disturbing much of the advertising I see on TV and in the Yellow Pages. For me, there are five reasons:

1. Surveys show that many people have a poor view of lawyers because of the lawyer advertising they see. Advertising in poor taste makes all lawyers look bad.
2. Lawyer advertising sometimes negatively affects the people who sit on juries. How would you like your lawyer to be arguing your case to a jury, only to have them remember that he is the lawyer who flies around in a flying saucer in his TV ads? Or that he equates pain and suffering to **BIG MONEY DAMAGES!!!** Jurors watch TV, too.
3. There is no way for the consumer in need of legal services to tell one lawyer from the other based on most

lawyer advertising. The ads don't give any useful information.
4. Even if not false, deceptive, or misleading, most lawyer advertising just isn't all that helpful to the consumer. What's the difference between "buy this beer" and "quick, call 1-800-LAWYERGIMMICKNUMBER right now"?
5. Some lawyer advertising creates unjustified expectations. If other lawyers advertise "One call—no court—settlements in 30 days," then my clients want to know how come I can't do that for them.

The inevitable result is that consumers are misinformed, mislead and confused. How could they not be? Lawyer advertising has perpetuated a number of myths that, far from being harmless, distort the truth about lawyer's qualifications and make it ever-more difficult for those in need of legal council to find the right attorney for them.

Myths About Lawyers and Lawyer Advertising

Let's take a moment to explode some of these myths once and for all.

***Myth**: All lawyers have basically the same training.*
Fact: Not all lawyers have the same training. Warren Burger, former Chief Justice of the Supreme Court, once warned, "a lawyer is not qualified, simply by virtue of admission to the bar, to be an advocate in trial courts for matters of serious consequence." Many lawyers continue their professional training throughout their careers, but for some, the last time they learned anything new about their craft was in law school.

***Myth**: The bar association determines whether a lawyer can advertise that he is a "divorce lawyer" or a "personal injury specialist."*
Fact: The bar association does not determine whether a lawyer can advertise that he is a "divorce lawyer" or a "personal injury specialist." There are virtually no

restrictions on the types of law for which a lawyer may advertise.

***Myth**: All lawyers go to trial.*
Fact: Not all lawyers go to trial; some who advertise for personal injury or medical malpractice cases have never gone to trial.

***Myth**: All lawyers have basically the same experience.*
Fact: Not all lawyers have basically the same experience. This may seem obvious, but many people (and some lawyers) think "a lawyer is a lawyer is a lawyer." Nothing could be further from the truth.

***Myth**: A lawyer who is good at DWI cases will be good at personal injury cases.*
Fact: A lawyer who is good at DWI cases won't necessarily be good at personal injury cases—while this may have been true in the "old days," today the practice of both DWI and personal injury cases is highly specialized. The same goes for just about every other type of law.

***Myth**: All lawyers carry legal malpractice insurance.*
Fact: Not all lawyers carry legal malpractice insurance. It is perfectly legal for a lawyer to not purchase malpractice insurance. Shockingly, they are not required to tell you who they are! You must ask for this information.

***Myth**: If a lawyer advertises that he accepts certain types of cases, he actually has experience with those types of cases.*
Fact: The fact that a lawyer advertises that he accepts certain types of cases does not necessarily mean that he actually has experience with those types of cases. Again, there are no strict rules against advertising for cases about which you have no experience. Not all lawyers who advertise in the Yellow Pages for malpractice cases, for example, have real experience handling a malpractice case.

***Myth**: A lawyer who advertises will actually be the lawyer handling your case.*
Fact: A lawyer who advertises won't necessarily be the lawyer handling your case. Some lawyers advertise for cases simply to refer them out to other lawyers. What do they expect to get for this? A big fat referral fee.

***Myth**: A "lawyer referral service" is a good way to find the right lawyer for your case.*
Fact: A "lawyer referral service" is not necessarily a good way to find the right lawyer for your case. Lawyers pay to be on these lists and no one checks to see whether the lawyer has experience in your legal matter.

***Myth**: Lawyers who advertise on TV must be super-successful.*
Fact: A full-page ad in the Yellow Pages is not necessarily a sign of success. Some lawyers run a "volume practice," hoping to make a little money off each case—usually by settling most, if not all, of the cases. Shockingly, in some offices, paralegals handle virtually the entire case. The only time you see the lawyer may be if his face is on the TV, billboard or Yellow Pages ad.

***Myth**: Lawyers at "Internet Find-A-Lawyer" directory sites are carefully screened for qualifications.*
Fact: Most Internet lawyer directories are nothing more than another advertising media. Lawyers are solicited daily to pay big bucks to have an "exclusive listing" as a personal injury specialist in a particular city. The big check they mail to be included is sometimes their only "qualification."

How to Find the Right Lawyer for Your Case

I can't change the way lawyers advertise, but I can help you make your way through the morass. Look, there are good lawyers out there…lots of them. You just have to do some work to find the right lawyer for your case.

Legal Disclaimer:
Hey, what would a message from a lawyer be without a "disclaimer"? Look, I can give you ideas and tips, and I personally guarantee that you won't have wasted your time by reading this chapter, but I can't guarantee you absolute success in finding the right lawyer for your case. I can't even give you one absolutely foolproof way to get to the right lawyer, but reading this chapter can greatly increase your odds of finding the right lawyer for your case.
First, let's just forget about the ads altogether for a while. After all, wouldn't you expect your lawyer to care about you? To be aggressive? To give personal attention to your case? To fight for you? Since all lawyers should do all of the above, we can safely come to the conclusion that:
Ads that tout such "benefits" are absolutely, 100% meaningless. Period. Rather than taking your chances on a Yellow Pages ad, a TV commercial or a "lawyer referral" service, you really should have a system for finding the right lawyer.
Does that sound like work? Well, it is. And it *should* be. Finding the right lawyer for you is very important. It's not like getting the right carpet cleaner or pest control guy.
So, let's take a look at a systemized way to find the right lawyer for your case.

Step One: *Start to Learn About Your Legal Problem*

In the old days, the law was pretty much a secret. The only way you could get your questions answered was to talk to a lawyer.
Not anymore. Now, with the advent of the Internet, there is no longer any excuse for anyone to not get a basic understanding about their legal problem. Search the Internet for FAQ's (Frequently Asked Questions) about your legal problem. Visit lawyer web sites. Visit chat rooms. And visit other legal web sites.
Now remember, I am not saying that all this information and advice you find on the Internet is any good, but all you are doing at this point is collecting information—

finding out "what ballpark you are playing in"—even before you talk to a lawyer. Some of the information you find may be flat out wrong—that's why you visit lots of sites. Obviously, it would be foolish to rely on information you find at any one web site. The purpose here is simply to move you along the path of knowledge so that you can make an informed decision about which lawyer to hire.

In this chapter I list a number of web sites you might look at. Remember, though, that if a law firm is listed at one of these sites, all it took was a checkbook (sometimes a big fat checkbook) to get there.

Next, take a visit to the library. Remember the library? I visit the library regularly. It is a fantastic resource of free information. Even though we have the Internet, there is nothing like a good old-fashioned book to start you on the right course. Every city has one!

Step Two: *Start to Gather Names of Potential Attorneys*

Here are your sources of information. Remember, you are still in the information-gathering process.

Think about your problem. What have you learned about your type of case? Now, can you summarize your problem in 20 words or less? "I was in a car accident." "I am having a problem with a tenant." "I would like to start an at-home business." "My child was arrested for DWI."

Do you personally know any lawyers in your area? They will be a good source of names. Even if your legal need is in another state, ask the lawyer you know first. He or she will probably be able to either refer you to a set of names in the other state or give you the name of someone who can.

Do you know anyone who has used a lawyer? At least then, when you call that lawyer, you can say that, "Mary gave me your name and I am looking for a lawyer who handles XYZ type of case."

Peruse the Internet. Do a search for [type of case] in [city or state]. Don't bother just typing in "personal injury attorney;" that will return thousands of entries, most from

geographical areas far from you. Rather, type in "auto accident attorney in Fairfax, Virginia" or "divorce attorney in Richmond, Virginia."

Pull out and look at the Yellow Pages. I recommend looking for lawyers who advertise only one or two closely related specialties. My experience is that usually a lawyer who specializes is better than getting a "jack-of-all-trades" type of firm or lawyer. This is because in the last 20 years, the law has become more complex than ever before. Many lawyers now specialize in just a few related legal areas. For example, a lawyer who specializes in wills and estate planning may also specialize in elder law planning. A DWI lawyer may handle shoplifting cases. A medical malpractice attorney may handle other personal injury cases. Those ads that proclaim a long list of "specialties" or types of cases are not very helpful, are they?

Yes, you can even write down the name of the lawyers you see on TV. You can't judge a lawyer by the media she uses to advertise. While, frankly, many firms that advertise on TV are running high volume practices, there are some good skilled and reputable attorneys advertising on TV.

Step Three: *Call and Ask for Written Information*
(And run the other way if they don't have any)

Call and ask for written information about the lawyers. Just like buying a high-priced consumer product, you are usually better off doing all of your initial research in the comfort of your own home. You don't want to be subjected to any high-pressure sales tactics, do you? Most lawyers offer free initial consultations in a variety of cases and flat fee or reduced rates for an initial consultation in other areas. That probably is not the **most efficient** way of getting information. The better course is to call and ask them to send you their "information package on YOUR TYPE OF CASE." Ask them to send you anything they would like you to read that would convince you to hire them as your attorneys. Remember, while there are time limits for filing suit, in most cases you have time to do

your research in the comfort of your own home, on your own time. (I told you this was work, didn't I?)

Hint: Beware of any lawyer who phones you first, or has someone else directly solicit you in person after you have been injured. In-person solicitation by a lawyer (or someone representing a law firm) who does not have a prior relationship with you is universally condemned.

Some lawyers may contact you by mail after you have been in an accident. You can just throw the letters away if you want. But the better practice (remember, we are gathering information) may be to call them up on the phone and ask them to mail you everything they have that would be useful in deciding whether to hire their law firm. If they say, "The only way to get this information is to come in," all you have to do is hang up.

After you have done your preliminary homework, narrow your search to 3-5 lawyers who appear to be experienced with your legal problem, make an appointment and interview them. There is no substitute for an in-person interview. No matter how experienced or successful they are, you have to feel comfortable with them. You have to trust them. Many will meet you in your home if you cannot travel to the office.

Step Four: *Ask The Right Questions*

Remember, the best and most experienced attorneys usually have a line of people begging to hire them. They are usually very selective in the types of cases they will handle and turn away many more than they accept. They will not be insulted or put off by these questions. Rather, they will welcome them, because it shows you are taking steps to educate yourself. We'd all much rather represent someone who does this than gets wacky advice from their cousin or neighbor.

1. *How many years have you been in practice?*
2. *Do you have actual experience handling my type of case?*
3. *Where can I read about your other cases?*

4. *What is the hardest part about my case?*
5. *Have you won any large verdicts or settlements?*
6. *Are you board certified by any state or nationally recognized organizations?*
7. *Are you listed in Best Lawyers in America®?*
8. *Do you carry malpractice insurance?*
9. *Are you an active member of any state or national trial lawyer organizations?*
10. *Have you been disciplined by your state bar association?*
11. *What is the process for handling my case?*
12. *Who in your office will be working on my case?*
13. *How will you keep me informed about my case?*
14. *What is my case worth?* This is actually a trick question—in almost all cases, it is impossible for a lawyer to determine the value of a case on the first visit. This requires study and analysis of your injuries and other losses suffered. Beware of anyone who states, with any certainty (in all but the smallest of cases) the "value" of your case on the first visit.
15. *Do you represent any insurance companies at all?* You really need to know where their interests lie. Some lawyers do most of their work for the insurance companies. This may suit you just fine. For others, the appearance of bias would be too much.
16. *Do you represent any corporations (besides "mom and pop" local businesses)?* Again, if you are calling about an injury case, you may want to find an attorney who is passionate about representing individuals – not big businesses.
17. *Can I take a copy of the written fee agreement home with me to study?* There is no "standard" fee and no standard fee agreement. Do not assume that if you have seen one, you have seen them all.
18. *Do you spend a high percentage of your time representing individuals against insurance companies in injury, disability and malpractice cases?"*
19. *Do you regularly attend Continuing Legal Education courses in your area of expertise?*

20. *Do you teach Continuing Legal Education courses to other lawyers?*
21. *Have you published any articles, guides or books for consumers or other attorneys?*

And The Best Question of All:
Who else should be on my list of attorneys to talk to?
This is a great question because the names you see coming up time and time again when you ask this question are as close to a "sure bet" to be the right lawyer as you can get!
All good, competent, honest attorneys will freely share their information with you. These are the attorneys who have as much (or more) work than they can handle. If they won't give you any other names – leave! It just may be a huge warning sign that they are starving for business—not a good sign.

Step Five: *Rank The Information In Terms Of Importance*

While you certainly would get a range of opinions on what is "most important" about hiring a lawyer, our clients tell us that most probably rank order the qualifications this way:

1. *Consistent results in the past*
Yes, "past results are no guarantee of future results," but the lack of consistent results in the past would be a warning sign. Yes, we all lose cases we probably should have won (and we've won cases we probably should have lost), but the lack of a track record of quality is a deal breaker for most people. Don't accept the excuse that "this is all confidential and we aren't supposed to talk about past results." This simply is not true. Each week, the legal newspapers publish settlements and verdicts. Many lawyers also have this information on their web sites.
2. *Experience*: Simply put, the longer you have been doing anything, the better you probably are at doing it.

3. *Board Certification*: The National Board of Trial Advocacy certifies lawyers and, as I outline later in this book, the process to become certified is rigorous[4].
4. *A listing in the book, "Best Lawyers in America®:"* True peer ratings. Unlike most other "lawyer guides," you can't pay to be listed.
5. "AV" rating from Martindale Hubbell®: Lawyers and judges confidentially rate other attorneys for ability and ethics.
6. Teaching at Continuing Legal Education Events.
7. Active participation in trial lawyer associations.

A Final Word to the Wise

You know those 1-800-DAMAGES or 1-800-LAWYERS type telephone numbers? Be careful. In some cases your call is routed through a call center which randomly sends your call to the next attorney "in line." Kind of reminds me of used car salesmen waiting to pounce on the next unsuspecting customer. In other cases, lawyers have bought "territories" for these "vanity" numbers. Even though you think you are calling lawyer Smith, your call is routed to lawyer Jones, based simply on the zip code or area code you are calling from.
What about those internet sites who claim to be able to pair you with a qualified lawyer in your area? They have the same problem. Lawyers have paid for listings at the following sites and, by and large, there is no significant screening of these lawyers before listing them. Often, lawyers have paid either for "exclusive" listings at these sites or for "top spots" or "banner ads." While there may be some decent legal information for someone on an initial fact-finding mission, we *do not* recommend any of these sites for actually choosing a lawyer:

www.lawyers.com
www.attorneyfind.com
www.an-attorney-for-you.com
www.injuryhelplineattorney.com

www.LawOnline.com
www.LegalMatch.com
www.lawyermatch.com
www.PerfectLawyerForYou.com
www.Lawyers.com
www.PickALawyer.com
www.onlinelegalcenter.com
www.lawyercitysearch.com

Now it's up to you.

Take Action

Be Persistent

Good Luck

Chapter Eight—A Letter to Your Doctor

Dear Doctor:
How to Document Your Patient's Injuries

Properly documenting your injuries is among the most critical pieces of building a successful claim. But what exactly does it mean to "properly" document your injuries? Addressing this question is our goal in this chapter. Although the explicit audience is your physician, it contains information that is of great value for you, the patient, as well. I urge you to openly discuss the issue of documentation with your doctor, and to offer a copy of this chapter to help facilitate this critical conversation.

Today in personal injury, your comprehensive medical examination, history and prognosis are tossed aside by the insurance industry in favor of norms embedded in silicone. The complex evaluation of your patient's injury, which was in the past handled by a trained adjustor, is in many cases now delegated to a machine. For the sake of your patient's insurance claim, it is important to understand what this machine considers in its evaluation.

Our discussion will center around the ubiquitous computer evaluation of your patient's care. It goes by various names—perhaps the best known is "Colossus." We are going to discuss facts and considerations you should be aware of in an effort to speak to the computer in a manner that will more clearly communicate your patient's injury. If the computer is better able to understand your patient's injury, it is given the opportunity to more justly evaluate the need for compensation, in part to pay for the care that you have provided.

Some of the recommendations I am going to make seem very self-evident. Sometimes, however, that which is self-evident is often ignored. For example, it is essential that every diagnosis you make and treatment you provide be recognizable and legible to the adjuster. If the adjustor cannot interpret hand written treatment notes, they will be ignored and will not be considered by the computer. For

the computer, it is as if they never happened or—even worse—are found to result in excessive, unjustified care. For this reason, I recommend that your Soap notes or other medical notations be typed or printed.

At the time I am preparing this chapter, my firm is fighting on behalf of a client in an attempt to resolve an insurance company's failure to honor medical payment benefits. In their denial of benefits, the insurance company cites three reasons that, in reality, all rest on illegible treatment notes. The insurance company doctor found that the records lacked legible documentation of an initial examination, patient history and examination findings that justified the treatment plan. Relying on this lack of a legible foundation, the insurance company doctor, analyzing the records, then found that none of the treatment was justified, effectively denying payment on the entire bill. This entire problem can be avoided by the simple act of keeping comprehensive, legible medical notes.

Your notes should always indicate if immobilization was a part of your patient's care. This care is something the computer understands and values. If a cervical collar was prescribed, be certain that your treatment record sets forth the dates and duration of immobilization. Should you recommend or should your patient receive injections, please be certain that your chart clearly reflects the dates, type and number of the injections. Necessity and efficacy should also be clearly discernable in your chart notes. We are at the self-evident again, but better said than ignored: if medications are prescribed in any form, legible records must be maintained in the patient's chart. All diagnostic tests and results should be clearly chronicled in the patient's chart.

As with human communication, it certainly helps to speak the same language. The computer's language is comprised of what are called ICD-9 codes. Accordingly, all diagnoses should likewise be rendered in ICD-9 codes. In addition, it is also important to consider that computers, not unlike their human programmers, have a very small vocabulary when it comes to understanding what insurance companies

euphemistically refer to as a "soft tissue injury"—a name the insurance industry uses to imply that if soft tissue is involved, the injury is somehow less compensable. Here is a list of some words, which, if they apply to your patient, may communicate the injury more effectively:

Limited range of motion
Headaches
Dizziness
Anxiety (if it is treated by a mental health professional)
Spasms
Radiating pain

This list of words is certainly not exhaustive, and use of these terms must be clearly substantiated and quantified for their impact to be understood by the insurance company computer. The nature, causal relationship to the injury, dates and duration must all be set forth in your notes.

Let's now discuss an often-ignored factor in a patients care: home therapy. The computer will consider if you prescribe home therapy to your patient and your patient complies. This therapy should be carefully noted in your patient's chart. The types of home therapy, along with the dates and duration, must appear in the chart.

Frequently, accident injuries result in a physical impairment. If your patient has an impairment, it must be stated in and adhere to AMA guidelines. With this said, it is important to know the personal injury insurance company computer has a baseless prejudice and will allow for the consideration of the impairment only if it is rendered by an MD or DO. A Doctor of Chiropractic is certainly qualified by training and license to render a finding as to impairment suffered by a patient. However, the insurance computers are said to refuse to understand that fact.

Do you and your patients know the real effect of gaps in care? Watch your patient's treatment gaps. The computers hate gaps in care and will actually deduct from the

evaluation of an injury when gaps are present. The computer does not care if your patient has the flu or has suffered the loss of a family member. If you see lack of compliance on the part of your patient, I recommend you contact both your patient and their legal counsel immediately.

If your patient's injuries prevent them from returning to work for a period of time, a disability notice should be issued for each time period. Your notes should reflect the exact reason for the inability to perform specific functions required in this individual patient's work.

Many of your patients will return to work, assuming their duties under the duress of pain and disability. The reality of supporting a family must in many cases take precedence over your patient's physical well being. The computer will sympathize with your patient if and only if your patient's resumption of her work duties under duress are clearly noted in your chart. The nature, date and duration of your patient's working in pain or disability must be clearly set forth in your notes.

Duration of care is an issue that has become a rallying point for the insurance industry. I must again repeat that what I am putting forth is in no way intended to alter or guide your treatment of your patient. Only you and your patient are the arbiters of your treatment plan. With that said, it will likely not surprise you to hear that the insurance industry has an immutable position regarding duration of conservative care of soft tissue injury. This is especially true when that care is physical therapy, chiropractic or acupuncture. Treatment beyond 90 days will not be considered in the evaluation of the injury. Often treatment beyond 90 days is used as a diminishing factor in the evaluation of your patient's personal injury case. This is neither fair, just, nor reasonable, but this 90-day consideration is very real.

I hope this information has been of value to you and your patient. This material is in no way exhaustive, but if the factors discussed are accurately reflected in your charts, the nature and extent of your patient's injury will be more

properly evaluated by insurance computers. And if it is more accurately understood by the insurance computer, a more just result may be possible.

Chapter Nine—The Insurance Adjuster is NOT your Friend

The Insurance Adjustor is Not Your Friend

When you are the victim of an accident, you will be looking for a friendly face to help you and guide you through a difficult time. It is vital that you don't overlook an important fact: your insurance adjustor is not on your side. You must remember that however trustworthy your adjustor might seem, he is not looking out for you, and he does not have your best interests at heart. This is not because he is a bad person—it's because he's a loyal employee. Everyone wants to succeed at his job, and the insurance adjustor is no different. His success at his job is based upon how much money he makes—or saves—for the company, which means that his goal is to settle your claim for as little as possible.

Everyone knows that insurance companies are for-profit companies, meaning that their loyalty lies not with accident victims, but with their stockholders. A lesser-known fact is that more profit is made by settling claims cheaply than by recruiting customers to pay premiums. Why? Because every dollar saved on your claim is one hundred percent profit. As attorney John Bisnar notes in his book, *The Seven Fatal Mistakes that Can Wreck your California Personal Injury Claim*, an insurance company is doing well if it collects five percent profit on every dollar of premium payment. On the other hand, every dollar saved on settling a claim is a dollar of profit. One hundred percent profit. This means that the insurance company's ultimate goal—to settle your claim cheaply—is in direct opposition to your ultimate goal, which is to get fair compensation for your injury or damages.

When considering these facts, it becomes clear that the friendly face you are looking for in your time of need is not the face of your insurance adjustor. As an attorney with over 28 years of personal injury experience, I have seen countless accident victims who were forced to settle for less than was just compensation for their injuries because they took on their insurance company themselves. I highly recommend consulting an attorney before you talk to your

insurance company. Research conducted by the insurance industry itself has shown that those who employ the services of an attorney receive far greater settlements than those who do not, even after legal fees have been paid. Not all cases require the assistance of an attorney, of course, but talking to an attorney first can help you make sure that your interests, and the interests of your family, are protected. Whether or not you choose to hire an attorney, I'd like to share some tips that can help you navigate through the complicated claims process and protect your interests—and those of your loved ones.

Tip #1: Don't fall for your insurance adjustor's "nice guy" act.

As I said before, insurance adjustors are not looking out for your best interests. Even if he seems cordial, friendly and helpful to you, an insurance adjustor's ultimate goal is not to assess or compensate you for your actual damages or injuries. Insurance adjustors are highly-skilled employees who are trained by their companies to gain your trust and manipulate you. Your adjustor's kind demeanor is part of the process of obtaining the information they need to settle your claim for the smallest possible figure.

Tip #2: Remember that your words can be used against you.

We've all seen detective shows on TV, right? Remember the "Miranda Rights" that the police read to suspects under arrest, which includes the familiar phrase "anything that you say can be used against you." This is a piece of advice that every accident victim should remember when dealing with an insurance company. Just like when police question a suspect, it is best to talk to an attorney before you say anything to your insurance adjustor. Your adjustor will make note of anything and everything that you say, with the purpose of getting you to settle your claim for as little as possible. Even if you plan to settle your claim yourself, I recommend that you talk to an attorney before

you say anything to any insurance adjustor. Most good law firms will provide a free initial consultation.

Tip #3: Be wary of making recorded statements.
Though there is no law that requires recorded statements, some insurance companies require you to make a recorded statement before they will settle your claim. Keep in mind that what you say on a recorded statement can be used against you. Anything that you say, no matter how insignificant or minor it might seem, could be twisted or taken out of context. Don't give them the opportunity to turn your words against you. If you do agree to record a statement, I recommend that you do so only with two conditions. First, you should have an attorney present to act as your advocate. Second, you should ask for an audible copy of the statement to be sent to your attorney's office, stipulating that if it is not sent within five business days, then the statement cannot be used in any future proceedings.

Tip #4: Do not grant access to past records.
Often, your adjustor will ask you to sign a release which allows the insurance company to access documents from your past. Never sign a release for documents. This release gives the insurance company permission to retrieve files from your past, whether or not they have relevance to your claim. This might include medical, school or employment records, leaving your whole life open to scrutiny. These records can be used as a kind of veiled threat, to keep you from resisting a low settlement.
Signing a release might also have the consequence of making your formerly friendly adjustor suddenly difficult to contact. Once he has all the information he needs from you to finalize your claim, he no longer needs to be friendly or concerned about you.

Tip #5: Be wary of delayed payments.
The longer an insurance adjustor waits before paying your settlement, the more money he makes for his company.

There are two reasons for delaying your settlement. The first is because delayed payments make the company more money on interest. When insurance companies get money from your premium payments, they invest those payments, and the payments of all their customers, in the stock market or other funds that earn interest, which is how insurance companies make their enormous profits. If they can delay making settlement payments, the funds are still making interest. The longer they delay payments, the more interest they make.

The second reason is to get you to become so frustrated or desperate for your compensation that you will accept less than you deserve. When you are involved in an accident, there can be many costs—repairs, rental cars, medical bills, and more—which you will have to pay out-of-pocket. As your bills pile up, and you wait for your claim to be settled, it becomes more likely that you'll accept any amount they offer you without a fight.

Following the tips listed above can mean the difference between getting the compensation you deserve and being left with burdensome bills to pay. You deserve to receive what you are entitled to under state law. Whether you hire an attorney or not, you need to be cautious. Remember—your insurance adjustor is not your advocate or your friend.

Part III: The Litigation Process

Chapter Ten—Intro to Accident Litigation

My goal in this chapter is to provide you with an introduction to the process of personal injury litigation. If you and your attorney decide that a lawsuit is a necessary next step in your case, this chapter will give you a general idea of what to expect and a number of specific suggestions to increase the odds of a successful outcome.

Fortunately, the majority of accident cases—over 90%, in fact—can be successfully resolved without litigation, without the injured victim needing to sue the negligent driver in order to receive sufficient compensation for all losses that resulted from the crash. In these instances, the victim's attorney and representatives from the other driver's insurance company are able to arrive at a settlement figure acceptable to both sides. Of course, there are cases in which an agreement can't be reached, when the different estimated values of the case are simply too divergent to be reconciled to either party's satisfaction. There are a great many possible sources of disagreement on the value of a client's claim, but based on my firm's experience, the following is a list of what I believe to be among the most common.

• *Liability*

The insurance company believes that "fault" does not fall upon their insured. They believe that the responsibility is yours in whole or in part, or is the responsibility of a third party.

• *Disputed Injury*

Often, the insurance company will take the position that your injuries are not as severe as presented.

• *Insurance Company Policy*

For internal reasons only known to insurance companies, they will periodically resist the settlement of a claim and force the claimants to file suit in an effort to reach a desirable result.

• *Insurance Company Time Delays*
Some insurance companies will attempt to delay the settlement of your claim, placing you under greater financial difficulty, in an effort to secure a lower settlement value.

Once you and your attorney have decided that a lawsuit is required, your attorney will prepare a document called a "complaint." A complaint outlines the legal basis of your claim, describes your injuries, and names the responsible parties. The complaint is written in your attorney's office and will not require any participation on your part.

Once the complaint is drafted, it is then filed with the court in the jurisdiction that is appropriate for your case. After the complaint is filed, it is then "served" on the person or company who is responsible for your injuries—the "defendant" in your case. Your position as the person making the claim for damages is that of the "plaintiff." The defendant will take the lawsuit to his insurance company, which will then hire a lawyer to defend the lawsuit. Next, the insurance company lawyer will file what is called an "answer." The answer is generally a counter argument to the complaint, typically denying the insured's responsibility for your injuries, denying the extent of your injuries, and may possibly seek to bring other parties who might have been involved in the incident into the lawsuit.
Though most of the legal procedures in your case will not involve you directly, it is important that you stay in continuous contact with your attorney. You must advise your lawyer immediately of any change in your address, phone number, work status, marital status, or if any changes occur in your injury. If you receive a letter or phone call from your attorney or a request for documents or other assistance, you must respond immediately, as there may be time limits in your case that could affect its outcome.

The next phase is referred to as "discovery," in which both sides have the opportunity to "discover" information about the other side's case. Discovery takes a variety of forms:

1. Interrogatories
These are written questions concerning the facts of the accident, your injuries and any other matters that are relevant, which you will answer in writing with your attorney's guidance.

2. Depositions
Both your attorney and the defendant's attorney will have the right to interview individuals involved in the case, including you, the plaintiff. Depositions, as they are called, are given under oath in front of a court reporter. Both the plaintiff and defense attorney may ask any questions that are "calculated to lead to admissible evidence." This very general requirement gives the other side's attorney the freedom to ask you a virtually limitless number of questions, many of which will be tailored to trick you into some form of inconsistency or admission. Because your deposition is such a critical component of the litigation process, I've asked David Miller, a good friend and skilled trial attorney, to write a guide to giving an effective deposition, which appears in the following chapter. I recommend that you study this chapter carefully and review it with your attorney.

3. Request for Production of Documents
If either the plaintiff or the defendant believes that documents are pertinent to the lawsuit—medical reports, witness statements, medical bills, for example—they have the right to serve upon the other party a "request for production of documents."

4. Request for Admissions
If either the plaintiff or defendant has very narrow questions they wish to ask, they can file a "request for

admissions," which requires the other party to either admit or deny certain facts.

5. Expert Depositions
Depositions will also be taken by both the plaintiff's and defendant's attorney of any expert that will be testifying at trial. This could include the doctors that treated you for your accident-related injuries, as well as doctors who may be called to testify for the defense.

6. Defense Medical Examinations
When you sue an individual or entity for injuries, your physical condition is at issue in the litigation. This means that the defense attorneys can ask you questions about your medical history and current medical condition. He or she can also require that you undergo a so-called "Independent Medical Exam," also referred to as a "Defense Medical Exam." I don't like the phrase "Independent Medical Exam" because it implies that the exam is done by an independent doctor. The phrase "Defense Medical Exam" is more accurate, as the doctor who will examine you is employed by the defense attorney or insurance company. In other words, the exam is not the least bit independent. Generally, the doctor will review your medical records and then meet with you in order to make his or her findings. The doctor's findings will then be put in a report to the defense attorney. If your case does proceed to trial, this doctor will in all likelihood testify for the defense. At some point, your attorney will be able to obtain a copy of the doctor's report and, if needed, will be able to take the doctor's deposition in preparation for trial.

After and frequently during the discovery phase of your case, the court system will require you to participate in some form of alternative dispute resolution. These are designed to reduce the number of cases that go to trial and can take any number of forms, including mediation in an attorney's office or a settlement conference in front of a judge from the court where your case is filed. Many cases

come to an agreed upon settlement at this point. The discovery process has given the defense attorney a clearer understanding of the nature and extent of your injuries, along with the liability factors involved. As a result, the attorney will frequently convince the insurance company to make a reasonable offer in your case. In rare instances, however, the defense attorney is able to uncover deficiencies in your case that may require you to reevaluate your settlement demand.

If the parties and their attorneys are unable to resolve the case through the alternative dispute resolution, the matter will likely proceed to trial. Exactly when your trial will take place is difficult to predict. The date of your trial depends on the number of cases waiting to be heard in your particular county or jurisdiction, as well as the number of judges available. Nonetheless, your lawyer should be able to tell you approximately when your case will reach trial. In most jurisdictions, it takes roughly a year. You will receive plenty of notice and your attorney will help prepare you for the process.

The trial generally follows a relatively predictable format, but it will not resemble anything you've seen on television. As my friend and trial attorney Jack Harris puts it, "On TV, you see reel life. In the courtroom, you see real life." Most trials begin with the judge calling the lawyers, clients and prospective jurors into the courtroom. The attorneys are then able to ask questions of the prospective jurors. Called "voir dire," this process allows the attorneys to determine whether any particular juror has a bias that would result in an unfair trial. If your attorney believes that a juror is not suitable for your trial, he or she will ask that that juror be excluded.

Once the jury is selected, the trial will commence with opening statements from both sides. An opening statement provides what Jack Harris characterizes as a "roadmap" for the case—a summary of each side's argument and the evidence that will be presented. The two opening

statements—given by your attorney and the defendant's attorney—will tell two different stories of what happened, who is at fault and, as a result, what the proper outcome should be.

After the opening statements are complete, it's your lawyer's job to present your case. Generally, the case will begin with you coming to the witness stand for direct examination. Following your attorney's questions, you will be cross-examined by the defense attorney. This allows the other side to ask questions designed to elicit responses that reflect the defendant's view of the case. Other witnesses will also testify on your behalf, who may include your doctor, employer, friends, family and any witnesses who can testify about the incident or your injuries. Nonetheless, your testimony is critical—it sets the tone of the case and establishes your credibility in the eyes of the jury. Here are a number of things you would do well to keep in mind:

• *Review your deposition transcript and interrogatory answers.* Your attorney will explain to you Records Are the Tools of Justice your case for your testimony to be consistent with earlier discovery.
• *Do not mention insurance.* If insurance or anything about insurance comes out in the trial, the judge will probably declare a mistrial and you'll have to wait for another trial date.
• *Dress appropriately.* Your clothing should be conservative and respectful—what you would perhaps wear to a church function or other official meeting.
• *Review your medical history.* That way you can testify accurately and with authority on your medical history: injuries suffered in the incident, doctors who treated you, hospitals that you were treated in, and the nature and extent of the medical care you received.
• *Never overstate or exaggerate.* It is important never to exaggerate or overstate your injuries. Exaggeration can destroy your credibility and your case.

• *Be courteous and respectful to everyone, including the defense attorney.* Courteous behavior and respect shown to the judge and defense counsel will impress the jurors. Always refer to the judge as "Your Honor" and refer to the defense attorney as "sir" or "ma'am."
• *Don't lose control.* Defense attorneys will typically try to get a witness to lose their temper. If you feel that you are being badgered, remain courteous and in control. Your composure will impress the jury, often causing the defense attorney's tactic to backfire.
• *Don't anticipate.* Always wait until the question is finished before you provide an answer. Listen carefully to each question and take your time in answering.
• *Look at the jurors.* The importance of this can't be overstated. Looking into the eyes of the jurors and speaking directly to them, as you would a friend, will make your testimony more credible in the jury's mind.
• *Speak clearly.* Always answer "yes" or "no"—never with a nod of the head, an "uh huh" or a "yeah."
• *Do not look at your lawyer for answers.* You are the witness and must be able to answer the questions on your own. Looking at your lawyer for guidance during your testimony will make the jury doubt your honesty.
• *Act naturally.* You are going to be nervous—it's inevitable—and everyone understands that, including the jury. But don't worry. After you begin testifying, you'll be more comfortable, especially because you're going to be telling the truth.
• *Tell the truth.* The truth is what your case is about. No one's case is perfect. Don't be afraid to tell the truth to the jury when asked. Remember, the defense attorney is waiting to catch you in a lie to destroy your credibility.
• *Review Chapter 11 regarding your deposition testimony.* Many of David Miller's recommendations apply to your testimony in court as well.

After your attorney has finished presenting your case, the defense lawyer is then allowed to present their side by calling witnesses for the defense. The defense lawyer

presents the witnesses through direct examination and, in a similar fashion, your attorney is then allowed to cross-examine them.

Once both attorneys have finished calling all their witnesses and presenting all their evidence, the judge will instruct the jury on the law and its application to your particular case. This process generally takes an hour or more depending on the judge and the judge's instructions. After instructions, the attorneys will be given the opportunity to present closing arguments, which summarize the case and request that the jury return a particular verdict. Your lawyer will be allowed to go first, followed by the defense attorney, after which your lawyer will be offered a brief time to present a rebuttal.

The jury will then be allowed to deliberate your case in a closed room. Although it is impossible to say how long it will take for the jury to reach a verdict, the trial ends when the judge calls everyone back into the courtroom and the verdict is announced. You'll learn at that time whether or not you have won your case and how much money, if any, the jury has awarded you.

Chapter Eleven—The Deposition

The Deposition

This chapter appears through the courtesy of an accomplished California trial attorney and friend David Miller. The strategies and instructions contained in this chapter have been developed over the course of David's twenty-year career fighting in court for the rights of his clients.

Other than the trial in your case, should one actually take place, your deposition is the most important event you will participate in, and one in which you alone can influence the final outcome of your case. This is the first moment the opposing attorney gets to meet you after hearing all the negative things about you from his/her client. This is when you will be carefully evaluated by the defense attorney on your ability to accurately testify. The deposition testimony is critical, and you alone are in control of this important aspect of your case.

The deposition is usually held in the defense attorney's office in a conference room, but your attorney will be there to represent you. Sometimes it will be held at a court reporting company's conference room. The opposing side, or anyone you have sued, may also be present. Do not be concerned. This is your moment, not anyone else's. Every witness will have their chance to testify, so only be concerned with how you come across and do not be concerned about others present in the room. The only people in the deposition you should look at are the attorney asking the questions, the court reporter and your attorney.

Your deposition testimony is given under oath, just as if you were in court. A court reporter will record everything that is said. You will be allowed to read the written deposition transcript a few weeks after the deposition. You can make changes to your testimony at that time, but your

attorney will advise you not to change anything unless it is absolutely necessary because it can be brought up at trial that you changed your testimony. The best time to make any changes will be on the day of your deposition before it is over. This is what is important. If the opposing attorney wants to spend 30 minutes telling you about the deposition process, just ignore the attorney but respond politely that you understand the process. Your attorney will tell you what you need to know about the deposition beforehand. The opposing attorney cannot give you any advice or instruction, although they commonly try to do so.

With the instructions you are provided, and with your attorney's assistance, you can expect to testify quite well. Every client has testified with exceptional ability and has greatly added to the value of their case. In some cases, my clients have faced down very obnoxious attorneys who were quite skilled, and forced them to seriously reconsider their evaluation of the defendant's defense. You will do just as well. Excellent client testimony is a continuing trademark of a good attorney working with a credible client. Just pay close attention to your attorney's written and verbal instructions and you can expect a successful deposition. Here are some basic rules:

Tell the truth

Honesty is always the best policy during a deposition. The entire judicial process is a search for the truth. If a witness is lying about anything, it will probably be exposed, and the rest of what the witness says can be hidden behind the exposed lie. An outright lie can lose the best case. Testify from your memory, and avoid a simple yes or no answer if a brief explanation is necessary, (although normally a yes or no is greatly preferred). The questioning attorney often wants you to commit to a yes or no. Sometimes the answer is not that simple. Tell the attorney you are testifying from memory accurately to the best of your ability.

For example, if you are asked whether you have ever told a lie, your answer would be "yes." But a better response is, "I've always tried to tell the truth." If the question is asked again, your best response is, "As I stated, I have always tried to tell the truth. I am sure at some time I may have exaggerated something or failed to tell the exact truth that someone expected to hear, although I cannot recall any specific incident." At this point, the defense attorney may ask, "So your answer is yes?" Do not agree with him. Simply remind him you gave an answer to his question and you may repeat your answer again. Remember that the defense attorney will try to take a particular word or phrase out of context to use it against you. Listen very carefully to the words used in each question.

Answer only the question asked
This is very difficult because we all have a tendency to jump ahead and tell a story. Keep your answer *as short as possible.* The best way you can do this is to keep your answer to only one sentence. This way you force the defense attorney to ask more specific questions.

Do not volunteer information
Anytime you give a long explanation instead of a short answer, you have opened many areas for possible questions. The deposition will take longer, and you have given the opposing side a better look at your evidence, and at you. This is not the time to "bare your soul." Your attorney will tell you when that is appropriate. Offering extra information only leads to more questions. We need to keep it short, and be very truthful without "giving away the store." Trial is the time when your whole story will be told and your attorney will be asking the questions then. At the deposition, just answer the question asked. At the end of your deposition when the defense attorney is finished, your attorney can ask you questions to clarify any area where further deposition testimony may needed, so do not worry about whether you gave all the necessary information.

Answer every question fully
This may seem to contradict the previous rule, but it does not. A complete answer is given to only the question asked. All relevant details should be given. If not, you will face a serious problem. Later on, probably at trial, you will be asked the same question as the defense attorney works from your earlier deposition transcript. If you add or embellish the facts at trial, which are not *all* the facts stated in your deposition, then you will be criticized on the witness stand as a person who conceals things and cannot tell the truth when asked.

Do not answer in absolutes
Well what does that mean? It simply means you must leave the door open for more later on. Frequently the defense attorney will ask what I call a "clean-up" question such as, " Is that all?" Sometimes it's phrased as, "Have you told me everything about this?" Be careful. Do *not* say yes. Do *not* say, "That's all." This is a trap. I use it myself, and you can expect a good attorney to use it. If you say yes, you are held to that exact answer, and at trial if you remember anything new you will be called a liar because you said that's all when asked the question at deposition earlier. Well how can you avoid this? Easy. Just leave the door open by saying, *"That's all I can recall at this time."* Now, you have left open the opportunity to recall other details that you could not recall when sitting at the deposition. Normally there will be some additional facts recalled after the deposition, and at deposition you are understandably nervous. Even if you are not asked if you have told everything, conclude your response with this kind of answer.

Try to answer with a full sentence
For example, if you are asked, "Did you ever steal money?" try to answer "I have never stolen any money." This is better than a plain "no."

Pause and think about the question you are asked
Do not take long, just pause and think. Give me time to object, if I find it necessary. Normally I try to stay out of it, but in some cases I need to object quite frequently. This all depends on the attorney hired by the defendant. If any question is inappropriate, I will object and tell you not to answer it.

Support your conclusions with descriptions
Imagine you are teaching a class of twelve students/jurors. Draw a picture in their minds so they see what it was like. There is a big difference between testifying that, "We didn't have any money for food," and testifying that, "We didn't have any money for food, so at night when my children were hungry and I couldn't feed them, I let them crawl into bed with me and we all cried ourselves to sleep together." There is a difference, isn't there? That is how I need you to draw a mental picture for the opposing attorney. You can do it. You were there. You are the best person to describe what happened and what it felt like.

Use approximations rather than exact measurements
Exact measurements are difficult to know. The conference room width or table length can be used as a reference to estimate a distance.

Do not guess
If you do not know the answer, do not guess at one. If you are giving an estimate make sure you say it is an estimate. For example, if you are asked how many car lengths away you were from another car, you should say that you were *about* 3 or 4 car lengths, or say, "I would estimate I was about 3 or 4 car lengths away." Do not commit yourself to a specific number unless you are quite positive the exact number is correct. The same thing goes for date and time questions. Often in deposition you will be asked what date an incident occurred, how many times it occurred, or what time of day it occurred. Unless you are absolutely sure, you should only give an estimate. On some questions you will

know exactly and be quite certain. On other questions you may be a bit uncertain so an estimate is better. If you don't recall the exact date an incident occurred, use another known date as a reference point. For example, if asked when you were told a specific instruction by your supervisor, or asked when you made a certain complaint, you can say you don't know the exact date but that it was before "this" and after "that" had happened. Common reference points may be holidays, weekends, pay raise dates, or even seasons of the year such as summer or fall.

Never say never

These words can be used against you and are not necessary to fully answer question. Similarly, do not use "always." The only time you need to use these words is when you are absolutely sure. Sometimes a particular event or act may be forgotten, and then later recalled after you have testified. It would sure look suspicious to add another event after you have testified under oath that you "never" did something. This can damage your credibility and the defense will make a big point of changing testimony.

Ignore intimidation

Always be polite and positive while testifying. Do not let bullying tactics have any effect on you. And do not try to intimidate the opposing attorney with argument or facial expressions. Any time you feel anxious or too nervous and stressed, ask to take a break. A short break every hour is normal for depositions.

Wait for a complete question

Do not interrupt the opposing attorney. Wait until the question is completed before you answer. Do not anticipate the end of the question and jump in with a quick answer. Remember, I may want to object to the question and I need that one second pause.

Give a complete answer

If the opposing attorney interrupts you before your answer is finished, let him ask the next question, then tell him

your prior answer was not finished. Do it politely. Try, "I'm sorry but I had not finished my answer to the previous question." Then give your complete answer. The reason the opposing attorney cuts you off is because the attorney did not like your answer. That means your answer helps us and hurts the opposing side so they want to stop you from answering.

Make sure you really understand the question

There will always be a few questions you do not understand, or you may not know how to answer. When you are asked a question that has a phrase or word you are not real familiar with, tell the attorney you do not understand the question. It's simple. Just say, "I don't understand your question." Or say, "I'm not sure what you are asking me." This will usually prompt a response of "what don't you understand about the question?" Then you tell the attorney what part of the question is not understood. Don't let the attorney get you mad here. Sometimes they can get sarcastic and try to make you feel stupid. Do not let it bother you. If the attorney acts that way, it usually means they are getting frustrated and not getting the answers they want.

One other way to handle this is to ask the attorney to clarify a word or phrase. It's important to clear up any possible misunderstanding so there is a clear question and a clear answer. This is your testimony and it's important. The testimony you give in deposition is the same as it will be in court during trial. (If not, you will be called a liar because you gave two different answers to the same question). The only difference between deposition and trial is that at trial the questions and answers are in a different order, since each attorney will arrange the questions to draw out answers he wants in the order he wants. Now, just one caution here. Do not overdo it by asking the attorney to clarify or rephrase questions too often. Too much of this will appear that you are playing games to avoid giving honest answers.

Be polite

No matter what happens or how you feel inside, be polite. It will not hurt to say "no sir" instead of just "no." Or you can say "no ma'am" instead of just "no." Just like with the other instructions, remember not to overdo it. It can become obnoxious if you "sir" and "ma'am" too much. In some cases the attorneys can get fairly obnoxious, sarcastic and critical. Ignore any bad manners. You must always be polite. The opposing attorney may act that way toward you to see if you get angry and say something stupid. If you do get angry, and you say something stupid, you can be sure that foolish remark will be read to the jury. The opposing attorney may also be showing off for his client. No matter what happens, be polite. Later at your attorney's office you can privately say the things you held back.

Maintain eye contact and don't wiggle around

Look at the attorney questioning you, or look at the jury if it's during trial. Keep your head up. Do not twist your chair from side to side. Do not fold your arms across your chest. That makes you look defensive. Speak out clearly, speaking as you would to a group of interested friends.

Dress appropriately

Dress in something comfortable, not too dressed up, and not too casual. Clean, neat casual clothes are fine. If you do not work in a suit for your job, do not wear one to deposition or trial. Tee shirts are not appropriate, neither are shorts. Women can wear a great variety, just no extremes. Go easy on the make-up and perfume. Do not dress up like you are going out for a party. The people facing against you in the deposition do not like you. Dressing up and looking good will not change that fact. Wear clothing you would normally wear. Be comfortable, calm, articulate and polite.

Let your attorney object

After each question, pause for one second. Do not be too eager to answer. Your attorney may want to object, and if you answer too quickly the objection is lost. That means your attorney cannot raise an objection at trial to that same question. You will have a tendency to answer quickly to emotional, tough questions. Those are the ones that get you a little mad and make you respond back with a fast answer. Those are exactly the questions that your attorney may need to object to. These kinds of questions are usually thrown at you unexpectedly. Keep calm, wait to see if your attorney objects, then give your answer.

I recommend that you re-read this chapter several times before your deposition. Think about your case as you read it. Try to think of questions you will be asked, and how you will answer. Try to think of the questions that may get you angry, and practice staying cool, but not so "cool" you appear incapable of emotion. Think about how you would feel if you were sitting on a jury and watched someone give your testimony. Would you think they were lying if they appeared too rehearsed? Would you feel they were harmed if they showed no emotion? Think about it. Make notes about any questions you may have and go over them with your attorney.

Follow these simple rules and your deposition will be very successful.

Glossary of Personal Injury Legal Terms

Our partial glossary of personal injury legal terms was provided to us by good friend and exceptional trial lawyer Christopher M. Davis. Chris has tried dozens of personal injury cases to verdict and has successfully handled and resolved hundreds of accident claims. He has been recognized as a "Rising Star Attorney" and a "Super Lawyer" in consecutive years by the legal publication Washington Law & Politics. *In 2008, Mr. Davis was recognized as a lawyer in the "Top 100 Trial Lawyers in Washington State" by the American Trial Lawyers Association.*

Acceptance: Acceptance prevents a buyer rejecting goods for breach of contract (i.e. if goods are faulty). There are 3 ways in which a buyer will be regarded as having 'accepted' goods: 1. If he tells the seller that he accepts the goods; 2. If he retains goods beyond a reasonable time without telling the seller that he wishes to reject them; and 3. If he does an act which suggests that the seller no longer owns the goods (i.e. if he gets someone other than the seller to repair faulty goods).

Addiction: A physiological and psychological compulsion for a habit-forming substance. In extreme cases, an addiction may become an overwhelming obsession, which may cause injuries or even death.

Affidavit: A written statement affirmed or sworn by oath before a commissioner for taking affidavits or a notary public, for use as evidence in court.

Affirmed: In the practice of the appellate courts, the decree or order is declared valid and will stand as rendered in the lower court.

Age of Majority: The age when a person acquires all the rights and responsibilities of being an adult. In most states, the age is 18.

Aggregate Products Liability Limit: This limit represents the amount of money which an insurer will pay during the term of a policy for all Products Liability claims which it covers.

Alcohol Education Program: One of the required penalties of an DUI conviction.

Allegation: Something that someone says happened.

Alternative Dispute Resolution: Methods for resolving problems without going to court. Mediation is one form of ADR.

Amicus Curiae: Latin for "friend of the court." Refers to a party that is allowed to provide information (usually in the form of a legal brief) to the court even though the party is not directly involved in the case.

Answer: In a civil case, the defendant's written response to the plaintiff's complaint. In Washington the answer must be filed within 20 days, and it either admits to or denies the factual basis for liability.

Appeal: A request to a supervisory court usually composed of a panel of judges, to overturn the legal ruling of a lower court.

Appellate: About appeals; an appellate court has the power to review the judgment of another lower court or tribunal.
Arbitration: A method of alternative dispute resolution in which the disputing parties agree to abide by the decision of an arbitrator. The arbitrator decides the case, just like a judge or jury.

Arraignment: The first court appearance after an arrest, where the charges are formally read, and you enter a plea.

Assignment: The transfer of legal rights, such as the time left on a lease, from one person to another.

Assumption of Risk: A defense raised in personal injury lawsuits. An Assumption of Risk asserts that the plaintiff knew that a particular activity was dangerous and thus bears all responsibility for any injury (or possibly a death) that resulted.

At Fault: Found responsible. Sometimes fault is shared between parties involved, depending on the circumstances of each case. Shared fault is also referred to as comparative fault.

Attorney-Client Privilege: Generally, all communications between an attorney and their client are privileged, that is they are entirely confidential, being given special protection under the law, and no one else (particularly their opponents in a lawsuit) are entitled to gain access to them. This is referred to as the Attorney-Client Privilege. Also, most documents produced by an attorney and his staff in regard to the client's case are also privileged. This is referred to as the attorney work-product privilege. Often times, a defense attorney may, through the discovery process, seek to acquire access to these documents developed by the personal injury attorney and his client. There are only very narrow and specific instances where they are entitled to do so. However, it is the job of the personal injury attorney to know these exceptions and to zealously guard the confidentiality of these documents and the privacy of his clients.

BAC: Blood alcohol content. In most states, alcohol level may be determined by reference to breath alcohol level as well, without having to convert to blood alcohol level.

Bad Faith: Dishonesty or fraud in a transaction, such as entering into an agreement with no intention of ever living up to its terms or knowingly misrepresenting the quality of something that is being bought or sold.

Bench Trial: Also called court trial. A trial held before a judge and without a jury.

Bifurcation: Splitting a trial into two parts: a liability phase and a penalty phase. In some cases, a new jury may be impaneled to deliberate for the penalty phase.

Blood Alcohol Content/Level (BAC): The amount of alcohol in your bloodstream. The legal limit is .08% in Massachusetts and most states. For someone under 21, the legal limit is .02%.

Bodily Injury Liability: A legal liability that may arise as a result of the injury or death of another person.

Bond: A document with which one party promises to pay another within a specified amount of time. Bonds are used for many things, including borrowing money or guaranteeing payment of money.

Breach of Warranty: Takes place when a seller fails to uphold a claim or promise about a product. The law expects companies to stand by their assertions and fulfill any obligations made to customers.

Brief: A written document that outlines a party's legal arguments in a case.

Burden of Proof: The duty of a party in a lawsuit to persuade the judge or the jury that enough facts exist to prove the allegations of the case. Different levels of proof are required depending on the type of case.

Business Liability: The term used to describe the liability coverages provided by the business owner's Liability Coverage Form. It includes liability for bodily injury, death, property damage, personal injury, advertising injury, and fire damage.

Caps on Damages: A damages cap is an arbitrary ceiling on the amount an injured party can receive in compensation by a judge or jury, irrespective of what the evidence presented at a trial proves compensation should be. A cap is usually defined in a statute by a dollar figure or by tying the cap to another type of damages (e.g. two times compensatory damages). Caps usurp the authority of judges and juries, who listen to the evidence in a case, to decide compensation based on each specific fact situation. Several states have declared caps unconstitutional.

Caps on Non-Economic Damages: Non-economic damages compensate injured consumers for intangible but real injuries, like infertility, permanent disability, disfigurement, pain and suffering, loss of a limb or other physical impairment. Caps or limits on non-economic damages have a disproportionate effect on plaintiffs who do not have high wages – like women who work inside the home, children, seniors or the poor, who are thus more likely to receive a greater percentage of their compensation in the form of non-economic damages if they are injured.

Case Evaluation: One of the most difficult challenges for a private individual handling their own personal injury claim is to know what their claim is worth. Most people simply don't feel comfortable in the bargaining process to settle a claim. And even those people who are comfortable with it are at a great disadvantage if they have no real idea where to start bargaining from. Likewise, an attorney who is inexperienced or unfamiliar with personal injury law may not yet have developed the necessary feel for the value of a client's case, and may not yet be familiar with the many resources available to help evaluate a claim. Personal

injury attorneys who are well-experienced in resolving personal injury claims will have developed the knowledge of how particular factors will influence the value of a claim. Things such as comparative negligence issues (in which more than one person was at fault for an accident), punitive damages issues (in which the actions of a defendant, such as a drunk driver, were particularly reprehensible), and pre-existing medical conditions of the claimant which may either increase or decrease the value of their claim. Experienced personal injury attorneys will also have access to resources (some at considerable expense), both in book form and on-line, which give them up-to-date details about the claim value of particular types of injuries. An attorney should have an extensive, up-to-date library with medical and legal information that assist substantially in evaluating claims.

Case Law: Also known as common law. The law created by judges when deciding individual disputes or cases.

Case of First Impression: A novel legal question that comes before a court.

Catastrophic Injury: A catastrophic injury is one that is so severe that the injured person is not expected to fully recover. The injured person may require multiple surgeries, long hospital or rehabilitative stays, and full-time nursing or assistive care. Some examples of catastrophic injuries include certain types of brain injuries, spinal cord injuries, severe burns, loss of limb, amputation, and paralysis or paraplegia.

Certiorari: Latin that means "to be informed of." Refers to the order a court issues so that it can review the decision and proceedings in a lower court and determine whether there were any irregularities. When such an order is made, it is said that the court has granted certiorari.

Challenge for Cause: Ask that a potential juror be rejected if it is revealed that for some reason he or she is

unable or unwilling to set aside preconceptions and pay attention only to the evidence.

Chambers: A judge's office.

Change of Venue: A change in the location of a trial, usually granted to avoid prejudice against one of the parties.

Charge to the Jury: The judge's instructions to the jury concerning the law that applies to the facts of the case on trial.

Charge: The law that the police believe the defendant has broken.

Charging Lien: Entitles a lawyer, who has sued someone on a client's behalf, to be paid from the proceeds of the lawsuit before the client receives their proceeds.

Chief Judge: The judge who has primary responsibility for the administration of a court but also decides cases; chief judges are determined by seniority.
Circumstantial Evidence: Indirect evidence that implies something occurred but doesn't directly prove it.

Civil Lawsuit: A lawsuit in which one does not need to prove criminal liability. Most civil lawsuits involve the question of paying money damages.

Claimant: The claimant in a personal injury case is the person (or persons) injured as a result of the negligence of one or more other parties. If a formal lawsuit is filed, the claimant becomes the plaintiff in the lawsuit and the negligent party becomes the defendant. An insurance claim is the formal beginning of a personal injury case, and is made when the personal injury attorney informs an insurance company (or a self-insured business or government entity) that the injured person will be seeking

compensation for damages that were sustained. It is very important when making an insurance claim to know what information must be given to an insurance company, what information need not be given, and what information should never be given. Providing more information than required by law may seriously damage the value of a personal injury claim. Also note that a claimant may be a family member in the case of a wrongful death suit.

Clear and Convincing Evidence: The level of proof sometimes required in a civil case for the plaintiff to prevail. It is more than a preponderance of the evidence but less than beyond a reasonable doubt.

Clerk of the Court: An officer appointed by the court to work with the chief judge in overseeing the court's administration, especially to assist in managing the flow of cases through the court and to maintain court records.

Common Law: The legal system that originated in England and is now in use in the United States. It is based on judicial decisions rather than legislative action.

Comparative Negligence: The degree to which the plaintiff is at fault (if at all) when compared to the fault of the defendant. A jury determines comparative negligence after hearing the facts of the case and the relevant law as instructed by the Judge. Damages may be reduced or apportioned as a result of plaintiff's comparative negligence.

Compensable Claim: A claim for which a person is entitled to receive compensation.

Compensation: Monetary award transferred from defendant to plaintiff to make up for some wrong, damage or injury caused by the defendant's actions or inaction.

Compensatory Damages: Reimburse the plaintiff for actual dollar value that the plaintiff has lost due to the

injury (e.g. medical expenses, lost income, loss of future earning capacity, may also include pain and suffering, etc.). A family member may be entitled to compensatory damages in the event of a wrongful death. **Complaint:** The formal document that starts a lawsuit once filed with the court. A complaint will outline the circumstances (parties, nature of damages, desired relief, etc.) of the incident that form the case.

Comprehensive General Liability: A policy covering a variety of general liability exposures, including Premises and Operations, Completed Operations, Products Liability, and Owners and Contractors Protective. Contractual Liability and Broad Form coverages could be added. In most jurisdictions, the "Comprehensive" General Liability policy has been replaced by the newer "Commercial" General Liability (CGL) forms which include all the standard and optional coverages of the earlier forms.

Comprehensive Personal Liability: This coverage protects individuals and families from liability for nearly all types of accidents caused by them in their personal lives as opposed to business lives. It is most commonly a part of the protection provided by a Homeowners policy.

Conflict of Interest: Refers to a situation when someone, such as a lawyer or public official, has competing professional or personal obligations or personal or financial interests that would make it difficult to fulfill his duties fairly.

Consideration: The price in a contract for the other party's promise. The price may be a promise or an act (e.g. promise of payment). A party can only sue on a promise if he has given consideration in return for the promise. Consideration is often a monetary amount, but does not have to be.

Contempt of Court: An action that interferes with a judge's ability to administer justice or that insults the dignity of the court. Disrespectful comments to the judge or a failure to heed a judge's orders could be considered contempt of court. A person found in contempt of court can face financial sanctions and, in some cases, jail time.

Contingent Fee Agreement: When an injured person, or the family member of a deceased person, hires an attorney to represent them in a lawsuit, they both sign a contingent fee agreement. This is a document which is essentially the employment contract with the attorney that lays out in detail all of the terms of that employment. "Contingent fee" refers to the fact that the attorney is being hired on the basis that they will only receive a fee from the client contingent upon the client receiving money from the person(s) causing their injuries. This means that the personal injury attorney only receives payment from the client when the attorney has secured a settlement, binding arbitration award, or jury verdict for the client. This allows even clients of very modest means to hire the very best attorneys for their cases. A good personal injury attorney will be experienced in all phases of case work, and will be able to properly guide the client's case while it is an insurance claim, and, if necessary, on through the stages of lawsuit, discovery, arbitration, mediation, and/or trial.

Contingent Liability: A liability imposed because of accidents caused by persons other than employees for whose acts an individual, partnership or corporation may be responsible. For example, an insured who hires an independent contractor can in some cases be held liable for his negligence.

Contributory Negligence: Prevents a party from recovering for damages if he or she contributed in any way to the injury. Not all states follow this system. Washington does not follow the law of contributory negligence.

Counsel: Legal advice; a term used to refer to lawyers in a case.

Counterclaim: A claim that a defendant makes against a plaintiff.

Cross Examination: The process of challenging the evidence presented by a witness, typically a police officer in these cases.

Damages: Damages are awarded in various categories. Compensatory damages compensate the plaintiff for actual dollar-value losses (e.g., medical expenses, both past and future), lost income, loss of future earning capacity, etc. General damages, which are also a form of compensatory damages, cover more intangible losses, such as pain, suffering, humiliation, the loss of enjoyment of life as well as grief suffered from the loss of a loved one. Punitive damages (which are rare) serve to punish a defendant for extreme behavior and which serve to deter others from similar conduct.

Decision: The judgment rendered by a court after a consideration of the facts and legal issues before it.

Defective Product: A "defective product" is one that causes injury to a person because of some defect in the product (e.g., manufacturing defect, design defect, or inadequate warning). Product liability litigation and claims are usually more complicated than ordinary cases because of the necessity of securing experts in the field from which the product was manufactured. These experts can show alternative designs, and can demonstrate that the manufacturer could have prevented the injury, or death, by making modifications, installing safety guards, or having designed a completely different product.

Deposition: A deposition is a form of discovery in which a plaintiff, a defendant, a witness, or an expert witness with relevant information about a lawsuit is formally questioned under oath by the attorneys representing all parties in the lawsuit. The deposition is similar to the giving of oral testimony in a trial, but takes place under less formal circumstances and in advance of a trial. The deposition is typically before a court reporter and the witness is subjected to examination by attorneys for all parties.

Defendant: A person who is sued or accused in a court of law.

Design Defect: In these cases, a poor design causes injury to the person. In North Carolina, the injured person must prove that the manufacturer acted unreasonably in designing the product, that this conduct proximately caused the injury, and one of the following: the design of the product was so unreasonable that a reasonable person, aware of the facts, would not use or consume a product of this design; or the manufacturer unreasonably failed to adopt a safer, practical, feasible and otherwise reasonable design and that the better design would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality or desirability of the product.

Direct Evidence: Evidence that is directly perceived to prove an alleged fact.

Direct Examination: The initial questioning of a witness by the party that called the witness.

Directed Verdict: A judge's order to a jury to return a specified verdict, usually because one of the parties failed to prove its case.

Disbursements: Expenditures of money. When lawyers charge clients for disbursements, they seek to recover costs for expenses such as photocopying, long-distance phone charges, etc.

Discovery: The use of depositions, interrogatories, requests for production of documents, requests for admissions, and demands for independent medical examinations, and other procedures to discover relevant evidence possessed by the other parties or by independent witnesses.

Dismissal with Prejudice: An order to dismiss a case in which the court bars the plaintiff from suing again on the same cause of action.

Dismissal without Prejudice: An order to dismiss a case in which the court preserves the plaintiff's right to sue again on the same cause of action.

Dismissal: The judge may dismiss your case at motion hearing if there is evidence that your rights were violated during the stop of the vehicle, or a host of other reasons, if the evidence against you is weak. The judge can dismiss a case with prejudice, which means the DA can't re-file the case against you, or without prejudice, which means the DA can chose to re-file and try again to convict you.

Drunk Driving: A general reference to those criminal cases that are called DUI, DWI, OUI, OWI, DUII, DWAI, or other acronyms. They generally describe two types of cases: first, where the driver is sufficiently impaired by alcohol, drugs, or a combination of the two that the driver cannot drive safely. Second, "drunk driving" relates to those cases where someone is above that state's legal limit, usually .08, no matter how safely the person is driving.

DUI: Driving under the influence. Will either refer to driving under the influence of alcohol, driving under the influence of drugs, or driving under the influence of a combination of liquor and drugs. This is the most widely used acronym for drunken driving cases. The standard for what it means to be under the influence will vary from state to state. It is important to contact a lawyer in your area that knows DUI law if you have been accused of DUI or a related drunk driving offense.

Duty to Warn: The legal obligation to warn people of a danger. Typically, manufacturers of hazardous products have a duty to warn customers of a product's potential dangers and to advise users of any precautions they should take.

Exculpatory Evidence: Evidence that the District may possess that could establish your innocence.

Expert Witnesses: Expert witnesses are individuals trained in some particular specialty, such as medicine, engineering, accident reconstruction, or economics. By virtue of this training they are qualified to render "expert opinions" or "expert testimony" regarding the facts of a case. Some expert witnesses may have had direct involvement in the personal injury case prior to the beginning of a lawsuit, such as a treating physician (who directly provided medical care to an injured person) or a police officer at a traffic accident scene who has been trained in accident reconstruction (although very few officers actually have more than minimal training in this specialty). Most expert witnesses, however, are hired by one side or the other in a personal injury case for the purpose of analyzing complex information that falls within their area of expertise. Expert witnesses may be vital to a personal injury case's successful conclusion, especially in cases where the facts are highly disputed or particularly complicated. As personal injury attorneys gain experience in their specialty, they will

become more and more familiar with whom the most qualified and respected expert witnesses are.

Strict Liability: A type of liability that arises from extremely dangerous operations. An example would be in the use of explosives: A contractor would almost certainly be liable for damages, injuries or death caused by vibrations of the earth following an explosive detonation. With strict liability it is usually not necessary for a claimant to establish that the operation is dangerous.

Afterword

There's no doubt: if you've been injured in an auto accident, you need all the help you can get. I hope that reading this book, at the very least, has given you a measure of confidence—and more than a little knowledge—in your pursuit of the compensation you need to get your life back on track. I can imagine nothing more important than protecting you and your family's well being. In representing my clients and in writing this book, helping people do just that has been—and, so long as I am able, will continue to be—my single greatest aim as an attorney.

If you would like to speak to me directly about your case, don't hesitate to contact me. You can reach me—whether by mail, e-mail or phone—at:

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I wish you a complete recovery and the full fairness and justice of our legal system.

Joseph M. Ghabour

Also By Joseph M. Ghabour

When the Open Road is Not So Friendly
-Guide to Motorcycle Accident Claims

A Basic Guide for Injured Bicyclists
-Cycling Your Way to Recovery and Compensation

Safe & Secure
-A Guide to Keeping Your Child Safe.

Diary for the Injured
-A Workbook for Recording Your Injuries & Losses.

The Essential Guide to Pedestrian Safety
-Know What You are Walking Into

A Simple Guide to Auto Insurance
-How Much is Enough Coverage?