

# A BASIC GUIDE TO INJURED BICYCLISTS

CYCLING YOUR WAY TO RECOVERY  
AND COMPENSATION



**Joseph M. Ghabour, Esq.**  
JOSEPH M. GHABOUR & ASSOCIATES, LLC

**A BASIC GUIDE TO  
INJURED  
BICYCLISTS**

**CYCLING YOUR WAY TO RECOVERY  
AND COMPENSATION**

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## Introduction

My name is Joseph M. Ghabour and I wrote this book for one simple reason: being injured in a car crash 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.

By way of introduction, I would like to share a few things I've learned in representing injured bicyclists over the years. The first is just how prevalent a certain attitude toward cyclists is among drivers, one that casts cyclists as intruders on the road, riding where they don't belong. Of course, this is nonsense. Cyclists have just as much right to use our roads as drivers do, a right that we exercise—no pun intended—without causing pollution or worsening traffic.

I've also learned that, at least partly as a result of this attitude, drivers often fail to see, much less conscientiously accommodate, the cyclists with whom they share the road. And the virtually inevitable result are injuries more severe than those the cyclist would have suffered in a comparable car crash. Because injuries are often serious and require ample recovery time, the cost of adequate medical treatment can be significant—in most cases far too great for the cyclist to pay for out-of-pocket. Injured cyclists both need and deserve adequate compensation for their losses: the cost of medical bills, missed work, lost earning potential and—no less importantly—the pain and suffering they endured as a result of the accident.

If you've been injured in a bicycle accident, my hope is that, in reading this book, you'll better understand what happened to you, what steps you should take now to secure a fair settlement and what to expect in the future from the process of personal injury litigation. 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, one who understands what sets bicycle accidents apart.

This book begins with the chapter “I’ve Been Injured in a Bicycle Accident—What Should I Do?” If you’ve recently been in a bicycle accident, chances are you want to know what to do. That’s why I decided to think like a journalist and put the most important information at the very beginning.

The remainder of the book is divided into three parts. Part I, entitled “Prevention and Preparation,” begins with a chapter on common causes of bicycle accidents and how to prevent them. As a cyclist, taking certain precautions not only reduces the likelihood of accidents, but increases the odds of a successful claim should an accident occur.

The following chapter is “Kids and Bikes: How to Keep Young Cyclists Safe,” which covers the special safety rules for child cyclists, what to expect for riders of different ages and how to get your kids to wear that all-important helmet. Part I ends with a chapter devoted to insurance. All too often we purchase our insurance without understanding the coverage 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.

Part II—“Presenting a Successful Claim”—comprises three chapters. The first chapter is designed to help you sort through the overblown claims and confusing language found in lawyer advertising. Most importantly, it gives you sound advice on how to find a lawyer who is truly qualified to handle your case, one that will actually deliver the level of representation that you need to achieve justice on behalf of you and your family.

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, “Why the Insurance Adjustor Is Not Your Friend” provides advice on how to speak with insurance adjustors and negotiating your personal injury settlement. Though this information is primarily intended for those involved in minor accidents, where 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.

And finally, Part III—“The Litigation Process”—opens with an introductory chapter on personal injury litigation. It is an unfortunate reality that many serious accident injuries 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. For this reason, I’ve included a guide to doing just that. Following the

recommendations given 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.

Thank you for your purchase of *A Basic Guide for Injured Bicyclists—Cycling Your Way to Recovery and Compensation*. I sincerely hope the information and understanding you gain 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

## **I've Been Injured in a Bicycle Accident—What Should I Do?**

A bicycle accident is a traumatic experience. On top of the physical pain from injuries sustained, there's the emotional turmoil that inevitably arises—the fear from not knowing what will happen and the confusion from not knowing what to do. In working with clients, I've seen that the sense of having lost control over one's life can easily become overwhelming.

I hope that this chapter, which covers the most important actions you can take following your accident, will in some small way mitigate the sense of powerlessness, giving you a clear course of action and the certainty that you are doing the right thing for yourself and your family.

### **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 *Injury Victim's Diary—Records Are the Tools of Justice*, 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 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 driver's negligence was at the time of the accident. It's impossible to know exactly what will later prove 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. Some injuries you'll be aware of immediately—abrasions or fractures, for example. However, many of the most common injuries don't become symptomatic until hours and even days later. Although damage to soft tissue occurs immediately, you may not feel it for some time. That's why it's so important to see your family physician immediately, 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 adjustors, 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 adjustors 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.

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 *The Injury Victim's Diary*, 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**

If you intend to make a claim for injuries suffered in your bicycle accident under your auto insurance policy, you have an obligation to immediately report the accident to your insurance carrier. Before reporting the claim, however, I recommend you read Part II of this book.

### **Contact a qualified injury attorney**

Because bicycle accidents tend to cause more severe injuries than collisions between cars, is most often the victim's best interest to immediately contact an attorney with experience handling these types of cases. *Unless you escaped the accident with the most minor of injuries, you should consult with an attorney even before reporting the accident to your insurance company.*

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, 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 his or her insurance should pay for your medical treatment 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 pay for only a certain percentage of your losses.

### **Educate yourself**

As I mentioned in the introduction, my premise in writing this book is that, for someone injured in an accident, a little knowledge can go a long way towards achieving justice and peace of mind. Since you're reading this book, I can only assume you feel the same way. In my experience as an attorney, the most effective clients are continually seeking to empower themselves with an understanding of the legal process. Rather than resigning themselves to being a victim, they are committed to playing an active role in securing the fair outcome to which they are entitled. In your relationship with your attorney, don't hesitate to assert yourself. All attorneys worth their salt

encourage their clients to ask questions, become involved and seek to understand the legal process.

### **Relax**

In light of your circumstances, relaxing may sound absurd or impossible. You may be facing serious injury, a mountain of medical bills and an uncertain future. Nonetheless, although the healing process will take time, healing will happen. At this point, you've done everything you can do to ensure that you are given the financial resources you need to get your life back on track. Rest assured that, having hired a qualified attorney, you're in good hands. When things go wrong, there's great value in knowing that you have experienced, professional advocate on your side. It's your attorney's job to fight for your interests and your rights. Though you should provide whatever assistance and information you're asked for, your most important job is to take care of yourself—body and mind—as best you can.





# Part I

*Bike Safety: Prevention and Preparation*



## **Common Bike Accidents and How to Avoid Them**

In the past few decades, there has been debate about the best and safest “riding style” for cyclists. On the one hand, many cyclists champion a style of bike riding in which cyclists act like vehicles and are treated as such, commonly called “effective” cycling. On the other hand, there are cyclists who subscribe to an “invisible” cycling style, based on the assumption that cyclists should ride as though drivers and pedestrians are unable to see them. The truth is that most cyclists fall somewhere in the middle of these two styles.

While the law treats cyclists as drivers of vehicles, expecting them to obey rules of the road just as vehicles do, the truth is that a bike is not a car. Experienced cyclists, even those who call themselves “effective” cyclists, use some of the tricks that the “invisible” cyclists use, and vice versa. Really, the key to being a safe cyclist is following the legal rules of the road, while at the same time keeping up the awareness that drivers may not be looking out for you. This chapter will provide general safe riding tips and some essential riding skills that can help keep you safe. We will also delve into some common collision types, not only to help you avoid them but to help you understand what happened to you if you have recently been in an accident.

### **Common Collision Types**

#### ***The drive out***

This collision occurs when a driver enters a road from a cross-street or a driveway and fails to yield to a bicyclist. This can be caused by driver inattention, or if the driver misjudges the speed or distance of the cyclist. This can also be caused by a cyclist “coasting” through a stop sign, or if the cyclist is riding in a place where a driver is not expecting (and looking for) oncoming traffic. These types of crashes are most common when cyclists are riding the wrong way (against traffic) or on the sidewalk.

There are a few ways to avoid this crash. First, never ride against traffic, and always obey the rules for traffic on the road. While many

cyclists do not stop at stop signs, and many drivers expect that you won't, you should never assume that a driver is expecting you to ride through a stop sign. Going through a stop sign without stopping may also ruin your chances of proving that an accident was the fault of the other driver.

### ***The ride out***

This collision occurs when a cyclist enters the roadway from a cross-street or driveway and fails to yield to a vehicle. This is a common crash for children.

To avoid this crash, you should use caution at every intersection or driveway that you exit. If you are used to judging when to pull out based on driving a car, you will need to re-adjust your timing for riding a bike. When in doubt, don't pull out.

### ***The right hook***

This collision occurs when a motorist turning right fails to yield to a cyclist traveling parallel to the vehicle. This can occur when a cyclist is riding in a motorist's blind spot, or if a motorist attempts to pass a bicyclist and misjudges the cyclist's speed.

To avoid this crash, always use caution when passing a vehicle on the right, and be aware that the driver might pull over or turn to the right at any moment. If you are stopped at a stoplight, you should either pull up directly behind the car in the center of the lane, or in-between the first and second car, so that you can be adequately seen by both drivers.

### ***Motorist right on red***

This collision occurs when a motorist turns right, into the path of a cyclist traveling on a cross-street. It is most common when the cyclist

is riding against traffic or on the sidewalk because a driver is not anticipating a vehicle coming from the right.

To avoid this crash, never ever ride against traffic, and only ride on the sidewalk if you absolutely have to.

### ***Motorist overtaking***

This collision occurs when a driver hits a cyclist while passing. This can happen because of narrow or winding roads with poor visibility, caused by darkness or high glare. This crash can also happen when the driver simply misjudges the space needed to safely pass a cyclist, or if the driver or cyclist swerves to avoid another danger in the roadway.

You can avoid this crash by riding in the center of the lane, forcing the driver to wait until the opposite lane is completely clear before passing. Most states require that cyclists ride as far to the right as is practicable. This is one of those cases where taking the lane ensures that you are visible to drivers, and you can see around sharp curves.

### ***Motorist left turn into oncoming bicyclist***

This collision occurs when a motorist fails to yield to an oncoming cyclist while turning left. Because drivers are used to looking for oncoming cars in the middle of the road, they often fail to see bikes, which are much smaller and harder to spot.

To avoid this crash, you should keep an eye out for any oncoming cars waiting to turn left, and never assume that a driver can see you. Try to make eye contact with the driver. When riding at night, make sure you have a bright headlight to alert oncoming traffic of your presence as well as a taillight for those vehicles behind you.

### ***Cyclist sudden turn into traffic***

This collision occurs when a cyclist suddenly turns into traffic, either because the cyclist intends to turn and fails to look, or swerves to avoid an obstruction in the road like a drain.

To avoid this crash, you should look ahead and behind before you change direction at any time, and always ride in a predictable,

straight line. Beginning riders should practice skills like the “small swerve” and looking over the shoulder while staying in a straight line before they attempt to ride on busy streets. If you are on a street that has many obstructions towards the right side of the road, it might be best to remain in the center of the lane, rather than weaving around obstructions.

### ***Door open into cyclist***

This collision occurs when a driver or passenger in a parked car opens the door into the path of an oncoming cyclist. Not only can the impact of this be injurious, but the rider can also be put in more danger if they are thrown into traffic.

To avoid this crash, imagine the range that a door would swing if it were opened in to the road, and avoid riding within that width of parked cars. While you may also be able to anticipate opening doors by looking for people in parked cars, it’s best not to take the chance. You can also avoid roads where there are many cars parked alongside the roadway when choosing your route.

### **General Tips for Cyclists**

#### ***Choose your route carefully***

The issue of choosing a route on a bike is one of the instances where we see a difference between bikes and cars. In an ideal world, you could ride your bike wherever you wanted. But the truth is that there are many streets that are not safe for cyclists, whether because there are too many cars traveling at high speeds, lots of parked cars on the side of the road, or any one of the other dangers that cyclists face. Think carefully about where you choose to ride and don’t be afraid to take a route that might be a little longer in the name of safety.

#### ***Be flexible with your road position***

One of the common mistakes of novice riders is that they often pick a spot in the road to ride and stick with it, regardless of the traffic around them. You should ride predictably, and not weave in and out

of traffic. However, a cyclist's road position should be flexible, based upon the surrounding environment. A good rule of thumb is this: the closer you're going to the speed of traffic, the closer you should ride to the traffic. If you are going much slower than traffic, ride far to the right. If you are going almost as fast as everyone else, ride near the traffic stream. This helps make you visible and discourages drivers from turning in front of you. If you're going as fast as other traffic, ride in traffic. Never, ever ride fast in the gutter. Drivers will not be looking in the gutter for fast-moving traffic.

You should also be aware that your road position is very important at intersections. If you plan to go straight through an intersection, do not pull to the right. This fools drivers into thinking you are going to turn right. This may seem simple, but this one change can help you avoid 20-40 percent of all car-bike crashes.

### ***Learn to use your brakes effectively***

Braking might seem simple, but experienced riders have sophisticated technique for stopping under varied conditions. In general, your front brake can stop the bike significantly faster than the rear brake. But when the road is slippery for any reason, you should use your rear brake. See below for more information on how to do a short stop.

### ***Make yourself visible***

Every bike should be equipped with both a rear light and a headlight. Don't skimp on cheap lighting—you want these lights to be reliable. If you do a lot of riding at night, consider getting a reflective vest and reflective gloves. Reflective gloves allow you to signal at night.

### **Essential Riding Skills**

Here I've compiled a list of essential riding skills for cyclists. These are meant to go beyond the basics like how to mount a bike, etc., but instead cover a few maneuvers that will help you avoid accidents.



### *Scanning behind*

This may seem basic, but there are many riders who have trouble maintaining a straight line while looking over their shoulder, given that the body naturally turns in the direction of the head, taking the handlebars with it. Even if you use a rear-view mirror, you should always look over your shoulder before moving in any direction. Not only does this give you a better view of surrounding traffic, it can also signal to other drivers that you intend to turn or move. If you have trouble keeping straight, you can practice in an empty parking lot. Ride next to a paint stripe, and ride along while looking back, trying to spot specific objects behind you. Keep a light hold on the handlebars, and if you still have trouble, you can try pushing forward with the arm that corresponds to the direction you are looking. You can also try dropping your hand to your thigh, away from the bars, so you don't pull on the bars as you turn.

### *Short stop*

A great way to get thrown from a bike is to slam on the brakes, which many riders have learned the hard way. You can learn how to stop quickly without getting thrown with just a little practice. The idea of the short stop is to change how weight is normally distributed when you brake. When you brake hard, your body's weight moves from the rear to the front wheel, leaving the rear end lighter and lighter until the back tire starts to skid and lift. To do the short stop, you should rise off the seat of the bike and move your whole body back to keep more weight on the rear wheel. In this position, you can squeeze the front brake harder than the rear brake without going over, which allows you to stop more quickly because your front brake has more stopping power. If you feel the rear wheel start to skid, just let up on the front brake. This is counter-intuitive for many beginners, as the tendency in an emergency is to hit the front brake as hard as possible.

However, skillful cyclists can learn to ease up as soon as they feel the rear tire start to skid.

### *Small swerve*

Learning to quickly steer around obstructions in the road, like rocks, without moving too far in either direction is vital. You can practice this by using something soft as your “rock,” like a wet sponge. Ride towards the “rock” slowly. At the last minute, turn your handlebars sharply to avoid it with your front wheel. Once your wheel is past the object, turn your handlebars the other way and straighten out. With a little practice, you can learn to avoid objects in your path with little more than a twitch of the front wheel.

### *Quick turn*

Hopefully, by riding defensively, you can avoid situations where you would need to use the quick turn to avoid an oncoming car. That said, sometime you may find yourself in the path of a car turning right, and need to get away fast. Normally, when a bike turns, it turns because you lean into the direction you want to go, and you gradually fall into the direction of the turn. With the quick turn, the trick is to turn towards the car (i.e., the wrong way) very briefly first. Once you have turned briefly away from the direction you want to go, you have set up the lean in the right direction. Then, turn hard in the direction you want to go. You’ll find that with a little practice you can learn to turn sharply with little notice.

## **Kids and Bikes: How to Keep Young Cyclists Safe**

It can be easy for children—and even parents—to see their bicycle as a toy. The reality is that bikes are not toys. In fact, more children ages 5 to 14 go to hospital emergency rooms for injuries associated with bicycles than with any other sport. Despite the obvious dangers, riding a bike is a wonderful activity for kids. For younger kids, it improves coordination, provides exercise and is a fun activity that the whole family can do together. For older kids, riding a bike gives them the chance to be independent. You can teach your kids to understand that biking should be a whole lot of fun—with a healthy dose of caution. In this chapter, I've put together a list of tips to help parents make sure that their children ride safely.

### ***Understand their limitations***

Remember—children are not small adults. Children simply do not have the cognitive abilities that adult riders do. Here's some examples:

- Children are not able to use their peripheral vision as adults do, and particularly children in grades K-3 have trouble spotting objects in their peripheral vision.
- Children do not naturally use sound to identify where traffic is coming from, and instead rely solely on their vision.
- Children are unable to grasp the complexity of many traffic situations. For example, they might believe that a road is safe because they cannot see any cars present, despite a nearby blind curve.
- Children are easily distracted and have poor impulse control. They may not understand the serious consequences of crossing a road without waiting for the light to change or the road to clear.
- Children believe that adults are responsible for their safety, and will look out for them, even a stranger driving an oncoming car.

### ***Know their abilities***

Though of course each child is different, there are some general guidelines about the abilities of children at different ages.

#### *Ages 1 to 5*

- Most children ages 5 and under are not ready to ride a bike. You can start teaching them about bike safety while they are passengers on your bike, however.
- Teach preschool cyclists how bicycles are not the same as a toy car or a tricycle. Bicycles are not toys.
- Teach them to stay away from the street, and to keep an eye out for things that might hurt them.
- Make sure they wear a helmet at all times, and they understand why helmets are so important.
- Familiarize them with different parts of the bike and helmet, and how to use the brakes to slow and stop.

#### *Ages 5 to 8*

- Many children learn to ride a bike during this time, and they should learn safe riding skills at the same time.
- Children at this age should not ride unsupervised.
- The Center for Disease Control and Prevention (CDC) recommends that children in this age group ride only on the sidewalk, assuming that riding on the sidewalk is legal in your community. Make sure that your children learns to alert pedestrians to their presence, and understand that being on the sidewalk does not mean they are free from danger. They should still watch for cars in driveways, and always walk their bikes across intersections.
- Make sure your child develops riding skills like avoiding obstacles in the road and riding in the straight line while looking behind.
- Teach them about selecting a good route. If they ride their bike to school, you should ride or walk with them until you are confident they can do it on their own.
- Even if they are riding on the sidewalk, children should always ride in the direction of traffic, and learn to obey

traffic signs and signals.

- Teach them how to communicate with others on the road with hand signals and eye contact, and to look out for signs from others.
- Familiarize them with all the equipment on the bike, and the importance of their helmet.

#### *Ages 9 to 12*

- There is no set age for determining whether a child is ready to ride on the road. However, most children in this age group have developed the skills to ride on arterial roads. Beginner cyclists, no matter their age, should ride with supervision.
- Before letting your child ride on their own, think about their behavior out of traffic. Are they able to control their impulses? Do they take risks? Do they have trouble paying attention? Their behavior on the road will likely echo their behavior off the road.
- Never, ever let them ride against traffic.
- Teach them about advanced riding skills such as selecting gears and road positioning.
- Emphasize the importance of wearing a helmet. Many preteens and teens will begin to think helmets are uncool. See below for tips on how to get around this dangerous notion.

#### *Ages 13-17*

- Teen cyclists have much more independence. Stress that this means that they also have more responsibility as well.
- Teens should continue to work on riding skills like panic stops and riding in the winter.
- Teach them about common collision types and how to avoid them.
- Everyone should avoid riding at night. If they must, teach them to use proper lights on their bike, along with reflective clothing.
- As they learn to drive a car, remind them of what they

learned as a cyclist, and how to keep an eye out for cyclists on the road.

### ***Set the rules***

It's never too early to teach them the rules of safety. Even if they're just a passenger on your bike, you can start pointing out the rules of the road as you ride. Once they have their own bike, you should go over this list with them, and make sure to review real-world examples when you're actually on the road. Here's the essential list for bike safety directions for kids:

- Ride in the same direction as traffic.
- Obey all traffic laws.
- Stop and look both ways before entering traffic.
- Walk the bike across busy intersections.
- Watch for cars entering the road from driveways or parking spots.
- Use hand signals and look in all directions before turning.
- Ride predictably—avoid swerving suddenly.
- Ride single file on the right.
- Never ride at night or at dusk. If you are out late, you should call for a ride.
- Wear bright colored clothing.
- Never wear headphones or eat while riding.
- If you need to carry something while on the bike, you should put it in a backpack to keep your hands free.
- Always keep at least one hand on the handlebars.
- Never carry anyone on your bike.
- You should make your own decisions about safety—don't do something just because your friends did it.
- Wear a helmet at all times.

These rules are essential. Set an example for your children and follow these rules at all times.

### *Get the right equipment*

Parents should make sure that their child's bike fits properly. Buy a bike that is the right size, not large enough to “grow into.” Your child should be able to place his or her feet on the ground while seated, and with an inch or two of clearance while straddling the crossbar. Make sure that your child can grasp the hand brakes, if the bike has them, and can also apply sufficient force to stop the bike completely. Make sure they can be heard and seen—equip the bike with front and rear lights, reflectors for pedals and wheels, as well as a bell or horn. Of course, they'll need a helmet, too. There's more on helmets, and tips on how to get your children to actually wear their helmets later in this chapter.

### *Do regular safety checks*

Every time your children ride their bike, you should do a safety check with them. First, see that the wheels, seat and handlebars are secure and move freely. Test the hand brakes. Make sure the tires are properly inflated. Make sure the brakes, chain and wheels are free of any dirt that might clog their operation, and that the chain is well-oiled and tight. Make sure that their clothing or shoelaces will not get caught in the chain—that could cause a fall.

### *Make sure they wear a helmet*

Wearing a helmet can mean the difference between walking away from an accident with light injuries and death or debilitating injury. According to the CDC, wearing a helmet can cut brain injury by 88 percent, and face injury by 65 percent. Getting your kids and teens to wear their helmets can be challenging, however. Here's some tips on how to get them to wear their helmets:

- **Start them early.** Children who learn to wear a helmet when they get their first bike will wear their helmet as a habit throughout their life. If you didn't start them early—don't give up. It's never too late to start being safe.
- **Let them pick their helmet.** If your children choose their

own helmets, they are less likely to tell you the helmet is uncool or feel like you are forcing them to wear it. Realize that if they want a more expensive helmet, it might be worth it to get them to actually wear it. You might want to try a fun trick at the bike store, too. Find a salesperson who you think your child might look up to—someone young and athletic—and ask them to show your child the helmet that they wear when they ride.

- **Be an example.** Wear your helmet when you ride—your kids learn by watching you.
- **Encourage their friends to wear helmets.** You can make peer pressure work for you if all of their friends wear helmets.
- **Make it a package deal.** If they want to learn to ride a bike, they have to agree to wear the helmet at all times.
- **Explain why you want them to wear a helmet.** Wearing a helmet should not seem like an arbitrary rule. Explain why they should wear a helmet as part of a larger conversation about bike safety. They should understand that you want them to wear a helmet because you value their safety, and not wearing a helmet can hurt them permanently or even cause death.
- **Point out helmets while watching sports.** Bike racers like those in the Tour de France are required to wear helmets. Even players in other sports—football, baseball, hockey—have to protect their heads.
- **Reward them.** Praise them or give them a special treat or privilege when they wear their helmet without being reminded.
- **Do not let them ride without a helmet, ever.** Be consistent. There is no time or place when it's safe to ride without a helmet, and if you are inconsistent, they will learn that wearing a helmet is optional.





# Part II

*Presenting a Successful Claim*



## How Do I Find the Right Lawyer for My Case?

*This chapter is inspired by the writings of an exceptionally talented and dedicated trial attorney, Benjamin W. Glass. 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.*

In 1977, when the United States Supreme Court ruled that lawyers could advertise, it was hoped by many that this move would empower consumers with additional knowledge of available legal services. At the time, no one could have anticipated the vast number of confusing messages to which the legal consumer is exposed today. Injured victims are told to call immediately to get the vast sums of money that they deserve as compensation for their injuries, at no cost to themselves. This information is incomplete at best.

The consumer of today opens the phone book or turns to the internet with a desire to obtain the knowledge necessary to make a wise decision as to the selection of an attorney. The consumer is then exposed to meaningless slogans disguised as information, such as:

- No recovery no fee.
- Free initial consultation.
- Member of Million Dollar Roundtable.
- Best lawyer in XYZ County.
- You may be entitled to cash for your pain.
- We come to you.
- Largest verdict in the city.
- Former judge.
- Member of the American Bar Association.
- Former District Attorney.

- 37 years combined experience.

These slogans are truly meaningless and can result in misleading the legal consumer. Let's take a look at what a few of these slogans really mean.

- “*No fee if no recovery*” generally refers to the fact that no attorney fee will be due to the attorney unless and until the case is settled or won at trial. However, the consumer is not told that there may in fact be costs and expenses. There are many costs involved in a personal injury case including court filing fees, expert witness fees, and other third party expenses that the attorney may incur and charge to their client. All costs should be clearly covered in your retainer agreement with any attorney you consider hiring.
- A “*free initial consultation*” is generally available with most attorneys in cases involving personal injury. Nevertheless, many attorneys continue to brag about this offer in their advertising.
- “*Member of the Million Dollar Roundtable or Million Dollar Advocate Club*” indicates that the attorney may have settled a case for \$1,000,000 or more sometime in his legal practice. This impressive figure might grab your attention, but it says nothing about the competence of the attorney, merely showing that they represented someone who suffered a very serious loss or injury.
- Any lawyer who claims to be the “best” is making an unethical claim. No one can prove such a statement, as no standard is presented

and such a claim is precluded by state Bar ethical rules.

- A number of years experience is another meaningless claim we see all too often. The experience could be on cases totally unrelated to your needs and the quality of work performed during this experience could be clearly substandard.
- Claims of experience as a former prosecutor could be of value, if you are charged with a crime. However, such a claim is not directly relevant in the case of a personal injury.
- “*You may be entitled to cash for your pain*” is the kind of claim that can hinder a personal injury case, because such claims can make jury members unsympathetic toward accident victims. Our law is meant to protect injured victims by providing them just compensation for their injuries. It is not a new form of lottery where the ticket is a fender-bender.

These slogans are not only inaccurate—in some cases they can be misleading. Let’s discuss some of the truth and fiction that we find in lawyer advertising.

***Fiction:*** Every lawyer goes to trial.

***Truth:*** All lawyers do not go to trial, and many that advertise personal injury as their specialty do not go to trial.

***Fiction:*** The state Bar authorizes a lawyer to advertise the specialty of personal injury.

***Truth:*** In fact, there are virtually no restrictions for advertising an area of focus.

***Fiction:*** All lawyers are basically the same.

***Truth:*** The expertise of lawyers varies as much as any profession that we are exposed to in modern society. Many lawyers take pride in their craft and continue the study of law throughout their career. Regrettably, many do not.

***Fiction:*** A lawyer who is talented at DUI will be a good personal injury attorney.

***Truth:*** Personal injury is a complex area of the law which requires understanding that a general practitioner simply may not possess.

***Fiction:*** If a lawyer advertises for personal injury, he or she must have experience in personal injury.

***Truth:*** There is absolutely no relationship between advertising and experience. It is up to you as the consumer to determine the experience level of the attorney you interview.

***Fiction:*** A “lawyer referral service” is the best way to find an attorney.

***Truth:*** Lawyer referral services can be hit-and-miss, because lawyers pay to join such services and the requirements to be featured on the lawyer referral service can vary tremendously between jurisdictions.

***Fiction:*** All lawyers who advertise on TV are successful.

***Truth:*** Advertising in any media is no barometer upon which to base your decision to hire a lawyer.

***Fiction:*** Internet “pick-a-lawyer” sites are a good way to find an attorney.

***Truth:*** Though these sites do serve an important function, the consumer is at the mercy of the standards of the particular site. Many of these sites require only a check from the attorney to qualify to be featured on the site.

Now that we've examined some of the myths about lawyer advertising, you're probably wondering how to navigate the road to finding the right attorney. By following these six steps, you can make a well-informed and wise decision.

### *Action Steps on the Road to Finding the Right Attorney*

#### **Action 1: Gain an understanding of the legal problem you face.**

Before the advent of the internet and other mass media, knowledge of the law was all but reserved to attorneys and the legal community. However, in today's world everyone has immediate access to important information through the internet. You should be forewarned that there is no guarantee that the information you're going to garner from your study of the internet will be accurate.

You have made an excellent choice by reading this book. You can follow up by visiting the Consumer Resource Alliance website. All the information on the site is provided by member attorneys who have agreed to adhere to ethical standards and have demonstrated a very real commitment to provide the injured consumer with the information necessary to empower them to make wise decisions for themselves and their family.

#### **Action 2: Begin to gather names of potential attorneys to consult with.**

Certainly the authors of the books on the Consumer Resource Alliance website are a good start in compiling your list of attorneys to consult with. However, there are other valuable sources you should consider, including friends and family members who have had experience with an attorney in your community. You may also wish to consider a state Bar-approved referral service as a source for qualified attorneys. Once you have put together what you believe to be an adequate list of attorneys, consider moving to Action 3.



**Action 3: Call the attorney's office and ask for written information.**

If an attorney cannot or declines to provide you with written information, you may want to remove them from your list. You are about to enter into a very important contract with an attorney that is going to be responsible for your legal and financial welfare. If they have not taken the time to put together meaningful consumer information in writing, they may be a poor choice. If you contact their office and find yourself experiencing high-pressure sales tactics, immediately run the other way.

**Warning:** Always beware of any lawyer who calls you first or has someone else solicit your case either by phone or in-person. Unless you have a pre-existing professional relationship with the attorney, any such contact is unethical, and may be illegal.

**Action 4: Narrow your choices.**

At this stage, you should narrow your choices to three to five lawyers that appear experienced and have provided you with written information about your particular legal problem. No matter how experienced the attorney, it is critical that you feel comfortable entrusting your case to the attorney at what can be a very stressful time.

**Action 5: Ask questions.**

Listed below are a series of questions you may want to consider.

1. *How many years have you been a practicing attorney?*  
You do not want someone who has just graduated from law school.
2. *What actual experience do you have in handling cases like mine?* The attorney should have worked on not just any personal injury case, but one with real similarities to yours.
3. *Please explain my case to me. What legal challenges do*

- you see?* This is a good test of the attorney's ability to communicate clearly with you in a caring and understanding manner.
4. *What is your rating on www.Avvo.com?* This is an excellent web resource to find meaningful information on the attorney you may be considering.
  5. *Do you carry malpractice insurance?* If they do not carry this insurance, it may show that they are reckless and unconcerned with your welfare.
  6. *Have you been disciplined by your state Bar association?* If they have, let them offer you an explanation and you can decide if it is something that should take them off your list.
  7. *Please describe the process that I will experience in the handling of my case.* Again this will be a good test of communication skills and allow you to determine if this is a firm that you want to work with.
  8. *Who in your office will I be working with on my case?* Find out if you are going to be working with a qualified attorney or only a paralegal.
  9. *How will you keep me informed as to the status of my case?* The attorney you hire should be able to give you a clear explanation of their communication policy with their clients.
  10. *What is my case worth?* This is a good trick question. Any attorney that begins quoting you numbers is someone that you should not consider. Most ethical attorneys are going to review your case in detail with

you and explain the different parameters involved. No attorney can predict with any certainty the ultimate result in your case.

11. *Do you represent insurance companies?* This is a good question to ask because you will want to know whether there may be a conflict of interest with this particular attorney and your case.
12. *Do you regularly attend continuing legal education courses in the area of personal injury?* Did their education end with law school? If yes, take them out of the running.
13. *Have you published articles, guides or books for consumers or other attorneys?* You want the best, and if they have published a book, you will be able to see their expertise in print.

### **Action 6: Rank the information you've received.**

By ranking the information you've received into the categories that you feel are most important, you'll be in a position to make a decision that is both wise and based on real information that you've gathered from the attorneys you've interviewed. Take your time in your selection of your attorney, as this will be one of the most important decisions you can make in determining the outcome of your personal injury claim.

If you follow all these guidelines and suggestions, as well as your personal instincts, you should be able to find the right attorney for your case. Always remember—YOU ARE THE BOSS and your attorney serves at your pleasure. Do not be afraid to demand the level of service and care you deserve.

## **A Letter to Your 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 letter is meant for 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 adjustor. 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 finds 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. If you prescribe home therapy to your patient and your patient complies, the computer will include that in its calculations. 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.



## Why 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 a car accident, there can be many costs—car 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 or being left with burdensome bills to pay. 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



## An Introduction 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 auto 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. Independent 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." The second phrase 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 9 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.

## 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 be 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.



## Towards a 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 choose 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 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**

### **Your Car is Wrecked! Don't Wreck Your Injury Case**

*-Guide to Auto Injury Claims*

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*-Know What You are Walking Into*

### **A Simple Guide to Auto Insurance**

*-How Much is Enough Coverage?*



WA

**A BASIC GUIDE TO  
INJURED  
BICYCLISTS**

CYCLING YOUR WAY TO RECOVERY AND COMPENSATION

If you've been injured in a bicycle accident, my hope is that, in reading this book, you'll better understand what happened to you, what steps you should take now to secure a fair settlement and what to expect in the future from the process of personal injury litigation. Injured cyclists both need and deserve adequate compensation for their losses: the cost of medical bills, missed work, lost earning potential and—no less importantly—the pain and suffering they endured as a result of the accident. 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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