THE ESSETINAL GUIDE TO PEDESTRIAN SAFETY

KNOW WHAT YOU'RE WALKING INTO

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

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THE ESSETINAL

GUIDE TO PEDESTRIAN SAFETY

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Introduction

If you've been injured in a pedestrian accident, you're not alone. Every year, roughly 64,000 pedestrians are injured by motor vehicles in the United States. On average, a pedestrian is struck by a car every eight minutes. Injuries in these accidents are often, I'm sorry to say, severe. The human body possesses marvelous strength and resilience, but is no match for a two-ton piece of steel traveling at a high speed. If you've been involved in a pedestrian accident, chances are you have injuries that require ongoing medical treatment, which may have forced you to miss work and may interfere with your day-to-day life. Your ability to care for and provide for your family may be compromised.

Drivers have a duty to observe traffic laws and to drive safely, responsibly and cautiously, a duty that many people—too many and too frequently—breach. It is very possible that, having been injured in a pedestrian accident, you are suffering the consequences of another person's negligence. You both need and deserve fair compensation for your losses.

My name is Joseph M. Ghabour, and I wrote this book for one simple reason: being injured in a crash can be a challenging ordeal, to say the least, and I wanted as many people as possible to benefit from my years as a personal injury attorney. In helping my clients to understand their cases and the law, I've come to see just how powerful a little knowledge can be. In my practice, as well as in this book, my intention is to give people the knowledge they need to empower themselves and—no less importantly—to put their minds at ease. There is a great deal of literature available concerning personal injury cases that arise from collisions between motor vehicles, and though much of the information also applies to pedestrian accidents, there are too few resources available crafted with injured pedestrians explicitly in mind. I hope this book meets this important need.

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, you must immediately seek a consultation with a qualified personal injury attorney.

This book begins with the chapter "I've Been Injured in a Pedestrian Accident—What Should I Do?" If you've recently been in a pedestrian 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 in into three parts. Part I, entitled "Prevention and Preparation," begins with a chapter on common causes of pedestrian accidents, outlined in the form of "do's and don'ts"—safety tips both for the driver and the pedestrian. As a pedestrian, 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 "Children and Pedestrian Accidents," which covers common scenarios in accidents between children and motor vehicles, reasons why such accidents are common and safety tips to help protect your children from the dangers of the road. 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 everyone should possess—will help you use your money wisely and achieve the greatest degree of protection for yourself and your family.

Part II—"Creating a Successful Claim"—likewise 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 it will 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 go a long way toward a helping you deliver 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 **The Essential Guide to Pedestrian Safety--*Know What You're Walking Into.*** 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 Pedestrian Accident—What Should I Do?

A pedestrian 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 *Diary for the Injured: A Workbook for Recording your Injuries and Losses*, an easy-to-use tool designed to ensure that all critical information regarding the accident is recorded. If you haven't already, I highly recommend acquiring a copy. This record could make an important contribution to the success of your case.

You may have gotten into an accident that you feel was clearly the fault of the 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. Damage to soft tissue occurs immediately, but you may not feel it for some time. That's why it's so important to see your family physician at once, and in person. That way, the doctor can give you a full evaluation and document your injuries.

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

Document your injuries

When it comes to receiving fair compensation from insurance companies, documentation is everything. Records, we might say, are the language of insurance 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 *Diary for the Injured: A Workbook for Recording your Injuries and Losses*, which I mentioned above. In addition to helping you record important details of the accident, it is also designed to help you document your injuries. It contains both specific questions regarding your symptoms and a convenient format for tracking them over time.

Report the accident to your insurance company

If you carry an automobile insurance policy that includes the types of coverage that protect you in the event of a pedestrian accident, and you intend to make a claim, you should promptly report the accident to your insurance carrier. In the chapter on insurance, we'll discuss the various types of "automobile" insurance and distinguish between those that cover you in a pedestrian accident and those that don't. But for now, the types of coverage most likely to be relevant and pedestrian accidents are Uninsured and Underinsured Motorist coverage and Personal Injury Protection.

Contact a qualified pedestrian injury attorney

Because pedestrian accidents tend to be more severe than collisions between motor vehicles, it is most often in 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 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 an 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

Prevention and Preparation

Do's and Don'ts—Understanding the Most Common Causes of Pedestrian Accidents and How to Avoid Them

Pedestrian accidents, as you may have learned the hard way, are very often the result of driver negligence. Maybe the driver wasn't paying attention and failed to stop at a crosswalk, or maybe he or she made a quick left turn in front of oncoming traffic, only to realize at the last second that the pedestrian in front of the car had the right-of-way while crossing the street. The potential sources of driver error in pedestrian accidents are numerous, too numerous to cover all of them here.

In the form of "do's and don'ts" for motorists, this chapter discusses those that are, in my opinion, the most common. My hope is that the practical advice offered in this chapter will not only help you as a driver to avoid future accidents, but also, as an accident victim, that it might help you better understand what happened to you. Some of the advice may seem obvious, and some less so, but it's been my experience that what seems like common sense is commonly ignored and represents the most frequent causes of accidents.

However, this chapter doesn't stop with the driver. I have also included do's and don'ts for the pedestrian—precautions and practices to help you and those you care about avoid future accidents. However, simply because you are a safe and responsible pedestrian does not mean that a driver acting irresponsibly will not crash into you. But it does mean that, should you get hit, it will be easier to demonstrate that the driver was at fault and that you deserve full compensation for your losses.

Do's and Don'ts for the Driver

Do: ***Slow down when around pedestrians.***
Excessive speed is one of the most common contributing factors in collisions with pedestrians. The faster you drive, the quicker your reaction time needs to be—the less time you have to apply the brakes and to swerve out of the way, and the less time you have to scan your surroundings for pedestrians. When you drive too fast, any errors in driving are magnified. A second of inattention is more dangerous at higher speeds because the car covers a greater distance while you are distracted. If you over-correct in your steering, you veer further from the intended path the faster you're traveling. Excessive speed also contributes to the severity of the accident. The force with which two objects collide is a function of two things: their mass, or size, and their acceleration—that is, their speed. And it's been calculated that an accident between a pedestrian and a car going 20 mph has only a 5% chance of being fatal. But one traveling at 30 mph raises the likelihood of death to 45%. An additional 10 mph puts the likelihood of death at 85%.

Do: ***Yield to pedestrians at all crosswalks, those that are explicitly marked and those that aren't.***
What exactly defines a crosswalk? Most people assume, incorrectly and unfortunately, that a crosswalk is by definition clearly marked with solid white or yellow lines—or, recently, with flashing lights—and that cars must only yield to pedestrians when crossing these explicitly marked paths. Not so. Only a small percentage of crosswalks are explicitly marked. In every state in the country, a crosswalk is said to exist at every intersection at which streets meet at right angles, in addition to those that are visibly painted or otherwise indicated in the middle of the block. These so-called "implicit" crosswalks at intersections require drivers to exercise the same caution and to yield to all pedestrians traversing the road. In other words, a crosswalk exists at every intersection, and drivers must always yield to pedestrians.

Do: ***Look for eye contact from pedestrians waiting to cross the street.***

How do you tell the difference between a person simply standing on a street corner and another waiting to cross? Though there's no foolproof indicator of a pedestrian's intention, the most reliable answer is eye contact. Pedestrians intending to cross the street very often look for confirmation that the oncoming driver sees them. When a pedestrian is looking to make eye contact with you as you approach, or as you wait to make a turn, it most likely means that he or she intends to cross.

Do: ***Watch for pedestrians before making a turn.***

Again and again, drivers strike pedestrians while making a turn. When you are turning right at an intersection on a green light, for example, it's easy not to see the pedestrians coming from behind—they're on the edge of your peripheral vision and in your car's blind spot. Making a left turn is also hazardous, but for a slightly different reason: the driver's attention is most likely to be focused on finding a big enough gap in the oncoming traffic. Drivers typically make left turns more quickly for just this reason. In general, yielding to pedestrians while making any sort of turn on a green light is at least somewhat counter-instinctual. Green, after all, means "go." Also, making a right turn on a red means that you should also look left for pedestrians crossing your path. The car next to you, which may be continuing straight ahead, might easily obscure your view of pedestrians about to cross in front of you.

Do: ***Give older pedestrians the time they need to cross the street.***

Elderly pedestrians are more likely to take longer to cross than their younger counterparts. They may also require more time than the traffic light allows them. Unfortunately, impatient, anxious and aggressive drivers often fail to give older pedestrians sufficient time, and instead attempt to cut them off or drive around them within inches of their heels, both of which leads to accidents. Drivers must also be aware that elderly pedestrians often must make do with

diminished hearing and vision. Not only does this mean that they might not detect the presence of your vehicle, regardless of how far away you are, but also that they might make mistakes. Like stepping

Do: ***In bad weather, apply the brakes earlier when stopping for a pedestrian.***

In most pedestrian accidents involving bad weather, the driving conditions themselves were not the cause of the accident. Rather, it was the driver's failure to take the weather into account. Inclement weather usually results in, among other things, poor visibility and slippery roads. A slippery road means uncertain breaks and maneuverability, a dependable recipe for an accident. Contrary to what most people assume, rain and snow are often the most dangerous just after they begin to fall—the oil and dust that has not yet been washed away combines with water to form a slick layer on the road. Remember that precipitation of any kind means that your car needs more time to come to a complete stop, so err on the side of caution and put on the brakes earlier than you think you need to when stopping for a pedestrian.

Do: ***Follow special guidelines around blind pedestrians.***

There are a number of important guidelines to follow when yielding to blind pedestrians. The first is that blind pedestrians, whether they're using a guide dog or canes, should *always* be given the right of way, no matter where or when they're crossing—it's the law. The second is that you should stop your car no more than 5 feet from the crosswalk. Blind pedestrians must rely on the sound of your car in determining whether you have stopped or are continuing to move towards them. Stopping close to the crosswalk will help ensure that the blind pedestrian knows you've stopped and that it is safe to cross. For this reason, those who drive hybrid or electric cars, which make less noise, must be aware that blind pedestrians will have a far more difficult time detecting the presence and motion of the vehicle. Finally, do not honk or give verbal directions to blind pedestrians. It will only impair their ability to cross safely.

Do: ***Be especially cautious around schools or where children are likely to be.***

As we'll discuss in more detail in the following chapter, children are developmentally unprepared to be consistently safe pedestrians. For example, the ability to accurately detect the distance, direction and speed of vehicles by sight and sound requires a degree of cognitive development than many young children don't yet possess. Their motor coordination also trails behind adults', and both diminished attention and heightened impulsiveness make for a bad combination when it comes to traffic safety. There's a reason why the proverbial child chasing the ball into the street appears in virtually every driver's safety video. Children, especially young children, can't be relied on to act calmly, safely and responsibly, and drivers should take extra care when they're around.

Don't: ***Drink and drive.***

Fourteen percent of pedestrians killed in an accident are the victims of drivers with a blood-alcohol level above the legal limit. Fortunately, it's now common knowledge that drunk driving is exceptionally unsafe, both for the intoxicated driver as well as for the others who share the road and sidewalks. When under the influence of alcohol, our coordination, response time and judgment become increasingly less reliable the more alcohol we consume.

Furthermore, the costs of a DUI arrest are great, both emotionally and financially. Emotionally, there is the shame of being arrested, of having to go to court, of dealing with the Department of Motor Vehicles (DMV) and of telling your family, maybe even your boss. But all that, traumatic though it is, pales in comparison to the legal consequences and unspeakable guilt of taking the life of an innocent pedestrian or another driver.

Don't: ***Pass when the car in front of you has stopped at a crosswalk.***

This is a common scenario in pedestrian accidents. A driver approaching a crosswalk eyes a waiting pedestrian and decides to stop. The car behind him, unable to see the pedestrian crossing in front of the car, impatiently passes the conscientious driver and strikes the pedestrian in the middle of the street. Drivers are also liable to assume that the car in front of them is waiting to turn left but simply forgot to signal, so they zip around the right side and strike the pedestrian just as they're stepping off the curb. The moral is this: when the car in front of you appears to stop in the middle of the road, don't jump to any conclusions, look carefully for crosswalks or pedestrians and proceed cautiously.

Don't: ***Stop your car in the middle of a crosswalk.***
We've all seen this before: pedestrians forced to walk around a car blocking their path to the other side of the street. This puts pedestrians in serious danger. Blocking the crosswalk obscures other drivers' view of the pedestrians, as well as the pedestrians' view of the oncoming traffic in the opposite lane. It also forces pedestrians to venture outside the crosswalk, whether or not the crosswalk is clearly marked, where other cars may not expect them to be.

Don't: ***Block any sidewalk.***
The dangers for pedestrians that arise when a car blocks the sidewalk are the same as those of a blocked crosswalk. It forces them out of their normal path and to walk either closely behind or in front of the vehicle blocking the way, neither of which are safe. Also remember to yield to any pedestrian when you're pulling into or out of a driveway or alley.

Don't: ***Stop too close to pedestrians in a crosswalk.***
The reason is a familiar one: visibility. When you pull up too closely to the crosswalk, it can obscure another driver's view of the pedestrians. The general principle is that, when pedestrians are out in the open—rather than against a close background, typically a car—they will be much more apparent to drivers.

Don't: ***Get distracted.***
Driver distraction is one of the most common causes of car accidents in general, and pedestrian accidents are no exception. It's entirely possible that the driver who struck you was distracted in the moments before the accident. What constitutes a distraction? Changing a CD, looking for a song on an iPod, tuning the radio, fishing around for something in the glove box, talking to a passenger—these are common. But by far the most common, as I'm sure you've guessed, is the ubiquitous cell phone. Whether drivers are talking or texting, cell phones occupy their minds, diverting mental energy from the task of driving.

Driving can be tedious, especially if you're caught in traffic or driving your daily route for the umpteenth time, and it's tempting to use your phone to pass the time or get work done. Nonetheless, the research on this point is incontrovertible: cell phone use—with or without a hands-free device—significantly impairs driving performance and is one of the most common contributing factors in accidents. If your mind is driving along with the rest of you, you'll be a better, safer driver.

Don't: ***Drive aggressively.***
The banner of "aggressive driving" covers most of the driving practices and habits that frequently cause accidents, pedestrian and otherwise. We all know what driving aggressively usually entails: tailgating, waiting to the last second to merge, cutting other drivers off, swerving across lanes, laying on the horn, accelerating rapidly, refusing to let other cars in—the list goes on. But the problem with aggressive driving extends beyond the aggressive driver. It affects how others drive as well, potentially igniting road rage or making others nervous, neither of which bode well for safety on the road. Driving defensively, on the other hand, simply means being cautious—being on the lookout, so to speak. It means using your peripheral vision,

checking your blind spots, glancing in your mirrors, using your turn signal before changing lanes and—more often than not—it means slowing down.

Do's and Don'ts for Pedestrians

Do: ***Cross at marked crosswalks and intersections.***
This may sound like a no-brainer, but the number of pedestrian accidents would plummet almost immediately if everyone observed this simple rule. The majority of pedestrian accidents actually occur away from intersections—76% in fact. It's largely a matter of drivers' expectations. They expect to see pedestrians at crosswalks and intersections, and, as a result, they often slow down and pay more attention—a surefire formula for accident prevention. Accidents that take place at intersections are also far less severe than those that occur on major roads, which have few if any intersections. Due to higher speed limits, around 70% of fatal pedestrian accidents on major roads.

Do: ***Walk on the sidewalk whenever possible.***
Walking on the sidewalk instead of the road is another obvious-sounding but nonetheless important way to avoid being hit. Very few pedestrian accidents, as you would probably guess, occur on sidewalks. In areas where there is a sidewalk, drivers will be even less likely to expect a pedestrian in the road, and when drivers don't expect to see you, they very well might not.

Do: ***Check for cars turning before beginning to cross.***
Consider that both pedestrians and drivers making a turn—whether to the left or right—usually have green lights at the same time. So imagine what would happen if everyone acted as though a green light meant it was automatically safe to proceed. You as a pedestrian have the right-of-way, but that doesn't mean you're safe or invulnerable. Make sure to look over your left shoulder for cars making a right turn.

Do: ***Make sure the drivers see you before crossing.***
Try to make eye contact with approaching drivers, including those making a turn. That will help ensure that you know that the driver

sees you and the driver knows that you seem him. Drivers too will hopefully be looking to meet your gaze as confirmation that you intend to cross.

Do: ***When walking on a road with no sidewalk, walk on the left side of the road.***

Few people are even familiar with, and even fewer follow, this important recommendation. We are so ingrained to walk and drive on the right side that it strikes us as inherently dangerous to walk against the traffic direction. The opposite, in fact, is true. If you must walk on a road with no sidewalk—which is to be avoided if possible—it's safer to do so on the left side of the road. You're more likely to see approaching cars in advance, giving you more time to get out of the way and negating the possibility that you'll take an unintentional sideways step at just the moment a car is passing you from behind.

Do: ***Be especially cautious at night.***

It should come as no surprise that, according to recent statistics, the majority of fatal pedestrian accidents occur between 6 PM and midnight. Pedestrians—who, unlike cars don't come equipped with headlights—are much more difficult to see at night. Even on a clear night, for example, drivers' visibility is diminished—the headlights cannot follow the curves of the road. What they can see is limited to the angle and range of the beams, giving them visual access to far less of the environment than during the day. If you must walk on the road at night, make sure to wear bright clothing to heighten your visibility. Wearing reflectors and carrying a flashlight is even better.

Don't: ***Cross between two parked cars.***

It's especially dangerous to cross in the middle of the block between two cars parked on the side of the road. This is another common accident scenario. The danger derives at least partly from the fact that the pedestrian must be more or less in the road in order to see if it's safe to cross. The pedestrian is also camouflaged by the parked cars,

and any situation where both the pedestrian's and the driver's view of each other is compromised, accidents are likely to occur.

Don't: ***"Dart out" or run into the street.***
This one may also sound too obvious to mention, but so-called "dart out" accidents are disturbingly common, where the pedestrian appears suddenly in front of the car and the driver is unable to stop in time. Dart out accidents are also especially disadvantageous for the pedestrian because the driver is rarely judged to be at fault, which puts strict limits on the compensation that the pedestrian is entitled to.

Don't: ***Enter the road on a "don't walk" indicator.***
All but the most safety-conscious among us have, at least once in our lives, probably stepped out into an intersection after the green pedestrian light indicating "WALK" turned into a flashing red "DON'T WALK." Nonetheless, it's for a reason that these indicators begin to flash when they do: there is too little time left to safely cross the street before the light changes.

Don't: ***Assume that a car will stop for you.***
A big one, to be sure. Many of the accidents I've dealt with over the years have involved one person putting too much faith in another. Drivers will do what they want, not what we as pedestrians want them to do or what we think they're going to do. They see what they see, not what we assume they see, nor even necessarily what is right in front of them. There are a lot of inattentive, inexperienced and plain ole bad drivers out there, and we would all do well to remember that. As I pointed out before, simply because you have the right of way does not guarantee your safety. The frequency of accidents is proof that people make mistakes. So walk defensively.

Don't: ***Walk behind a car that is backing up.***
Yet another frequent cause of pedestrian accidents. Drivers backing up will hopefully, at the very least, check their rearview mirror before

pulling out, but many don't look over their shoulder and check their side view mirrors as well. That means that they see what's behind them at the moment they look, but not who may be crossing their path as they start backing up. Large vehicles like SUVs and trucks, due to their height, pose an even greater risk. Their drivers are especially likely to back into a pedestrian crossing behind them, and the likelihood increases the taller the vehicle, the shorter the pedestrian and the closer he or she is to the rear of the vehicle. Stories of parents driving an SUV and backing over their child are distressingly prevalent for this reason.

Pedestrian Accidents and Young Children

Nothing is more precious than your child's safety. Over the course of my career as a personal injury attorney, some of the most heart-wrenching cases I have seen have been those involving children who were victims of pedestrian accidents. In this chapter, I'd like to take a look at why children are particularly vulnerable to pedestrian accidents and what you can do as a parent and a driver to prevent these tragic accidents.

Why are child pedestrians at risk?

Pedestrian injury is the second leading cause of unintentional injury-related death among children ages 5 to 14, claiming the lives of about 600 children annually, according to a recent report. This same report also indicated that more than 38,400 children were treated in emergency rooms for pedestrian-related injuries. Although pedestrian injuries are not as common as motor vehicle occupant injuries, a disproportionate number of the injuries sustained by child pedestrians are severe.

External circumstances can increase the chances of child pedestrian accidents, but more often it is their innocence that makes them vulnerable to dangers on the road. Child pedestrians can be killed for a variety of reasons, including high traffic volume, high posted speed limits, absence of a divided highway, few pedestrian control devices, lack of alternative play areas like parks and irresponsible driver behavior. However, children are particularly at-risk pedestrians because they are exposed to traffic threats that exceed their cognitive, developmental, behavioral, physical and sensory abilities. This is exacerbated by the fact that parents often overestimate their children's pedestrian skills. Take a look at some of the reasons why children under age 10 are unsafe, at-risk pedestrians:

- ☐ They often "dart out" into traffic, perhaps chasing after a toy or a pet.

- ☐ They may believe that if they can see the driver, the driver can see them.
- ☐ They may believe a green light means it is always safe to cross.
- ☐ They may believe drivers will always stop if they are at a crosswalk.
- ☐ They may believe cars can stop quickly.
- ☐ They often cannot accurately tell which direction sound is coming from.
- ☐ Their peripheral vision is significantly less than that of an adult.
- ☐ They may not be able to tell how fast a car is traveling or how far away it is.

Children simply do not have the cognitive abilities to be safe pedestrians. Both parents and drivers should be educated about the most common types of accidents, how to prevent them as both a pedestrian and a driver, how to teach children to be safe and how to improve pedestrian safety in their communities.

What are the most common types of child pedestrian accidents?

Though we call them "accidents," there are some noticeable patterns to when, where and how child pedestrian accidents occur. Urban areas have twice the rate of traffic-related pedestrian deaths as rural areas. Children are most likely to be involved in pedestrian accidents when walking on straight, paved, dry roads in urban or residential areas. Accidents are also most likely to happen between the hours of 4pm and 8pm, when children are traveling from school and playing in residential areas. It was recently calculated that 43 percent of fatal child pedestrian accidents occurred between these dangerous hours.

In addition to being aware of the riskiest times and places for child pedestrians, you can also reduce the risk of accidents by becoming

familiar with the most common types of collisions, which are explained below.

Child darts out

In the last chapter, I mentioned the common example of a child chasing a stray ball into the street, which is certainly one reason why a child might dart into traffic. In many cases, however, children have not been educated on how to properly cross the street. A recent study in San Diego indicated that 90 percent of children ages 5 to 12 did not know how to safely cross the street. As a driver, you should be aware that this type of crash happens both at intersections and mid-block, and you must be on the lookout for children entering the road, even at non-intersection locations. Statistics show that over 80 percent of children who died in pedestrian accidents were killed at non-intersection locations.

Vehicle turns into the path of a child

A child may assume that a green light or a WALK signal means that it's safe to cross, but a driver turning may not look for a pedestrian or might not see the child crossing.

Child hidden from view by an ice cream truck

Sadly, a child's excitement about getting an ice cream treat may make them unaware of the surrounding traffics, and a large truck might block them from view before they step into the street. Exercise caution when passing ice cream trucks—you might even want to come to a full stop.

Child is hidden from view by bus and driver does not stop

Think back to when you were a kid, and how excited you were for school to let out at the end of the day. Did you pay any attention to the traffic around your school bus? Children exiting a school bus are distracted, and the large bus not only obstructs the exiting children from the view of drivers on the road, but also can block the road, making some drivers impatient—and potentially dangerous.

Children may exit the school bus and step into the street, all the while they are blocked from view by the school bus. That is why every state in the U.S. requires traffic in both directions to stop on undivided highways when students are getting on or off a school bus.

Vehicle backing up in roadways, driveways or parking lots

While some "backover" accidents are caused by careless drivers, often young children are just too small or quick to be seen by even the most careful driver. In addition to teaching children to look for people in the driver's seat of cars in driveways, and for illuminated reverse lights before crossing a driveway, parents should never allow young children to play in their own driveways or around parked cars.

What can I do to increase safety for child pedestrians?

Teach your children how to be safe pedestrians

Although teaching children how to be a safe pedestrian might not prevent every accident, you can teach your children to protect themselves and exercise caution. Children should learn about street safety as soon as they are able to walk outdoors. Here's how you can teach children street safety at all ages:

Preschool

- ☐ **Supervise them at all times.** Preschoolers should never be allowed to cross the street alone, and you should always hold their hand while crossing the street.
- ☐ **Teach by explaining.** Explain what you are doing as you do it. For example, if you are crossing the street together, you should say, "When I cross the street, I always stop at the curb. Then I look and listen for cars. First I look left, then right, then left again. If it's clear, then I can cross, while I keep looking for cars." If your child can't tell the difference between left and right, you can say "this way" and "that way." You can also point out others who are exhibiting safe or unsafe behaviors (quietly, of course).

- ☐ **Teach by example.** Your behavior should be an example for your children. They are watching you to show them how to do the right thing.
- ☐ **Praise them.** Encourage safe behavior by praising them for copying your actions or words.

Children ages 5-10

- ☐ **Accompany them.** Young children should have an adult or older child with them every day until they show they can safely cross the street. Don't overestimate their abilities.
- ☐ **Make sure they follow these rules when crossing the street:**

  STOP at a curb or the edge of the road, and only at a corner or intersection.

  LOOK left-right-left for moving cars.

  WALK, don't run, when road is clear or all cars have come to a stop.

  STAY ALERT and keep looking for cars as you cross.

- ☐ **Remind them to use their eyes and ears at all times**. Child pedestrians can be at risk not only when crossing the street, but whenever they are near a street. Remind them that cars that appear to be parked may not always be parked, and to exercise caution when walking near driveways and parked cars.
- ☐ **Teach them to obey all traffic markers.** In addition to learning to cross at a WALK signal, children should learn to check for traffic, even if there is a green light or WALK signal.

Children ages 10 and up

- ☐ **Choose their route to school.** Walk to school together to find the most direct, safest route to school. When walking alone, they should follow that route and never use shortcuts.
- ☐ **Make sure they use the sidewalk.** If there is no sidewalk along their route, then they should keep to the left and walk facing oncoming traffic so they can see cars coming.
- ☐ **Make sure they are visible.** Many jackets and backpacks come with reflective materials built-in. You can also add reflective tape to any article of clothing, which is available at hardware or fabric stores.

Encourage "walkability" in your community

In the ten years between 1990-2000, there was a 49 percent decline in the rate of traffic-related pedestrian deaths in children ages 14 and younger. The decline can be attributed to decreased exposure to traffic, educational programs, increased law enforcement and efforts to improve pedestrian environments. Unfortunately, some of the decline may be because children are simply not walking as frequently. According to the SAFE KIDS organization, nearly half of all elementary school children walked or biked to school in 1969. But by 1995, only 10 percent of children walked or biked to school.

Walking is a no-cost mode of transportation which gets children to exercise, improves air quality by reducing vehicle emissions and allows parents and children to spend time together, free from the distractions of driving. You can help make your community a place that allows children to walk to school and other activities—safely and free from danger.

Teaching children how to safely cross the street is not enough. The National SAFE KIDS Campaign collected over 9,000 "walkability checks" across the country. The study showed that nearly 60 percent of parents and children found at least one serious hazard on their routes to school. Frequent hazards included a lack of sidewalk or crosswalk, wide roads, complicated traffic conditions, improper parking and speeding drivers. You and your community can help

kids avoid these hazardous conditions by creating safe walking environments. Here's what you can do:

- ☐ Promote driver awareness about safe behaviors, traffic laws and penalties for violations through media campaigns, brochures and public service announcements.
- ☐ Encourage parents to walk or bike with their children to school, and also to walk or bike to work, to ease traffic congestion.
- ☐ You can create programs such as "walking school buses," which provide adult supervision along routes child pedestrians take to school.
- ☐ Develop programs that encourage more walking and less driving, such as creating a school-wide "Walk-to-School" day.
- ☐ Contact your local law enforcement department about increasing traffic enforcement around your child's school, community center or other facility where you notice hazards.

Drive safely

General safe driving tips are covered in the "Dos and Don'ts" chapter at the beginning of Part I . Let's take a quick look at some safe driving tips that can help prevent child pedestrian accidents specifically.

Come to a complete stop at stop signs.

Children are told to wait until cars have stopped completely before they step into the road. Make it easy for them to know when to cross—always stop fully and completely at stop signs, and before the crosswalk.

Obey the speed limit in school zones.

A National SAFE KIDS Campaign study found that two-thirds of drivers exceeded the posted speed limit in school zones during the half-hour periods before and after school. In addition, one-third of

drivers were traveling at a speed of 30 mph or more. This is bad news for child pedestrians. The likelihood of a pedestrian being killed if struck by a vehicle traveling 20 mph or less is about 5 percent, whereas the likelihood of death increases to 40 percent if the vehicle is traveling 30 mph or more. Prevent tragedies by driving within the posted speed limits.

Know your blind spots.
Larger vehicles such as trucks, vans and SUVs can make it difficult to see small children. Be aware of your blind spots at all times, particularly when turning or backing up. At home, you should also trim any hedges or landscaping in your driveway or yard that might block your view or the view of other drivers.

I would do just about anything to protect my children, and I know all parents feel the same way. In an ideal world, children would be able to walk to school and play in their neighborhoods without exposure to danger, but the truth is that cars are dangerous machines, and people make mistakes. My hope is that awareness of this information can prevent accidents before they happen.

Auto Insurance
A Brief Introduction

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

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

What is insurance?
Why buy car insurance?
What are the different types of car insurance?
What types of Insurance must I buy?
How much and which types of insurance should I buy?
What types of insurance are optional?
What determines the cost of insurance?
How should I shop for insurance?

What is insurance?

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

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

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

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

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

Premium

Your premium, in short, is the cost of a policy, which is usually specified in a certain dollar amount over a given period of time. As you might expect, purchasing a policy with a high limit will mean paying a higher premium.

Coverage

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

Policyholder

The policyholder is the person who purchased the policy.

Insured

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

Deductible

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

Claim

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

Why Buy Car Insurance?

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

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

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

What are the Different Types of Car Insurance?

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

Liability

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

There are two principal types of liability insurance: single limit and split limit. In a single limit policy, the insurance company promises to pay up to a specified lump sum of money for all liability that result from a single accident. Simple enough. A split limit policy, on the other hand, is a bit more complicated. There's not one limit, but three: one for all the bodily injuries you cause to a single person, another for all the injuries you cause in a single accident involving more than one person, and a third for all property damage you cause in a single accident.

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

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

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

Uninsured and Underinsured Motorist Insurance Coverage (UN/UIM)
In my mind, these types of coverage are equally as important as liability insurance for protecting yourself and your family. Unfortunately, many consumers fail to maximize this relatively inexpensive insurance coverage. In a perfect world, every driver would be adequately insured, making this type of insurance completely unnecessary. The unfortunate reality is that the vast majority of people either have no liability insurance or a policy that is inadequate to cover another's potential losses from even moderate accidents.

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

If, on the other hand, the other driver did in fact have insurance, but whose limit was below the value of your injuries, your "underinsured motorist" coverage may pay some of the difference, depending on your policy limit. ***Underinsured motorist coverage doesn't work the way most expect.*** The total amount of money you can recover from an accident with an underinsured driver is equal to your UN/UIM policy limit. Your compensation equals your policy limit minus what's paid by the defendant's insurance.

Let's say…

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

Here's what most people think would happen:

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

Here's what would actually happen:

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

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

Personal Injury Protection Coverage (PIP)

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

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

Comprehensive insurance is usually an option available on your auto insurance policy that covers loss of your vehicle due to theft or fire. If your car stolen, and you have Comprehensive insurance, your insurance policy will pay for the cost of your car, minus any deductable you may have on your policy. Because Comprehensive coverage requires your insurance company to pay you for the cost of your vehicle, your interests once again are adverse to those of your insurance company. They will try very hard to pay you as little as possible to replace your car.

Collision insurance

Collision insurance, which you buy from your car insurance company, covers any damage to your vehicle as the result of colliding with another object. This covers any car damage caused by an accident, and—like PIP—it doesn't matter who is at fault. Collision insurance typically requires you to pay a deductible up front in the event of an accident. A deductible, remember, is an amount of money that you have to pay, specified in your policy, before your insurance kicks in. As with all deductibles, if you'd like to pay less money to repair your car, you'll have to pay more for your insurance.

Umbrella policies

In addition to their primary liability insurance, many people buy personal umbrella policies. These provide a second layer of liability

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

What Types of Insurance Must I Buy?

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

Basic Policy

One of the biggest complaints of drivers in NJ is that auto insurance costs too much. The Automobile Insurance Cost Reduction Act mandated that a Basic Policy be available to all drivers in NJ, to provide basic coverage. But, the saying "you get what you pay for" really does apply to the basic policy.

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

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

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

Standard Policy

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

How Much and Which Types of Insurance Should I Buy?

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

Liability

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

Let's say…

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

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

entail hospital bills or lost wages. The reality, however, is often a great deal more severe.

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

Let's say…

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

In the scenario above, it is easy to see that the result could be financially catastrophic for the defendant. But this result could be avoided with an adequate liability insurance policy. You may have heard that you should buy a liability policy with a limit that more or less equals your total assets, the idea being that you are "covering" your assets in doing so. If your insurance equals or exceeds your net worth, so the thinking goes, you'll never have to worry about having to pay a lawsuit judgment out of your own pocket. This is nonsense, and it's based on a complete misunderstanding of how insurance and personal injury law work. There's nothing that says that someone

couldn't sue you for more than your policy limit, requiring you to pay the difference. Your liability insurance is the first line of defense, and a good one at that, but your personal assets remain vulnerable beyond your policy limits.

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

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

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

Uninsured and Underinsured Motorist Insurance Coverage

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

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

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

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

Personal Injury Protection Coverage (PIP)

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

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

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

Let Say….

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

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

Another advantage of a PIP policy is that it comes with few provisions and exclusions compared to the pages and pages of fine print that usually comprise your average health insurance policy. That means that PIP typically covers medical services that most health insurance policies do not—often including chiropractic care, dental care and others. What's more, you're not limited to a single provider. The reason why PIP is broader in terms of the care and providers it will cover is that the situation in which it becomes active is narrower. Your health insurance will cover any illness or injury, regardless of when or how it was caused. PIP insurance, on the other hand, will only pay for injuries sustained in a car accident.

To summarize, a driver should have liability insurance in proportion to his or her assets and adequate to cover the cost of a possible personal injury claim. Uninsured/Underinsured Motorist Coverage should be as high as reasonably possible for protection against the large number of uninsured or inadequately insured drivers on our highways. The good news is that many relatively high limit insurance policies are reasonably priced in relation to the valuable protection they offer. Let's look at each type of insurance.

Which Types of Insurance are Optional?

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

Comprehensive and Collision insurance

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

Umbrella policies

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

What Determines The Cost of Insurance?

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

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

Who you are

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

Your driving record

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

Where you live

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

How much you drive.

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

The car you drive.

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

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

How Should I Shop for Insurance?

To my way of thinking, there's a right way and a wrong way to buy insurance. The wrong way, unfortunately, is the approach we are most accustomed to taking when comparison-shopping: we figure out what we're looking for, and then we look for it at the lowest price. Based on the assumption that the product is essentially the same regardless of where one buys it, this focus on price makes a great deal of sense. The problem is that insurance is different than most of the things we buy.

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

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 found that none of the treatment was justified, effectively denying payment on the entire bill. This entire problem can be avoided by the simple act of keeping comprehensive, legible medical notes.

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

As with human communication, it certainly helps to speak the same language. The computer's language is comprised of what are called ICD-9 codes. Accordingly, all diagnoses should likewise be rendered in ICD-9 codes. In addition, it is also important to consider that

computers, not unlike their human programmers, have a very small vocabulary when it comes to understanding what insurance companies euphemistically refer to as a "soft tissue injury"—a name the insurance industry uses to imply that if soft tissue is involved, the injury is somehow less compensable. Here is a list of some words, which, if they apply to your patient, may communicate the injury more effectively:

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

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

Let's now discuss an often-ignored factor in a patients care: home therapy. 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 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. You deserve to receive what you are entitled to under New Jersey law. Whether you hire an attorney or not, you need to be cautious. Remember—your insurance adjustor is not your advocate or your friend.

Part III

The Litigation Process

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 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, you answer would be "yes." But a better response is, "I've always tried to tell the truth." If the question is asked again, your best response is, "As I stated, I have always tried to tell the truth. I am sure at some time I may have exaggerated something or failed to tell the

exact truth that someone expected to hear, although I cannot recall any specific incident." At this point, the defense attorney may ask, "So your answer is yes?" Do not agree with him. Simply remind him you gave an answer to his question and you may repeat your answer again. Remember that the defense attorney will try to take a particular word or phrase out of context to use it against you. Listen very carefully to the words used in each question.

Answer only the question asked

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

Do not volunteer information

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

Answer every question fully

This may seem to contradict the previous rule, but it does not. A complete answer is given to only the question asked. All relevant details should be given. If not, you will face a serious problem. Later on, probably at trial, you will be asked the same question as the defense attorney works from your earlier deposition transcript. If you

add or embellish the facts at trial, which are not *all* the facts stated in your deposition, then you will be criticized on the witness stand as a person who conceals things and cannot tell the truth when asked.

Do not answer in absolutes

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

Try to answer with a full sentence

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

Pause and think about the question you are asked

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

Support your conclusions with descriptions

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

Use approximations rather than exact measurements

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

Do not guess

If you do not know the answer, do not guess at one. If you are giving an estimate make sure you say it is an estimate. For example, if you are asked how many car lengths away you were from another car, you should say that you were *about* 3 or 4 car lengths, or say, "I would estimate I was about 3 or 4 car lengths away." Do not commit yourself to a specific number unless you are quite positive the exact number is correct. The same thing goes for date and time questions. Often in deposition you will be asked what date an incident occurred, how many times it occurred, or what time of day it occurred. Unless you are absolutely sure, you should only give an estimate. On some questions you will know exactly and be quite certain. On other questions you may be a bit uncertain so an estimate is better. If you don't recall the exact date an incident occurred, use another known date as a reference point. For example, if asked when you were told a specific instruction by your supervisor, or asked when you made a certain complaint, you can say you don't know the exact date but that it was before "this" and after "that" had happened. Common

reference points may be holidays, weekends, pay raise dates, or even seasons of the year such as summer or fall.

Never say never

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

Ignore intimidation

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

Wait for a complete question

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

Give a complete answer

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

Make sure you really understand the question

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

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

Be polite

No matter what happens or how you feel inside, be polite. It will not hurt to say "no sir" instead of just "no." Or you can say "no ma'am" instead of just "no." Just like with the other instructions, remember not to overdo it. It can become obnoxious if you "sir" and "ma'am" too much. In some cases the attorneys can get fairly obnoxious, sarcastic and critical. Ignore any bad manners. You must

always be polite. The opposing attorney may act that way toward you to see if you get angry and say something stupid. If you do get angry, and you say something stupid, you can be sure that foolish remark will be read to the jury. The opposing attorney may also be showing off for his client. No matter what happens, be polite. Later at your attorney's office you can privately say the things you held back.

Maintain eye contact and don't wiggle around

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

Dress appropriately

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

Let your attorney object

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

unexpectedly. Keep calm, wait to see if your attorney objects, then give your answer.

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

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

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 a 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.

Collapse: Literally, to cave in or give way. Term usually used in a case where a building under construction collapses and causes injury or death to those working in the area.

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

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

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

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

Compensatory Damages: Reimburse the plaintiff for actual dollar value that the plaintiff has lost due to the injury (e.g. medical expenses, lost income, loss of future earning capacity, may also include pain and suffering, etc.). A family member may be entitled to compensatory damages in the event of a wrongful death.

Complaint: The formal document that starts a lawsuit once filed with the court. A complaint will outline the circumstances (parties, nature of damages, desired relief, etc.) of the incident that form the case.

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

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

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

Consideration: The price in a contract for the other party's promise. The price may be a promise or an act (e.g. promise of payment). A party can only sue on a promise if he has given consideration in

return for the promise. Consideration is often a monetary amount, but does not have to be.

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

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

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

Contributory Negligence: Prevents a party from recovering for damages if he or she contributed in any way to the injury. Not all

states follow this system. Washington does not follow the law of contributory negligence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

knows DUI law if you have been accused of DUI or a related drunk driving offense.

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

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

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

Strict Liability: A type of liability that arises from extremely dangerous operations. An example would be in the use of explosives: A contractor would almost certainly be liable for damages, injuries or death caused by vibrations of the earth following an explosive

detonation. With strict liability it is usually not necessary for a claimant to establish that the operation is dangerous.

Afterword

There's no doubt: if you've been injured in an 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

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Also By Joseph M. Ghabour

Your Car is Wrecked! Don't Wreck Your Injury Case
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When the Open Road is not so Friendly.
-Your Guide to Motorcycles Accident Claims

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

THE ESSETINAL GUIDE TO PEDESTRIAN SAFETY

KNOW WHAT YOU'RE WALKING INTO

If you've been involved in a pedestrian accident, chances are you have injuries that require ongoing medical treatment, which may have forced you to miss work and may interfere with your day-to-day life. Your ability to care for and provide for your family may be compromised.

Drivers have a duty to observe traffic laws and to drive safely, responsibly and cautiously, a duty that many people—too many and too frequently—breach. It is very possible that, having been injured in a pedestrian accident, you are suffering the consequences of another person's negligence. You both need and deserve fair compensation for your losses.

My name is Joseph M. Ghabour. I want as many people as possible to benefit from my years as a personal injury attorney. In my practice, as well as in this book, my intention is to give people the knowledge they need to empower themselves and to put their minds at ease. 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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