



# **PERSONAL INJURY LAW**

## **An Overview for Pennsylvania Accident Victims**

*by James D. Hagelgans & Nicholas A. Veronis*



**PENNSYLVANIA  
INJURY LAW**  
A Reference for  
Accident Victims

**James D. Hagelgans  
and  
Nicholas A. Veronis**



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This book is a collective effort compiled for you by twenty leading members of the plaintiffs' bar in the states of Pennsylvania, New York, North Carolina, South Carolina, Texas, Arkansas, Florida, Georgia, Indiana, Kentucky, Vermont and Tennessee. Each attorney involved has contributed his expertise to this project to assure readers that they are being provided with basic sound information when they find themselves the victim of an accident. This is not a law book, but an overview of personal injury law.

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# DEDICATION

This book is dedicated to all our clients who have given us the privilege of representing them in pursuit of their personal injury cases. It has been our honor to serve you.



# FOREWORD

You or someone in your family has just been injured in an accident that was not your fault. Suddenly, your life is in turmoil. You are worried and confused. You face the prospect of being out of work for an extended period of time. You do not know how you will be able to support your family. Will the insurance company deal fairly with you? What will happen if you lose your job and cannot pay your bills? What will happen if your injuries are permanent?

You may be reluctant to seek the advice of a lawyer because you are intimidated or because you believe that the insurance company will treat you fairly. You are facing the dilemma of having to choose the right lawyer. Will the lawyer you contact be honest and conscientious? Will he be able to help you obtain the compensation which you deserve? These are all typical thoughts of accident victims.

Insurance companies are in the business of making money. Despite their warm and fuzzy marketing slogans, they are sometimes more interested in enriching their shareholders than in fairly compensating the people who their insureds (customers) have injured. They are not primarily concerned that you receive reimbursement for your lost wages, payment of your outstanding medical bills and an amount of money that will fully compensate you for the pain, suffering and inconvenience you and your family have experienced as a result of the accident.

Every day, thousands of people in our country are seriously injured as a result of the careless and reckless conduct of irresponsible drivers, dangerous workplaces, greedy corporations and a very small percentage of doctors and healthcare professionals. Most people who are injured in accidents that are not their fault are merely seeking funds so that they can pay their bills, return to work and provide for their families.

Contrary to what most Americans think, personal injury cases in the American legal system encompass fewer than 1% of

all lawsuits filed in our country. The majority of lawsuits involve domestic, criminal and business issues.

Under Pennsylvania law, if you suffer injury or a death as a result of the negligence of another person or corporation, you or your family are entitled to receive compensation for that injury or death. The purpose of personal injury law is not to make you, the victim, rich, but to try to alleviate your suffering and enable you to be justly compensated so that you can get back on your feet and resume your life.

Our legal system stacks the deck in favor of insurance companies and corporations, which have the resources and attorneys to make it difficult for victims to recover what they are rightly entitled to recover under the law. It is for this reason that you need skilled and experienced personal injury lawyers who will be able to fight for you, and who have the resources to take on the insurance company and its lawyers. We are personal injury lawyers who represent only victims of personal injury.

We, as personal injury lawyers, have written this book to provide you, the accident victim, with the information you need to understand what you will encounter as you proceed with your personal injury case. We hope it will ease your anxiety and help you understand the legal system in the context of such cases.

### ***Philosophy of Hagelgans & Veronis Law Firm***

At Hagelgans & Veronis, we represent only people who have suffered an injury or death as a result of another's negligence. We have not and will never represent insurance companies, big business or wealthy corporations.

We pride ourselves on providing personalized and conscientious representation to the victims of personal injury. Our law firm's philosophy is to treat our clients with the respect they deserve and to provide the best legal representation possible for them.

Because of the complexities of modern-day law, we limit our practice solely to representing people and families who have been wrongfully injured or disabled in accidents caused by the

negligence or carelessness of others. By limiting our practice solely to personal injury law, we are able to provide our clients with the best representation possible and obtain the results and settlements that they deserve.

We have successfully recovered tens of millions of dollars from insurance companies to compensate our clients since our law firm's inception in 1994. Our law firm has an established track record and reputation for successfully recovering maximum compensation for the clients we have represented.

At Hagelgans & Veronis, we receive our greatest satisfaction from seeing our clients recover from their injuries and move on with their lives, return to their jobs and to their everyday activities as soon as possible following an accident.

### ***Reasons to Choose Hagelgans & Veronis to Handle Your Personal Injury Case***

- From the initial free consultation, your case will be handled by an experienced attorney, not a paralegal or legal secretary.
- The attorneys at Hagelgans & Veronis are experienced litigators and trial lawyers who have over 75 years of experience, combined, in settling, litigating and trying personal injury cases. We have recovered tens of millions of dollars in settlements and verdicts since our law firm's inception in 1994.
- Our founding partners, James D. Hagelgans and Nicholas A. Veronis, are certified members of the Million Dollar Advocates Forum, a group of lawyers, made up of less than 1% of all attorneys in the United States, who have recovered settlements, awards and verdicts of \$1,000,000 or more.
- At Hagelgans & Veronis, our attorneys have extensive litigation experience and have litigated cases throughout Pennsylvania. We have litigated cases in all of the counties in

central Pennsylvania, in Philadelphia and the surrounding counties, and in Pittsburgh. We have also litigated United States military cases. In the Pennsylvania federal courts, we have litigated cases in the Eastern and Middle Districts of Pennsylvania and in the Third Circuit Court of Appeals. In addition, we have litigated cases before the Pennsylvania appellate courts, including the Pennsylvania Supreme Court, the Pennsylvania Superior Court and the Pennsylvania Commonwealth Court.

- We value quality over quantity. For that reason, we purposely limit the number of cases we handle so that those cases are handled thoroughly and expeditiously. We utilize whatever resources are necessary to obtain fair compensation for our clients.
- Most of our personal injury cases come from the referrals of prior satisfied clients. A large number also come from fellow attorneys who are confident that they can refer their own clients to our law firm so that their clients will receive the respect, competence and superior settlements synonymous with cases handled by Hagelgans & Veronis.
- We are able to reach settlements for our clients over 95% of the time without our clients having to go to court, yet we have the expertise and experience to succeed in court if the insurance company does not make a fair offer for our clients' cases.
- Our law firm will never charge nor receive any attorney's fee until our clients receive a recovery. Furthermore, we will advance all costs necessary to ensure that our clients receive the best representation possible, which will lead to a successful resolution of their personal injury claims.
- Our lawyers keep up with the complex changes in personal injury law and attend seminars on a regular basis. By

knowing the law as it changes, our attorneys are better able to handle complex cases and ensure that our clients receive what they are entitled to under Pennsylvania and federal laws.

- Our lawyers and staff practice with honesty and integrity. From the beginning of the case, we advise our clients of both the strengths and weaknesses of their cases so that they know what to expect as we proceed to obtain fair compensation for their injuries and damages. We explain legal theories in easy-to-understand language so that our clients will understand how the law applies to their particular cases.
- We return our clients' phone calls in a prompt and courteous manner. Studies have shown that the most common complaint about lawyers is that they fail to respect their clients by returning their phone calls in a timely fashion.
- We have offices throughout Central Pennsylvania and will visit you at your home or in the hospital, if you prefer.
- We pride ourselves on establishing good relationships with our clients so that, by the end of their case, each client appreciates the time and dedication Hagelgans & Veronis expended in obtaining a fair settlement for them.

## *References from Some Past Clients*

We are glad to provide references from past clients who have given us permission to do so. Here is a sample of what some of our clients have said about us:

*I would like to extend my thanks for your expert abilities and knowledge in representing my son, Jake. I would highly recommend your services and will without hesitation hire you again if ever the situation arises. Thank you for everything.*

–Susan F., Quarryville, PA

*We thank you from the bottom of our hearts for all you have done for us. Thank you over and over. We would not have gotten through this without your law firm.*

–Dolores and John H., Willow Street, PA

*Thank you for the personal touch you showed in representing us on our personal injury case. We were very impressed with your attention to detail and the fact that you always returned our phone calls promptly and explained what would happen as we pursued the lawsuit. Having never been in such a situation, we were hesitant to hire a lawyer but now know we made the right decision in hiring your law firm.*

–Steve W., Mount Joy, PA

*Thank you for all you have done for me and my family. We never expected to be in a situation where we would lose our family income because of an accident caused by someone else. We not only had a great lawyer helping us, we feel we made new friends with you and the people in your law firm. If anyone I know ever needs a lawyer, we will recommend you highly.*

–Ruth H., Lancaster, PA

*Many thanks for all you have done for us and our father. We greatly appreciated the manner in which you always made yourself available. It certainly changed our image of lawyers. Thanks also for your willingness to visit my father in the hospital and nursing home and for helping him get the settlement he needs to provide for his future medical care and what he went through.*

–Richard S., Columbia, PA

*Thank you Hagelgans & Veronis for taking my case. You not only got me the settlement I felt I deserved, you gave me great advice on auto insurance and how to deal with insurance companies. I am giving your name to everyone who needs a lawyer.*

–Mayra M., Lancaster, PA

*I talked to other lawyers before coming to your law firm. Your law firm seemed different in that the lawyers took a genuine interest in not only my case but me and my family. Boy, was I glad I picked you guys to represent me. Not only did you get me a great settlement, you treated me with respect and genuine interest.*

–Robert C., York, PA

*Thanks for everything. When my husband died, I was very reluctant to talk to a lawyer. You came highly recommended and your firm's services far exceeded my expectations.*

–Elizabeth B., Elizabethtown, PA

*When I fractured my neck in an accident caused by a teenager, I didn't know who to turn to for help. Thank goodness my children recommended your law firm. Not only did you get me an incredible settlement, you visited me in the hospital and at my home and showed interest in my life. I am indebted to you and your law firm for taking care of us during a most difficult time. Thank you so much.*

–Nicholas C., Lancaster, PA

# CHAPTER ONE

## **PENNSYLVANIA PERSONAL INJURY LAW**

### *MOTOR VEHICLE LAW*

#### *Limited Tort vs. Full Tort Insurance*

In 1990, the Pennsylvania Legislature, in an effort to reduce auto insurance premiums, enacted a tort selection system of auto insurance law. Pennsylvania drivers are offered two “tort options.” They may choose either “Limited Tort” or “Full Tort” insurance coverage on their non-commercial (personal) motor vehicle insurance policies.

An individual who chooses the limited tort option pays less for auto insurance. By choosing limited tort rather than full tort, however, a motorist has a limited ability to recover such non-economic damages as pain and suffering, inconvenience and, in some cases, scarring, even if the accident was another person’s fault.

An individual who selects limited tort coverage may also limit the rights of other family members, including any children who reside with them.

There are several exceptions set forth in the law that allow an individual to pursue claims for non-economic damages, even if he or she is covered by limited tort auto insurance. Those exceptions are set forth below.

1. The individual was injured by an uninsured motorist.
2. The person who was at fault was convicted of driving under the influence, or accepts entry into the accelerated



- rehabilitative disposition program for driving under the influence of alcohol or a controlled substance.
3. The person who was at fault was operating a motor vehicle registered in another state.
  4. The individual was injured by someone who is in the business of designing, manufacturing, repairing, servicing or otherwise maintaining motor vehicles, and the injury arises out of a defect in a motor vehicle that was caused by, or not corrected by, an act or omission in the course of that business.
  5. The injured individual was injured while an occupant of a motor vehicle other than a “private passenger motor vehicle.” Such vehicles include commercial vehicles and motorcycles.
  6. The injured person was a pedestrian.
  7. The individual has suffered “serious injury”.

Under Pennsylvania law, a “serious injury” is defined as personal injury resulting in:

1. Death;
2. Serious impairment of a body function; or
3. Permanent, serious disfigurement.

The way that courts and many jurors have defined “serious injury” is not, however, what many people would characterize as a serious injury. Experienced personal injury attorneys, such as the attorneys of Hagelgans & Veronis, are in the best position to determine whether an individual has suffered a “serious injury,” since they have extensive knowledge concerning case law and jury decisions determining whether an individual has suffered a “serious injury.”

By contrast, if you choose full tort coverage, you are entitled to pursue a claim for non-economic damages, including pain and suffering damages, regardless of the severity of your injury. Further, by choosing full tort insurance, you are not subject to

uncertainty about whether your injury is a “serious injury” if you do not fit within any of the other exceptions.

Often, motorists believe that if they have “full coverage,” they also have full tort rights. Full coverage simply means that you have both liability insurance to protect you in the event that you cause an accident and collision coverage to pay for the damage to your own vehicle. If your vehicle is financed, the bank or financing company will require “full coverage.” They will not require “full tort” insurance.

### ***No-Fault Benefits***

No-fault benefits, also known as first party benefits, are benefits that your own insurance company pays you if you are involved in a car accident, regardless of who is at fault. In Pennsylvania, the only required no-fault benefit is medical coverage.

Under the Pennsylvania Motor Vehicle Financial Responsibility Law, Pennsylvania motorists are only required to carry \$5,000 in medical benefits. That amount of coverage is often inadequate to pay the hospital and medical bills in motor vehicle accidents involving serious injuries.

We recommend that you purchase at least \$100,000 in medical benefits coverage. The cost for this additional coverage is usually not that high, especially in comparison to the extra coverage obtained.

Your insurance company is also required to offer you extraordinary medical benefits that provide additional medical benefits of up to one million dollars to protect you in the event of a catastrophic accident.

Another no-fault benefit that you may purchase is income loss coverage. The advantage of having income loss benefits is that you will be paid for your lost income, up to the limits of your coverage, while you are disabled and recovering from a motor vehicle accident. You may recover this income loss coverage regardless of whether you or another person is responsible for the accident. This coverage, in most cases, pays up to 80% of your actual loss of gross income while you are disabled. However, this

coverage does not pay for the first five days you are off work. Lost income for the first five days is part of your claim against the party who was at fault.

If you do not have no-fault income loss benefits, in most cases, you will not receive any payment for lost wages from the responsible parties or their insurance companies until the case is settled or tried. Depending on the complexity of the case and the issues involved, this may take months, or even years if the claim results in a lawsuit. This often creates undue financial hardship for a family whose primary wage-earner is left disabled by an accident.

The cost of obtaining income loss coverage on your own policy is minimal. We highly recommend that you and your family purchase this coverage.

Another available no-fault benefit is a death benefit, which is paid to the personal representative of your estate, in the tragic event that you suffer death within 24 months of the date of a motor vehicle accident. In essence, this accidental death benefit is like a life insurance policy, covering a death in your family caused by a motor vehicle accident.

You may also purchase funeral benefits to cover the funeral, burial or cremation expenses of a person who suffers death within 24 months after a motor vehicle accident.

### ***Subrogation***

Subrogation is a legal doctrine that permits an insurance company or others paying the injured person's medical or other bills to seek reimbursement from the person or company legally responsible for causing an accident. Subrogation most often takes place after the innocent driver's insurance company has already paid its insured for personal injuries and/or vehicle damage.

For example, if another person causes an accident that involves property damage to your vehicle and your own insurance company pays for the property damage, your company then has the right to seek reimbursement from the insurance company for the person who caused the accident. If the person who caused the accident has no insurance, your insurance company may

seek reimbursement directly from the person who caused the accident.

Some motorists in Pennsylvania select lower limits of medical coverage or even the state minimum of \$5,000, based on the rationale that they have health insurance to pay the medical bills. Even if you have good health insurance, it is important to have high limits of no-fault medical benefits on your motor vehicle policy. In many cases, under Pennsylvania and federal law, health insurance companies have subrogation rights and are permitted to place a lien (a legal claim) on personal injury settlements. This means that they have the right to obtain reimbursement for medical benefits they paid for treatment related to injuries suffered in a motor vehicle accident.

For example, HMOs and most self-funded ERISA health plans have the legal right to assert a lien and seek reimbursement for benefits paid by the health insurer for injuries suffered in a motor vehicle accident. By contrast, your car insurance company is not permitted by law to seek subrogation or assert a medical lien for medical payments made under your first-party medical coverage on your car insurance policy.

For this reason, it is very important that you, as a motorist in Pennsylvania, carry higher limits for first-party medical benefits on your automobile insurance policy. By carrying higher limits, you ensure that your car insurer will pay the medical and hospital bills associated with your car accident, and the bills will not be paid by your health insurer.

We highly recommend that you purchase at least \$100,000 in medical benefits to adequately protect you and your family in the event that you are injured in a serious car accident. This will ensure that all of your bills will be paid by your own car insurance company and will not be paid by a health insurance company, which may then seek reimbursement from your personal injury settlement or verdict.

It is important for you to consult an experienced personal injury attorney to determine whether there will be any issues of subrogation in your personal injury case. In many cases, an expe-

rienced personal injury lawyer may be able to contest or negotiate a reduction of the subrogation lien.

### ***Uninsured and Underinsured Motorist Coverage***

Uninsured and underinsured motorist insurance are very important coverages that every Pennsylvania motorist should have.

Uninsured motorist coverage protects you and your family if you are injured by a driver who has no car insurance. Although it is against the law to drive a motor vehicle without liability insurance, statistics have shown that as many as 1 in 10 people on the road are driving without any insurance. Often, these negligent and irresponsible drivers cause accidents and serious injuries to innocent people, who then cannot obtain fair compensation from these drivers because they (the at-fault drivers) carried no liability insurance and have no assets from which to recover a monetary judgment. By purchasing uninsured motorist coverage, you and your family will be able to obtain compensation for personal injuries from your own insurance company, even if the person who caused the accident had no liability insurance.

Underinsured motorist coverage protects you and your family if you are injured by a driver who has inadequate liability insurance. In Pennsylvania, motorists are only required to carry \$15,000 in liability insurance coverage. Unfortunately, many drivers purchase only the minimal required limits. By purchasing underinsured motorist coverage, you and your family will be able to recover additional compensation for your personal injury claim, in addition to the amount of minimal liability coverage the negligent party had at the time of the accident.

By not purchasing uninsured and underinsured motorist coverage, you are placing yourself and your family at risk that there will not be sufficient insurance available to fairly compensate you for the personal injuries you suffer in an accident caused by the negligence of another person.

## ***Waiver/Sign Down of Uninsured/Underinsured Coverage***

Pennsylvania law requires a car insurer to offer you uninsured and underinsured motorist coverage in the same amounts as your liability coverage. You may, however, sign a form rejecting that insurance coverage. This type of form is known as a waiver of uninsured and underinsured motorist coverage. In the alternative, you may sign a form that reduces your uninsured and underinsured motorist coverage to amounts that are lower than your liability coverage. We recommend that you never sign a waiver, sign down or reduction form. By doing so, you are reducing or eliminating coverage that protects you and family members if you are injured by a person who has no insurance (uninsured motorist) or a person who has inadequate insurance (underinsured motorist). To fully protect your family, it is essential that you have as much uninsured and underinsured motorist coverage as possible.

## ***Stacking Uninsured and Underinsured Motorist Coverage***

If your family and you own more than one motor vehicle, you can select “stacked coverage.” Stacked coverage enables you to multiply the amount of your uninsured and underinsured motorist coverage by the number of insured vehicles in your household. Also, even if you own only one vehicle, whether you elected “stacked coverage” may affect the available insurance coverage if you are injured while in another person’s car. We, at Hagelgans & Veronis, recommend that you always elect the stacking option for both your uninsured and underinsured motorist coverage. This coverage is typically inexpensive.

## ***Liability Coverage***

Liability coverage is insurance coverage that you have on your automobile policy to protect you if you or a family member is responsible for causing an accident. Liability insurance protects your family’s assets from a judgment or verdict against you. Your insurance company, however, is only contractually obligated to

pay a settlement or verdict up to the limits of the liability coverage. The insurance company is also required to hire a lawyer at its own expense to defend you if you are sued for an accident that is your fault.

Pennsylvania motorists are only required to carry \$15,000 per person/\$30,000 per accident in liability coverage. Although it is legal to carry such low liability limits, it is unwise to do so. By carrying such low liability limits, you are exposing yourself personally to liability over and above the minimum insurance, in the event you cause serious injury or death to another person in a motor vehicle accident. We, at Hagelgans & Veronis, recommend that you carry at least \$100,000 per person/\$300,000 per accident in liability coverage. If your family has substantial assets, you should purchase higher limits of liability insurance sufficient to protect those assets from a judgment or verdict against you or a family member.

If you have substantial assets, you should purchase an umbrella or excess liability policy, which will provide additional coverage to pay a settlement or verdict entered against you if you cause a serious accident. If you have substantial assets and want to protect those assets from a potential judgment or verdict, we recommend that you purchase one to three million dollars in excess liability insurance. Most insurance companies will require you to purchase at least a \$250,000 underlying liability policy before you will be eligible to purchase an excess or umbrella liability policy.

When liability coverage is presented as “\$100,000 per person/\$300,000 per accident,” it means that any one person injured in a motor vehicle accident caused by the person with the \$100,000/\$300,000 policy can recover a maximum of \$100,000. If more than one person is injured, the insurance company will pay up to \$300,000 for the accident, no matter how many people are injured, and a maximum of \$100,000 per person injured.

### ***The Valuation of a Personal Injury Claim***

Frequently, individuals who have sustained a personal injury want to know the value of their cases. Like medical diagnoses,

valuation of personal injury claims is typically not susceptible to a simple answer. There are many variables involved in valuing a personal injury case.

Before you can attempt to value a motor vehicle case, you must determine who was at fault for an accident and whether the fault lies solely with one person or is shared by multiple drivers. There are some situations where both drivers may be at fault for an accident. In Pennsylvania, if the injured person is completely or partly at fault, it may reduce or totally bar his or her personal injury recovery. If the person who is pursuing a personal injury claim is more than 50% at fault for an accident, he or she is totally barred from any recovery. If the plaintiff, or person bringing a personal injury claim, is 50% or less at fault, his or her claim or verdict will be reduced by the percent of negligence he or she bears.

For example, a jury may decide that the defendant (the driver who is being sued) is 70% at fault, and that the plaintiff (or person suing) is 30% at fault. In this scenario, if a jury renders a verdict of \$100,000, the verdict would be reduced by the plaintiff's 30% fault, so that the plaintiff would actually receive \$70,000 rather than \$100,000.

In evaluating a personal injury claim, there are many other issues that need to be considered. One of the most important is where the lawsuit may be filed. This is called the venue of a lawsuit. In Pennsylvania, a lawsuit usually may only be filed in the county where the accident occurred or in the county where the defendant resides or does business. Often, the amount of compensation or verdict a person receives in a personal injury case is based on the locale or venue of the lawsuit. Big cities such as Philadelphia, New York and Los Angeles tend to have more generous juries, which are more inclined to award larger verdicts in a personal injury case. The same personal injury case in Philadelphia may be valued much higher than a personal injury case in a small town where the juries tend to be more conservative in their decisions. Also, the bias and makeup of the jury will have a significant effect on the amount of money a person receives for his or her personal injury case.



In addition to the venue of a particular case, another important issue is the extent of the victim's injuries and damages. A larger settlement or verdict is much less likely for a person who has suffered an injury from which he or she has fully recovered than it is for a person who has suffered a permanent injury, total disability, an impairment that significantly affects life activities or serious permanent scarring or disfigurement. The extent of pain and suffering attributable to a person's personal injury claim is dependent on whether that person has had lengthy treatment, has undergone lengthy hospitalizations, painful surgeries, or a long rehabilitation or sustained an injury that has greatly altered that person's quality of life. A physician's diagnosis and prognosis will in many cases help determine the value of a personal injury claim.

Another significant factor in valuing personal injury cases is the amount of a person's past and future wage losses due to the injuries suffered from an accident. Under Pennsylvania law, an injured person is entitled to recover past lost wages up to the time of recovery, as well as any future lost wages or future diminishment of earning potential over that person's normal lifespan. Many large settlements and verdicts are attributable to a plaintiff's economic or actual past and future wage losses. Since lost wages are more objective than "non-economic damages" such as pain and suffering, a lawyer can often better predict the outcome of a case in which there is significant wage loss.

Pennsylvania law does not permit attorneys to ask for a specific amount of money for "non-economic" damages, such as pain and suffering damages. This often surprises clients, who may have heard that other states permit a lawyer to sue for a specific amount of money for non-economic damages. Because lawyers are not permitted to express any opinion on the amount a client should receive for pain and suffering damages at trial, juries often are inconsistent in the amount of money they award. At a personal injury trial, the judge specifically instructs the jury that they are to award what they feel is fair to compensate a person for non-economic damages, based on the evidence they heard at trial.

By retaining an experienced personal injury law firm such as

Hagelgans & Veronis, you can be assured that experienced attorneys will present your case in the most positive light and present all of the damages in a way that increases your chances of maximum compensation for your personal injury claim. With over 75 years of experience in personal injury cases, the partners at Hagelgans & Veronis know the value of personal injury claims based on thousands of prior claims they have handled. Furthermore, the attorneys are familiar with most insurance companies and in most cases have previously settled claims with the same claim representatives and defense attorneys who will be involved in your case.

### ***Workers' Compensation***

For employees injured in the course and scope of their employment, the Pennsylvania Workers' Compensation Act provides benefits for the payment of lost wages and medical expenses.

If you are injured on the job, the law requires that you notify your employer within 120 days that you suffered an injury. The injury will then be reported to the employer's workers' compensation insurance carrier and an investigation will likely take place.

For treatment of your work-related injury, the law requires that you receive treatment from a physician on your employer's approved panel physician list for the first 90 days after the initial treatment of your injury. Failure to use a panel provider during this time period may result in the workers' compensation insurance carrier denying payment of your medical bills.

After 90 days, you may go to a health care provider of your own choosing, and the insurance company will pay for the treatment if it is notified within five days of the first visit and the treatment is reasonable and necessary and related to the injury. The injured worker will not have a co-payment for work-related medical expenses paid for by the insurance company.

The law also provides for the payment of your lost wages. If a physician restricts you from all work activities or places you on restrictions that your employer cannot or will not accommodate, you have a right to claim lost wages if the period of disability exceeds seven days. After you make a claim for lost wages due to

your disability, the insurance carrier has 21 days to decide whether to accept or deny your claim.

If the insurance carrier denies payment of medical expenses and/or lost wages, the worker may file a claim petition (workers' compensation lawsuit) within three years of the date of the injury. The petition will then be assigned to a workers' compensation judge and the case will be litigated.

In some cases, claims are initially accepted and benefits paid. At a later date, however, the employer through the workers' compensation insurance carrier, may try to modify, suspend, or terminate your workers' compensation benefits. In such cases, a Petition will be filed asking the Judge to terminate your benefits. Your case will then be assigned to a judge who will ultimately make a decision about whether to modify, suspend, or terminate your benefits.

Whether you are pursuing a claim petition, or defending your rights in response to a petition to reduce or terminate your benefits, you need a supportive physician who believes that your diagnosed injury or condition is related to your work injury. It is also necessary to have clear and appropriate restrictions, or guidelines, with regard to your work abilities.

There is also another type of benefit under workers' compensation law. It allows payments for specific loss or disfigurement. If, as a result of an injury suffered in the course and scope of your employment, you have lost some vision or hearing, had an amputation or sustained scarring on your face or neck; you are eligible for a specific loss of benefit. The amount of this benefit is based on the nature and degree of your injury and your workers' compensation rate.

At Hagelgans & Veronis, we are often able to negotiate a favorable lump-sum settlement of your workers' compensation claim, which enables you to receive a lump-sum payment of money in return for you releasing any further liability for your employer and its workers' compensation insurance carrier. Call us for a free consultation to discuss whether you qualify for such a settlement.

## CHAPTER TWO

# UNDERSTANDING YOUR INJURIES AND DAMAGES

In personal injury law, the wrongdoer (sometimes known as a tortfeasor) is responsible for all of the injuries caused by his or her negligence, or by any other unlawful conduct. If you are injured as a direct result of that conduct, you are entitled to be fully compensated for all the injuries that you have suffered. In the law, the goal is to make the injured party whole. That is, the purpose of monetary compensation is to try to restore you and your family to the position that you were in before your accident.

Once it is clear that the wrongdoer is at fault for your injuries, an experienced personal injury lawyer can help you fully identify and understand your injuries. Your law firm will obtain and review your medical records and talk with you, your family and your physicians to fully understand your injuries and how they have affected your life. Using prior experience with similar cases, your lawyer will then be able to predict the range of dollar amounts a jury may award.

In recent years, insurance companies, their lobbyists and greedy corporations have promulgated a great deal of propaganda that casts personal injury victims and their lawyers in an unfavorable light. They do this purposely to bias potential jurors against personal injury victims and in favor of the people and insurance companies they sue. Often, the media exacerbates this problem by highlighting bizarre or rare multi-million-dollar cases. This creates the mistaken perception that most people pursuing personal injury claims receive unjust windfalls, or do not entirely deserve the compensation they receive. Nothing is further from the truth. In reality, most people injured by careless wrongdoers are hardworking Americans who just happened to be in the wrong place at the wrong time.

## PROVING YOUR INJURIES CAN PROVE YOUR CLAIM

Sometimes, understanding your injuries can actually help prove your case. Take the case of a nine-year-old boy who was hit by a car while running back across the street from an ice cream truck. The driver of the car claimed that she was not at fault and that the boy had simply run into the side of the car. Even the investigating police officer took the driver's word and decided the little boy was at fault. There were no other witnesses.

However, thanks to the experienced personal injury lawyer the boy's family consulted, that was not the end of the investigation. The lawyer investigated and researched the particular type of leg fracture the boy had. To make a long story short, the lawyer was able to prove, using medical and scientific evidence and testimony, that the only way the injury could have occurred was if the car had hit the boy, instead of the boy running into the car. By fully understanding the injuries in the case, the lawyer was able to turn a claim denied by the insurance company into a substantial recovery to provide for the boy's future.

### *Follow Through With Your Doctors*

The full extent of your injuries may not be obvious immediately after an accident. Some people may feel that they did not sustain a serious injury, only to discover weeks or months later that what they initially thought was a minor injury has worsened and may require significant medical treatment. Because of this possibility, one of the things you should do after an accident is be treated by a doctor for a full evaluation. Depending on the type of injury, it may be best to consult with a specialist. Be certain to tell your doctor about all of your symptoms, no matter how minor

they may seem. You should see this doctor as soon as possible after your accident so that the doctor can appropriately treat you and properly document the full extent of your injuries. This documentation is important because it creates a clear record of your injuries and treatment, which is important in a legal claim.

## **MEDICAL RECORDS CAN BE ESSENTIAL**

One example of a case in which understanding the injuries was crucial was the case of a 50-year-old construction worker, who suffered back injuries after being struck by a dropped piece of drywall. The worker had been employed in the construction industry for 30 years at the time of his accident, and had back pain on and off throughout his working life, just because of the nature of his job. Thankfully, he was always able to recover from whatever was causing his back pain and return to work without restrictions.

In this case, the drywall was dropped by an employee from another company. That company contended that the injured worker's back problems were preexisting, so they were not responsible for the injury. However, after a thorough investigation, the injured worker's lawyer was able to prove that the back injuries were new, and truly were caused by the falling drywall. The lawyer used medical evidence such as a detailed comparison of imaging studies taken before and after the accident, consultation with medical experts and further medical testing, to prove when the injuries were caused by being struck by the dropped drywall. This proof made the difference in the case, allowing the injured worker to recover financial compensation for his medical care, his pain and other damages.

Immediately after the accident, it may be difficult even for the most experienced doctor to tell you how long you will require medical treatment. Depending on your injuries, you may need

follow-up care for the first few weeks or months after you leave the hospital. For some extremely serious injuries, you may need long-term or even lifelong care. Because it is often difficult to predict your needs early in a case, it is important for you to be vigilant about your condition. If you notice a change in your symptoms, you should be certain to tell your doctor about it. You should also, of course, actively participate in your own recovery by following your doctor's orders, taking any prescribed medications and undergoing whatever rehabilitation or treatment your doctor recommends.

Your lawyer will also need to know about changes in your condition and how they affect your life, so he or she can explain the full extent of your injuries and damages to the insurance company and obtain the fairest settlement of your claim. To help your lawyer, you should keep a written record of your medical treatment and how your life has been affected by your injuries. This will also help you refresh your memory later, in case your claim goes to trial months or years after the accident. You should also periodically advise your lawyer of your continued treatment.

When your treatment is completed or your doctor feels you have reached maximum medical improvement, your lawyer may request additional medical records, to better understand how the injuries will affect you in the future.

### ***Types of Injuries***

Under the law, a personal injury is any harm that you sustain, including physical injuries, financial costs and emotional trauma. Injuries also include personal losses, such as losing the care and companionship of a loved one.

As you work to resolve your accident claim, you may hear insurance adjusters, lawyers and doctors discuss different degrees of injuries. You may hear injuries described as minor, moderate, severe or catastrophic. Minor or moderate injuries can be injuries such as sprains, strains, fractures, bruising or superficial cuts. These may be painful, but they usually heal well and quickly, with minimal medical treatment.

You may hear insurance adjusters refer to “soft tissue injuries.” Soft tissue injuries are injuries to the non-bony parts of the body, such as internal organs, nerves, muscles and connective tissues. Sprains, whiplash and pulled muscles are all types of soft tissue injuries. Soft tissue injuries may heal quickly, but they may also take a long time to heal. Some may even result in chronic pain or disability, which can be permanent if not treated properly. Typically, it is harder to recover substantial compensation in these cases than in cases involving serious or catastrophic injuries.

A catastrophic injury is a serious injury that is expected to permanently change the victim’s life. Examples of this type of injury include burns, amputations, spinal cord injuries, paralysis and head injuries (also called traumatic brain injuries). These types of injuries result in the most substantial settlements and verdicts because the injuries can be proven objectively and are more obvious to the insurance company or the jurors.

Although catastrophic injuries are immediately obvious in most cases, sometimes the full extent of the injury is not immediately revealed. This is especially true when the victim suffers a traumatic brain injury, which may also be called a closed head injury. In some cases, the brain may be affected in ways so subtle that only people close to the victim notice changes in abilities, behavior or personality. A closed head injury can be caused by physical trauma (a hard blow or penetrating wound) or violent shaking of the head. It often results from jostling of the brain. Such trauma can damage the tissue of the brain, which in turn affects the abilities controlled by the damaged tissue.

A concussion is the mildest form of brain injury, but more serious brain injuries leave their victims permanently disabled. Naturally, brain injuries affect many aspects of the injured person’s life, including physical movement, the senses, intellectual ability, creativity and even personality. Sometimes, what appears to be a minor concussion or brief loss of consciousness following a car accident can result in a serious closed head injury, with symptoms such as chronic headaches, memory loss, loss of concentration or changes in a person’s personality or behavior.



## ***Permanent Disability***

Unfortunately, some injuries lead to permanent disabilities, either partial or total. A permanent disability is any loss of ability that will continue for the remainder of the victim's life, and at least partially impair the person's ability to work or perform other day-to-day activities.

A permanent disability is often a major, life-changing event for victims and their families. In addition to the disability itself, disabled accident victims also face a higher risk of medical complications than uninjured people and often suffer profound emotional injuries because of their disabilities. Those with permanent disabilities may require extensive medical help, such as home health care nurses, extensive inpatient medical care and rehabilitation, or the need for long-term accommodation in an assisted living facility. Someone who has suffered a permanent disability is much more likely to recover a large judgment than someone who has fully recovered.

## ***Medical Expenses***

As everyone who lives in modern society knows, health care can be very expensive. Even if you have medical insurance or good medical coverage through an auto insurance policy, you may be charged thousands or tens of thousands of dollars for a lengthy hospital stay, a trip to a specialized care center or repeated doctor visits and physical therapy appointments. For someone who has suffered a catastrophic injury or a permanent disability, lifelong medical treatment may cost millions of dollars.

In a personal injury claim, these medical expenses are part of the damages (monetary compensation) you are entitled to recover. These expenses are not limited to direct health care costs, but may extend to any medical expense, including prescriptions, medical devices and the cost of transportation to and from your doctor's office. Recovering your medical expenses is an essential element of your personal injury claim.

If your case involves a catastrophic injury, your lawyer will

want to not only determine your existing medical costs, but also hire medical experts to determine the likely costs of your future medical treatment. In some cases, your law firm may need to hire an expert to develop a “life care plan” that predicts all of your future medical needs. This expert will evaluate your injuries, review your medical records and project the cost of future medical care.

### ***Lost Income and Loss of Earning Capacity***

If you are unable to work because of your injuries, you are entitled to claim the losses you suffer. In addition, if you have a disability that affects your future earning potential, you are also entitled to recover monetary damages for loss of the income you would otherwise have earned.

For example, suppose that you can no longer do the specific job you had at the time of the accident, but you find a job within your physical limitations that pays less than your previous job. In this case, you would be entitled to recover not only the income you lost from the old job, but also any future income you lose because you had to take the lower-paying job. If you are self-employed and your injury results in your being unable to do your job, you may need to hire someone to replace you. You may be entitled to compensation for the extra money you pay to that person during your recovery.

In addition to your lost income and loss of future earning capacity, you may be entitled to recover any loss of benefits, such as health insurance, pension plans, contributions, bonuses or other benefits directly associated with your employment.

An experienced personal injury lawyer will help you determine all of your financial losses so you are able to seek compensation for those losses. Your lawyer may need to hire experts, such as a vocational expert (an expert in employment opportunities) or an economist. These experts will review your financial and medical records, then calculate and predict the economic losses you have suffered from the accident. If you are self-employed, you

can prove your economic losses through tax returns and other business documents.

### ***Pain and Suffering Damages***

Another part of your personal injury claim is the way your injuries affect your daily life including your pain and suffering. Personal injury victims are entitled to recover damages for past and present suffering as well as any pain and suffering they may experience in the future. These damages for pain and suffering are different types of damages than those you would claim for your economic losses or physical injuries. For example, someone who suffers chronic pain after an injury is entitled to be compensated for that pain and suffering.

Pain and suffering are not the same. Physical pain is a sensation and suffering is a mood. Pain is the awareness, through a stimulus in the brain, or something that could damage your tissues and is followed by a feeling of discomfort or unpleasantness. By contrast, suffering is an emotion that is considered the opposite of happiness or enjoyment, and involves cognitive awareness of an unpleasant situation, or a lack of the pleasure the victim could have expected had it not been for the accident. Suffering may involve many emotions, including depression, anxiety and humiliation. For example, embarrassment and anxiety may result from a disfiguring facial injury, an amputation, incontinence, paralysis or another injury that severely affects a person's quality of life.

It is the job of an experienced personal injury lawyer to help you prove specifically how your injuries have affected your life and your family. The ultimate goal of a personal injury claim is to obtain the maximum possible compensation, so you may return to your life as it was before the accident. Although injuries make that impossible in some cases, you are entitled to seek compensation for every injury you suffer. It is the goal of a personal injury lawyer to help you obtain the fullest and fairest compensation permitted by the law.

## ***Loss of Consortium***

In many states, the law allows the spouse of an injured person to recover damages as well, even if the spouse was not physically injured. This is called a loss of consortium claim.

Black's Law Dictionary defines "consortium" as the "conjugal fellowship of husband and wife, and the right of each to the company, society, and cooperation, affection and aid of the other in every conjugal relation." Loss of consortium includes not only material services that you may lose because of a spouse's injury, but such intangibles as society, guidance, companionship and sexual relations. Usually, you may only make a loss of consortium claim where one spouse has been seriously injured, and that injury has had a direct negative effect on the marital relationship. Generally, you cannot make a loss of consortium claim if you are merely living with the injured person. A marital relationship is essential to making a loss of consortium claim.

Often, the non-injured spouse, at the direction of an experienced personal injury lawyer, will present compelling testimony at trial. This helps convince a jury that an accident has affected not only the marital relationship, but also the family. Juries often empathize with the spouse who was not injured and better appreciate how the injuries have affected the marriage and the family. An experienced personal injury lawyer will help you determine whether you should add a loss of consortium claim to your personal injury claim.

## ***Common Defenses Used by Insurance Companies***

As experienced personal injury lawyers, we have years of experience with the misrepresentations, exaggerations and outright lies insurance companies commonly use after injury victims make a legal claim. One common defense is to suggest that the victim suffered from similar injuries before the accident, or that the victim was predisposed to the type of injury he or she suffered. Another defense is to try to prove that the victim's injuries were not caused by the accident, but by other events in the victim's

life. When insurance companies cannot dispute the fault of their insureds, they might resort to the age-old tactic of attacking a plaintiff's character or prior lifestyle.

An experienced lawyer will successfully challenge these common defenses and help the victim present their injuries clearly, concisely and coherently. For example, even if you suffered from a similar medical problem (such as a back or neck condition) before the accident, your lawyer can help you prove that your previous injury was made worse as a result of your accident. Most state laws provide that a wrongdoer "takes his victim as he finds him." This means victims are entitled to recover full compensation even if they were particularly susceptible to an injury, or predisposed to experience greater pain or suffering than could have been foreseen by the defendant.

For example, if you have a bad back that never required surgery, but then you are involved in a serious car accident that aggravates the back condition enough to require surgery, you are entitled to recover compensation for the surgery.

### ***Doctors and Other Medical Providers***

If you have been seriously injured for the first time, you may be encountering types of doctors that you have never heard of before. The following are some of the medical specialists that personal injury victims are most likely to encounter.

An **anesthesiologist** administers drugs to provide pain relief during surgery. Some anesthesiologists also treat chronic pain. Anesthesiologists who treat pain are also sometimes called specialists in **pain management**.

A **burn specialist** is exactly what it sounds like — someone who cares for patients with severe burns.

A **dermatologist** handles diseases and injuries to the skin, including burns.

A **doctor of emergency medicine** usually works in an emergency room. This doctor may have been the first doctor to treat you after the accident.

The doctor you most likely see regularly is probably a **family practice** or **general practice doctor**. Depending on your injuries, that doctor might take an active part in your care or refer you to a specialist.

A **neurologist** treats injuries and abnormalities of the nervous system, which includes the brain and spinal cord. This is the doctor you will see if you have a brain or spinal injury. If you need surgery, you might also see a **neurological surgeon** or **spinal surgeon**.

An **orthopedic doctor** treats injuries to the bones, muscles and joints, sometimes including amputations, as well as broken bones.

A doctor who treats problems with joints is a **rheumatologist**. For accident victims, doctors of **plastic surgery**, **reconstructive surgery** or **cosmetic surgery** work to correct damage to the body or unsightly scars, and to restore functions or prevent loss of functions.

**Physical therapists** and doctors of **physical medicine** and **rehabilitation** work with injury victims to restore movement or function to areas affected by an injury.

**Psychiatrists** handle mental health issues, including emotional injuries caused by accidents.

Specialists in other specific parts of the body include **nephrologists** (kidneys), **hepatologists** (liver), **gastroenterologists** (the digestive system), **cardiologists** (heart), **pulmonary specialists** (lungs) and **podiatrists** (feet and ankles).

### *Common Medical Tests*

If you sustained any sort of internal injury, including an injury to the spine, brain or internal organs, your doctor may ask you to take one of these special tests. This is good, because the more information you have about your injuries, the easier it will be to begin healing. This will also make it easier for your lawyer to prove your injuries. Tests you might take include:

**X-rays** are the radiation tests we are all familiar with; you have

probably taken one at the dentist if you had your wisdom teeth removed. They show bony structures, so they are best for diagnosing bone injuries and cannot be used to diagnose soft tissue injuries.

**CT scan**, sometimes known as a **CAT scan**, is short for computerized tomography. A CT scan uses multiple x-rays taken in a circle around the same point to build a better picture than one x-ray could provide alone, using a computer to combine them.

**MRI** is short for magnetic resonance imaging. If you undergo an MRI, the doctors will ask you to lie down in a large tube that uses harmless magnetic radiation to look at soft tissues of the body. Sometimes they will also ask you to drink or have an injection of a substance that makes those tissues easier to see. Because this technology uses magnets, you cannot use it if you have a pacemaker or other metal implanted in your body.

**PET scan** is often used in tandem with a CT scan. In a PET scan, the patient is injected with a harmless substance that can be seen by the scanner using radioactivity. Unlike CT scans, PET scans show your body's metabolic activity rather than just structures of the body. The images they produce are also three-dimensional.

**Ultrasound tests** use high-frequency sound waves that bounce off internal structures of the body to build an image. The image it builds is not as detailed as images from other methods, but because it does not use radiation, it may be the best choice for people with certain conditions. It is also less expensive than an MRI. Doctors may use ultrasound studies to look at internal organs, connective tissue, bones, blood vessels and eyes.

**Nerve conduction study** is an electrical test that can detect problems with your nerves. In this test, one electrode is placed over the nerve being tested, while another is placed in a "downstream" area of the nervous system. The speed it takes for the electricity to travel between them determines whether there is nerve damage.

**Electromyograph study (EMG)** shows muscles' activity by measuring the electrical current they produce when they are in motion. This might be used for people with nerve damage, muscle weakness or the conditions that might cause them. EMG involves doctors either inserting a thin needle into the muscle being tested or placing an electrode over the area, then measuring the electrical impulses of the muscle.

**Endoscopy** uses a flexible tube with a light and a camera to look inside natural openings in your body, such as the throat. This study is most commonly associated with tests of the stomach or colon, but can be used in any area with a natural opening.

### *Health Care Facilities*

If you are seriously injured, you may end up at a health care facility more specialized than the hospitals we are all used to. If you need this kind of care, you might even be transferred from your original hospital to one of these facilities:

A **Trauma center** handles patients who have sustained a sudden and serious physical injury. They are ranked from Level I to Level IV, with the most serious cases handled at Level I facilities. Because they are expensive to run, they are not common; patients outside major cities may have to be airlifted to one.

A **Rehabilitation center** is a facility where patients work to reestablish or relearn abilities they lost because of a serious injury, through therapy. **Physical therapy** helps with movement or prevents loss of movement, while **occupational therapy** might focus on relearning activities of daily life or finding ways to perform them despite a new disability.

**Burn centers** focus on patients with serious burns. They not only treat burn injuries, but work to help patients return to everyday life, often with therapists, social workers, psychi-



artists and other professionals who are not conventional doctors.

**Assisted living facilities** may be appropriate for injury victims who need long-term physical or occupational therapy and help with everyday living. This might be true of someone with a severe brain injury or spinal damage. In addition to providing meals and housekeeping, as at a nursing home, the staff at an assisted living facility works with patients to help them regain independence and abilities. Some patients are able to return home eventually; others may need to remain in a facility throughout their lives.

**Home care** is an option for patients whose injuries do not require full-time hospitalization. A nurse or other health care professional might visit every day or a few times a week. Depending on the injuries, the professional might do anything from changing bandages to administering a treatment with an IV to helping with personal needs.

## CHAPTER THREE

# CHOOSING A LAWYER

The lawyer you choose is one of the most important factors in the success or failure of your case. It is a decision you should make with care. Unfortunately, choosing a lawyer can be intimidating for people who have never been through the process before. You may be justifiably concerned about ending up with a lawyer with bad ethics or poor skills. In this chapter, we hope to ease those fears and provide a basic guide to finding a personal injury lawyer.

The first thing to consider is that lawyers, much like doctors, often concentrate their practices in specific areas of the law. If you need hip replacement surgery, you would see an orthopedic surgeon, not a cardiologist. Similarly, if you are in an accident, you will not want to hire a lawyer who concentrates his practice on divorces, real estate, criminal or any other such type of law. Another type of lawyer may be able to help you, but he or she will not have the same experience and skills that a personal injury lawyer brings to a personal injury case. Personal injury lawyers understand the legal, procedural and evidentiary strategies that can maximize the value of your personal injury claim, because they work with these issues every day.

At our firm, we find that most of our clients come to us because of a recommendation from someone they know who has used us in the past. For that reason, we recommend that you begin the search by talking to your family and friends. Ask if anyone can refer you to a personal injury lawyer who helped them get good results, or who they have heard good things about.

If nobody you know can recommend a lawyer, you can also start by considering lawyer advertisements. You have probably seen lawyer ads on television, in newspapers or in the Yellow Pages. Consistent advertisements from a particular lawyer show that his firm has been practicing for all of that time, and is likely

to have the experience and resources necessary to take on insurance companies. In fact, insurance companies sometimes decide whether or not they will settle a case before a trial based on the reputation and experience of your lawyer.

### WHY HIRE A LAWYER?

The question may enter your mind: *Should I even hire a lawyer, as opposed to just dealing directly with the insurance company and its adjuster?* You should know that although the insurance adjuster may seem friendly and cooperative, he or she works for the insurance company that will pay to settle your claim. If the insurance adjuster can persuade you to settle your claim for less than what it is worth, that is good for the insurance company but bad for you. Unlike a lawyer you hire, the insurance company has no legal duty or financial incentive to treat you fairly!

Case in point: A working-class mother had a serious accident with a commercial tractor-trailer rig. She was injured in the accident and her car was so badly damaged that it was useless, both of which posed challenges for this mother of three young children. The very next day, she was visited at home by a representative from the truck driver's insurance company. The insurance adjuster was very skilled at creating a sense that he was there to help her deal with the problems the accident had caused. After learning that she had no medical insurance, he told her that he believed she would make a good recovery, based on his experience and the way she was able to get around in her home and carry one of her children. Based on this evaluation, he offered her cash to repair her damaged vehicle, and \$1,000 to compensate her for the trouble and pain she may have experienced. All she needed to do was accept the cash that day and sign the release, barring her from making any further financial claim.

Although tempted, she called her husband at work. He told her not to accept or sign anything and to call a lawyer immediately. After contacting a lawyer, she eventually found that she had severe injuries to her shoulder and would need a period of treatment and testing to see if she could recover without surgery. Fortunately, she recovered without surgery after receiving the necessary treatment, and was fairly and fully compensated for her months of suffering and damages. Ultimately, she received nearly 25 times what the adjuster wanted her to accept. As you can imagine, this client and her family were immensely pleased with their decision to retain a lawyer rather than deal directly with the insurance company

If you are comfortable with computers and the Internet, you can try an Internet search. Using a search engine like Google, Yahoo! or MSN, you can easily search by both your location and the legal specialty you need. There are many ways to search for this information. Here are a few tips that may be helpful:

1. Search for a phrase instead of a single word. “Auto accident lawyer” will probably turn up more useful results than just “lawyer.”
2. Put the phrase you search for in quotes. This will tell the search engine to look for the entire phrase as you searched for it, not the individual words in the phrase. Without quotes, your results will be greater in number but not nearly as relevant to your search. Just make sure to spell everything correctly.
3. Narrow your search by including some geographical information. For example, if your auto accident happened in New York, you might want to search for “New York auto accident lawyer.” You need a lawyer in the state where the accident happened, even if that is not the state where you live or have legal residency.

## ***The Initial Consultation***

When you first call our law firm, your call will be taken by a lawyer. The lawyer will ask you for basic contact information, as well as the details of your accident. Based on your answers, a lawyer will make an initial assessment of your case and may schedule a consultation. If you cannot travel to the law firm, we are willing to have the consultation on the telephone, or meet you in your home or at the hospital. At our firm, we make every effort to accommodate clients and potential clients with this type of need.

During the initial consultation, you will be asked for details about your accident and your injuries. Because details can be hard to remember, and because some clients feel intimidated or stressed by this meeting, we recommend that clients bring all of the documents they have that are related to the accident — things like police reports, hospital bills, and your insurance policy. We always do our best to put clients at ease and explain everything as thoroughly as possible, without “legalese.”

Questions the lawyer is likely to ask at your consultation include:

1. Did anyone receive a ticket?
2. Was a police report made? If so, do you have a copy?
3. Did you take photos of the vehicle?
4. Did you take photos of your injuries?
5. Did you give a statement to police, insurance adjusters or anyone else?
6. Were there any witnesses, and if so, did anyone get their contact information?
7. How much damage was done to your vehicle?
8. What medical treatment have you had thus far?
9. What medical treatment, tests or follow-up are currently recommended by your treating physician(s)?
10. How are you feeling?
11. How are your bills being paid?
12. What insurance companies are involved?

Once you have discussed your claim, the lawyer should explain his fees. Most personal injury lawyers work on what is called a contingency-fee basis. This means that you are not required to pay for legal services unless and until the case has been won. The lawyer should have a fee agreement that specifies that he will be paid with a percentage of the financial settlement or verdict. (It is possible, and common, to resolve claims before filing; see Chapter Four for more.)

This arrangement may sound strange, but it remains popular because it allows lawyers to take strong cases brought by clients who might not be able to otherwise afford legal fees. We believe this is an essential and valuable part of our legal system, providing access to justice for everyone, no matter what their income or background might be.

## **CHOOSE YOUR LAWYER CAREFULLY**

Choosing the right lawyer can have a substantial effect on the results of your personal injury claim. An experienced personal injury lawyer who meets you and takes the time to listen carefully to the facts of your case can sometimes save you substantial financial and personal hardship. Take the case of a 39-year-old man who was hurt in an auto accident, who had already undergone one cervical spine surgery to correct injuries from his accident. To settle his claim, the insurance company had offered him just \$150,000 out of a total available insurance policy of \$250,000. What's more, the man did not realize that he had an additional \$750,000 in underinsured motorist insurance, which could cover his treatment if his claim exceeded the \$250,000 limit.

The man and his wife consulted several personal injury lawyers to discuss whether they should accept the insurance company's offer. The first two lawyers they consulted did not delve into all of his medical problems. Importantly, they did not identify the fact that he would likely require future surgeries, which could jeopardize his livelihood as a salesman who traveled thousands of miles a year. Fortunately, the couple sought out the advice of one of the experienced personal injury lawyers who wrote this book. After listening carefully to the prospective client, the lawyer realized that this gentleman was a likely candidate for future surgeries that could threaten his career. The lawyer recommended that he wait for several months before considering any settlement offers, to see whether he needed more treatment or had other problems related to the accident.

As the lawyer suspected, the man ultimately needed two additional cervical spine surgeries, which resulted in permanent physical limitations. He was terminated from his job and ultimately had to accept a job paying significantly less. Based on these lost future earnings and his additional surgeries, the lawyer was able to negotiate a settlement that was over six times the amount of the offer from the defendant's insurance carrier. In this case, waiting to make a claim until he fully understood his injuries, and hiring an experienced personal injury lawyer, helped the man avoid the financial and medical problems that might have resulted from taking the smaller initial offer.

### ***What Is the Next Step?***

When you find the right lawyer, you will sign a contract formally retaining start your the case, your lawyer will obtain your medical records, doctors' notes and medical test results, along with a copy of any accident report and any insurance information or statements the insurer might have recorded. If necessary, the lawyer might also retain a private investigator to find important

but elusive information about your case. All of this case development takes time. At our firm, we have found that clients really appreciate being kept informed, whether or not we have anything significant to report. For that reason, we update clients regularly about the status of their cases.

In this first stage, your lawyer is working to understand the facts and the strength of your case. After the case is developed, your lawyer can begin negotiating with the other side to get you the best possible compensation under the laws of your state and the facts of your individual case. You may end up settling the case outside of court or participating in a full trial. You will learn more about this process, the stages of a lawsuit and your own responsibilities in Chapters Four through Seven.

### ***What if My Case Is Rejected?***

Unfortunately, sometimes lawyers must turn down cases. In order for a lawyer to accept a case, he or she must consider many factors, including the severity of your injuries, which parties were at fault, conflicts of interests, legal limitations, time constraints and more.

At our firm, turning down cases is one of the least favorite parts of our work. When we have to tell clients that we cannot take their cases, we do our best to refer them to a local bar association or another lawyer who may be able to help them. We also try to provide them with educational materials, like this book, to help them better understand the system and where their cases may fit into it.



## CHAPTER FOUR

# YOU HAVE BECOME A PLAINTIFF — WHAT NOW?

You have been injured through someone else's actions, and you know you may be entitled to recover financial damages. You have decided to hire a lawyer to represent you and bring a legal claim for these damages. You are now a plaintiff.

The most important thing for you to do now is focus on getting better. That means you need to follow your doctor's advice and keep all of your appointments. If your doctor prescribes physical therapy, tests or other medical procedures, you should follow through with his recommendation. If your doctor writes you a prescription for medication to help you heal or manage your pain, you should not delay having it filled at the pharmacy.

Not only will this help you heal, but it also creates a "paper trail" that will be important for your personal injury lawsuit. Your doctors' records are important medical evidence in your case and help the lawyer determine the value of your claim.

### *Keeping Diaries and Calendars*

Your lawyer may ask you to keep a diary, a calendar of your daily activities or both, focusing on your physical and psychological injuries. This may seem like a chore, but it can be important for your legal case because it helps to prove your claims about your injuries, your pain and how they have affected your life. If you sustained serious injuries in the accident, your treatment may continue for months and your healing patterns may change over time. It is important to keep a record of the changes you notice, both positive and negative, starting as soon as possible after the accident. In some cases, even your treating physician may benefit from your notes.

## YOUR DIARY MATTERS

Clients and potential clients frequently tell personal injury lawyers “I am not the suing type.” Many people are injured by someone else’s wrongful or negligent act, yet they are either afraid of litigating or do not know what it takes to bring a claim. Essentially, bringing a claim means that you become a plaintiff, and this may seem like a daunting task to many people. However, the simplest tasks assigned to plaintiffs can often have huge rewards.

This was the case for one client who came looking for lawyer nearly two years after his accident. He was severely injured when his van was run off the road by an unknown driver, causing his right arm to be paralyzed. He told his lawyer that he waited so long to get legal help because he assumed there was no one to collect from, since the car that caused the accident was never located. He did, however, keep a diary of his daily life over the two years since his accident. In it, he noted every time a nurse came to his house, every time his mother had to drive him to therapy and even how excruciating the pain was on a daily basis.

After investigating, his lawyer discovered that the client’s company van had uninsured motorist insurance that should cover the accident. After a two-week trial, he was awarded a multimillion dollar verdict. This daily diary of his life was very important, because it helped explain to the jury all that he had been through. Even though he did not know at the time that he would eventually become a plaintiff, common sense dictated much of what he did that resulted in such a large recovery.

In your diary, you should focus on how you feel and how you are coping with your injuries. Make these entries as often as you feel a change; there is no need to make an entry every day. To begin, write down your name and a start date. On any day after the accident when you notice any changes in how you feel, or experience anything unusual, write it down. Include the date

and a brief description of what you are feeling and what you were doing when you felt it. Include any descriptions of things that seem important, such as events that seem to trigger pain.

It is important not to forget the diary as time goes on. At the beginning, you may make daily entries, but as you start to feel better, you may find yourself making entries that are further and further apart. It is absolutely fine to make fewer entries if you have less to say, but it is important not to forget your diary altogether. Unfortunately, some injuries continue to have occasional side effects, even after they seem to have healed. Try not to tuck your diary so far out of sight that you forget about it.

You should use the calendar to record each of your doctor's appointments or other medical care. When you record a diagnostic appointment, be sure to note the type of test, such as an MRI. It is better not to use this calendar to record social appointments or chores that are not relevant to your case. However, you should also record the dates and times of appointments with your lawyer, and any deadlines or court dates he or she provides.

You should take your diary and calendar with you both to doctor's appointments and to meetings with your lawyer. They will help your doctor treat you better and keep your lawyer updated on your injuries and how they are healing.

### ***Pre-Litigation Settlement***

Many of our clients are surprised to learn that they might be able to settle their cases before they even file their lawsuits. In fact, a significant percentage of personal injury cases are settled during the beginning stages of the case. This is possible because part of the job of a personal injury lawyer is to negotiate with insurance companies, both your own and the company or companies for the other parties involved. This type of quick settlement is most likely when there is little or no question that the other driver is liable for your injuries, such as when the driver has admitted responsibility, or when he or she got a ticket. It may also happen when liability is still in question, but your injuries are especially severe.

During the pre-litigation process, your lawyer verifies that the liable person or people have insurance coverage, and determines whether your own insurance policy provides coverage for the accident. Your lawyer will also investigate the facts surrounding the accident, review the police report, interview the witnesses, and inspect the scene of the accident in order to compile the best possible information on how the accident occurred and who is at fault. And he will also review your current and prior medical records, to prove that your injuries stem from the accident and to understand how they relate to any pre-existing medical condition.

Once your lawyer has done all of this, he can begin to determine what your legal claim may be worth, financially. This is generally expressed as a range of values (such as \$200,000 to \$500,000), because of the uncertainty of settlement negotiations and trials.

At some point during the course of your medical treatment, your lawyer may demand a settlement from the insurance company, in an effort to recover the compensation you are entitled to without a formal lawsuit. Usually, the insurance company will respond with either an offer to settle or a request for additional information. That additional information may include copies of MRI films, tax returns, records of a physical examination of you by a doctor of your choosing or other information the insurance company feels is important to understand your case. Once it has all of the necessary information, it will be in a position to make a settlement offer. Your lawyer will notify you of this offer so that you can discuss it and determine whether you find the offer acceptable.

### ***Pre-Litigation Mediation***

Sometimes, but not often, the parties will agree to mediation before continuing to litigation. The mediation may come at the suggestion of either the insurance adjuster or your own lawyer. Mediation allows both sides to present the relevant facts of the case and the extent of the costs and damages to an independent

third party, a mediator, who will work to help them agree on a settlement. These independent mediators are often retired judges or people with special court certification as mediators, so they should have experience with the laws and issues that are important in your case. (For more on mediation and other forms of alternative dispute resolution, see Chapter Six.)

If no settlement is reached at mediation, the case is free to proceed to litigation. Any failure to settle at mediation will have no effect on your right to continue your case.

### ***The Case Settles***

If a settlement is reached, either through negotiation or pre-litigation mediation, the insurance company will send a check for you. They will also send a legal document called a release for you (and if necessary, your spouse) to sign. By signing the release, you discharge the insurance company and the party who is liable for your injuries of any further obligations or payments related to the injuries and damages from the accident. You must sign this release in order to collect the settlement.

Your lawyer should have a trust account, which holds money that has been entrusted to him but belongs to clients. Once the settlement funds clear through this trust account, your lawyer will prepare a settlement statement or closing statement for your signature. This is another legal document, which sets forth the total amount of the settlement and any deductions for lawyers' fees and costs, or any medical bills or liens that are to be paid from the settlement. You will have the opportunity to review this statement, and your signature will authorize the law firm to give you your settlement funds. Once you receive the proceeds from the settlement, your case is successfully concluded. For more on settling and closing your case, please see Chapter Six.

## CHAPTER FIVE

# LITIGATION

Even though many claims are resolved before a lawsuit is formally filed, there are some insurers that simply refuse to settle a claim for a fair amount. The extent of your injuries, the type of accident you had, the amount of insurance coverage available, who was at fault and the difficulty of proving that fault are all factors that may prevent you from reaching a fair and quick settlement with the insurance company. If you are unable to reach a fair settlement, your lawyer will probably recommend filing a lawsuit. However, even if a lawsuit is filed, your lawyer will continue trying to settle your case before the trial.

### ***When Do You File Your Lawsuit?***

The law of each state sets deadlines by which you must file your lawsuit. These are called Statutes of Limitations. For example, the statute of limitations for most personal injury lawsuits in Pennsylvania is two years. They are usually calculated either from the date of your injury or from the date you discovered an injury that was not immediately obvious. (They may also be extended for minors and people with certain disabilities.) Statutes of limitations are different in each state and often change according to the type of case you have, but all of them are strict deadlines. That is, if you wait too long, you will not be able to pursue your case, no matter how strong it is. One of the first things your lawyer will do after learning about your case is calculate the statute of limitations that applies, and take any action necessary to preserve your right to sue.

There are also legal deadlines that apply in certain specific circumstances. For example, if you plan to sue a government agency, you are frequently required to give that agency notice

within a relatively short period of time, or file an administrative complaint, before you may sue. Because these deadlines can be as short as 30 days, and because missing them can take away your right to sue, it is essential to learn about them and take action as quickly as possible. This is one reason why personal injury lawyers prefer to meet you as soon as is practical after your accident.

### ***Filing a Lawsuit***

Your lawyer's office should take care of the actual, formal filing of the lawsuit. Usually, you will file your case in the county where your accident occurred, or in the county where the defendant lives or does business, depending on the circumstances and the laws of your state. The county where the case is filed is sometimes called the "venue." Your lawyer can explain how these rules affect your case.

A lawsuit formally starts when you file a written complaint, a writ or a petition with the court. The complaint first describes the facts of the case, your injuries and why the person you are suing is responsible for your injuries. It then separately lists each "cause of action," which is a reason for suing, and finishes with a request for financial compensation for the injuries you have listed. It may be quite detailed, depending on your state's requirements, but it always contains enough information to tell the defendants why they are being sued.

Along with the complaint, in some jurisdictions your lawyer will also file a summons or citation, a document that will be served to (that is, formally given to) the defendants. The summons explains how the defendants should respond to the complaint and gives the deadline to do so. As a courtesy, your lawyer may send a copy of the complaint to the defendants' insurance company or companies.

When this complaint is filed, your lawyer will also specify whether you prefer a trial by jury or a "bench trial," (a trial in which a judge makes most of the decisions). In a jury trial, a group of randomly selected citizens from the area decides all of the questions of fact while the judge acts as a referee and resolves

legal questions. By contrast, in a bench trial, a judge decides questions of fact as well as questions about the law. Bench trials are less common than jury trials. If your lawyer recommends one, he or she should be able to explain why.

### ***Who Answers the Complaint?***

After the complaint is filed and served, the defendant's insurance company will usually assign the matter internally to an employee called a litigation claims adjuster, who will oversee the claim. This person's job is to try to resolve your claim before trial, or handle the claim in a way that helps the insurer at trial. The insurance company may take extra steps to resolve your claim after the lawsuit is filed, so you may be able to settle at this stage. However, for this chapter, we will assume that you will not settle right away.

The insurance company will also assign one of its own lawyers, or hire an outside lawyer, to represent the defendant in court. The first task for this lawyer is to prepare a document called an answer to file with the court. The answer will either admit or deny the allegations of your complaint; it may even raise additional issues such as that other parties are at fault for your injuries and should be added to the lawsuit. The answer may also set forth any defenses the defendant is planning to use in the case that explain why he or she is not responsible for your injuries.

It is only after the answer is filed that a trial in your case will be scheduled. If the defendant fails to file an answer at all or breaks a rule when filing it, you can ask the court to simply declare you the winner by asking for a "default judgment." This is not common. A "default judgment" is like a sports team forfeiting a game because it never showed up to the playing field.

### ***Discovery***

Discovery is the process of exchanging information with the other side in a lawsuit. This is a formal legal process governed by set rules. The law requires that all sides in a lawsuit share



information about the case with one another on request. (Certain things, such as privileged communications between you and your lawyer, are exempt from discovery even if they are specifically requested.) In most cases, the information exchanged includes information about your accident, the injuries you sustained, the nature and cost of your health care, the effect of your injuries on your life and your family, your employment background and your educational background.

Discovery is extremely important because it permits both parties to learn about the facts and issues of the lawsuit before trial. This allows both sides to build a case and evaluate the strengths and weaknesses of their positions. During settlement talks, the information you receive during discovery can be invaluable.

## **YOUR RECORDS ARE ESSENTIAL IN DISCOVERY**

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As a plaintiff, you now have the responsibility to prove your case. In contrast, the defendant does not have to prove anything. Because the burden to prove your case is on you, your actions as a plaintiff are very important. Take the case of a 37-year-old construction worker who was hurt when a load of cement blocks were partially dropped on him, driving him to his knees. This injury caused him debilitating back pain, and because of it, he was never able to return to work.

The problem in the case was that all of the damages were based on an invisible injury — pain. Pain is very difficult to prove. But in this case, the injured worker was extremely consistent about attending all of his medical appointments, kept very good records, established reliability with his medical providers and had a long-established reputation for honesty and hard work.

Because of this consistency and reliability, all of the witnesses in the case were willing and able to give favorable testimony. The injured man's medical providers were able to explain and support his claim for the unseen injuries. As a result, his lawyers were able to convince the defendants of the substantial risk of taking the case to trial, winning an out-of-court settlement large enough to supplement the man's lost income and provide security for his family. In his role as a plaintiff, the worker did his job successfully so that his lawyers could do theirs.

### *Interrogatories*

Typically, the first step for both sides in discovery is to send written questions for the other side to answer. These written questions are called interrogatories. In many areas, you will answer these questions under oath, even though they are written and you will not be in a courtroom. Interrogatories will usually ask you about the accident, your background and your damages, including any past injuries or problems for which you have sought health care, as well as any previous legal claims in which you were involved. You may also be asked to provide details about any income you lost or information about your past employment. The goal is to build a story about the relevant parts of your life before and after the accident. When you have written your answers, you will sign them and they will be sent to the defendant's lawyer.

We find that some clients are initially reluctant to answer these questions, because they can be personal or stray into topics considered impolite or irrelevant. Your lawyer can and will formally object to an inappropriate interrogatory, or to a number of interrogatories that exceeds limits set by your state's laws. However, these questions are usually being asked because they are relevant to your case. Most of the information about your health and your finances is considered "discoverable," which means it is a fair question during discovery. Your responses help your own lawyer

and the other side gather the information they need to evaluate your claim, which helps you get closer to settling your case fairly.

### ***Requests for Admissions***

Another written discovery tool is a request for admissions, which is simply a document asking one side to admit or deny the facts it specifies. When you might get these requests depends on the rules of your court. If you dispute or deny a request for admissions, you must write down the facts that you believe support your position. Your lawyer should help you with this. Using requests for admissions helps both sides determine which facts are agreed upon, which are disputed and which must be part of the lawsuit.

It is important to respond to requests for admissions in a timely manner, because if you miss the specified deadline, the court will act as if you admitted to everything asserted in the request.

## **THE IMPORTANCE OF BEING EARNEST DURING DISCOVERY**

Complete disclosure of information during discovery is an important way to come to a settlement, but it is also important if you end up in trial. This was illustrated by the case of a client who failed to inform her lawyer that she had been denied a promotion at work because of her injuries, resulting in over \$20,000 a year in lost income. She thought it would be better to “surprise” the insurance company with this information at trial.

However, because this client had failed to reveal this information in discovery, the defendant was able to prevent her from testifying about it at trial, because it had not had an opportunity to investigate that part of her claim. The judge ruled that because the information was not provided before trial, as required by the rules of discovery, it could not be presented to the jury.

This mistake by the client prevented her from recovering compensation for lost wages that totaled \$400,000 over her lifetime. The client still won her lawsuit, but the judgment did not include any compensation for her lost future income. Not only could she have won more by disclosing this loss before trial, but she could also have increased her chances of settling the claim for a larger amount — without going to trial at all.

### ***Requests for Production***

Requests for production of documents — that is, asking the other side to send copies of specific papers — are an important part of discovery. Requests for production may come with the interrogatories, but both sides are free to request production of documents throughout discovery.

Requests for production should be requests for documents that are relevant to the lawsuit, the accident or your damages. This often includes copies of your health care records, receipts or invoices for your health care expenses, accident reports, witness statements and pictures of the scene of the accident. If you are claiming a loss of income, you will probably be asked to provide your tax returns for several years prior to the accident. You may even be asked to produce any notes or diaries you have kept. Either side may request any discoverable document. Your lawyer may review the request for production with you and help you copy the documents and send them to the defendant's lawyer.

In addition to requesting documents and evidence from you, the defendant's lawyer may also ask other people or companies for information. Most commonly, he or she may request copies of your medical records directly from your treating doctors. The defendant may also be entitled to request information about you from your employers, schools you have attended or from the military, if you have served. Additionally, if you have applied for Social Security benefits, the defendant's lawyer may request information about your claim from the Social Security Administration. You

may feel uncomfortable with these requests, but if the information is discoverable, the defendant's lawyer is entitled to ask for these documents. In fact, you may even be required to sign forms authorizing release of the information.

## *Depositions*

A deposition is a little like an oral version of interrogatories. When you give a deposition, you answer questions from the lawyer for the defendant in person, under oath, and usually with all of the parties and their lawyers in the room. A court reporter will be hired to take down the questions and your answers. Either side may request a deposition at any time, but the request is most likely to come after you have responded to interrogatories and requests for production of documents.

Many of our clients are nervous before depositions, so good preparation is important. Your lawyer will be there with you throughout the deposition and can object to inappropriate questions or ask for breaks if you need them. This is important, because it is essential for you to stay calm and professional during a deposition. This is the first opportunity for the other side to evaluate you in person, so you should appear neat and as confident as possible. Your lawyer will advise you on what to wear and how to behave.

Your lawyer (or his or her staff) should also prepare you ahead of time for the questions in your deposition. You may be asked to attend a meeting where you review all of the written information your lawyer has, as well as any responses you gave to interrogatories. It is especially important to make sure that your testimony is truthful and consistent with these interrogatory responses, because the lawyer for the defendant will probably question you closely about any inconsistencies. Your deposition preparation should also help refresh your memory about the details of your injuries, your treatment and your recovery.

When the deposition begins, you will be asked to swear an oath to tell the truth to the best of your knowledge, just as you would in court. The court reporter will swear you in, then type

your testimony into a written transcript that will be available to the lawyers later. In some cases, the deposition is also videotaped, which means that there will be another person operating a video camera and filming the deposition.

The lawyer taking your deposition will introduce him- or herself and may briefly explain the procedure for the deposition. The lawyer may start by reviewing the information in your written interrogatory responses. The deposition is an opportunity for the other side's lawyer to clarify or have you explain those written answers, and to obtain additional information. It is important to make sure that your testimony is truthful and consistent with your interrogatory responses, so the other lawyer does not detect a seeming inconsistency between your oral testimony and your written testimony.

Your answers should be based on your own personal knowledge. Do not guess in making an answer. If you do not know or remember the answer to a question, you should say so. Many people feel embarrassed to admit they do not know something or had a memory lapse, but these things are only human. When you are under oath, it is important to be honest and come across as credible.

Remember that the lawyer for the insurance company is your adversary, not your friend, and may not believe the facts are the way you say they are. If you are asked a question that you disagree with, perhaps because it assumes something you do not believe is true, do not be afraid to say so in order to answer the question. Stay in control. If the lawyer for the defendant puts you in a position where you must speculate or guess, do not answer the question. If you do not understand or hear a question, you can ask for it to be repeated or rephrased.

As with the written discovery, you may feel that some of the questions are invasive or do not directly relate to your accident. However, unless your lawyer objects or tells you not to respond, you should answer every question in the most honest way you can. If some of the questions upset you, you can usually take a break during your deposition testimony, although you may have

to respond to any unanswered questions first. If you would like to take a break, you are permitted to do so.

After the other side has finished questioning you, your lawyer is usually permitted to ask follow-up questions, or clarify an answer you gave earlier. This does not happen in every case, and in many instances, your lawyer may not ask you any questions at all.

In addition to taking your deposition, the lawyers in the case may also depose (take a deposition from) any other witnesses in the case. While the number of depositions will vary from case to case, depositions may be taken from the defendant, any witnesses to the accident, friends and family members who are familiar with your injuries, representatives from the defendant's insurance company and your own doctors and health care providers.

### ***Discovery and Settlement***

The discovery tools outlined in this chapter are the most common ones used in a lawsuit. Discovery may seem time-consuming, but by exchanging this information, the parties can often obtain the information they need to settle the case without a trial. And if the parties are still not able to resolve their case after discovery, the information they exchange during discovery will help them build evidence for their cases and narrow down the issues to be decided at trial.

## CHAPTER SIX

# SETTLEMENT

Many cases settle voluntarily, without having to go to trial. Trials take time, are expensive and may make clients nervous. They can also produce unexpected outcomes. From a personal perspective, an experienced personal injury lawyer may want to take a case to trial — but that is always the client’s decision. The job of an experienced personal injury lawyer is to help clients achieve their goals. We find that most of the time, the client wants the matter resolved quickly and fairly, so settlement is always a priority. If no settlement offer meets the client’s goals, the matter can be resolved by a trial.

Experienced personal injury lawyers also understand that settlement should not be rushed. Settling a case is a *process*. It is a dialogue and can be complex. Different lawyers initiate the process in different ways (who goes first and so forth), but it always ends up with an offer and a series of counteroffers and counter-demands. This is the process, and there is more to it than simply presenting numbers back and forth. Behind the numbers is reasoning. It is through this dialogue that the case is, hopefully, resolved. Each side has an opportunity to persuade the other. By exploring the weaknesses and strengths of each side’s case, the parties will generally be able to either agree on settlement or agree that they need the help of either a judge or a jury.

Be wary of settlement offers that come very early in this process, even if it is tempting to end the case quickly. After many years of practice, we have found that insurance companies will often offer a settlement before clients and their lawyers can determine all of their damages. Or a settlement offer will be extended quickly by an insurance company, before all the liens and other expenses have been determined. Everyone wants the matter resolved as quickly as possible — but an experienced personal injury lawyer



knows that a fast settlement offer by an insurance company can be a trap.

Deciding whether to accept a settlement offer requires you to consider subjective as well as objective factors. For example, there are benefits to ending your claim, and it may also be a personal relief. On the other hand, the time, anxiety, energy and risks associated with a trial may be worth it for the client —because of the potential for greater compensation, for an important lesson to be learned or for an important message to be sent. The decision does not always focus on the money alone. Client objectives vary, and each case and each client is different. The settlement process offers an opportunity for dialogue — and out of this dialogue comes a decision that fits the client in *that* case.

There are numerous factors to think about when considering a settlement offer, but issues to consider start with the amount of money being offered, the conditions attached to the offer and the amounts owed to third parties — like health care providers or other insurance companies. There are laws and contractual obligations that govern these third parties' rights to participate in the distribution of settlement proceeds. These rules are part of every settlement agreement, and you are expected to know them. An insurance company has no duty to explain the rules to you. Third parties such as health care providers might also claim part of your settlement behind the scenes.

What you and your law firm must determine is the true *value* of the offer being extended. That is, you need to know how much of the money offered will go to your client. To answer this question, the lawyer has to solve the puzzle (so to speak) that is the totality of the client's claim, with the goal of maximizing the claim's value. An experienced personal injury lawyer will analyze these and other issues behind the scenes, so the client can focus on the challenge of recovering from injuries and putting his or her life back together.

The lawyer participates in settling cases — but it is always the client who makes the final decision. The lawyer's job is to prepare the client to make that decision fully informed. The lawyer will provide the benefit of his education and experience, as well as

perspective that can be valuable for clients to make a prudent decision about a settlement offer.

Sometimes the courtroom is the right choice, if the client makes that decision with the advice of an experienced personal injury lawyer. Understand, however, that your lawyer will work to give you a realistic assessment of the benefits and risks associated with settlement and trial. That way, you can make an informed choice.

### ***Understanding a Settlement Offer***

In a settlement, there is always paperwork. Before you agree to a settlement offer, you and your lawyer will discuss whether you understand and accept all of the terms and conditions of the settlement. The insurance company for the at-fault party will ask you to accept money in exchange for your agreement to end the case — releasing the at-fault party from any future responsibility.

First and foremost, you and your lawyer will discuss whether the amount of the offer is reasonable under the circumstances. Your lawyer should be able to give you a professional opinion on this, weighing the likely outcome of a trial against the certainty and benefits of settling now. Rejecting one settlement offer does not mean you will never get another. In fact, some defendants even expect to go through several rounds of offers and rejections.

Another consideration is any debt, claim or lien that you might owe to health care providers or other parties because of the accident. (We will discuss and define liens in the next section.) If the settlement offer is not sufficient to pay all of these debts, you may be liable for the rest. Sometimes, your lawyer can help by negotiating or using other remedies available under the law to make sure all of your obligations are covered. Depending on the circumstances, your lawyer might be able to convince creditors to take a lesser amount in exchange for immediate payment. But because this is an uncertain process, it is important to discuss your debts and obligations with your lawyer when analyzing a settlement offer.

At this stage, your lawyer may also talk to you about subrogation,

which we discussed in Chapter One. A subrogation claim is a claim that an insurance company or other party has on the money you recover in your case. For example, if you have medical insurance, it probably covered your initial medical care. But if an auto insurance company is legally obligated to cover those costs, the medical insurer may be entitled to reimbursement from the auto insurer or from you, out of any settlement you reach with the auto insurer. Subrogation can be complex and depends on state and federal laws as well as individual contracts. Your lawyer should help you understand how it applies to you.

### **QUICK RESULTS HELP FAMILY IN NEED**

Sometimes, a quick settlement is one of the most important services a personal injury lawyer can provide in a tragic wrongful death case. In this case, a young family was in a serious car accident that killed the wife and her unborn child, leaving the husband a single parent of a two-year-old. Thankfully, the two-year-old was not seriously injured. The husband and his child filed a wrongful death and personal injury lawsuit.

Because the driver responsible for the accident did not have substantial assets, the family's law firm knew it was important to identify and collect from all available insurance policies. The firm worked quickly and was able settle these claims in just eight months, for an amount exceeding \$1 million. Although that money could never bring back their lost loved ones, receiving this settlement in a timely manner allowed this grieving father and husband to move on with his life and take care of his child.

If you have claims against more than one defendant or insurance company, or are considering a lawsuit over the same injuries against another party, you should also consider whether settling with one defendant could limit or eliminate your right to pursue

the other cases. For example, in states with at-fault auto insurance, you may have a claim against your own auto insurer for available uninsured/underinsured auto insurance claims. (Much more about insurance can be found in Chapter One.) Many states require you to notify other parties if you settle with one. If you fail to follow this or other laws, you may lose your right to pursue your other claims.

### ***How Liens Can Affect Your Settlement***

Liens are legal claims against personal property, used to secure a debt. A residential mortgage is a common type of lien. A lien claim might be a part of your case if you have a large amount of debt stemming from the accident and you cannot pay it out of your own pocket. This is particularly common with debts for medical care. If this is the case, the hospital or other medical provider that you owe money to can eventually put a lien on your settlement, or on your home or other property. Liens make it difficult to sell or otherwise make changes to the property.

Resolving lien claims can be difficult because of the many complex laws that apply to them, and because holders of lien claims are often slow to respond in writing to questions about their liens. Unfortunately, the law does not always say that lienholders are required to respond to requests for a lien amount within a specific time, and it sometimes takes months to get an appropriate answer. This delay prevents prompt payments of settlement funds to clients like you, and can be frustrating for you and your lawyer. Your law firm should work hard to obtain this information and resolve these issues, so that the settlement can be distributed and you can resolve your case.

For example, if Medicaid or Medicare has paid health care providers for treatment you needed because of your accident, they are entitled to reimbursement of those payments. To ensure that they are paid, they may place a lien on your settlement. Your lawyer will probably have to hold back a part of your settlement equal to the debt until you can negotiate an agreement and pay the agency.

When multiple insurers or debts are involved, this can become quite complex. For example, you might run into complicated lien problems when you have your own private insurance (including a settlement from a personal injury case) but are using Medicare as a secondary insurer. When it is not certain whether Medicare is a primary or secondary insurer, Medicare will make a conditional payment. If it is later determined that some other party was responsible for that payment, Medicare is entitled to a refund from that party, or from you or the health care provider, if one of you was paid by that party. The federal government may place a lien on your property to recover this type of conditional payment. (It might also be entitled to make a subrogation claim against your settlement.) Again, your settlement funds cannot be distributed until you reach an agreement and pay Medicare.

### **TAKE CARE WITH MEDICARE**

Cases involving Medicare can be much more complicated than cases involving private insurers. One family using Medicare found that out after the mother was seriously hurt in a car accident. They were unable to resolve their claim with the wrongdoer's insurance company, so they hired an experienced personal injury lawyer. After the lawyer was able to settle the case for \$100,000, the family thought that their life would turn around. However, they soon discovered that Medicare was demanding all of the settlement proceeds for reimbursement of the medical bills it had paid on the mother's behalf. In fact, Medicare claimed it should be reimbursed for all medical care provided to the mother for the last five years, even though the accident had only happened a year earlier.

Their experienced personal injury lawyer was able to distinguish the charges for treatment of the auto accident injuries from the other types of treatment. Medicare, because it is a government entity without any true controls, took months to consider the case. After extensive negotiations with Medicare, the lawyer was able to substantially reduce Medicare's claim, to an amount allowing this needy family to retain enough money to help pay the mother's future medical expenses and replace their car.

### ***Ways to Reach a Settlement***

In this book, we have referred a few times to “settlement negotiations.” However, negotiating directly with the defendant and his or her lawyer is just one way you can reach a settlement. You can also use methods that are collectively called “alternative dispute resolution,” which are more formal. They include mediation and arbitration, both of which are a little like informal trials led by someone specifically trained in resolving disputes. In some states, courts may order the parties to try an alternative dispute resolution method, or you may be obligated by a contract to try it. You can also choose this option on your own.

### ***Direct Negotiations***

The most direct way to reach a settlement is simply to negotiate with the insurance adjuster, or the defendant and the defendant's lawyer. Doing this requires substantial knowledge in two areas: The prospects of your case if you go to trial, and the value of your claim. This is where having a lawyer can benefit you greatly. Experienced personal injury lawyers have handled hundreds or even thousands of cases like yours, so they understand how your case is likely to come out at trial. They should also be familiar with the courts and juries in your area. For the same reasons, they understand how to calculate the full value of your claim. And

of course, a lawyer is an experienced negotiator. This levels the playing field against the insurance adjuster or defense lawyer, who will work to minimize your payments to save money for the insurance company.

Once you retain a law firm, it will handle all contact and negotiations with the insurance company and the defendant. Legally, they can no longer contact you directly, so the law firm will take care of it for you. Under most circumstances, you do not need to be present for direct settlement negotiations, although your lawyer will keep you informed throughout. Using the information you provided about your case and the information obtained during discovery, your lawyer will build the strongest possible case for settlement and present it to the other side. If they make an offer, your lawyer will present it to you for a decision, along with his advice. The decision to settle is totally yours.

### ***Mediation***

Mediation is a type of settlement negotiation in which an impartial third party helps both sides reach an agreement, using training in dispute resolution methods and legal experience. Mediation is usually conducted through an in-person discussion with all parties, including you, the insurance company and/or the defendant, as well as the lawyers for all parties. Generally speaking, a mediator is a retired judge, a lawyer or other neutral person who has also been trained to mediate disputes. Frequently, he has a special certification from the courts or the bar association of your state. However, unlike a judge, a mediator must be paid. Usually, you and the defendant will split this cost evenly. Mediation can be chosen or ordered by the court at any time during your case, although it is more likely after discovery has been conducted.

At a mediation conference, both sides will sit down and present their cases to the mediator informally. There is no jury. The mediator will then discuss each party's claims, either in the same room or in private conferences, if necessary. In these conferences, the mediator might ask questions and raise issues to help the parties find a compromise that they can agree to. Because the mediator

is experienced in the law affecting your case, he should take into account your legal rights, the extent of your injuries and the prospects of your case in a trial.

After the initial mediation conference, you may have a follow-up conference or discuss the matter by telephone. It is important to realize that reaching an agreement in this way can be slow. If you reach an agreement at mediation, it is not binding unless you and the defendant sign papers and take other steps to formalize it. If you do not reach an agreement, you are free to try again or continue toward trial.

In mediation, you are in a way previewing your case for the other side, just as they are previewing theirs for you. That means it is important to be careful about what you say and to present yourself in a professional manner, just as you would if you were going to trial. A good rule of thumb is to behave as if the room is full of a diverse group of people from your area, some of whom may not be sympathetic to you. Your lawyer will prepare you for mediation, just as he or she would for trial and depositions. And if you cannot attend a mediation conference, you should let your lawyer know as soon as you can, because not showing up might result in penalties or even the dismissal of your case.

### ***Arbitration***

Arbitration is another form of alternative dispute resolution. Like mediation, it brings the parties together before an impartial third party who understands the applicable law and will keep order during discussions. And like mediators, arbitrators are often retired judges or lawyers with experience in the legal area affecting your case, with a fee that will usually be split evenly between the parties. But unlike a mediator, an arbitrator does not actively guide the conversation or give opinions. Arbitrators are more like judges who keep order and rule on questions about the law, and eventually decide which party should prevail. In non-binding arbitration, the resulting judgment is only a suggestion; in binding arbitration, the decision is usually final.

At a non-binding arbitration, both parties present their cases



as they would in mediation. But instead of holding the conference that a mediator would hold, an arbitrator simply decides which side should prevail and how much the plaintiff might be entitled to in damages. The idea is to show the parties how an impartial person sees their case, which encourages them to settle. The arbitrator's decision is non-binding, so if you do not agree, you are free to continue to trial. However, in some jurisdictions, you may be penalized for this if the court ordered the arbitration, or if you go to trial and do not do as well. Your lawyer should be able to tell you about the rules that apply to your case.

Binding arbitration is just like non-binding arbitration, except that both parties agree beforehand to abide by the arbitrator's judgment. You and your lawyer can choose binding arbitration, or you may be contractually obligated to use it. Binding arbitration can be advantageous for parties who want to resolve their cases more quickly, and sometimes more cheaply, than they might be able to in court. However, because it is hard to challenge the judgment produced by binding arbitration, it is important to understand before the arbitration that you usually must follow the decision of the arbitrator. In fact, you may be penalized for ignoring or defying that decision. Your lawyer can give you a professional opinion on whether binding arbitration is a good idea in your case.

### ***Closing Your Case***

Reaching a settlement can provide some satisfaction in knowing that your legal claim is finally going to be behind you. But you must still complete the closing process, which is an important part of finalizing your case and can take time.

Usually, you will be asked to sign a form called a release that formally concludes all current and future claims against the at-fault party and/or insurance company for these injuries. Because signing this ends your right to collect any more compensation for your injuries from this defendant, you should understand this completely and raise any objections before you sign it. Do not hesitate to bring up questions or concerns with your lawyer. After

it is signed, both sides will notify the court that the case has been resolved and ask to dismiss any lawsuit.

As part of the closing process, your lawyer may have to address outstanding bills, claims or liens on your settlement proceeds, as discussed in the section entitled “Understanding a Settlement Offer.” This may mean that you have to pay some of your settlement to a third party, or that part of your settlement payment may be held by your lawyer while questions about payment are resolved.

Settlement proceeds are sent directly to your law firm. Injury law firms have bank accounts called trust accounts, where they hold money belonging to clients until their cases are finalized. (This is a lot like holding money in escrow for people who are buying or selling a home.) Ethics rules forbid lawyers from using this money for their own purposes. Your settlement check will go into this account at first. You will probably sign a statement authorizing the law firm to deposit it.

The net settlement proceeds will be released to you after you sign a form called a closing or settlement statement, which typically ends your case and your client relationship with the law firm. It also lists all of the disbursements of the settlement funds, which include payment of legal fees and costs, outstanding medical expenses, liens, and any other debts to be paid out of the settlement, as well as your own payment. Again, you should not hesitate to bring up any questions or concerns about this document. If you have special circumstances or a particularly complicated case, your lawyer may bring up other ways your settlement proceeds might be disbursed, or have suggestions designed to best serve your financial and legal interests.

Your lawyer cannot write you a settlement check until this paperwork is done, and in many states, until after a legally required waiting period is over. If you are concerned about receiving the money quickly, it is important to take care of the paperwork as soon as possible.

## ***Case Study: Increasing Your Settlement***

Hiring an experienced personal injury lawyer may substantially increase your recovery, even if there is limited money available from insurance policies and you have high medical bills. In this section, we would like to show you an example of how a lawyer's negotiations made a difference for one client who was injured in a motorcycle accident. Of course, the facts of each case are unique, so the results may not look much like the results in your case. But we hope we can show you how valuable it can be to get help from an experienced personal injury lawyer when dealing with insurance claims.

The client in this case, a woman in her twenties, was riding on the back of her boyfriend's motorcycle when a tire fell off the back of a tow truck and struck the motorcycle. She was seriously injured in the resulting accident, with medical bills reaching a total of \$140,000. The tow truck's insurance company offered her \$100,000, which it claimed was the total amount available under the insurance policy covering the tow truck. That is, that was what they claimed *before* she retained a lawyer. Before calling a lawyer, she had worked out an agreement with her medical providers, in which they would receive the entire \$100,000 available under the insurance policy, and she would make payments for the remaining amounts due over time.

This victim learned of a lawyer who had many years of experience with accident cases, and called to ask if he had any advice about dealing with outstanding medical bills. The lawyer asked her if she had confirmed that the \$100,000 was the only amount available under the tow truck company's insurance policy, or if she had confirmed that this was the only insurance policy that could cover the accident. The lawyer also asked whether any of her medical bills had been paid through a group health insurance policy, if she had reviewed that policy to determine whether one insurer might have to compensate another, and if any agreement was made by the tow truck's insurer with medical providers for paying off the medical bills.

After speaking with the lawyer, the woman realized that there was more to the case, and that she needed help to get the best

compensation she could. With help from the lawyer, she was able to reach a settlement with the tow truck company's insurer. Ultimately, the settlement she received in the case paid all of her medical bills and her lawyer's fees, and even provided compensation for her pain, suffering and inconvenience.

## CHAPTER SEVEN

# TRIAL

Once you have been through all of the detailed preparations for a jury trial, you might see why most people prefer not to go to court. People want their disputes resolved quickly and fairly. While a trial may be fair, it is rarely a timely process. Trials require months of preparation, even if the trial itself may take only a few days once you enter the courtroom.

The good news is that many cases handled by experienced personal injury lawyers are settled long before litigation would have started. And in most cases where a lawsuit is filed, the parties still settle before going to the courtroom. It is the collective experience of the lawyers authoring this book that 90 percent or more of personal injury cases handled by an experienced personal injury lawyer settle before trial.

This is in part because the job of the personal injury lawyer is to get the fullest possible information to decision-makers on the other side of the case, as early as it can reasonably be shared. Presenting your case before trial lets the defendants know you have a strong case, and is aimed at convincing them that settlement may be a better option for both sides. Remember, only you can decide to settle your case. If the other side does not make a fair offer, a jury will be able to decide the dispute.

An experienced personal injury lawyer will prepare your case, from the beginning, just as if it will ultimately go to court. This is not just in case you do go to trial — it is also because full preparation allows you and your lawyer to make the most compelling case possible in settlement talks. The facts will be gathered. The witnesses will be found. The evidence will be assimilated. The issues will be understood. The law will be applied to the facts. Demands for settlement will be presented. Through the settlement discussions, an experienced personal injury lawyer will learn all about the strengths and weaknesses of your claim. If the claim

can be settled fairly, so much the better. If not, your case will be ready for litigation.

## **SOMETIMES, YOU JUST HAVE TO GO TO TRIAL**

Sometimes, a trial is necessary in order to reach a fair settlement. That was the case for one 79-year-old man who was badly hurt during an otherwise nice walk at the mall. A kiddie ride had been set up in an open area of the mall, with a ramp leading up to the ride. That ramp was in the walkway and was nearly the same color as the floor. Before the man walked through that area, the owners of a nearby store had reported to the mall security that they had seen numerous shoppers trip and fall over the ramp. Despite this warning, the ride operators took no safety precautions. When the man walked through that area, he tripped and fell. His medical bills exceeded \$80,000.

To the man's lawyers, it appeared to be a clear case of negligence — but the defendant denied liability and offered no settlement at all. His law firm filed suit and prepared the case for trial. Still, the defendant offered no money. The law firm took the case to court. After a two-day trial, the jury returned with a verdict of approximately \$170,000.

### ***The Complaint and Answer***

Every lawsuit starts with a written complaint/petition filed in court by the lawyer for the plaintiff. The plaintiff's complaint lays out all of the relevant facts, then lists each cause of action (reason for suing), stated as a separate count. At the end of the complaint, the injured party will sum up his or her request for relief in a "prayer." This is a request for damages — financial compensation for your physical, emotional, financial and other injuries. (Please see Chapter Two for more about understanding your injuries.)

The people being sued are called defendants. After your lawyer files the complaint and has a copy served to the defendants, they must file a written document of their own, called the answer. The answer either admits or denies all of the points raised in the complaint. Because the answer includes reasons for these admissions and denials, it is often your first look at arguments the defendant is likely to make at trial. Together, the complaint and the answer frame the issues the lawsuit will ultimately be about.

## LITIGATION IS A MEANS — NOT AN END

In many cases, litigation is a tool for solving problems, not an end in itself. Take the case of the Robinsons, who were involved in a car accident. As they made a right turn, they were sideswiped by a driver on the intersecting street, who was traveling the other direction. In the accident report, a police officer wrote that the collision occurred in the center of the road. The Robinsons said the other driver had crossed the center line, so the collision was his fault. The other driver said Mrs. Robinson steered wide around the corner, so the collision was her fault. The insurance adjuster refused to make any settlement offer.

The Robinsons did not want to litigate. They wanted a fair and fast settlement. But in this scenario, there was no choice but to start litigation so that the drivers could be deposed. (That is, give out-of-court spoken testimony — see the “Discovery” section in Chapter Five for more.) After litigation starts, lawyers for both sides schedule depositions of both parties and all witnesses. In this case, the couple was able to settle after depositions showed their story was backed by the evidence. Mr. and Mrs. Robinson would have received no compensation if their law firm had not filed a lawsuit. In their case, as in many other cases, litigation was a tool for solving problems, not an end in itself.

## ***Motions***

As soon as the case is filed, either side is free to file a motion, which is a request that the court decide a point of law. For example, a defendant may move to dismiss, asking the court to rule that the complaint was filed too late (for example, if the complaint was not filed until after the statute of limitations expired). In considering a defendant's motion to dismiss, the court must assume that allegations in the complaint are true, so that any challenge at this stage is made strictly as a "matter of law" — what the law of your state says about a specific situation. Another example is a motion for summary judgment, which asks the court to rule in the requester's favor because essential facts are no longer in dispute (perhaps because of what has been learned in discovery), making a jury's decision unnecessary.

Either side can also present motions orally, while in the courtroom. Like pre-trial motions, these oral motions ask the court to decide a matter of law. For example, defendants sometimes move for judgment as a matter of law (called a motion for a directed verdict in some states), after the plaintiff has finished presenting evidence. This motion asks the court to dismiss the case without requiring the defendant to present any evidence, asserting that the plaintiff failed to show that a question of material fact is in dispute. Such a motion can address some or all of the many legal issues involved in trying a personal injury claim.

## ***Jury and Bench Trials***

When your lawyer files your complaint, he may request a jury trial. In a jury trial, a group of randomly selected citizens from your area serve as the "judge of the facts." A jury collectively decides who to believe and what to believe, deciding all questions of disputed fact. After all evidence is presented, the jury will use directions from the judge (called jury instructions) to decide the three most important questions in any civil trial: fault, causation and damages. Questions of fault ask the jury to decide how much fault each of the parties bears for the injuries. Questions of



causation ask the jury to decide whose fault caused what injury. At the end, the jury assigns a dollar value to each injury it believes was caused by the defendants' actions. The jury does all of this according to the judge's instructions and a verdict form provided by the judge. The judge presiding over a trial, who may also be called the court, is "the judge of the law." His or her job is to preside over all the courtroom proceedings, to keep the trial on track (according to procedural rules) and decide any questions of law. Questions of law can be about either matters of procedure (such as whether a line of questioning is appropriate) or matters of substance (such as whether the defendant may present a certain technical legal defense).

The judge also instructs the jury concerning how the law affects the facts they are deciding, through the use of jury instructions. For example, if you claim the defendant was negligent, the judge will provide the jury a definition of negligence. This definition will be one that has been decided in prior appellate court decisions, or by the state legislature.

There is another type of trial, called a bench trial, in which a judge decides the issues without a jury. If your lawyer thinks you should consider a bench trial, he will discuss it with you in advance. As with all aspects of your case, you will make the final decision, using your lawyer's advice.

### ***Burden of Proof***

As the party seeking financial damages, the plaintiff has the burden of proof, which means you and your lawyer must provide the evidence to prove that your allegations are true. Many people are familiar with the requirement to prove a case "beyond a reasonable doubt," which is the standard used in a criminal trial. The standard is lower in a personal injury case, because you are seeking a payment, not seeking to punish someone or to put someone in prison. Plaintiffs in personal injury trials must prove their cases "by a preponderance of the evidence," which means the facts you are alleging are more likely than not.

## ***Presenting and Defending the Case***

Because you, as the plaintiff, have the burden of proof, your lawyer will present your case first during trial. After your lawyer has presented all of the evidence in support of your complaint, he will “rest.” Then the defendants will present the evidence in support of their defense. After each witness testifies for the side that called him, the other side has the right to ask questions. This is called cross-examination. A famous legal quotation describes cross-examination as “the greatest legal engine ever invented for the discovery of truth.” A good lawyer uses this tool effectively, either to show the strength of the client’s case or to show weaknesses in the other side’s case. While cross-examination is frequently portrayed by television shows and movies as hostile, it does not have to be hostile in order to be effective.

## ***The Jury Verdict***

After all the evidence has been submitted and both sides have rested, the judge will explain the applicable laws to the jury by reading the jury instructions. The jury will then be asked to go to jury room to discuss the evidence in secret. Out of the presence of the judge, the lawyers and the parties, the jury will decide which facts presented are true, apply those facts to the law specified in the jury instructions and attempt to reach an agreement called a verdict. In order to reach a verdict, a required number of jurors must agree on each point to be decided.

The number of jurors who must agree in order to reach a verdict is different in different jurisdictions. A unanimous verdict is required in federal court, but some state courts allow a verdict even if some of the jurors do not agree with the majority. The rule in your state will be explained by your lawyer. If the jury cannot reach a verdict, the court will declare a mistrial, which is sometimes called a “hung jury.” When a trial ends with a hung jury, the case has to be retried before a new jury, starting from the beginning.

## *Judgment and Collection*

If the judge believes the jury's verdict was proper, the judge will file a document called the judgment of the court. A verdict in the favor of the injured party is called a plaintiff's judgment. A plaintiff's judgment is a legal document stating that the plaintiff is entitled to collect the payment the jury decided was fair. It shows that the defendant got the due process he was entitled to receive and that the defendant is legally obligated to pay the money awarded by the jury.

If the defendant has an insurance policy that covers this judgment, that insurer will usually pay it without intervention from the court. However, if the defendant or his insurance company does not pay voluntarily, you may need to ask the court to force the defendant to comply. This process is called post-judgment collection procedures, and includes requests for documents such as a "writ of execution" or a "writ of garnishment." The purpose of these post-judgment remedies is to seize assets belonging to the defendant so those assets can be sold and the money applied to satisfy the judgment.

If a defendant does not have insurance and does not have assets sufficient to satisfy a judgment, the defendant can file a petition asking that the judgment be discharged. This is done in a bankruptcy court. This is a complicated area of the law and beyond the scope of this book. As a part of the decision to take your personal injury claim through the litigation process, an experienced personal injury lawyer will consider whether a defendant has the ability to pay. This discussion will occur at the beginning of your case. The ability to recover money for a favorable judgment is of primary concern.

The role of an experienced personal injury lawyer is to figure out the end of a case at the beginning, and to work throughout the case to maximize the client's recovery. That work always includes considering whether you will get paid if a verdict is obtained.

## *Appeals*

If either side believes there was a mistake at trial, it can file an appeal. An appeal is a request to another court, called an appeals court, to reconsider the first court's rulings. Most people do not realize that an appeal can only be made on the basis of an error in the law. A jury's decision, as "the judge of the facts," cannot be overturned on appeal unless the jury's decision was somehow the result of an error of law. Appellate courts decide matters of law.

There is no jury in the appeal process. The appellate court judges are required to presume the jury's decisions at trial were correct — as long as the record on appeal contains evidence to support the jury's verdict. A jury's decision can be changed by the appellate court only where there are no facts in the record to support the jury's decision or when the judge who presided over the jury trial allowed the jury to consider facts that should not have been considered, or to incorrectly apply law that was given to the jury. Appellate court decisions are important because they form what is called the common law. The common law is the law of your state, unless a decision of the judicial branch of government is precluded or overturned by a decision of the legislative branch of government.

When the defendant files an appeal, he can post a financial bond to stop collection of the judgment. If the appeal fails, that bond will be used to pay the judgment. If you win your case, but the other side appeals, you may have to wait some time before you can collect the compensation you won.

Your lawyer will need to explain this complicated process to you and will counsel you about whether to settle on appeal, given the increased costs, fees and time associated with the complicated appeals process. All of these decisions will turn on the specific facts and law applicable to your case. An experienced personal injury lawyer will explain all of your options and help you make the right decision for you and your family.

## *It Is the Client's Case*

We find that some potential clients are afraid that a lawyer will make important decisions about their cases, such as what settlement amount is fair or whether to file a lawsuit. This is not true. A personal injury claim belongs, at all times, to the client. The lawyer is hired to gather the facts and the law, and to show the client how the law will likely be applied and how the facts will likely be interpreted. As the owner of the claim, the client has the right to make the final decisions about things like whether to settle.

Experienced personal injury lawyers know litigation is a means to an end, not an end in itself. The end is justice for the injured client — full financial compensation for his injuries and the satisfaction of holding wrongdoers responsible for their actions. Litigation is simply the means that must be applied when there is no *voluntary* settlement along the way.

An experienced personal injury lawyer will begin with the end in mind — preparing the claim from the outset in such a way that both the lawyer and the client are ready for litigation and trial — *if necessary*.

# CONCLUSION

We wrote this book in order to give you, our clients and potential clients, a helpful guide to the process of a personal injury claim. We believe this is important information for people who have already decided to pursue a case — but also for those who want more information before they are ready to decide. As a potential client, you have the right to know what you're committing to. And if you become a client, you truly *need* to know these things about your case, for your own peace of mind and to help us make the case as successful as possible.

However, we know that no book can be detailed enough to address every plaintiff's situation. Each case, each pattern of facts and each plaintiff is unique. This is why we want to once again encourage you to meet with us, if you have not already, for more information about what you can expect if you become a plaintiff, so we can discuss the specifics of your case.

As injury lawyers, we believe that helping people is one of the most important aspects of our profession. An injury lawsuit helps clients directly by securing money to pay for health care and other costs of an accident, of course, but also by cutting through the bureaucracy of insurers, hospitals and other large organizations to get you the compensation you deserve. More indirectly, it can even help the community by alerting others to the dangers that caused your accident, including the at-fault parties' careless or illegal behavior and the lack of oversight or accountability that allowed those behaviors. In a few cases, you may even be able to make new laws or force policy changes that better protect our community.

There is nothing more fulfilling than helping our clients recover a fair settlement or verdict. As a plaintiff, you are a partner in that work, and your participation is not just helpful — in many ways, it is essential. We hope that this book has helped you better understand what you can expect from your case, and your own role in reaching a successful resolution of it.













***We wrote this book as an introduction to personal injury law for people who find themselves just where you are now: the victim of a devastating accident.***

*As experienced personal injury lawyers, we understand that most accident victims are caught unprepared for the life-changing effects of a sudden, serious accident. This book should help guide you through those changes and the new legal and medical worlds you will enter, worlds filled with their own members and their own vocabularies. We offer a step-by-step explanation of the entire process, from accident to settlement.*

*This book should not be considered legal advice, but an overview of personal injury law.*

***Whether you have been injured in a motor vehicle accident, workplace accident or any other accident, this book will provide you with valuable information about your personal injury case.***



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