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# Win Your **Serious Injury Case**

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# **Win Your Serious Injury Case**

**First Edition**

By

Jon. L (Lin) McCraw, III, Esq.

McCraw Law Group

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## Table of Contents

<b>Title Page</b>	<b>1</b>
<b>Table of Contents</b>	<b>3</b>
<b>Introduction</b>	<b>4</b>
<b>Do You Or Do You Not Have a Serious Injury Case?</b>	<b>6</b>
<b>Part One: The Basics of Serious Personal Injury Law</b>	<b>10</b>
<b>Part Two: Special Types of Injury Cases</b>	<b>21</b>
<b>Part Three: How to Handle Insurance Companies During Your Serious Injury Case: The Basics</b>	<b>40</b>
<b>Part Four: Answers to Frequently Asked Questions (FAQs) about Serious Injury Cases</b>	<b>48</b>
<b>Part Five: How to Manage Your Life After an Injury (Addressing Financial, Health, Emotional, Career and Relationship Concerns)</b>	<b>57</b>
<b>Conclusion</b>	<b>64</b>
<b>Disclaimer</b>	<b>65</b>

## Introduction

Perhaps you lost a loved one in a painfully vivid truck accident on a Texas freeway. Or maybe your son suffered a brain injury from a wreck or even medical neglect. The pain, frustration and confusion you feel can be difficult to put into words and challenging to communicate even to those you love.

You need and deserve strategic guidance about how to meet the diverse challenges in your life. What medical care do you need, both in the short term and in the longer term? How can you get back to work, if that's even possible? How should you handle your relationships, your finances, and your personal development in light of all that's happened to you and your family?

This e-book offers deep insights into this journey. It's not a comprehensive guide, nor should it not be construed as legal advice.<sup>1</sup> But it can hopefully provide some clarity and peace of mind and answer big questions that have been nagging at you, ever since the accident or injury event. You can also use it as a reference, as you go through the process.

**PART ONE covers the basics of serious personal injury law.** We'll explore what you need to establish to build a personal injury case. We'll also define and explain what terms you need to know and understand; and we'll discuss how the process typically works and what to expect.

**PART TWO covers special kinds of injury cases.** Different injury cases require distinct strategies and approaches. For instance, even though truck wrecks and car wrecks can both be loosely grouped together as "motor vehicle wrecks," truck wreck cases often follow a very unique trajectory. We'll also examine the surprising challenges created by brain injuries and explore how advances in technologies and forensics techniques have transformed these types of injury cases. Each sub-section will also review "common traps" -- that is, mistakes that people often make in these situations in pursuing a claim.

**PART THREE discusses how to handle insurance companies.** Most money that pays for serious personal injury claims comes from insurance companies or from very large companies, self-insured retention that is administered through the companies' own risk management people. What should you and shouldn't you say to an adjuster or a risk manager? What can you do if an

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<sup>1</sup> Each case is different, and many times small details can completely change the legal analysis. This book is intended only as a general guide. You should rely only on the advice of a competent personal injury lawyer concerning the particulars of any individual situation. Also, unless otherwise noted, this book provides a general overview of handling a personal injury case in Texas. Other states have rules that may dictate a markedly different outcome on a similar set of facts.

insurance company refuses to pay you or intimidates you? How might your insurance coverage fit into the picture? We will address these and many other relevant concerns.

**PART FOUR addresses frequently asked questions about diverse, important topics.** This section will surface and address many questions that are on your mind -- or at least should be! For instance: what laws in Texas commonly confuse a person making a claim? How should you handle a claim against a special entity like a city or school district? If a police car hits you and causes injury in non-emergency situation, what recourse might you have, and how might your injury case be different from an emergency situation? Does a police officer have a claim if he is injured by another's negligence on the job? When and how are injured persons able to make valid claims for injuries on the job? These and other questions will be explored to help prepare you to ask good questions when talking with a lawyer.

**PART FIVE is a strategy guide for how to manage your life after an injury.** We'll cover a range of concerns, including your finances, health, emotions, career and relationships.

Whether you suffered a serious injury last week at work, or you lost a loved one recently in a tragic truck crash or medical neglect, we hope this book will give you powerful insights into what you can expect and help make your journey a little bit easier and a little less uncertain.

## Do You Or Do You Not Have a Serious Injury Case?

Let's start with the basics: *do you have a case?*

This is obviously an essential question, but many injured people (and their friends and family members) lack guidelines for evaluating it. As a result, some delay the search for legal assistance, which can potentially harm their case; some wrongfully conclude that they do not have a claim; or they embrace a false hope that they'll get substantial compensation from someone because that outcome just *seems* fair.

But how do you *know* whether you have a case?

The truth is, you must ask and answer three questions; and if the answer is “yes” to all three questions, then you likely have a case\*.

### **QUESTION #1. Did somebody do something wrong?**

If so, what did they do wrong? The more "wrong" their action -- the stronger your “yes” is to this question -- the stronger your potential case.

### **QUESTION #2. Did the wrongdoing harm someone?**

If yes, then how badly was the person harmed? Again, the bigger and clearer your “yes” is to this question, the bigger the case.

### **QUESTION #3. Can you get any money from the person who hurt you?**

If the answer is "no," then you can't build a case. If the answer is "yes," then you can.

Let's take a look at examples of how to apply these ideas. Imagine the following scenarios:

**Scenario #1.** *A driver in a sports car calmly navigates a school zone, while driving soberly and obeying the speed limit.* In this case, the driver didn't do anything wrong, so there is no case. Also, there is no injury, so there is no case.

**Scenario #2.** *A driver in a sports car careens through a school zone, driving 100 miles per hour while DUI.* In this scenario, the driver definitely did something wrong and probably scared a lot of people. But since nobody got hurt, there is no civil case. If caught by the police, this driver will likely have to face criminal charges, but with no injury, there is no civil case.

\* Additional analyses must be done on special entities like public utilities, public employees, medical negligence and other special purpose torts and entities.

**Scenario #3:** *A driver in a sports car careens through a school zone, driving 100 miles per hour while DUI and hits a child, causing a major brain injury. But the driver has no insurance, no savings, and no other assets, was not in the course of his employment and was not driving someone else's vehicle.* This example shows an extreme wrong, extreme damage to another, and no source of funds to pay a judgment. Even though the driver committed wrongdoing and hurt someone very badly, he has no money to pay a civil judgment. Thus, tragically, unless another source of potential money can be located (e.g. uninsured motorist coverage, personal injury protection or a third party liable for the driver's actions), there is no civil case. It is in these situations that a personal injury lawyer can be particularly helpful in finding coverage or money, when the bad actor or an insurance company responsible for his driving simply wants you to go away and take it at face value that you have no good claim against them.

**Scenario #4:** *A driver in a sports car careens through a school zone, driving 100 miles per hour while DUI, and hits a child, causing a major brain injury. The driver does have insurance and other substantial assets.* In this scenario, all three preconditions are met: there is a case.

### **Analyzing the Three Preconditions**

Figuring out when and how these preconditions are met can get rather tricky. Let's take a deeper look at all three, using examples to illustrate.

#### ***#1. Did someone do something wrong?***

Your intuitive answer might be "yes!" or you may not be sure. In either case, be skeptical of your initial judgment. For instance, let's say you're convinced that the truck driver who rear-ended your car was on texting when he hit you or your loved one. You also believe that his trucking company somehow caused the problem, because you Googled the company after the accident and discovered that it has a history of hiring dubious drivers.

But until you do a thorough analysis, you can't really know the truth and cannot know just how bad and at what level the neglect really is. For instance, perhaps the trucker had been alert when he hit you; his brakes just failed. Knowing this information is key. It would shift your focus from the trucker's negligence to the company's negligence regarding maintaining the truck and the truck driver's duty to perform a pre-trip inspection of the truck. It could change how you'd frame the case and alter the target (or targets) of any legal action. Perhaps the trucker fell asleep. A thorough review of his driving logs, repair and fuel receipts could help determine: 1) whether he was too tired because he was allowed or encouraged to drive by his company while fatigued; 2) whether the sanitized driving logs are true logs and not made up after the collision at the

employer's direction. Any requirement that has been falsified after a collision can really enhance the "yes" to the first question and can potentially lead to a substantial recovery if the other two questions result in a "yes."

On the other hand, you might believe "no one was to blame." For instance, maybe you and another vehicle collided after a cow or dog ran out into the road, causing the other driver to swerve into you. The accident seemed like dumb luck. But an analysis might reveal that the other driver was speeding. Or maybe the cow was on a state highway or was in a county that requires all livestock to be fenced in. Maybe the dog's owner chose not to keep the dog fenced in despite causing other injuries or close calls. The lesson is: don't make assumptions about blame. Your intuition may be off base.

## ***#2. Did somebody get hurt?***

On the surface, this question seems much more straightforward. But it, too, is surprisingly nuanced. If you lost a family member in a truck crash, or if that person suffered severe lacerations and broken bones, then the answer is obviously "yes."

Sometimes actions that look devastating create injuries that turn out to be mild. Conversely, sometimes injuries that seem mild at first turn out to be anything but. Here are two examples of a problem that looks at first like a small injury but that can have terrible effects on a person's life. A "mild" whiplash injury might cause pain and stress in your neck after a car crash. But you might dismiss it as a minor inconvenience that will heal, since you didn't lose a limb or suffer more serious injuries. Often, that will be the case, but sometimes the pain and lack of function can simply refuse to heal and become chronic. The treatment of a chronic "soft tissue" injury can lead you to rack up massive medical bills over time. Physical therapy, massage, chiropractic work, and pain management injections can add up to tens of thousands of dollars over the years.

Alternatively, maybe a loved one got into a bike crash and sustained what you believe is just a "mild" concussion. But what happens if you (or the victim's doctor) have underestimated the nature and scope of the brain damage? And what if it leads to unforeseen problems months or even years later? Understand that when a doctor says a brain injury is mild, **the doctor is referring to the initial mechanism of injury, not to the long term effects**. Some medical texts estimate that approximately 15 percent of people with "mild" brain injuries end up with permanent cognitive effects from their injuries. We worked with one client who suffered a brain injury. He thought that he was not impaired at all, even though his friends and family could see a clear difference in his behavior, thought and memory processes. His brain injury prevented him from recognizing the fact of his brain impairment. Prior to his being run over, he had been an accountant. But the brain injury made numbers no longer make sense to him. Before, he had



been a high level corporate accountant. Now, he can no longer make month end adjustments to the books. The brain injury destroyed his career and long-term earning potential. The effects of this injury were devastating and lifelong.

***#3. Is there money to be had from the person who caused the injury?***

Not to be a broken record, but the same lesson applies: avoid leaping to conclusions. For instance, perhaps a wealthy-looking businessman in a Lamborghini T-boned your vehicle and caused injuries to your sister. Given the person's appearance and his vehicle, you might assume that he at least has money that can be tapped to provide compensation.

But looks can be deceiving. Perhaps he is a con man who just filed for bankruptcy; he may have no assets, personal or otherwise, to pay for your damages, and he may not even have any insurance in effect to provide coverage.

Conversely, you might be able to access funds for compensation, even if a path to success is not immediately apparent. For instance, let's say a driver with no insurance hit you at an intersection and caused damage and injuries. The driver has no money and no insurance. But perhaps his truck had been defective in some fashion. You might be able to sue the manufacturer of the bad part... or the person or company who installed it. Or perhaps the driver was borrowing a car from a person who has insurance coverage or the driver was working on the job when the collision occurred. You may have found coverage for your claim.<sup>2</sup>

Determining whether you have a case is a simple, straightforward process, but it can give rise to complex scenarios. You need solid answers to three basic questions. But unpacking those questions can require detailed analysis and knowledge of the law in your jurisdiction, forensic work, and other crucial investigative skills.

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<sup>2</sup> Of course, although it is too late after a collision, maintaining adequate Underinsured/Uninsured Motorist coverage and Personal Injury Protection coverage on your own insurance policy will insure you against a collision with a person who chooses not to have liability coverage or enough liability coverage.

## **Part One: The Basics of Serious Personal Injury Law**

## **Introduction to the Basic Legal Process for Serious Injury Lawsuits**

How, exactly, does the process of filing (and, ideally, winning) a personal injury lawsuit work?

In this chapter, we're going to review the general flow of this process, define key terms and correct common misunderstandings about the roles of plaintiffs, judges, juries and lawyers. By the end of this section, you'll hopefully have a good bird's eye view of how serious personal injury cases typically play out in the court system. Of course, we want to re-emphasize the caveat we discussed earlier: *each case is different*. This basic primer doesn't cover every contingency.

In the subsequent chapters, we'll explore several categories of injury cases in detail and discuss the complications that can ensue as well as common mistakes and opportunities for plaintiffs.

### **4 Common Situations That Can Lead to Personal Injury Litigation**

#### **1. Intentional wrongdoing/fraud**

For instance, an oil and gas company intentionally underpays royalties to landowners. You can file a legal action against that person or company for the harm caused.

#### **2. Medical malpractice/patient safety cases**

A doctor prescribes the wrong medication or a nurse administers a medication in the wrong amounts causing harm to the patient.

#### **3. Accidents**

Motor vehicle crashes, such as car, truck, or bicycle crashes; workplace accidents and accidents caused by hazards on someone's property can all be grounds for legal action.

#### **4. Defective products, including prescription medications**

### **How Do the Laws That Govern Serious Personal Injury Cases Get Made?**

A body of law known as "**common law**" plays a defining role in many accident cases. Common law refers to the collective knowledge and decisions of judges who've tried similar cases. When a high-level judge makes a ruling, lower level judges generally have to follow the **precedent** set. In other words, judges are constrained by what other judges in the past have said and done. Injury laws differ markedly from state to state. That's why, if you get seriously hurt in Texas, you want to find an attorney who's deeply familiar with Texas's particular rules, laws, and

processes. At a minimum, most competent trial lawyers will hire local counsel in the jurisdiction to help with local rules and local laws that can effect the case.

Some formal statutes and state legislation can affect the process. The legislature often passes statutes to intentionally change the law or the processes for prosecuting a case. Medical malpractice is one area where the state legislature has changed the law requiring a higher level of proof in some cases, limiting recovery in all Texas medical malpractice cases; and it has changed the procedure to make these actions more difficult and expensive to pursue. In addition, each state sets what are known as “**statutes of limitations**” on personal injury actions. In Texas these rules have been set by legislation and interpreted by the courts. The law says that you have a limited amount of time after an injury event to initiate legal action. If you miss this window, you surrender your right to make a claim and obtain money and other compensation. The statute of limitations depends on the nature of the action or tort, in some cases on who the defendant(s) are, and sometimes when the victim (or family members) discovered the injury. Because the statute of limitations varies, it is important not to wait to have your claim evaluated.

### **Basic Outline of a Personal Injury Case**

Although every case is different, here’s the basic architecture of the legal process.

#### **1. A person or institution causes harm to a person.**

The act that “sets off” the legal process can be an intentional act, such as malicious attack, an accident, or an error of omission.

#### **2. The injured person links the harm with the defendant’s wrongdoing.**

The victim recognizes that a person or company broke a legal obligation. For instance:

- A hospital fails to provide competent medical care, and as a result, the expected outcome is made worse.
- A truck wreck causes a persistent concussion that will not go away.
- A company produced (or failed to recall) a defective pharmaceutical or medical device that causes unexpected harm to their customers.

The nature of the legal breach will obviously depend on the type of case and details of that case.

#### **3. Evidence is presented/gathered.**

#### **4. The claim is made with or without an attorney.**

##### **Negotiations Over Settlement**

Most cases are resolved through the settlement process. To avoid costs of a trial and potentially large damages later, wrongdoers (or insurance companies who represent wrongdoers) sometimes offer to **settle** claims in exchange for their agreement to avoid filing suit. Settlement negotiations can break down. For instance:

- The defendant may not offer enough money;
- The defendant may not offer any money or even admit wrongdoing;
- The injured person might want to file a lawsuit on purely moral grounds, to punish wrongdoers or to prevent that person or company from harming other people.

If the matter cannot be resolved during this stage, it may proceed to trial, during which a jury will assess the defendant's liability and decide the appropriate remedy.

##### **A Closer Look at the Legal Process**

Let's just take a more detailed look at the steps involved, how they typically play out, how long various stages of the case last, and what you might be able to anticipate.

##### **Step #1. Plaintiff retains an attorney.**

It can be challenging for seriously injured people (and their families) to even contemplate taking legal action. Unfortunately, many people who do get seriously hurt never hire lawyers – or wait too long to do so after the injury. Contrary to what you might have read about in the tabloids, most people are the opposite of litigious. In other words, very few people are eager to file suit.

Being a plaintiff isn't necessarily an easy journey, emotionally or logistically. On the other hand, if you fail to retain legal help, you might miss out on an opportunity to collect compensation to pay for things like medical care, live-in help, replacement for lost wages, and beyond.

Most injury attorneys will offer a “**free consultation.**” This is an opportunity to discuss your case in confidence with the attorney and get answers to questions you have about your situation. During this consultation, you can learn about how the attorney works, what the fee arrangements might be, and what you should generally expect in terms of timeframes.

Obviously, no attorney can guarantee results or even predict them with even ballpark accuracy. Seemingly straightforward “winnable” cases may turn out to be anything but, once the critical details emerge. Conversely, cases that to you might seem complex and confusing may turn out to be relatively straightforward and simple.

Many attorneys take personal injury cases on a **contingency basis**. This means that the attorney does not collect a fee unless he or she obtains a result, such as a settlement or a victory at a trial.

The attorney may or may not offer to represent you, depending on:

- The nature of your case;
- The law firm’s current caseload;
- The type of legal assistance you need;
- The potential length, complexity and costs of the case.

Once you establish an **attorney-client relationship**, the next stage of the process can begin.

Your attorney may need to take action rapidly to preserve evidence that might degrade, disappear or otherwise get lost. For instance, after a commercial trucking accident, an attorney may need to subpoena driving logs almost immediately. In other situations, the timeframe is less intense.

Your attorney can help you manage the other parts of the process, such as:

- Fielding questions from insurance adjusters who approach you about your case;
- Visiting medical providers and tracking what you learn from them;
- Keeping you updated on what you need to know about the case, so you can focus on other concerns, like healing, caring for your family, getting your finances in order, etc.

Technically, you can pursue legal action on your own -- that is, without being represented by an attorney. But you will almost certainly run into a headwind and certainly unnecessary headaches. You could miss important filing deadlines or say or do things that could compromise your case. For instance, let’s say an insurance adjuster meets with you and asks how you’re feeling after an accident. You respond “I feel a lot better.” By that, you mean that you’re no longer in excruciating pain, but rather only “really bad” pain. But the insurance company could still twist your words to detriment of your case. The liable insurer might later say: “on such-and-such a date, didn’t you tell Mr. X’s representative ‘I’m feeling a lot better’?”

Just like you would (hopefully) never try to operate on yourself or be your own financial advisor, you can honor your time and the seriousness of your case by retaining experienced legal representation for your injury.

### **Filing a Complaint (Also Known As a Petition)**

Your attorney will prepare a document called a **complaint (or petition)**, which lays out your allegations -- who caused the harm, what the legal basis for the action is, and what facts occurred. The complaint will include a demand for compensation -- what you want the defendant to do.

### **Summons**

The court will then order a **summons (or citation)**, which will tell the defendant about the lawsuit, establish the parameters by which the defendant can answer (or try to dismiss the case) and stipulate what happens if the defendant does not respond in time.

### **The Defendant Answers**

In what's known as the **answer**, the defendant in federal court responds by addressing all of the points established in the complaint. The defendant can choose one of three responses.

- Admitting the complaint;
- Denying the complaint;
- Deeming that there is "insufficient knowledge to admit or deny" the complaint.

In the answer, the defendant can counter the liability claims, one by one.

In Texas State Court, the defendant can, and often does, file a "general denial" of all allegations, forcing you as the claimant to prove up each point or element of your claim.

### **Counterclaims and Cross-claims**

The two sides can go back and forth, iterating this process. For instance, the defendant can submit a document that's very similar to the complaint called a **counterclaim**, which responds to the defendant's answer. The defendant can then reply to that counterclaim in a similar fashion.

You can also submit what's known as a **cross-claim**, which would be appropriate if the lawsuit has multiple parties, not just two, when each party has claims against the others.

## Discovery

The court system wants to get all the facts about any matter “out and onto the table” as soon as possible. This comprehensive process of disclosure is done through **discovery**. The court takes in information through depositions, the production of documents, and written discovery.

**Depositions** give the parties an opportunity to ask questions about the matter and get sworn answers in response. These statements can range from the relatively perfunctory (an hour or so in length) to the much more extensive. The purpose is to establish everyone’s stories and to test out how witnesses will likely behave during trial. The deposition process can be intense and long; and the court wants to make sure that all relevant facts are heard. The defense counsel can work vigorously to undermine your positions about events, identify logical inconsistencies in your story or even challenge your character itself. You must prepare strategically for most depositions.

Additional depositions of other fact witnesses and experts often occur to preserve testimony and limit opinions for trial. An important part of “lawyering” includes deciding whom to depose, what to ask and what not to ask in these depositions.

## Pre-trial Motions

Lawyers for both the plaintiff and the defense can file requests with the court for rulings known as “**motions**.” For instance, early on, the defendant might file a “**motion to dismiss**.” The goal of this is to ask the court to rule that the plaintiff’s action does not have a legal basis. The defendant can challenge the jurisdiction (i.e. argue the plaintiff has brought action in the wrong court) or say the plaintiff failed to serve the summons and complaint appropriately.

Another kind of motion is called “**motion for summary judgment**.” This request seeks to stop the case before it goes to trial or keep a part of the case from going to trial. It asks the court to take a look at the evidence that’s already undisputed and to use it to render a judgment, normally against a person who filed a complaint. To stop this motion for summary judgment, the other side must offer evidence that critical facts are still in dispute and that a trial is necessary to resolve those disputes. Again, summary judgment practice is very difficult for the non-lawyer to get right. Many a worthy case has been lost at the summary judgment phase.

Yet another type of motion is known as “**motion for default judgment**.” If a defendant fails to respond to the complaint in a timely fashion, the court can find the defendant in default and establish the claimant’s damages. Filing such a motion is something that your lawyer might do in the right circumstances. In general, the court prefers to examine the merits of a case before



rendering judgment, so a defendant can often convince the court to **vacate** (in effect, to “hit the delete button”) on the default and allow the process to go forward.

### **Settlement: Resolving the Matter Before Trial**

The lengthy, costly and invasive nature of litigation motivates all parties to work out settlement arrangements, if possible. In general, the defendant will offer some basket of concessions -- an insurance company or defendant may offer a sum of money, for instance – in exchange for the claimant’s agreement to stop pursuing legal action.

When evaluating a settlement offer, the claimant needs to look at the odds of succeeding at trial, the challenges of going forward with a trial, and the pros and cons of arguments from both sides. The plaintiff also needs to consider his or her minimum acceptable amount – that is, how much money he or she would be willing to accept to avoid trial – as well as insurance policy limits and the defendant’s resources.

You and your attorney will also need to ask and answer questions like:

- If you try the case, what are you risking in time and money?
- If you negotiate, will the other side see it as a sign or weakness?
- When is the best time to negotiate?
- What is the best way to negotiate?
- What negotiating tactics or strategies do you want to use?
- How long might the trial last?
- How much information would you have to reveal about yourself, your family, your business dealings, etc? With some exceptions, most civil cases (like personal injury lawsuits) go on the public record. You may also need to consider how much media attention you could get and how you would handle that, in the appropriate case.

### **Alternative Dispute Resolution (ADR)**

Personal injury matters can also be resolved through other types of processes, including mediation and arbitration, also known as alternative dispute resolution (ADR) mechanisms.

**Mediation** is a kind of “negotiation with assistance.” Parties work together, in conjunction with a mutual third-party, known as a mediator, in a voluntary and collaborative process. Both parties give informed consent to go through the mediation process, and the details are kept confidential. If the third-party mediator cannot find a way to resolve the dispute, the matter can head to trial.

**Arbitration** is a related process to handle certain personal injury cases by going through a private court system. “Neutral” arbiters examine the evidence and then render a legally-binding decision about the matter that the courts can enforce. Arbitration was designed for big companies to fight out contractual matters without the need for “expensive” court time. Increasingly, we are seeing one-sided arbitration in consumer matters. Ironically, the time and money saving process rarely costs the consumer less, and it is sometimes criticized as being less objective or neutral than an elected judge or jury.

### **Going to Trial**

In criminal trials, the prosecution must prove the defendant’s guilt “beyond a reasonable doubt.” In civil cases, the burden of proof is supposed to be far less severe. The plaintiff must prove a “preponderance of the evidence,” which is effectively anything over 50% on fault, causation and damages.

The trial process begins with **jury selection**. The two opposing sides duel to determine which jurors are objectionable and which should be allowed to hear the case and render a decision. The process is really one of de-selection. Jury selection is both terrifying, as the lawyer has no control over any potential jurors’ answers, and very interesting, as the lawyers really get to learn about the jurors and what is important to them.

The next phase, **opening statements**, involves an exchange of statements from the plaintiff’s lawyers and the defense lawyers. The plaintiff’s attorney presents the facts of the case and gives the jury an overview of the case and the most important evidence in the case. The defense attorney counters with his or her own interpretation of the case’s facts and walks the jury through an alternative narrative.

The next phase involves **examination of witnesses**. Witnesses can range from expert forensic investigators to eyewitnesses to friends and family members of those involved in the incident. Both plaintiff’s attorneys and defense attorneys will have an opportunity to **examine** and **cross-examine** witnesses.

After the plaintiff “rests” his or her case, the defendant can respond. After that process, the plaintiff has a turn to offer a rebuttal to challenge the defense’s narrative. Both sides then “rest,”

and then they each have an opportunity to present closing arguments to the jury, during which they boil down their positions and make a final plea.

### **Jury Instructions and Verdict**

The jury determines which of the two narratives presented is most compelling.

After the judge provides **instructions** to the jury, the jury goes off to deliberate in private and render a **verdict**.

### **Obtaining Compensation Following a Win at Court**

Just because you win a judgment at trial doesn't mean the work is over!

Some companies and individuals may refuse to pay judgments -- or may claim that they don't have money to pay their responsible share. Plaintiffs can pull a variety of levers to obtain funds from an insurance company that is responsible to pay the verdict or other business entity that refuses to comply with the court's rulings.

Defendants, meanwhile, can do things like file for bankruptcy to prevent plaintiffs (and other creditors) from collecting judgments. So even after you win at trial, a lot of unpredictability and risk can remain.

### **The Appeals Process**

Just because a jury or a judge makes a decision about a case does not mean that the decision will stand. Depending on the outcome, either side can challenge what happened in court through **the appeals process**. In cases with large verdicts, appeals are quite normal.

A trial and an appeal are not the same thing. At a trial, the jury acts as a fact finder. That is, the 12 people on the jury examine the evidence to figure out what occurred, factually. The judge, meanwhile, manages the legal issues in the court. An appeal is less a debate about the evidence itself than it is a discussion about how the court interpreted and applied the law. In some sense, the trial is akin to a football game, and the appeal is like the heated post-game analysis. The difference here is if the analysis does not agree on the outcome, the court can order a retrial or even direct a verdict against the winner at trial. Smart trial lawyers try their cases with the appellate court in mind to prevent winning the battle [trial] and losing the war [result].

Appellate cases go to a panel of judges, not just to one judge. For obvious reasons, these panels include an odd number of judges. At lower levels, the number of judges may range from three to

many more. Depending on what happens at the appellate court, either side might appeal the decision again and send the case “further up” the judicial hierarchy.

The top court in Texas is known as the Texas Supreme Court. In special cases, decisions made even by the Texas Supreme Court can be appealed further to the United States Supreme Court, the highest court of the land. This body consists of nine justices appointed by the President, and it commands jurisdiction over all federal and state court cases. It would be very, very unusual if your case went all the way up to the Texas Supreme Court, let alone the U.S. Supreme Court, but you never know. Certain subtleties of your case may stimulate an important legal debate that these higher level courts might want to consider.

Those stages may seem complex and confusing. But hopefully you now have a clearer understanding of the general scope and scale of what’s involved.

Some matters resolve very early in the process. For instance, the plaintiff, for whatever reason, might fail to respond to your initial complaint, and the court can just enter a default judgment, which you can then collect. Alternatively, the process could lead to a settlement after months of work or after an exhaustive mediation or arbitration process. Or you might end up going to trial and working through multiple appeals to obtain a verdict.

In light of these diverse outcomes, what can you generally expect? For insight into that question, let’s head our next chapter, in which we’ll touch on common mistakes, misconceptions and opportunities for plaintiffs in specific types of cases.

## **Part Two: Special Types of Injury Cases**

## **Motor Vehicle Accidents**

The most common motor vehicle cases include bus accidents, bicycle accidents, pedestrian accidents, motorcycle accidents, car accidents and truck accidents. Airplanes, boats, segways and other moving vehicles can also, of course, do damage and cause injuries.

Truck accidents tend to be most likely to lead to massive injuries and death due to the fact that the vehicles are large, very heavy and exert tremendous force during a collision. Since this book is about severe personal injuries, we will devote some extra space in this sub-chapter to explain the causes, consequences and implications of truck accidents.

### **Motor Vehicle Accidents – A Very Quick Background**

According to the National Highway Traffic Safety Administration (NHTSA), nearly 100 people die every day in motor vehicle crashes, leading to over 30,000 fatal crashes a year. All told, a staggering 5.5 million motor vehicle accidents occur in the United States annually, causing nearly 2.3 million total injuries.

What trends are contributing to better road safety? What trends might be endangering us?

- **Seatbelt laws.**

Thanks in part to the hard work of consumer advocates, like Ralph Nader, starting the 1960s and 1970s, public health authorities began pushing hard for drivers and passengers to use their seatbelts more frequently. In the 1980s, mandatory seatbelt laws went into effect around the nation, and this concerted campaign to get people to “buckle up” saved thousands of lives and prevented hundreds of thousands of injuries.

- **More awareness of the dangers of alcohol and drug use.**

Concomitant with the push to get Americans to wear their safety belts, law enforcement agencies also began to crack down on the problem of driving under the influence of alcohol (DUI). Although we still have a long way to go to get a handle this problem, the number of DUI drivers (and DUI accidents) relative to the population has declined. More good news. Continuing to hold drivers fully accountable for the destruction they cause should continue this positive trend.

- **Technology improvements regarding auto safety.**

Airbags, automatic brakes, and computer assisted safety technology have all helped to make cars technically “safer.” Unfortunately, the full safety gains that consumer advocates once anticipated have not manifested. In other words, all these new technologies should have made driving safer than it actually is today. Why? What might be going on?

Despite safety technologies, the NHTSA has been slow to change and update safety standards and tests. As a result, many manufacturers are not making the changes in many of their models. After a serious injury, many then defend by saying “we are doing all that the law requires.”

- **Distracted driving.**

Another prominent change to the driving landscape has been the advent of cellphones and other mobile devices and a national addiction to emails, texts and other distractions. Study after study over the past decade has demonstrated that driving while distracted by technology can be deadly. Text messaging behind the wheel – something that was impossible to do decades ago – may actually be even more dangerous than driving under the influence. For instance, one study out of Virginia Tech several years ago found that truckers who texted while driving were over 20 times more likely to get into injury accidents than non-texters.

Another study conducted by researchers out of the University of Utah compared the effects of driving DUI with the effects of driving while speaking on a cellphone. The results were profound. Effectively speaking, both behaviors were almost equally as dangerous. Texting or emailing was found to be 6 times as dangerous than driving while intoxicated. As I like to say, at least some folks driving while intoxicated are trying to pay attention to the road; if a driver texts while driving, it is no different than putting a blindfold on and attempting to drive down the road.

Many safety advocates and legislators, alarmed by these dangers, have fought for restrictions on cellphone use, especially texting or emailing while behind the wheel. Tragically, though, even many safety advocates – and certainly many drivers – still labor under the impression that they are safely handling the distraction. The research literature does not support that view, though. The problem with cellphone driving is not necessarily that drivers look away from the road. Rather, it’s that the disembodied conversations cause a uniquely dangerous kind of mental distraction. Mentally, you’re “someplace else,” and this impedes your concentration and focuses the driver on the text, not the road.

- **Fatigue.**

Another important change to the American motor vehicle landscape is that we may not be sleeping as well as we once did. Fatigue is a huge risk factor for motor vehicle accidents. One study out of Australia, for instance, determined that someone who stays awake for 24 hours in a row suffers impairment similar to the impairment caused by DUI. Lack of sleep degrades attention, reduces reaction times and leads to more irritability and impulsivity behind the wheel, which can in turn create the conditions for serious accidents.

Choice not to follow medical safety rules that harm a patient can be the basis of a solid personal injury lawsuit. Unfortunately, medical neglect is not isolated, nor is it trivial in its effects. The

Journal of the American Medical Association estimates that there are 98,000 deaths a year in our country from preventable medical errors. If 98,000 people died on our roads a year, there would be justifiable outrage to make the system safer. Since most of the people badly harmed as the result of medical errors are either very sick or very old or both, an epidemic of suffering silently harms those who are most vulnerable. Holding those responsible accountable can result in payment to fix what can be fixed and help what can be helped, but it can also encourage effective medical safety strategies to prevent future harm.

Products that harm either because they are not properly designed or properly manufactured, or are not marketed properly, can be an additional basis for a personal injury lawsuit. While design and manufacturing claims are easy to understand [product falls apart in some way and hurts someone] marketing could be more subtle. For instance, a drug manufacturer markets a drug for unapproved uses and as a result the person is injured or killed. Sometimes, manufacturers recognize these dangers and simply count the cost as a part of doing business until someone has the fortitude to stop the danger.

How strong the case is, how well the case has been put together and the experience and abilities of the lawyers all go into an insurance company's case evaluation. Ultimately, the insurance company evaluates its chances to do worse at trial and/or on appeal in evaluating any claim.

The more the risk of loss and the higher the potential judgment, the greater the value of the case. To the insurance adjuster, what is "fair" does not matter. What matters is simply how much it is going to cost to get out of the case versus what will ultimately happen by rolling the dice. An attorney helps by increasing the risk of financial loss to the defendants. The greater the risk of loss and the sooner that risk is made apparent, the more likely to obtain a positive result from the case for the client.

### **Serious Truck Accidents: What Makes Them Unique and How to Handle Them**

According to the United States Department of Transportation, approximately 500,000 truck accidents involving rigs weighing 10,000 pounds or more happen every year in the United States, leading to approximately 5,000 deaths. In 2013, revenues from the trucking industry topped \$610 billion; the trucking industry's feverish growth is impressive, but our collective dependence on trucking to deliver goods and support service businesses sometimes puts people at unnecessary risk.

When trucks collide with other vehicles, the people in the smaller vehicles tend to suffer the brunt of the damage. For instance, among wrecks involving tractor-trailers and passenger cars, those in the passenger cars accounted for 98% of the total fatalities.

### **Trucking Accidents and the Inescapable Physics Problem**



Part of the problem is that the seriousness of an accident is related to the force released when the collision occurs. As you may recall from your high school physics class, force is equal to the mass of an object times its acceleration. Another way to say this is that the force is equal to the mass of an object multiplied by its change in its velocity. In other words, the faster a vehicle changes its speeds -- and the more massive it is -- the greater the force released of the crash.

Imagine that a 20-ton big rig driving at highway speed (50 miles per hour) collides with the rear end of a passenger car sitting stuck in traffic. The truck will likely devastate the passenger car, because it is much heavier than the passenger car, and it's traveling at a high rate of speed as compared to the stopped passenger car.

In order for a 2-ton passenger car to generate the same amount of force that the truck did, it would have to be driving ten times as fast as the truck did, assuming both vehicles stop in the same amount of time. Why? Because the car's mass is 10 times less than the truck's mass. The truck hitting the stopped vehicle at 50 miles per hour is therefore like a car hitting the same car at 500 miles per hour. Policy makers know the forces involved, and they have smartly issued regulations to help prevent as many of these wrecks as possible, when the rules and regulations are followed by the trucking industry.

### **Surprising Factors That Complicate Truck Crash Cases**

Truck accidents are also often more complicated because truck drivers (and the companies that hire and train them) must abide by a slate of complex laws, rules and regulations. Truck drivers can only drive a certain amount of hours in a row, for instance, before taking a mandatory break. Drivers also must go through special training and license requirements, which depend on the vehicle type, the nature of the cargo and the driving conditions anticipated.

Drivers are also not the only individuals responsible for how a truck performs on the road. For instance, the crew that loads and rigs up a truck can be held liable if a problem with the cargo precipitates a crash and causes injuries and damages. Likewise, the engineers and executives who design, build, market and maintain the truck's mechanical systems can be held liable if something goes wrong with those systems and leads to a bad wreck. In addition, the trucking company itself has diverse responsibilities (and obligations) to ensure the rig's safe operation.

Finding the true root cause of a truck accident, therefore, can be tricky and counterintuitive business. For instance, let's imagine that a truck on the freeway suddenly veers to the side of the road, clips another car, hits the concrete barrier, flips over, setting off an inferno on the freeway. Ultimately, one person dies in the blaze, and the truck driver suffers permanent brain damage and no longer can recall what happened or what went wrong.

Many different possibilities could have been at play. For instance:

- **Perhaps the driver fell asleep** because he had been consuming methamphetamines to stay awake to make a route faster (and thus earn more money for his family), but he crashed when the methamphetamines wore off.
- **Maybe the trucking company failed to screen its drivers** and hired someone who just didn't know how to handle the rig effectively or didn't receive proper training.
- **Perhaps the road signage had been confusing** or a construction cone had been left in the middle of the road, forcing the truck to veer to avoid it.
- **Maybe some other driver** – now long gone from the scene -- cut the trucker off, forcing him to make an evasive maneuver, which backfired.

**Perhaps the cargo in the back of the truck shifted**, because the people responsible for loading it in hadn't properly latched a latch. The sudden shift in momentum inside the truck forced the driver to lose control and ultimately get into the accident.

- **Maybe a mechanical failure occurred**, causing the driver to lose control of the truck. Truck companies must periodically thoroughly inspect, document the inspection and correct safety problems. The trucking companies also must ensure that their truck drivers do a pretrip inspection to ensure that mechanical failure does not occur. When mechanical failure causes these incidents, very often it is because of a conscious choice to ignore the rules; this often leads to responsibility for the collision.

In this simplified hypothetical scenario, many different entities could be liable for the damages, depending on what the investigation ultimately shows. In some of these scenarios, the driver obviously would be at fault. In other scenarios, the trucking company would be at fault. In still other scenarios, the manufacturer of a defective part or even the cargo loader could be liable.

Sorting out who should be held accountable and who should be exonerated is not just a concern for the defendants. As a plaintiff (or potential plaintiff) in such a case, you also need to discern the truth about the truck accident, not only because you want to see actual justice done but also because an incorrect interpretation of the accident will leave your argument vulnerable to defenses based on accurate and detailed forensic work.

### **High Stakes, Alert Defendants**

Yet another layer of complexity in truck accidents has to do with the fact that both commercial trucking companies and the insurance companies that represent these businesses deal with catastrophic crashes on a fairly regular basis.

Let's say your father got hurt in a big rig crash on the freeway. A rig slid into his lane, forcing his vehicle off the road into a strip of rocks and rubble and causing serious injuries. Odds are (hopefully) that your father had never been in a similar situation before in his life. But trucking companies and insurance companies deal with such scenarios all the time. They also know what's at stake, financially speaking, and they have detailed plans and processes for how to proceed to minimize their financial responsibility to victims. That may sound somewhat cynical, but it's very true.

These would-be defendants often immediately rush to respond, sometimes by morally and even legally dubious means. Personal injury lawyers are sometimes (unfairly and derogatively) called "ambulance chasers." But the reality is that trucking company and insurance company representatives actually do sometimes engage in "evidence chasing." That is, they immediately launch tactical strategies designed to deter liability, such as destroying or hiding evidence, creating false documentation, discrediting witnesses and downplaying injuries, before victims have even left the hospital.

That sounds quite cynical – almost to the point that it bends credulity -- but it's the unfortunate reality of our current system. In catastrophic truck accident cases, liable parties have a lot to lose – potentially hundreds of thousands or even millions of dollars.

In general, the more money at stake in an accident case, the more motivated (and sophisticated) the defendants' responses will be. In one occasion, the trucking company and its insurer literally destroyed evidence by allowing an unqualified downloading of the "black box" of a truck before the victim was even buried by her family. Serious truck injuries and death cases require immediate attention by the victim or their survivors.

### **Motorcycle Crashes: Unique Attributes and Challenges**

The National Highway Traffic and Safety Administration (NHTSA) reports that approximately 5,000 people die in motorcycle accidents every year in the United States and nearly 100,000 people suffer injuries. Even more disturbing, per mile travelled, motorcyclists are five times more likely to get hurt than people in passenger cars and 26 times more likely to die in crashes.

Despite powerful evidence that riders who wear helmets can protect themselves (to a degree) from head injuries, spinal fractures, concussions, bleeding in the brain, and worse, many bikers do not wear their helmets and engage in other practices that can heighten their risk of injury, such as driving while fatigued or under the influence of drugs, taking dangerous routes, and recklessly operating by weaving in and out of slow moving traffic on a congested freeway.

### **Motorcycles Vs. The Rest of Them: A David Vs. Goliath Tale**

The same physics that we discussed in the subsection on truck accidents also creates special hazards for motorcyclists. In a collision between a motorcycle and basically any other vehicle on the road, the motorcycle will likely suffer the brunt of the damage. Furthermore, people driving in passenger cars, trucks and vans have some degree of shielding thanks to their vehicles' chasses as well as seat belts, air bags and other cushioning devices. A motorcyclist, on the other hand, generally has very little in the way of physical protection.

The mechanics of how a motorcyclist interacts with the road also create special challenges. Vehicles that have four wheels are, at least according to many engineering models, fundamentally more stable and easy to maneuver than vehicles with just two wheels. A slippery rainy day or an oil slick can obviously cause any vehicle to skid out, but it's much harder to control or manipulate skids on a bike or ATV. It's easier for those vehicles to flip over as well.

### **Risk Tolerance and Motorcycle Riders**

Motorcycle riding is also an activity that tends to attract people who, *on average*, are less risk averse and more prone to engaging in daring (and potentially dangerous) behaviors on the road.

Demographically speaking, for instance, motorcyclists tend to skew male and young compared with passenger car drivers. Tragically, many motorcycle injuries involve the head, neck and spine and lead to permanent chronic problems. Even riders who survive these wrecks can often be left with permanent chronic maladies such as paralysis and brain damage. Any serious road injuries are horrific. But damage to the brain and spine can be especially costly, since these injuries can prevent someone from leading a productive, healthy life and impose profound burdens on the rider's friends and families.

### **Unique Aspects of Other Motor Vehicle Accidents [Bus, Bike, Boat, Etc.]**

Different types of motor vehicle accidents create different typical signatures.

Bike crashes, tragically, tend to disproportionately injure young adults and children, since young adults and children preferentially ride bicycles. Boat accidents, meanwhile, often involve drugs and alcohol. It can also be very difficult to understand what happened in a boat accident, because these incidents tend to leave fewer forensic clues.

For instance, a collision between a truck and a passenger car on the freeway might leave skid marks, wreckage that stays in one place, and other clues at the scene that can help investigators distinguish who caused what, when, why and how. However, a collision between two boats in open water may leave very little (if any) similar evidence for forensics teams to examine. Sometimes, for instance, damaged boats can actually sink to the bottom of a body of water or drift far from the scene, making it practically impossible to distinguish what went wrong and who might be to blame.

Bus accidents, meanwhile, have their own peculiar elements.

Like trucks, buses are quite massive, at least compared with most other vehicles on the road, and professional bus drivers must abide by special rules and laws when transporting passengers. This regulatory complexity can create special types of legal challenges in bus accident cases.

School bus accidents, fortunately, tend to be relatively rare. But when school bus crashes do occur, they often lead to catastrophic injuries to many people at once as well as newsworthy events. The most serious crashes – involving many people injured and/or killed – can touch off complicated legal proceedings and necessitate a delicate, strategic media management strategy.

For instance, let's say 10 people, including a bus driver, die in a freeway crash and 15 others get seriously hurt. The family members of each of the victims may all want to take legal action, but they may not agree with other potential plaintiffs over what should be done, how it should be done, who should be sued, and so forth. Meanwhile, the media will likely want to interview many accident victims, witnesses, family members and “experts” about the wreck, creating an additional element of chaos and distraction.

Similarly, like truck accident cases, bus accident cases can involve many different stakeholders, including the driver, the bus company, another driver who caused or contributed to the crash, and insurance companies who represent various defendants.

Pedestrian accidents, meanwhile, *also* have important, unique characteristics.

According to the Centers for Disease Control, 76,000 pedestrians suffered injuries in 2012 and nearly 5,000 died in traffic accidents. This breaks down to approximately one pedestrian injury every seven minutes. In the time that it's taken you to read this chapter, how many pedestrians have gotten hurt?

Pedestrian accidents unfortunately also tend to disproportionately affect children and older adults (65 years or older). According to CDC figures, one out of five pedestrian fatalities involves someone who is an older American. Of young children (5 to 15) killed in traffic accidents, 20% of those fatalities involve pedestrian crashes.

Pedestrians are at more risk when they walk at night and walk in heavily populated urban areas where vehicles are likely to travel at high speeds. Alcohol also plays a tremendous role in many fatal pedestrian accidents, as well as other types of accidents we've discussed. In roughly 50% of fatal pedestrian accidents in 2012, either the pedestrian or the driver (or both) had consumed enough alcohol to cross the threshold for DUI (0.08% blood alcohol concentration).

#### **4 Common Principles for Responding to Diverse Motor Vehicle Accidents**

Horrendous bus and truck accidents that lead to multiple fatalities and millions of dollars worth of damage might not appear to have much in common with quieter (but also awful) whiplash cases and minor pedestrian injury events. But similar investigative and legal processes apply.

### **1. Get Medical Help**

First off, after the accident, **your first priority should always be to obtain a qualified medical opinion** (and possible intervention).

Even if you feel relatively “okay” after a collision, don’t necessarily trust your gut instinct. Symptoms of a concussion (which can later lead to bleeding in the brain, edema, brain damage and death) may not be that apparent right after a collision. Likewise, a soft tissue injury, such as whiplash, may not present as acutely painful. Plus, the body produces endorphins and other neurochemicals that can numb pain sensations in the immediate wake of physical trauma.

### **2. Collect Information from the Crash**

In general, the more evidence that you can collect, the better. As a rule, “over collect.” Your attorney can help you discard or sort what’s important later. Take pictures of the crash with your cell phone camera (or other camera), if you can. Collect names, license information, insurance information, and other relevant data from everyone involved in the wreck. If you’re too sick or injured or confused, deputize someone whom you trust to handle this information gathering process for you.

Never admit fault in an accident, and stick to the facts, as you understand them. For instance, it’s not helpful to yell and scream at a driver who just hit your vehicle, nor is it resourceful for you to apologize after a crash that may not have been your fault at all.

### **3. Be Watchful about What You Say about the Accident and to Whom**

In particular, avoid speaking to insurance adjusters or other people who could have a stake in the case before discussing the matter with a competent attorney. Even if you say something innocuous and off hand to an adjuster, that comment can come back to haunt your case and create headaches months later.

For instance, let’s say a teen driver texting on his cell phone rear-ends you at a stoplight. The teen’s insurance company representative calls you later and asks how you’re feeling. At that moment, you might be feeling somewhat better than you did on the day of the accident, so you might say something off hand to the effect of “I’m feeling a little better, thanks for asking.”

However, you might not be feeling better in absolute terms. In fact, you may later become diagnosed with serious whiplash or another soft tissue injury that could require months or even years of therapy, leading you to rack up hundreds of thousands of dollars' worth of medical bills.

Your off hand, one time admission that you were "feeling better" can be nevertheless be cynically used by the insurance company in court to "prove" that the accident didn't really hurt you and that, therefore, the insurance company shouldn't be liable to pay for your care.

That may sound like an exaggerated example to prove a point, but insurance companies are not beyond such tactics.

#### **4. Don't Wait to Investigate Legal Options**

Lastly, be sure to start investigating potential legal options as soon after the crash as possible, against all of your other obligations.

In some cases, the evidence from the crash scene can be destroyed or lost. Witnesses who had a very clear vantage of the crash – who could affirm your story or your version of the events – may forget what they saw. Plus, witness testimony is like fruit; it tends to "go bad" very quickly. Psychological research has proven that our memories warp easier than most people realize.

In addition, in some cases, you may need to take legal action almost immediately to subpoena evidence and/or to stop a potential defendant from doing something that could undermine your future chances at obtaining compensation.

Finally, there is the issue of peace of mind. The longer you have to wait before understanding what your options are – and what you should be doing – the more confusing and stressful the entire "post accident experience" will likely be.

#### **Traumatic Brain Injuries: What They Are, What Typically Causes Them and the Profound Legal Implications**

Traumatic brain injuries kill over 52,000 people in the United States and lead to 1.5 million Emergency Room visits every year. In fact, researchers estimate that around 2% of the entire United States population – over 5 million people! – currently lives with some form of TBI. Brain injuries are the top cause of death and disability among Americans ages 1 to 44. In the wake of extended U.S. military campaigns in Afghanistan, Iraq and around the globe, TBI incidents have also exploded in the military. According to some researchers at the Pentagon, approximately 300,000 members of the U.S. Armed Services may have experienced traumatic brain injury. TBIs not only can create massive complications in the short term -- such as bleeding in the brain, edema, swelling in the brain, memory loss, stroke, and death -- but they also lead to

longer term risks for problems like dementia and Alzheimer's. In fact, serious TBI sufferers are four and a half times more at risk for developing Alzheimer's.

Common causes of TBIs include sports accidents, falls, struck by events, motor vehicle crashes and blast exposures in war zones.

### **The Science of TBI Injuries**

TBI is actually is a broad "catch all" term that includes diverse types of medical events.

For instance, physicians and lawyers distinguish between closed head and open head injuries. Closed head events happen when the trauma to the head doesn't actually break the skull but still leads to damage to tissue, changes to neurochemistry, bleeding, and the build up of fluid inside the cranium. Open injuries, on the other hand – also known as penetrating injuries – are often associated with gunshots and fractures caused by falls.

Some TBIs involve the toxic exposure of brain cells, in which a foreign compound somehow reaches delicate neural tissue and does damage. Other types of injuries involve the deprivation of oxygen to brain cells. For instance, someone who suffers severe pneumonia or drowns and gets resuscitated might lose some brain function as a result of anoxia.

Medical professionals also catalogue brain injuries by their severity. Different scales are used to determine the intensity and nature of the damage:

- **The Rancho Los Amigos Scale** attempts to measure the patient's ability to do repetitive tasks, respond to commands, and stay conscious.
- **The Glasgow Coma Scale** measures the extent to which a brain injured person can respond to behavioral prompts.
- **The Glasgow Outcome Scale** looks at a longer term prognoses for recovering various types of social, cognitive, and behavioral functions.

### **Current and Future Treatment of TBIs**

Neuroscientists, psychologists and cognitive scientists have made profound technological and intellectual breakthroughs with respect to the diagnosis and treatment of brain injuries over the past few decades, but the brain remains a mysterious organ.



We have more effective and targeted drugs and imaging techniques than ever before, but our collective understanding of how the brain orchestrates its various functions and engages in self-repair remains very primitive.

The good news is that our model of how the brain (and neural tissue in general) responds to trauma has changed in a way that's quite hopeful for injured patients.

The old picture of the brain suggested that the organ was relatively static. In other words, once the brain suffered some kind of insult, such as loss of neural tissue due to cognitive decline or a blow to the head, then that was that. Nothing could be done.

However, the newer thinking among neuroscientists and cognitive experts says that the brain is surprisingly adaptable. In fact, some experiments regarding re-growing types of neural tissue have proven promising. Under certain circumstances, the brain seems to be able to compensate for lost functions by forming new neural pathways or taxing different parts of the brain with important jobs that once belonged to a portion of the brain that suffered damage.

### **Many Different Ways to Injure the Brain**

However, the brain's sheer diversity and complexity means that understanding and responding to TBI trauma can be quite a challenge.

For instance, consider a relatively straightforward scenario in which a spectator at a baseball game gets hit in the head by a line drive foul ball. You might intuitively believe that the most brain damage would happen right at the site of impact -- where the ball connected with the head. However, at those collision speeds, the brain effectively acts as a fluid, from a physics perspective. When the impact hits, a ricochet effect can create brain damage in the opposite side of the head from where the blow hit. Technically speaking, this is known as a **coup-countercoup injury**, and it has very specific signatures and treatment protocols.

Now imagine a (horrendous) situation in which an overwhelmed nanny shakes a crying baby to make it stop screaming. The baby may then get nauseous, throw up, shake and exhibit other symptoms of a terrifying condition known as Shaken Baby Syndrome. In this case, the rapid rotational forces created by the shaking could have caused tearing of delicate neuronal structures, leading to a different type of TBI known as a **diffuse axonal injury**.

Like the coup-countercoup, the diffuse axonal injury presents unique signature symptoms and requires a high specific (and urgently indicated) treatment regimen. In other words, treatments that might be appropriate for one type of injury may be inappropriate or even dangerous for a different type of injury. That's why prompt (and correct!) diagnosis is critical.

Factors that can determine the type, extent and nature of the brain damage can include:

- The angle of impact;
- The age and general health of the person prior to the TBI;
- The delay between the accident or event and the application of medical care;
- The quality of the medical care provided;
- Any secondary complications, such as infection, bleeding, other medical conditions, etc;
- The nature and extent of the rehabilitation;
- The patient's own stamina and luck.

### **Concussions: Brain Injuries That Society [for Whatever Reason] Fails to Take Seriously Enough**

If you're a sports fan, you've probably read or heard a lot recently about the National Football League's "concussion crisis." In the wake of high-profile suicides and deaths of famous former NFL players, like Junior Seau, investigators began to find a profound association between NFL concussions and a kind of brain damage known as Chronic Traumatic Encephalopathy (CTE). The NFL is currently in the process of responding to a giant lawsuit brought by thousands of former NFL players and their families. The League has promised to pay billions of dollars to compensate these players and their families for chronic problems created by concussions the players sustained while playing professional football.

Over the next few years, it is very likely that we will witness an explosion of concussion related investigations not just in football but also in other contact sports. The link between "bell ringers" and cognitive decline, depression, anxiety, dementia, Parkinson's disease and Alzheimer's seems fairly robust. This is scary because almost all American children grow up playing (for years) contact sports like football, soccer and hockey. How many of us have sustained some degree of brain damage, perhaps undiagnosed, that has led (or will lead) to cognitive decline or other medical problems over the years?

Whether the new science – and the inevitable legal fighting that will follow it – prompts changes to the sports culture in the United States and in Texas remains to be seen. However, if you are a concerned parent, just appreciate that even "mild" concussions can lead to severe consequences.

For instance, researchers now believe that even minor concussions can change the brain's glucose metabolism patterns for up to week or longer after the concussion. If such an injured person suffers a second blow to the head while the brain is still trying to heal from the first blow, the results can be devastating. A so-called "second impact injury" can lead to profound and potentially fatal consequences.

Rest and proper post-accident care can help prevent second impact injuries. Getting a complete diagnosis is also very important. Doctors use elaborate tests and scans to diagnose traumatic brain injuries, but some types of trauma are not easily picked up by conventional scans.

For instance, an MRI may show that a patient looks "fine" and ready to resume normal activities, but a SPECT scan, PET scan, or a more advanced MR scan called a DTI might identify patterns of trauma that the regular MRI failed to pickup.

### **Creating a Legal Case to Obtain Compensation After a TBI – Overview of the Challenges**

Building and winning a traumatic injury case can be incredibly delicate and demanding work. It's one thing to prove to a jury that a car accident caused a broken leg, for instance. You can put an x-ray up on a screen and show the fracture for everyone to see. It's another thing entirely to convince people that an accident caused a traumatic brain injury that led to dangerous declines in attention and executive functioning. Sure, you can show a jury MRIs, CT scans and other types of imaging, but some of the most significant functional impairments rarely show up on these scans.

Our internal experiences are just that – internal. It can be hard to test and objectively prove that certain cognitive or behavioral problems flow directly from an accident or brain injury. Here are principles that can help you prepare a traumatic personal injury case:

- **Keep excellent records**, both of the injuries/accident itself as well as all of subsequent communications with doctors, diagnosticians, therapists, etc. A brain injured person is rarely the right person to do this, precisely because damage has been done to the brain. We recommend that a spouse, parent or significant other always attend medical appointments and help the TBI victim document all legitimate effects of the injury.
- **Keep a journal of your symptoms and day-to-day activities.** If you're unable to write, deputize a family member or a friend to help you. In addition to serving as potential evidence, a journal can help your doctors understand the progression of the brain damage and also alert them to potential problems with therapies or treatment modalities. Again, we recommend that a spouse, parent or significant help the TBI victim identify and track the legitimate effects of the injury.

- **Work with an attorney who has handled TBI cases before.** Each TBI case is unique, but there are tested processes that experienced TBI lawyers use to obtain results and help victims and their families work through the experience. In addition, the science is developing very quickly concerning the diagnosis and treatment of TBI. A lawyer must keep up with this science, or the client could be at a significant disadvantage at trial.
- **Hope for the best, but make contingency plans.** Brain injuries are among the most perplexing and confusing injuries. One month, the injured person might seem to be doing fine and even recovering function, only to suffer an unexpected set back that appears to “wipe out” months of progress. The point is that you will not normally know if the TBI is long lasting or if it will resolve. Plan as if it will not resolve, and hope and pray that it will.
- **Maintain an even demeanor.** Avoid being overly enthusiastic about good signs and overly pessimistic when things don’t work out as effectively as you might have hoped

### **Unique Signatures and Challenges Posed by Medical Malpractice Cases**

Doctors, pharmacists and other caregivers have important responsibilities to patients to treat them effectively and ethically. Medical negligence is a profound and, by some metrics, growing problem in the United States. The Journal of the American Medical Association (JAMA) reports that next to heart disease and cancer, medical negligence kills more people every year in the United States than anything else.

When providers -- through carelessness, negligence or errors of omission -- cause harm to a patient, directly or indirectly, that patient or the patient’s family can seek damages, such as compensation for lost work time, medical bills, pain and suffering, loss of consortium, and punitive damages. Unfortunately, even though 98,000 Americans die due to medical negligence every year, very few victims ever take legal action.

### **Why Medical Negligence Is Such a Huge Problem**

First of all, many people fail to recognize medical malpractice when it occurs.

If your doctor gave your husband the wrong kind of kidney therapy, prompting him to suffer a coronary event unexpectedly, you will likely be far more focused on what’s happening with your husband than you are with second-guessing his doctor’s medical wisdom. In other words, lack of patient education may be a big reason why more people don’t take legal action.

Another challenge involves the widely pervasive “tort reform” myth. Many people believe that medical malpractice cases are puffed up or even outright inappropriate. The so-called “tort

reformers” have succeeded not only in brainwashing a generation of Americans to believe that injured patients are overly litigious (when study after study shows that the opposite is actually true), but also in inserting unfairly tight caps on malpractice damages into many state laws, including in Texas.

In other words, insurance companies, physicians groups and other interest groups have managed to change laws to make it very difficult for people who are legitimately seriously injured by medical malpractice to obtain fair compensation.

As a result of all these roadblocks and obstacles, many personal injury attorneys will turn away what on paper seem like solid personal injury cases, because the odds are fundamentally stacked against victory. In fact, four out of five medical malpractice lawsuits conclude without any payouts to victims.

This 2007 article, [The Medical Malpractice Myth](#), from the Washington Post’s online magazine highlights the diverse evidence that busts the tort reform myth and discusses some of its devastating implications for the health care system and the health of Americans in general:

*“The best attempt to synthesize the academic literature on medical malpractice is Tom Baker’s The Medical Malpractice Myth... Baker, a law professor at the University of Connecticut who studies insurance, argues that the hype about medical malpractice suits is “urban legend mixed with the occasional true story, supported by selective references to academic studies.” After all, including legal fees, insurance costs, and payouts, the cost of the suits comes to less than one-half of 1 percent of health-care spending. If anything, there are fewer lawsuits than would be expected, and far more injuries than we usually imagine.*

*As proof, Baker marshals an overwhelming array of research. The most impressive and comprehensive study is by the Harvard Medical Practice, released in 1990. The Harvard researchers took a huge sample of 31,000 medical records, dating from the mid-1980s, and had them evaluated by practicing doctors and nurses, the professionals most likely to be sympathetic to the demands of the doctor’s office and operating room. The records went through multiple rounds of evaluation, and a finding of negligence was made only if two doctors, working independently, separately reached that conclusion. Even with this conservative methodology, the study found that doctors were injuring one out of every 25 patients—and that only 4 percent of these injured patients sued.”*

### **Time to Act Is Limited**

Another reason why potential plaintiffs should want to act with relative (although deliberate) haste is that the statute of limitations on your case can elapse. The exact amount of time that you have to file a case will depend intimately on the nature of the accident or event, what type of

injuries you sustained, and so forth. In some cases, the statute of limitations can be quite short, so you may have just a brief window of opportunity to explore the potential to bring legal action.

### **Examples of Medical Negligence:**

- A pharmacist misreads a prescription for a diabetes medication and fills a prescription for the wrong medication... or the right medication five times its recommended strength. As a result of this pharmaceutical error, the patient overdoses on the drug and suffers serious side effects. In this situation, the pharmacist or the doctor or hospital in charge of the patient's care could be held liable for surgical costs, medical bills and other damages.
- An oncologist fails to run a full battery of tests on a woman who presents with symptoms that could be indicative of early stages of breast cancer. As a result of the oncologist's lack of due diligence, the patient waits six more months before getting tested again. By this time, it may be too late to operate or the intervention may need to be much more extensive. The woman (or her family) may have a case the oncologist for this potentially deadly error of omission.
- A surgeon may do a poor job of stitching up an incision or even leave a tool inside a patient, prompting deadly sepsis or bleeding. The victim or the victim's family can potentially bring legal action against the surgeon or the hospital for the negligence that led to the horrific medical fall-out.

### **Wrongful Death Cases: How to Respond Assertively When Dealing with the Unique Challenges of Losing a Loved One Due to Someone Else's Carelessness Or Negligence**

Tragically, many of the injuries that we've discussed in this book so far (and that we will discuss later) can either immediately over years lead to the death of the victim.

A traumatic brain injury sustained in a high school football game, for instance, can lead to hemorrhaging and brain death two weeks after the game. A car accident victim may survive the initial three or four weeks in the hospital only to get an infection while recovering at home and pass away from complication of that infection. A victim of medical negligence can develop a chronic condition that can cause her to die 10 years earlier than she otherwise might have.

As a relative or a close friend of someone who has suffered a severe injury (or who has died as a result of someone else's wrongdoing, negligence or carelessness), you may have legal options to seek both compensation and justice for what happened.

The basic philosophy of how to obtain a result is similar to what it is in a serious personal injury case. However, there are several unique features to wrongful death cases that distinguish them from other serious personal injury cases.

First off, in addition to collecting evidence and establishing the basis for a legal case, you may also need to take care of funeral expenses and logistics as well as handle the will and probate process. These processes can be complex and legally ensnaring on their own, so you may require additional legal assistance from someone who specializes in handling those types of processes.

In addition, the emotional journey is unique.

Whenever someone gets seriously hurt, obviously, that person's friends and family wind up torn between the deep need to help that person recover and the deep need to deal with life's logistics and seek compensation and justice for what happened. But if you've lost someone in an event or accident, you will need to process your grief and simultaneously fight for justice.

## **Section 3: How to Handle Insurance Companies During Your Serious Injury Case: The Basics**



## How to Handle Insurance Claims: The Basics

The costs of serious personal injuries caused by motor vehicle accidents, traumatic damage to the brain, medical malpractice, workplace accidents and other events that we've discussed exact a staggering toll on the American economy. The National Highway Traffic Safety Administration (NHTSA) estimates that just motor vehicle accidents alone in 2010 created \$1 trillion worth of lost productivity and loss of life.

Who should pay for those costs; how; and under what circumstances?

The vast majority of monies to pay for wrecked property, bodily injury and other damages comes from insurance companies. Per Verisk Analytics, in 2012, the average money claimed for bodily injury in a motor vehicle accident was \$14,653. Property damage claims barely tipped \$3,000 on average that year, and the average collision claim didn't even reach the \$3,000 mark.

Per NHTSA, the breakdown of who pays these auto accident costs is as follows:

- The federal government (6%)
- State and local government (3%)
- Healthcare providers and charities (14%)
- Victims of crashes (26%)
- Private insurance companies (50%)

These statistics only cover motor vehicle accident costs, but it's fair to extrapolate to other types of serious injuries. The point is that we all, collectively, rely heavily on insurance companies to provide compensation after disasters and injuries. But how does the insurance process work? What do you need to do and know? What can go wrong with this process?

In this chapter, we will review the basics of the byzantine and confusing process of obtaining fair insurance results after a serious injury, so that you can be at least well-versed enough to understand the bigger picture.

### Filing the Claim

After being injured in a crash (or hurt in another event), you may need to file a claim with an insurance company -- perhaps yours, perhaps a company representing a defendant -- to obtain payment for lost productivity and wages (past, present, and future), medical and rehabilitation bills, loss of consortium, pain and suffering, and other types of damages.

### The Two Main Claim Categories

A **first-party claim** is a claim that *you file with your own carrier*.

A **third-party claim** is a claim you file with *an insurance company that represents a person or business whom you allege caused harm.*

Most serious injury cases lead to the filing of third-party claims, but in some cases, you may need to invoke your own insurance coverage.

For instance, if you recall from earlier chapters, one of the key conditions for building a successful case involves making sure that a pool of money can be tapped to pay damages. If an uninsured motorist caused a wreck, you may be able to file a first-person claim with your own carrier to obtain critical compensation. However, if a defective drug maker or careless commercial trucker caused the injury – in other words, the defendant has ample assets and coverage -- you will likely file a third-party claim.

### **Timeliness Matters: But Don't Rush the Process If You Don't Understand It**

The rules for how and when you need to report claims to insurance companies can be complex to the point that they can confuse even some professional attorneys. On the one hand, you don't want to wait too long to file a claim, or else the company could reject your claim due to the delay. On the other hand, you want to avoid filing a claim improperly, which can leave the claim vulnerable to scrutiny and potential rejection.

### **Investigation**

Once you've filed a claim, the insurance company will open what's known as an "investigation." During this phase, you will need to offer evidence to support the claim, such as names and contact information of witnesses, photographs of the injury or the scene of the crash and an elaborate discussion of what happened.

A representative of the insurance company, called the "adjuster," will probe the claim on behalf of the company, analyze your claim's value, and then either offer a settlement or deny the claim altogether. Claimants can appeal denials or inadequate settlement offers through an internal process at the insurance company. The insurer may provide a variety of reasons for denying your claim (or offering only limited benefits), such as:

- Perhaps you waited too long to make the claim.
- Maybe the insurer denies responsibility for the accident for xyz reason.
- Maybe the insurer does not provide coverage for your type of accident.

- Maybe the adjuster just does not believe that you will go through with the claims process if the adjuster can make it difficult enough for you.

## **Damages Formulas**

Assessing the value of your claim can be complex business, so insurance companies use formulas to calculate this value and, they sometimes will use fancy computer programs to try to limit the payout for what has occurred. In general, a claimant can ask for money for medical bills and other similar expenses, lost income, disfigurement or disability, lost educational opportunities and training, damage to personal and social relationships, and mental and emotional trauma caused or exacerbated by the injury. Insurance companies often use preset algorithms they call “damages formulas.”

The insurance adjuster assigned to your case tallies up the medical bills and expenses and lost wages, which are known in industry parlance as “specials,” because they refer to damages that can be added with a calculator and are uniquely special to the individual. The adjuster then adds other harms and losses -- known as “general damages” -- to provide compensation for emotional trauma, pain and suffering, and other general damages. The adjuster then will put that information into his or her own individual formula to “guesstimate” the value of the case. Of course, part of the job of the personal injury attorney is to make sure that the adjuster has all of the relevant information, including other harms and losses that will make the adjuster modify his or her company’s algorithms to account for all of the injured person’s harms and losses.

## **Who Is at Fault For What Happened... and By How Much?**

In some cases, accident or injuries are clearly 100 percent the fault of some person or some company. However, in other cases, the extent and percentage of fault is debated.

The insurance company will use this “percentage of fault” concept to adjust its settlement. The formula that calculates damages might say that your total damages come to \$80,000. But if the insurance company believes that the driver who hit you was only 50 percent responsible for the crash, it could cut the settlement amount in half and only offer you \$40,000. In Texas, if a driver is more than 50% responsible for the collision, that driver is prevented from recovering for any of his own harms and losses, regardless of the severity of the injury or the poor decisions of the other driver. Often, in these potential “split fault” cases, an attorney can highlight the poor choices of the other driver and increase risk of a jury making a finding that would create a recovery for their client. These cases can be very difficult for all parties involved.

This discussion is just a basic overview of some of the processes that insurance companies use, and the factors that can influence how a carrier evaluates a case and what actions it can take (or will take) when handling a claim could fill several books.

Even in a Utopian society -- in which insurance companies always worked objectively, played by the rules and sought to be ethical and transparent -- this process could still lead to substantial debate. For instance, claimants might disagree about the percentage of responsibility. Or there could be disagreements about what the algorithm should be... or what the costs of surgery or therapy will be or should be.

However, plenty of independent research has shown that insurance companies often act ruthlessly and immorally to minimize payouts to claimants. The Miami Herald-Tribune, for instance, summarized one of the most famous and egregious examples of this kind of behavior in its 2006 article, "[How a get-tough policy lifted Allstate's profits](#)," which begins as follows:

*For more than a decade, Allstate Insurance Co. kept a secret from its auto policyholders -- a national strategy to force customers to accept reduced cash payouts or face years in court.*

*Thousands of pages of Allstate documents reviewed by the Herald-Tribune detail how the nation's second-largest insurer systematically cut payments to customers as a way to boost profits.*

*The documents describe a two-pronged strategy.*

*First, the company evaluates claims with a computer program designed to reduce payouts by as much as 20 percent of what the company once paid for the same injuries.*

*Second, Allstate pushes policyholders to accept quick settlements without the help of lawyers. Policyholders who try to fight for more money face Allstate attorneys coached to refuse to negotiate and to drag out litigation.*

*The approach often forces car accident victims to take what Allstate offers right away or spend years in court while their bills go unpaid -- a strategy Allstate spelled out in guidelines for claims adjusters that "forces the claimant and attorney to think about the obstacles they must overcome ..."*

## **Tools Insurers Use to Minimize Claims Payments**

The insurance companies also now have developed powerful tools to minimize claims payouts. For instance, many insurance companies use a notorious (at least from claimants' perspective) computer program called Colossus to slash payouts. A telling 2013 article from the Chicago Tribune, [Former Allstate claims manager offers insight into computerized auto injury payouts](#), describes how the Colossus process works and how it can harm claimants:

*"When an insurer buys the software, [Colossus] conducts a "benchmark session" in which, with help from adjusters familiar with certain areas of the country, hypothetical claims are used to set the initial "tuning." The system that Allstate uses, Colossus, has about 600 codes representing various types of injuries, each of which has a dollar value settlement range. Periodically, an insurer might modify the software, perhaps removing or excluding certain outlying claims or settlements from the database. Those might include cases in which an insured driver has a major disfigurement.*

*By excluding that data, the recommended dollar settlement range to consumers is lower. The low end of the range is usually 20 percent less than the value of the claim being studied, [Mark] Romano said.*

*Romano, a Tampa, Fla., native who has a bachelor's in risk management and insurance from Florida State University, began working at Allstate in 1999, when it acquired a unit of CNA Financial, his previous employer.*

*Romano, in an interview and in his "Low Ball" report, says he was Allstate's top Colossus expert. His work included "tuning" Colossus, upgrading the system, training employees on it, analyzing trends, and representing the company at industry conclaves about Colossus.*

*"Skewing occurred initially upon the installation of the product and continued via various methods," including subjective data scrubbing in which outliers were removed or in which adjusters picked injury codes that yielded lower settlement values, he told the Tribune."*

It's important to remember that insurance companies are not "evil" or dedicated to being oppositional. Many people who work for these companies do so because they want to help other people recover from traumatic situations; we should not paint with a broad negative brush. However, just appreciate that insurance companies are businesses. *They are systems designed to produce a profit for their companies and their shareholders.*

As such, even though they give lip service to wanting to help society and ensure the wellbeing of claimants, the core business model of insurance creates a fundamental disconnect. After all, if an insurance company strives to be overly generous with claimants, its margins will shrink, leaving it more vulnerable to competitive companies that are less ethical and more willing to do whatever it takes to minimize payouts.

We cannot pretend to have the answer to how to fix this insurance situation. Fortunately, you do not need to solve this society-wide problem in order to obtain fair results in your case. In fact, you don't even have to understand that much about the industry or about its processes.

However, you should be aware of standard tactics that insurance companies use to deny claims that should be paid, intimidate claimants and otherwise disrupt, lengthen or make the process unnecessarily complex.

### **Dubious Involvement Immediately After an Accident**

As we mentioned in an earlier section, personal injury attorneys often have to shrug off the unfair and annoying label of “ambulance chaser.” But insurance companies actually legitimately do metaphorically “chase ambulances” by getting involved rapidly after serious injuries. Insurance companies are businesses. They have evolved time sensitive and highly tuned processes to minimize claims payouts.

After a horrible truck accident, for instance, the insurance company that represents a liable trucking company might rush to the scene and arrive even before police and rescue workers do! The insurance representative may even insert himself or herself into the investigation to downplay the victim's story and/or to coach the negligent trucker about what to say (and what not to say) to the police. Insurance representatives might even talk to police officers to try to bias them and engage in all sorts of other morally and ethically dubious behavior to obtain results.

### **“One Time Offers”**

Here's another bully tactic.

Insurance companies understand that injured people and their families are confused and psychologically vulnerable. The vast majority of people hurt in accidents want to minimize legal and insurance related hassles. Most people want to “get the thing over with” -- to avoid having to think in any way about the accident or its aftermath. Insurance companies understand this mentality, and they play off of it to try to obtain results.

For instance, an insurance company may offer an injured person a so-called “one time offer” that the claimant must accept within a very limited timeframe, or the company will rescind it.

The prospect of receiving a large sum in short order can be really appealing to someone who has been seriously hurt, particularly since it might mean avoiding complex negotiations or “having to deal with lawyers” about the crash.

Let's say that a trucking company representative approaches an injured man and his wife a week after a bad crash and offers a settlement for \$170,000. Although the man may be paralyzed and

unable to work, \$170,000 still sounds like a lot of money. The couple may decide to go ahead and take that money rather than “gamble” on the chance that the offer would go away and that the insurance company might offer them less or possibly even nothing.

However, that same case -- if handled by an attorney who understands how insurance companies work and how to stop such dubious ploys -- might ultimately settle for millions of dollars. And that money is important! After all, the point of obtaining serious money verdicts is not simply to “stick it to the man” or to punish a bad person or bad company for carelessness or wrongdoing. *The point is to acquire funds and resources that are absolutely necessary* to pay for a lifetime of medical care, to relieve families of awful burdens and to make life bearable after serious trauma.

### **Delaying, Intimidating and Failing to Cooperate**

Insurance companies have deep and detailed playbooks of tactics and strategies to use to minimize payouts and push claimants to compromise where they shouldn't:

- You may find that your claim is held up or delayed for mysterious reasons.
- Or the insurance company may try to categorize your accident and/or injury in such a way that it would minimize the company's responsibility.
- The company may try to extract damaging statements from you, from witnesses and from other stakeholders to win the upper hand in negotiations.
- The company might give you a lowball offer or threaten to close your file, unless you do XYZ by ABC date.
- Finally, even if and when you win your case or win a settlement, the insurance company may still put up resistance by delaying payouts, purposely underpaying you or even challenging the validity of your injury after things have been settled. For instance, let's say you suffered a serious back injury that has led to partial paralysis. You now have to walk around with a cane for the rest of your life. One day, during a follow up investigation, an insurance representative sees you walking around without your cane because you forgot it at home. He takes a picture, and then uses that photographic evidence to “prove” that you had been “overplaying” your injury. That photo then becomes a pretext to deny or reduce your benefits or worse, claim that the injured party is committing fraud.

An experience attorney can help you resist these ploys and fight back. Under certain circumstances, the insurance company can even be punished for engaging in this kind of behavior, entitling you to additional damages.

## **Section 4: Answers to Frequently Asked Questions (FAQs) about Serious Injury Cases**



## Getting Clarity on Important Questions about Your Injury

This section will examine diverse and important questions that might be on your mind about your matter – or at least probably should be on your mind! This is not a comprehensive catalogue of potential questions that claimants and their families should ask, but hopefully it at least will prompt you to think more strategically and productively.

### How much will your serious injury case be worth?

What end results should you anticipate? If you fractured your ribs, and your wife sustained a concussion in a truck collision, for instance, when all is said and done, how much (ballpark estimate) might you expect to collect?

These kinds of questions are natural and important one to ask. However, it's devilishly challenging to answer them. Why? The answers hinge on many subtle factors, and the differences between a major win (such as a seven figure verdict) and a miniscule (by comparison) settlement offer – or no offer at all – can be really narrow.

Right now, upon superficial analysis, it may seem like you have a relatively good chance of winning, let's say, \$400,000 in a case against the manufacturer of a defective kidney dialysis machine. Several recent cases with very similar backgrounds have settled for similar amounts. But as you dig deeper, you could find subtleties about your case that may make it much more challenging than those cases. Maybe you missed a filing deadline, or maybe the other accidents occurred in hospitals notorious for using out of date machines or hiring bad technicians.

Likewise, just because a similar case settled for very little money – or didn't settle for anything – does not mean that you might *not* have a big case.

When assessing the value of a case, keep in mind author Nassim Taleb's concept of "Black Swans" and "White Swans." In his books, *Fooled by Randomness* and *The Black Swan*, Taleb discusses how and when and why statistics can bias us and challenge our ability even to make ballpark projections of things like "return on investment" and "personal injury case verdicts."

A White Swan is a serendipitous event – a positive, unexpected windfall. A Black Swan is just the opposite – an unexpected negative event, like the stock market crash of 2008 or the 9/11 attacks. A revelation of a black swan or a white swan can dramatically affect the forecast of the value of the case.

Here are some elements that could be important:

- The nature and severity of the injuries;

- The nature of the wrong;
- What could have happened as a result of the bad choice?
- Who could have been hurt by the bad choice?
- How bad could the harm have been to you or others?
- How much you were at fault for what happened (if at all);
- The type of work you do and how the injury might affect that work;
- How and when you obtained emergency care and medical care;
- Your lifestyle and baseline health before you get injured;

### **How long will your case take?**

It's similarly challenging to predict the *length* of a case with any accuracy, particularly at the beginning stages.

For instance, your case may seem complicated and overwhelming right now because the defendant has an uncompromising personality. But some evidence may come to light that could help force a settlement much earlier than you're anticipating. Conversely, a case that seems relatively straightforward could wind up becoming vastly more complicated. The truth is when you file a lawsuit, you control half of a tornado, meaning that you really control none of it. Once a lawsuit is filed, your lawyer can help give you some ideas about the timing, but no one can tell you absolutely how long your case will take. As the case develops, the lawyer's sense as to timing generally gets better, because issues begin to fall away.

### **How quickly should you consider taking legal action?**

Again, the answer depends on the circumstances! In some cases, you may have some time (days, weeks potentially) to deliberate over how and when to hire an attorney and what to do. In other cases, the best course of action is to sue or take other legal action literally as soon as possible -- even before the accident scene gets cleaned up, ideally, so you can preserve certain evidence and hedge against likely defense strategies.

### **What if you contributed to the accident in a way that caused harm to somebody else?**

For instance, let's say that you and a truck driver both pivoted towards the center lane of a freeway at the same time and collided, causing you to veer into a third vehicle, which resulted in

harm to the people in that third vehicle. The accident might have been *mostly* the truck driver's fault, but you also contributed. You might sue to obtain compensation from the trucker who hit you, but you also might have to defend against an action brought by the third driver. To get a handle on these kinds of complex questions, speak with a qualified attorney.

### **Should I sign a release without having my attorney review it?**

No, not unless you are versed in indemnity provisions and subrogation law. The truth is that there is not a "standard release." Insurers routinely overreach when they draft these releases. These releases can create future liability for the person signing the release, sometimes for more money than is involved in the release itself. Many times, negotiating the release can be more daunting and complex than handling the lawsuit itself. Going it alone is playing Russian Roulette and could actually create liability for the signor that does not exist before the settlement. Be very careful, and make sure you understand every provision of a settlement agreement. If you do not understand the risk going forward, do not sign it.

### **How will making a claim for an injury affect my insurance rates?**

First of all, if your claim is solely against another individual -- and his or her insurance company is responsible to defend or pay the claim -- there is not ever a claim against your liability policy. Therefore, your injury claim has no affect on your own liability insurance coverage. Sometimes you must or may make a claim on your own underinsured/uninsured insurance policy (if the person responsible for your car wreck has no liability coverage or if your damages are greater than the liability and any excess coverages of the person responsible for the wreck). In that event, you still would not have a claim on your liability policy, and your liability policy will not be affected. The uninsured/underinsured policy would have a reportable claim for the policy period. In addition, a claim for personal injury protection benefits (PIP) on your insurance policy has no more impact on your liability coverage than does your own underinsured/uninsured coverage. While making a claim on the underinsured/uninsured coverage or personal injury protection coverage is reportable, understand that the underinsured/uninsured coverage does not come into consideration for injury accidents until the liability coverage of the responsible person is exhausted. As a result, even serious claims on those policies rarely materially affect future rates, because it takes a serious injury for the policy to normally be used.

In addition, in Texas, PIP benefits are normally relatively small (\$2500 for most drivers). Claims against your own PIP policy should not materially affect the PIP premiums going forward, because the PIP policy is normally an insignificant part of full coverage policies.

### **How do I know what insurance coverages I have?**

Your insurance carrier or agent will send you what is known as a declarations sheet or "dec sheet" on request that specifically lists the coverages on your policy and the amounts of those

coverages. In Texas, unless you specifically buy additional coverage, the state mandated minimum coverage is up to 30K liability per person and 60K per incident liability coverage; up to 30K liability per person and 60K per incident underinsured motorist coverage; and \$2,500 personal injury protection coverage. If you have full coverage, you have all three coverages, unless you elect in writing to reject the underinsured motorist coverage and personal injury protection coverage. If you have made that election in the past, on renewal of the policy, the rejections renew as well, automatically. You must specifically ask for the benefits to have them added back to the policy. Without underinsured/uninsured motorist coverage and personal injury protection, you are unnecessarily exposed to risk of harm. If you ever need those coverages, you will be glad you paid the extra few dollars a month for them.

### **Do I have to have an attorney to collect from my own insurance company?**

You do not have to -- then again, you can perform surgery on yourself if you have to as well! In all seriousness, there are times when it makes sense to get an attorney's help and times when it does not. To collect most PIP benefits, you may not need a lawyer, unless you just do not want to deal with the collections process. I often tell potential clients who have low amounts of PIP benefits that collecting these benefits is like picking money up off of the sidewalk. You fill out a claim form and attach evidence of the amount of loss; a week or two later, the check comes in the mail. You do not need an attorney to do this for you, but many people opt to get help for peace of mind and to take the process off of their plate.

An underinsured/uninsured claim is another matter entirely. These claims are just as contested as any claim on any third party. Despite the advertising to the contrary by the insurance companies -- and despite insurance code provisions that require such companies to treat you with good faith -- here's the frustrating reality. You can expect your own insurance company to treat you with hostility when you prosecute an uninsured/underinsured motorist claim. Not hiring an attorney in this situation plays into their hands.

### **How do I know what insurance coverages the person who harmed me has?**

You don't, at least initially under the current state of the law as this book is being penned. The same insurance company asking you for statements and medical authorizations to comb through your private medical information holds that information. Most companies will not voluntarily tell you the policy limits, unless it is clear that the policy will be exhausted. Information needed to help evaluate the claim is often a one way street until a lawsuit is filed. After a lawsuit is filed, that information is available by request for disclosure in Texas state court and by interrogatories or production request in other states.

### **Should I give the insurance company a medical authorization?**

Just like you should not give statements to insurance companies; you should not give a medical authorization. In many ways, allowing the insurance company to have a medical authorization unfettered by a protective order creates a lot of risk. Routinely, with any claim, insurers will gather records that are decades old and completely unrelated to the current injury. They will do so looking for mud to throw on you as a claimant. OB/GYN records, psychological records, medical prescriptions -- these all become fair game. A well-qualified personal injury lawyer should take action to limit the scope of medical records, the time period involved and even protective orders that allow the attorney to review the records in advance and make any objections with the court before production of the medical records.

If the insurance company gains access to unrelated but potentially troublesome medical records, it is hard to un-ring the bell. A decades-old STD, an abortion, a report of past drug use or abuse, and psychological issues amazingly become relevant, and the insurance company will try to use them. Without prior knowledge of the issue, your attorney will be at a distinct disadvantage and can be blindsided at trial.

### **Should I use my health insurance when I have been injured by another's poor choices?**

Normally, yes. Sometimes, however, you might want to not submit the medical bills to your health insurance company. Call your lawyer to determine whether to have your health insurer cover the costs or to seek more advantageous alternatives.

### **Will my health insurance provider be paid back from my recovery?**

Normally, per your contract, your health insurer will be entitled to be repaid from the recovery. This process is called *subrogation*. The extent and calculation of the subrogation interest is dependent on a number of factors including the language of the insurance policy, the language of the summary plan description in certain qualified ERISA group plans, and whether your insurance policy is an individual policy or group policy. In some situations -- e.g. when only limited funds can be recovered to pay for large medical costs -- the most critical part of the claim process is dealing with the outstanding subrogation interests in a timely fashion. A qualified personal injury lawyer can help resolve these issues for you.

### **If I do not have health insurance, are resources available to help me get treatment?**

Yes. Assuming that there is fault, damages and a financially viable defendant; very often, you can get the treatment you need to get better. A qualified personal injury lawyer can help.

### **How does Medicare or Medicaid fit into the picture after an injury?**

If you are a current Medicare or Medicaid beneficiary, and you suffered an injury due to someone else's poor choices, you will continue to see doctors and providers as before. Your

lawyer will need to know early on in the representation, so that government mandated processes are completed and benefits and subrogation are coordinated before settlement. If you are within 3 years of Medicare eligibility, your lawyer may need to coordinate to determine whether your recovery includes potential future benefits.

### **What do I do if my doctor will not treat me because someone else caused my injury?**

Find another doctor. Although medical ethical standards require doctors to provide records and even testify truthfully about your condition and its cause, many doctors simply refuse to do so. If your doctor is this selfish, you are better off finding a doctor who understands the physician's ethical and moral role. Your lawyer should be able to help if this happens to you.

### **What if I have a claim against a governmental entity for a personal injury?**

Every state is different concerning responsibility for injuries by the state, and various political subdivisions of the state. Generally speaking, a person historically could not sue the king or "sovereign" for injuries caused by the state or political subdivision. This principal of law is called "sovereign immunity." Today, that principal lives on and impacts lawsuits against the state or political subdivisions, such as cities, counties, state universities, hospital districts, community colleges and etc. To temper the harsh effect of the days in which the king could do no wrong, individual states have passed laws to "waive" or give up its ability to not be sued in limited circumstances. In Texas, for tort cases, we have the Texas Tort Claim Act (TTCA). Full analysis of this act would be a book in itself that would only interest law professors.

It is sufficient for you to know that the act exists and that it provides limited actions, in limited circumstances, for limited amounts of money against the state or political subdivisions. For instance, if a police officer working for a city runs a stop light and smashes into your car, the claim is against the city or state. The terms of the TTCA require that a claim can only be brought against the city. The act provides an injured person the ability to bring a lawsuit for up to \$250,000.00 in harms and losses for the poor driving of a city employee in a non-emergency, if notice of the claim is timely provided to the city. No notice, no lawsuit. The problem with claims against the state or a political subdivision is that the law granting the waiver of immunity is only for certain acts. A person suffering the same injury from the same police officer during an emergency call has no claim against the state because of the terms of the TTCA. Court opinions for years have criticized the random nature of this waiver of immunity, and they have issued periodic calls for a legislative fix; but as of the date of this book's publication, no change has occurred. A qualified personal injury attorney can help you navigate the maze created by the TTCA and by relevant court decisions to determine whether you have any claim at all or whether you can make other claims to obtain compensation for a serious injury.

### **Does a police officer or firefighter who suffered an injury on the job due to the poor choices of another have a claim against the person who caused the harm?**

Yes. Police and firefighters are uniquely exposed to danger, especially “road” danger created by other people’s poor driving. When any worker is harmed by someone who is not an employer, a claim might exist. In addition to filing workers compensation claims for on-the-job injuries, public safety personnel can maintain claims for the harms and losses sustained in the line of duty from those responsible for the harm. The fact that a police officer or firefighter might have been on duty or working does not prevent him or her from filing a claim.

### **What are your options if you are hurt on the job?**

Your avenues depend on a lot of factors. If your employer has Texas Workers Compensation, then your sole action **against your employer** is limited to a worker’s compensation claim, unless the injury results in the death of a worker. If your employer does not have Texas Workers Compensation, then you can maintain a claim for the employer’s neglect in causing your injury and have a regular trial in a real court with slightly different jury questions. If another person caused your injury, unrelated to your employer (e.g. a driver crashed into you at an intersection while you were driving to a sales meeting), you can pursue a claim against the person responsible for your injury, regardless of whether or not your employer also provides workers compensation benefits. If a subcontractor working on a jobsite harms you, you may or may not have a claim against the subcontractor, depending upon contractual provisions between the subcontractor and general contractor. As you might imagine, it can get quite complicated to even determine whether a claim can be maintained. A personal injury trial lawyer can help you navigate the maze.

### **What about claims against a parent by a minor child residing in the household?**

Another historical relic affecting tort law is claims against household members by other household members for poor choices creating injuries. Again, historically, children could not make claims against their parents, regardless of the circumstances. In Texas, that prohibition has been slightly relaxed, due in part to the requirement that drivers have minimum liability insurance policies. If a child is injured in a car wreck due to a parent’s poor driving, the child can maintain a claim in Texas against the parent up to the minimum limits of \$30K per child and \$60K per incident, **even in situations where the parent consents to the lawsuit to help provide medical care for the child**. These claims can be complex, especially in split or blended family situations. You should discuss potential claims with your lawyer.

### **If Texas law does not provide a feasible remedy for my injury, do I have other options?**

In Texas, the rights of people injured by known dangerous products have been severely limited over the last 20 years. Actions for exposure and illness caused by dangerous products, like asbestos, are rarely if ever filed in the state anymore, due to legislative hurdles passed to protect the manufacturers and distributors of products from other states or nations that have harmed

Texans. Fortunately, many other states have rules that allow for the prosecution of some of these very serious claims that have injured Texans in Texas. A qualified personal injury trial lawyer can help you find a good jurisdiction and competent counsel to prosecute these most complex cases. Likewise, many claims involving drugs and other products -- that have unique hurdles in prosecution in Texas -- can be brought economically in other states. If a poor product caused you harm, a qualified personal injury lawyer may be able to help. For instance, our firm is currently prosecuting cases involving the drug Risperdal, which can cause breast growth in young boys.



## **Section 5: How to Manage Your Life After an Injury (Addressing Financial, Health, Emotional, Career and Relationship Concerns)**

## **Addressing Your Diverse Concerns**

Serious injuries can create cascading and diverse challenges in the lives of the injured as well as for their families and colleagues. In this section, we'll discuss some of these challenges and analyze resourceful ways of dealing with them.

(This book is not intended to be legal advice, nor is intended to offer any medical or psychological advice. For help with health and wellness questions as well as financial issues, please speak with qualified advisors in those areas.)

### **Logistical Challenges: The Havoc They Can Create and What to Do About Them**

A serious personal injury case can throw your life out of whack, creating missed deadlines at work, problems with child-care, and short-term and long-term financial cash flow issues.

In other words, it's not just that you have to deal with the injury and all its medical and legal ramifications. You also need to deal with "life stuff." Life doesn't stop just because a car hits you or your doctor foolishly puts you on the wrong medicine. Most healthy people are busy and overwhelmed enough as it is. So how can you regain a feeling of control and relaxation while juggling these additional and unwanted obligations and stresses?

Here is a simple but powerful exercise to get the ball rolling in the right direction.

Author David Allen (*Getting Things Done, Making It All Work*) has won wide recognition among experts as a kind of "productivity guru." One of Allen's most compelling theses has to do with why people feel overwhelmed and out of control in their lives. When bad things happen -- or even when "normal life" happens -- most of us lack effective methods of identifying and tracking our commitments. As a result, we tend to keep a lot of information in our heads that really should be written down.

Allen analogizes our brains to computers. A computer only has so much Random Access Memory (RAM). When that RAM is overtaxed, the entire system slows down. Likewise, neurological research suggests that the brain does have a kind of a psychological RAM. We can only remember around 7 bits of information at any one time in our short-term memory. When we try to store more information, we consciously forget about them, because our short-term memory falters. But we subconsciously still remember that there is something "to do." And so we will constantly, at some level, be trying to figure out what to do about those hidden commitments. The brain's RAM gets stressed, and the system stops functioning at peak capacity.

One interesting solution is to do a "brain dump" of all the commitments on your mind, large scale and small scale, short-term and long-term. Then organize those commitments in a way that allows you to get them off your mind and deal with them in a strategic, coherent manner.

Here's a quick process to get this done.

First, write down anything and everything on your mind about the commitments in your life. These can range in size and scale from "get cat food" to "climb Mount Everest" to "find a personal injury attorney to help me with my case."

It may take you three to four hours (or longer) to write down all your commitments, but even just doing this exercise should make you feel relieved. You will see that there is an end to it all. In other words, the amount of "stuff" on your mind is not actually infinite.

The next stage involves processing this enormous list of stuff. Allen's model takes way too long to explain (you can learn [more about it here](#)), but basically you want to go line by line through all your commitments and ask yourself two questions about each one.

### **#1. What does the item mean to you?**

You might have written something like "do something about dad." But what, specifically, are you hoping to achieve? For instance, you might want to finalize moving dad into a nursing home. Or you might just want reassurance that dad has his finances under control.

### **#2. What's the next physical action you need to do about that item?**

Identifying the next action is very important. Physically, in the real world, what would you do next, if you had to work on this project right now? For instance, let's say you need to move your dad into a nursing home. The next action that you would take towards completing that project might be: "call my sister to discuss what to do about dad."

The third step in the process is to organize your projects and next actions. You can keep track of this list using a simple piece of software like Microsoft Outlook. Many people will tell you to create a running "to do" list that tracks all the projects that you've defined as well as all of the next actions and to review this large list of actions and projects at least weekly to make sure it's fresh and current. To me, the first thing I do is to determine what can be deleted from the list or delegated. If items on your initial list don't provide value to your life, cross them off of the list and learn to tell those who put them on the list "no." Remember that the word "no" does not require an explanation or excuse. If an item is still important enough to be on the list, CALENDAR the task. Once it's on the calendar, you no longer need to worry about it. Just complete it when it comes up on the calendar. In the face of an injury, things will take longer to accomplish, if you can accomplish them at all. Recognize this, and get help when and where you can. Delegating projects (like hiring a competent personal injury lawyer) can be an effective strategy not only for handling your case, but also for dealing with items as mundane as doing the laundry or going to the grocery store.

That may sound like a lot of work, but you don't have to implement all of these steps, all at once, to reclaim some degree of relaxed control over your "post-injury" life.

The basic point is that you want to avoid holding your commitments in your mind. Instead, create a coherent system – one that's written down! – that will allow you to catalogue and track your commitments. *You can only really feel good about what you're doing, when you're comfortable with what you're **not** doing.*

When you know that you've tracked all of your commitments -- and that you (or a future "you") will handle in it some capacity -- you can give your full and complete attention to whatever is going on in the moment, which will make you more effective and calm.

### **Dealing With the Financial Challenges Created By a Serious Injury**

In addition to creating major medical, surgical and rehabilitation bills, a serious injury can limit the entire family's earning capacity. Obviously, if the injured person himself or herself can no longer work (or can only work with very limited capacity), that creates a huge burden. As we discussed earlier in the book, one of our clients had been a highly successful accountant who suffered a traumatic brain injury that hobbled his ability to handle basic math, rendering him unable to do his job.

The injury can also *disrupt the earning capacity of other family members*. For instance, let's say your husband just got injured, and he now needs part time care. In addition to having to pay for your husband's care, you might also need to hire nannies to help with childcare, and the toil and logistical needs created by the accident and legal process can rob you of productive time at work and slow your career progress down.

In addition to pursuing remedies that we've discussed, you might also want to investigate ways to plan better financially, trim your budget and boost your income. If you haven't yet connected with a financial advisor, get a qualified Certified Financial Planner. Your lawyer should be able to help you find a qualified financial planner. You might also do the following exercise:

Injuries cause financial stress because they create uncertainty. Unfortunately, many claimants try to project their futures based on what will happen if/when they win a claim or settlement. As a result, if/when they don't obtain these results, their financial plans are thrown into chaos.

Instead, project forward in time and imagine *how you would meet your needs if you never won compensation or only obtained marginal compensation.*

Developing such contingency plans will require some creativity. For instance, you might have to move in with your parents or delay the healthy spouse's retirement by 10 years. These theoretical

sacrifices might not be fun to contemplate, but this exercise should give you more peace of mind. Winning your case won't be a matter of life or death -- you will know that you can meet your needs, no matter what happens. If and when you obtain a desired result, you can properly value the recovery, because you know what you would have to do without it. As a result, you will be less likely to spend the money on items (or give loans to friends and family) that are not in line with your needs for your recovery.

### **Recovering Your Emotional, Psychological and Physical Wellness After a Serious Injury**

The accident or other injury event may have permanently created physical challenges that could range from brain injury to paralysis as well as psychological and emotional issues. If you don't already have an excellent physician (or therapist or health advisor), finding such an ally or allies should be one of your top priorities.

Recruiting for excellent wellness provider is similar to recruiting to for a qualified attorney. First, get very clear about why you need health assistance and in what area of your life. For instance, if you're depressed or unable to concentrate after a truck crash, you might need a psychologist. If you're struggling to figure out what to eat in the wake of a major stomach injury or immune system reaction, you might need a qualified dietician. And so forth.

Next, spend time recruiting for excellent people with excellent track records assisting patients just like you. Don't settle for mediocre or even "okay" advisors. Really do due diligence and find people whom you can trust.

Here are some general health and wellness insights, some of which may seem "obvious" to you and some of which may seem somewhat counterintuitive:

- Consider eliminating or at least reducing the amount of added sugar and refined, non-nutritive carbohydrate from your diet. An increasingly solid body of scientific evidence suggests that added sugars, in particular, may contribute to a slate of chronic health concerns, including diabetes, obesity, non-alcoholic fatty liver disease, insulin resistance and even some types of cancer.
- Work with a qualified doctor and dietician to develop a dietary regimen of nutrient dense, whole foods. Make sure to meet your requirements for protein, essential fatty acids, vitamins, and minerals.
- Get enough (but not too much) healthy sun exposure. You obviously don't want to burn your skin or get too much sun, which can put you at risk for dermatological conditions and even skin cancer. But likewise, you also don't want to get too *little* sun, as a lack of adequate sun exposure has been linked to lower levels of vitamin D and poor health outcomes.

- Get enough sleep. Better sleep can help regulate your appetite and mood. Consider waking up every day at the same time and avoiding looking at the computer, your cell phone, your iPad, or your television late at night. Some evidence suggests that the blue light given out by these devices can interfere with your body's natural circadian rhythms.
- If you have been using cigarettes, alcohol or other drugs recreationally, cut back on those or, ideally, eliminate them entirely.
- Adopt a safe exercise program. Some evidence suggests that safe resistance training, using slow repetitions and heavy weights, can improve insulin sensitivity, build muscle and bone and assist with injury rehabilitation. Obviously, the exercise regimen you adopt should be carefully monitored and supervised, so that it does not create problems or exacerbate existing ones.
- Cultivate resilience, and remember the wise Chinese proverb: *fall down seven times, get up eight*.
- At the end of every day, reflect on (and write down) three wonderful things that happened that day that inspired gratitude in you.
- Pray regularly, and be in community with those of like faith. People of like faith comfort and help each other. Interestingly, that occurs in many different belief systems. Being involved with those in your church, synagogue, mosque, or other group creates feelings of hope instead of despair when you need this support the most.

### **Handling Relationships While Recovering from a Serious Injury**

Injuries not only create emotional and physical and psychological challenges, but they can also challenge your relationships with clients, vendors, bosses, colleagues, friends and family.

As a general rule, be honest and forthcoming with the people in your life about what happened, what your limitations are and what you hope the prognosis will be. Stick to the facts, and avoid getting into the details of the accident or injury with everyone you see or meet. You might want to develop a script for how to bring people up to speed.

If you are really not feeling well, ask a close friend or family member to “have the conversation” with the critical people in your work and personal circles, so that you do not have to field a million questions about what happened or what’s going to happen.

Also, you might find it resourceful to lean on the people in your life to take over critical chores, errands and tasks while you recover. For instance, if you have small children, and you are

recovering from a major lower back injury, consider hiring help (if you can afford it) or asking friends or relatives to pitch in with the childcare.

Now is the time to reach out to friends, family members, and even the community at large for assistance. For instance, you might belong to a volunteer group or to a church organization – don't be shy about letting these groups know that you need help!

To get best results, define the kind of help that you need and how assistance from others could best meet those needs. The more specific and direct your requests, the better. You might be surprised by how gracious people can be, if you ask for help in a clear, not demanding manner.

### **Taking a Breath and Handling Things in a Calm Way**

As much as you may want to take care of all these challenges regarding your health, your finances, your relationships and your psychology all at once, reflect on the serenity prayer:

God, grant me the serenity to accept the things I cannot change,

The courage to change the things I can,

And the wisdom to know the difference.

You've been through a tremendous amount of trauma, and you face challenges ahead. Give yourself credit for your resilience and recognize what you've been able to accomplish so far. The road ahead might not be easy or short, but even after the worst problems and pain, it is still possible to cultivate grace and resilience and to live a beautiful life.

## **Conclusion**

This e-book has taken you on a tour of the basics of how to handle a serious injury case.

We began by going over the basics of serious personal injury law and then discussed special cases and caveats for a variety of types of cases. Next, we explored the insurance process and analyzed common problems and pitfalls created by that process. We surfaced and addressed frequently asked questions that many claimants have about the personal injury process. Finally, we briefly explored strategies for how to handle life after a serious injury, touching on topics such as finances, health, emotions, career, and relationships.

We hope that this e-book has given you solid insight into what to expect regarding your case and how to handle both the case and the broader road ahead. We wish you great success and good healing in the weeks and months to come.

If you have any questions about your case -- or if you'd like to schedule a free consultation with our legal team about your potential options to obtain compensation or deal with other facets of your case -- please call us at 972-854-7900.



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