LAW OFFICE OF
BERNARD J. HAMILL

Secrets To Winning Your Massachusetts Accident Claim

- Six things that will KILL your case
- Five Secrets to Winning Your Case
- Insurance Company Dirty Tricks – and how to beat them
- 2 Questions you must to ask to get the Best Lawyer
- THE Single most important thing in Dealing with your Dr.
- How Insurance Companies Evaluate your Claim
- What is My Case Worth?

Call 617-479-4300 NOW to Have One of Our Experienced Attorneys Answer These Questions For You!!

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"the devil you know is better than the devil you don't know"

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INTRODUCTION

Greetings and thank you for requesting Hamill Law Office's Personal Injury Guide. This guide is intended to help people who have been injured in an automobile accident that they did not cause. It is written acknowledging that insurance companies are a constant presence looming over your case. This means not only the insurance company of the person who caused the accident, but your own insurance company as well!

Throughout this guide we will explain the correct procedures to deal with your insurance company at various stages of your claim. Your relationship with both insurance companies is likely at some point in time to be adversarial. *This guide will empower you and inform you as to what your rights are.*

Hamill Law Office is located 9 miles south of Boston. We have had 32 years experience litigating all types of personal injury claims! We have handled more than a thousand PI cases, and we have litigated hundreds and collected many millions for our clients. We hope that the process you are about to embark upon is made easier by using the tips and secrets that we have accumulated over three decades of fighting the unfair tactics used by insurance companies.

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CHAPTER ONE

What To Do When You Get Injured

So you have been in an accident and you are injured – what do you do next?!

Oftentimes when people are involved in an accident, they often have no idea how to handle the situation or what actions to take. Although accidents and injuries are frightening and emotionally upsetting, there are certain steps that you should take immediately in order to preserve your rights and/or those of a loved one.

- ✓ **Seek Good Medical Attention**
- ✓ **Consult an Attorney**
- ✓ **Take Pictures of Cars and Injuries**
- ✓ **Get Other Driver's Info**
- ✓ **File Police/Accident Report**

First Thing's First

Let me start by stating the obvious, if you've been injured the *first thing you should do is immediately seek good medical attention*. Although this point may seem obvious or natural to most people, in reality there is a small percentage of people who have been injured in an accident, and who actually call our office before they call their doctor.

However, what you must understand is that you have no claim until you have documented the claim and received treatment with a medical professional.

Next, ***you should continue to treat until you have no or negligible symptoms in carrying out your full load of work and recreational activities!*** Feeling "better" when you are laying on a couch with pain killers is not considered "cured." More on doctors and how they will affect your claim later in Chapter 5.

Step Two: Consult an Attorney

If your claim involves serious injury, after seeking medical treatment, the next step is to ***immediately consult an attorney***. See Chapter Ten for the best way to select an attorney.[1]

Step Three: Take Pictures

If you are unable to see an attorney within a day or two of an accident, then there are steps you should do regardless to secure evidence in your case. As soon as possible, you (or a friend if you are not physically able) ***take pictures*** of any evidence or instrument that caused you harm.

For example, in an automobile case you should take pictures as soon as possible within 2-3 days of the accident, not only of **your car**, but of **the other car** that may have been driven by a negligent driver. Insurance companies are famous for disposing of cars right after the accident, either because they do not want you to take pictures of substantial property damage claims, or they do not want to pay storage at a garage.

You clearly have the right to take pictures of your own vehicle. If you have difficulty gaining access to the other driver's vehicle, then consultant attorney or call your own insurance company adjuster and request that they take pictures of the other car as soon as possible. These pictures can greatly affect the outcome of a case, because juries want to see pictures of the damage

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to vehicles. There is a direct relationship between jurors belief in the severity of your injury compared with the amount of property damage.

Step Four: Accident Reports

It is a smart idea to ***keep an accident form in your car***. This way you will be prepared for an accident. You will be able to fill it out at the scene, and obtain the insurance and personal information of the other driver.

In addition to your own accident form, ***by law police accident reports must be filled out within 30 days of the accident***. Keep the information you fill out on the police accident report as **brief and "vanilla"** as possible – no books, no details. These can be filled in later. Example: "I was rear ended."

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CHAPTER TWO

Dealing With <u>Your</u>
Insurance Company

First, please understand that this entire section pertains **only to *your* insurance company, NOT the other driver's insurance company**!!!!

That being said, in Massachusetts your insurance contract gives the insurance company certain rights and you certain obligations after an accident.

Two Key Obligations to Remember:

- *Report*
- *Cooperate*

The first thing you have to do is ***report*** the accident to *your* insurance company. The second thing that you must do according to the policy is ***cooperate*** with your insurance company. Your insurance policy allows ***your*** insurance company to do the following –

- interview you
- have a doctor examine you periodically
- take a statement "under oath in front of a stenographer" from you

It is always preferable and advisable to consult with an attorney prior to communicating with your own insurance company.[2] Bear in mind however that if and when they request communication, you must respond within a reasonable time! If you fail to respond to their request within a reasonable time, ***they can refuse to pay your policy benefits*** because of your failure to cooperate, as their client, with their investigation.

Do not assume that your own insurance company is there to help you. They are trying to save a buck just like everyone else. Most of the time their motive is to find a way to deny paying you any benefits, and your dealings with them will become contentious and adversarial.

Keep meticulous records by keeping notes and preserving all paperwork regarding all communications with your insurance companies, whether they are via e-mail, letters or phone conversations. Also, be sure to request the name of the person you are speaking with. Write down their name, the time you spoke with them, and the content of your communication with them. Should they employ illegal tactics at any time, it will later be necessary for you to be able to document the substance of your communications with your insurer.

Although the insurance contract gives your insurer certain rights, it is not without limits and it is not absolute. For anything other than cursory initial reporting to your insurance company, if you find that communications are becoming frequent or highly involved you should always consult with an attorney.

Review:

- report
- cooperate
- protect your interests
- keep record of all communication
- consult an attorney

<u>Statements Under Oath</u>

Insurance policies in Massachusetts allow your insurance company to take a statement of you under oath, but *only under certain conditions*. Even your no-fault/PIP adjustor may require a statement.

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[2] *Hamill Law Office* – www.hamill-law.com

Frequently when people put in a claims against their own insurance company for underinsured benefits or uninsured benefits a statement under oath is requested.

Warning: Practice Tip – You should definitely ***have an attorney present*** for a statement under oath because *they are rarely used by the insurance company to help you, and are often prejudicial to your case.* It is important to have an attorney present who understands the insurance contract and rules of evidence, and can ***protect you*** by limiting the scope of the examination to the minimal content required to "cooperate."

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CHAPTER THREE

Dealing With the Other Driver's Insurance Company

If you think dealing with your own insurance company is difficult, wait until you have to deal with the insurance company of the person who harmed you!! This is hand to hand *combat*. This is a totally adversarial process that *requires* the assistance of an attorney in order to succeed.

Rule 1: Do NOT Speak to Them

The first rule in discussing your claim with the other insurance company is **don't!!** You are under NO obligation to speak with insurance adjusters from the other driver's insurance company. Therefore you should not. These people are professionals at what they do, and you must understand that this is an *adversarial relationship*.

If you are contacted by an insurance adjuster via the telephone, written communication or in person, politely decline to speak with them and seek legal representation **immediately**.[3] Once you are represented by counsel, insurance adjusters *are NOT allowed to contact you again*. Bottom line: Nothing you say to an insurance adjuster will *help* your cause, so you are better off not speaking with them.

While insurance companies are legally bound to pay legitimate claims in a fair and quick manner, they rarely do. In fact most insurance adjusters spend the majority of their time looking for an excuse to ***deny your claim***. Too frequently the presence of insurance is not a source of automatic payment, but rather simply the right to sue the insurance company for wrongly denying benefits. **This bears repeating:** the presence of insurance does not mean you will get paid voluntarily it only means you have the right to sue the insurance company for denying a legitimate claim.

Rule 2: Do NOT Write to Them

Similarly to how speaking with the other driver's insurance company is never a good idea, it is also **never** smart to fill out written reports or statements. Again, like verbal statements, written statements will **never** be used to your advantage. *Rather*, they will twist and contrive your words to their advantage. Do not fill out any reports, or give any statements or descriptions of the accident or your injuries. They will be used against you some way or another.

Rule 3: Refuse Statements Under Oath

Never give a statement under oath to the insurance company without (a) a court order and/or b) your attorney present. Insurance companies *always* seek statements under oath from claimants; however, they are NOT automatically entitled to them!! Therefore, NEVER agree to give a statement under oath, and if an insurance adjuster requests one, *seek legal representation immediately*.

BOTTOM LINE:

Do NOT communicate with the other driver's insurance company in any manner without legal representation!!!!

Warning: Practice Tip – A frequent trick by insurance companies is for investigators to contact you ***without fully identifying who they are*** and where they are

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calling from. They may start asking you questions and/or request to visit you. Do NOT ever *assume* it's your own insurance company adjuster. You have every right to know with whom you are speaking. Therefore, make anyone who contacts you identify themselves completely and refused to talk to anyone from the "other side." ***Do not be afraid to ask questions:***

1. who are you?
2. what is your full name?
3. what company are you calling from?

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CHAPTER FOUR

How to Kill Your Own Case: 6 Things to Avoid Like the Plague

Oftentimes clients do not understand how crucial their own actions are to their claims.[4] While there are definitely ways that you may *help* your case, there are probably even *more* ways that you can *ruin* your own case. You need to understand these risks and avoid them like the plague.

⇒ *Improper Medical Treatment*
⇒ *Exaggerating Your Claim*
⇒ *Minimal Property Damage*
⇒ *Activity While Injured*
⇒ *Statements to Insurance Company*
⇒ *Soft Tissue Injuries*

First – Improper Medical Treatment

DO NOT:

- *under-treat*
- *over-treat*
- *disobey doctor's advice*
- *fail to treat with a doctor*

Although these tips *sound* obvious, they are extremely important and worth noting nonetheless. Therefore, *follow your doctor's instructions*. If the doctor says take a prescription you need to have the prescription filled. If the doctor says go to physical therapy, you have to go get physical therapy. In our experience, the number one reason people do not follow through with proper treatment is because, unfortunately, it is time-consuming and inconvenient. However, if you are not treated for an injury, then we cannot recover damages for that injury, so it is your choice.

In addition to the inconvenience of treatment, many times in the hustle and bustle of everyday life, and particularly because of economic reasons, people are anxious to rush back to work and resume their everyday activities albeit with pain and discomfort. As a result, they blow off doctor's appointments and physical therapy appointments. They stop treatment half way through. They tell doctors they are "fine" when they are not.

BE WARNED: *NO insurance company will compensate you for injuries unsubstantiated in records*. Moreover, they will search your records with a fine-toothed comb for any failures on your part to appear for appointments; activities you report doing to the doctor; any comments that you are "fine," "better," etc., and use them against you.

The insurance company will not allow you to get away with registering complaints of pain at trial if you are unable to diligently substantiate them with medical documentation from the date of the accident, including reports and treatment for every symptom, pain and discomfort. ***Simply put*** – neither the courts, nor the insurance companies, will let you get away with taking the witness stand three years after an accident, and telling a sob story about how much pain you went through because of this accident, when in fact you missed physical therapy appointments, play hockey at night, and went to work every day.

The truth of the matter might be that as soon as you finished your work day, you required complete bed rest. But if that is not reflected in your

[4] *Hamill Law Office* – www.hamill-law.com

medical record or a medical report, then no one wants to hear it, and in fact it makes you sound untruthful. **You MUST be a good patient.**

Side Note: *The Skeptical Jury*

Unfortunately, juries today do NOT trust people with injury claims. There is now an inherent bias against injured people, who file lawsuits. The average person today likes to think that they are "not the suing type." People call our office regularly and begin by stating, "I have never done this before….I am not the type to sue." This is evidence of a negative stereotype that attaches to people who sue.

Therefore, if you come into court with any complaint that is not substantiated and documented in medical records, then expect your credibility to suffer dramatically. Jurors will simply not believe you, if it is not evidenced in medical records. The insurance company knows this, which is why they look at your records with a fine-toothed comb to see if your injuries are by visits to the doctor's office and follow through with the appropriate treatment.

Warning: Practice Tip – Appropriate medical treatment is **ENTIRELY** your responsibility. Your *attorney cannot argue your claim without evidence* to support it!![5]

Second – Exaggerating Your Claim

Do NOT exaggerate your injuries!!!! Exaggerating your injuries will absolutely kill your case. If you exaggerate your claim to any degree you will suffer disproportionately and you may even lose your case. Your credibility will suffer.

Once again, today's climate for personal injury claims is very jaded and not generous. The average juror today has a philosophy that "everything for me but nothing for the other person." *Jurors do not believe injured plaintiffs, nor do they want to award other people money*. Massachusetts juries have been ranked 46th out of 50 states in terms of the amount of verdicts they render to injured victims. Meaning, jurors in Massachusetts are *extraordinarily* reluctant to award victims money.

Today in order for a victim to recover as much as their personal injury claims is worth, their claim must be *nearly perfect* on paper. You have to have an honest, sympathetic plaintiff with serious injuries and the medical records to back them up.

Juries like "fighters" not complainers. For instance, a whiplash victim who constantly complains about aches and pains will turn a jury off. On the other hand a truly traumatically permanently injured victim who minimizes his/her physical shortcomings and concentrates on the progress he/she has been able to achieve and the hurdles he/she has overcome, since the terrible tragedy, always earns a jury's respect.

Third – Minimal/No Property Damage

It is possible, though overwhelmingly difficult, to convince a jury that your very serious injury was caused by very minor property damage. Rightly or wrongly jurors equate one with the other, and assess your

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credibility and measure damages accordingly.

As they say, "a picture is worth a thousand words." To jurors, pictures of a "totaled" car are extremely compelling and add credibility to your story. Therefore, always be sure to take pictures of your automobile and the other automobile to document the extent of property damage. It may help your case!!

Fourth – Activity While Injured

Juries look for *consistency* between the injuries and symptoms that you are claiming, and your actions. If you claim you cannot work because of the injury, but you are out playing hockey at night, you will lose your case. If you claim that you have a back injury that affects your home life and work abilities, but you are out dancing at clubs on the weekends, then you will lose your case. These may sound silly, but they are real life examples from cases we have handled.

Your actions, while you are injured, MUST be consistent with the symptoms of your injury!! A jury will NOT believe that you injury was serious, if you continue to participate in physical activities. The inconsistency of your actions will torpedo your case every time.

Fifth – Statements to Insurance Companies

While giving a statement to the other driver's insurance company should not affect the facts of the case or the value of the case, I have never in 32 years seen any good come from an insurance company statement (recorded or otherwise) taken from a client prior to retaining an attorney. There is too much potential for your words or meaning to be misconstrued, twisted or misinterpreted, which will inevitably leave you in a classic he said/she said contest with an insurance adjuster. Do NOT put yourself in this position.

As previously advised, *always consult an attorney prior to giving any statements to the other driver's insurance company*.[6] Attorneys are much better equipped to deal with the tricks and spot the crafty tactics of insurance adjusters. This will protect you from future squabbling over what you meant by what you said and what you were meant to say.

Sixth – Soft Tissue Injuries

Unfortunately, although soft tissue injuries, such as "whiplash," can be extremely painful and uncomfortable for the injured person, these cases are generally viewed *very unfavorably* by insurance companies, courts, and juries. Although soft tissue injuries are serious and even permanent approximately 10-15% of the time, they are oftentimes extremely difficult to document and/or treat. Going back to what we previously noted – it all comes down to hard evidence, namely medical records.[7] Without detailed, extensive records and treatment, your soft tissue, or whiplash, claim is worth *very little*.

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[7] *Hamill Law Office* – 617-479-4300

CHAPTER FIVE

The Medical Records Trap

Role of Doctors and Medical Records

Doctors and hospitals perform two major functions that affect the value of your case. The first function, obviously, is *medical treatment*. This function, you have no control over. The second function, however, is equally important and frequently dangerous to a plaintiff's case, and that is *record-keeping*.

Doctors not only perform actions, such as surgeries, prescribing medication, medical treatment, etc., but they record written narrative reports of your symptoms, complaints, pain level, diagnosis, prognosis, treatment and progress. The danger here is that you can select a wonderful surgeon, who is extremely able and highly qualified, but who maintains a written record that is inaccurate or unhelpful.

Unfortunately, there is a subtle, subconscious bias at work here, because doctors dislike the legal process and tend to side with insurance companies 90% of the time. The bottom line is that it is the insurance companies, who pay all of the doctors' salaries!! Some biases are more flagrant than others. For instance, many doctors refuse to accept accident victims as new patients. In fact, in one state the local medical society recently refused to treat any plaintiffs' attorneys ***or their families!!*** So do not be mistaken, the bias is there.

Assuming however, that you have chosen the right doctor and he does not have an ax to grind with you just because you are the victim of an accident, there are things you need to be aware of regarding how the doctor documents your case. For instance, typically the doctor will scribble a note or leave an audiotape for a secretary or a transcribing service to translate into a record. Well, sometimes the transcription is *inaccurate*. Sometimes it is *incomplete*.

Furthermore, doctors *rarely* change their records once they have written them down. Therefore, it is *extremely important* when communicating with your doctor's office and/or you are in with your doctor, that you fully, accurately and in great detail describe every symptom and ailment that you have experienced since the accident.

Too often we embarrassed to complain. Too often the polite thing to do is to say "I'm fine." Well saying "I'm fine" or "I'm doing much better" is the *worst* thing you can do, unless of course that is the truth. Nobody likes to complain, even in medical offices. However, that is why you are there – something is wrong, and in order for that something to be addressed, you must complain about it.

Many doctors do not know how to deal with a chronically injured patient. They might try surgery, physical therapy, and/or medication, and if that does not work, then they tire of the patient and lose interest in treating them. If the patient is a plaintiff in a personal injury case it is too easy, subconsciously or overtly, for the doctor to think the following way "this person is a malingerer, in it for financial gain, and that's why he is still complaining about pain. It's not my medical treatment that is deficient."

It is a total copout for the doctor to feel that way, but in today's traditional American medical system, the only treatment options for most injuries include either surgery, physical therapy, or pharmaceuticals. As a result, fortunately or unfortunately, that is the

way the "medical game" is played out in the legal-medical arena of a trial court.

Bottom Line: You must *document your injuries* and deal with your doctor with a vigilant knowledge that his reports and records might be incomplete, wrong or jaded, so that you must fully explain and repeat your symptoms every time you go to the doctor to increase the chances of your medical records being accurate and complete.

Story- The Insurance Trick That Backfired: Insurance companies love to hang you with your own doctor's records. Once at trial I represented a person who had a broken neck and surgery as the result of a serious car accident. On the second day after the accident and emergency neck/spine surgery, the doctor came in to my clients and asked "how are we today." My client politely answered "fine."

Of course he wasn't fine. He was in bed, in traction, and sedated with Demerol. He said he was fine strictly being polite, when in fact he was heavily sedated at the time.

At trial the insurance company lawyer pulled the record of that exchange out, and started hammering my client, "is it true that a mere two days after the accident you were feeling fine sir?!"

Of course I immediately pointed out that my client was completely sedated with Demerol and the insurance company lawyers tactic backfired. We won the case.[8] This demonstrates however how the insurance companies will try to use your own records against you, which is why you MUST *always* be extremely vigilant of what you say to your doctor, to ensure that your doctor has been told over and over again by you in detail what the accurate state of your symptoms and disabilities are.

Insurance Medical Exams ("IMEs")

It goes without saying that 95% of the time that an insurance company sends you for an Insurance Medical Exam, or IME, it will result in a report that says that you are not injured and that you are perfectly fine. Doctors performing IMEs for insurance companies are hired guns. I never use the term "independent medical exam," rather I refer to them as "insurance medical exams" because that is what they are, and their conclusion is always foregone – against you. You should always consult an attorney prior to submitting to an IME.[9]

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[9] *Hamill Law Office* – 617-479-4300

Warning: Practice Tip – If you must go to an IME, I always advise my clients to schedule an exam with their treating doctors on the same day or within a day of the "IME." That way we are able at trial to compare the findings of the treating physician from the exact same time period as those of the insurance company's hired gun.

Physical Therapy

Have you ever heard the phrase "can't live with them; can't live without them"?? That's my view of physical therapy outfits. Physical therapy is routinely prescribed for many orthopedic and post surgical injuries. They can be very helpful in getting a person back on their feet; however, *like doctors, physical therapists perform two functions* – report writing and physical treatments. I rarely have an axe to grind with physical therapy manipulations and treatments. In fact they are usually helpful at least to a certain degree for the patient recuperating from trauma. The note taking and record keeping and report writing function is another matter completely.

First, physical therapy reports often follow the same pattern of fiction. I can pick out any one report out of hundreds of physical therapy reports, and it will most likely have the same format, template and content regardless of the individual injury, progress or results.

Example: First PT note will read something like: "patient has a limited range of motion; patient is experiencing pain on the level of 8 out of 10; he cannot work; he cannot do the normal activities of daily living. PT Goal/Objective: for the patient to regain his full function, return to work and normal activities."

PT final report 6 weeks later will read something like: "patient has made great strides. Pain minimal. Function restored. Range of motion now 95% of normal. Patient feeling "much better" with no complaints. Patient is discharged with home exercises."

When I get these final reports and congratulate my clients on their full recoveries, they are always completely confused and astounded by my comment. Rarely is any trauma patient completely recovered within six weeks of the occurrence of the injury. It is much more common that the disabilities, the restrictions, the painful episodes, and the limited use of extremities, last for many months, sometimes permanently. However, *lasting effects and permanent injuries are rarely ever addressed in a PT discharge summary*.

Unfortunately, the physical therapy regimen is too often another "**insurance game**." The physical therapy outfit is allowed to treat you for six to 10 weeks and *is expected to discharge you*. Insurance companies exert pressure upon physical therapy outfits to only treat you for a limited amount of treatments. As a result, physical therapists feel pressure to report successful results from their treatment, which they do whether or not the recovery is real.

Unfortunately facts have a troublesome way of getting in the way. At least half of the time my clients have serious residual effects from an injury, even though the physical therapy discharge note proclaims them "cured."

There is no doubt that physical therapy helps them, but there is also no doubt that the physical therapy report writing absolutely kills, or at least limits, a lot of meritorious cases because of their inaccuracies and understatements regarding the extent of continuing symptoms and injuries. Again, your attorneys can only argue that case that your medical records support![10]

So, what should you do to combat this physical therapy trend?? *Never tell a physical therapist you are feeling fine just to be polite*. They encourage you to say that you're feeling better, which might in turn make you feel like a whiner if you continually repeat your complaints of pain and discomfort. However, if you cannot honestly describe your pain and difficulty to your physical therapist, who can you describe it too?? Certainly NOT the jury a year after the fact, if you didn't tell the therapist!!

If you say you are not feeling better, then your physical therapist will often respond, "Well aren't you feeling at least a little better?" You might feel pressure to again be polite and/or guilty telling them the truth, i.e. that the therapy has not helped that much or that the *exercises actually hurt* (which they often do). However, *this is not the time to be polite*, when your health is at risk. If you are not feeling better you must stick to your guns and tell them that your pain is the same as it was the day before.

Another thing that physical therapy fictionalizes is that they examine you in a vacuum. By that I mean you are in a vacuum of inactivity. Typically the recovery immediately following traumatic injury involves a cessation of normal activities, such as work, hobbies and exercise, etc., which makes it easy to understand why with the stoppage of all of these activities, you might feel better.

It is when people leave physical therapy and try to resume their everyday day activities where the symptoms flare up again. **NOTE:** You are *not* recovered if you feel discomfort and limited motion in doing your everyday activities. You are not recovered or cured, if you feel better doing nothing.

It is important to realize the format that your physical therapist will use to create the fiction that you came into his office as a cripple, and are leaving ready to run a marathon. Make sure your therapist records and writes down accurately every limitation and every pain that you experience during physical therapy and during your normal pre-accident activities.

Warning: Practice Tip – You should steer your therapist toward a discussion at every session as to what LIMITATIONS and/or PAIN you experience when:
(a) you attempt your everyday activities;
(b) whether you were sore after the last PT session; and,
(c) ask and discuss how today's PT session is designed or modified to address (a) and (b).

In Summary:

- Tell your therapist at each visit what activities continue to bother you and when! If you only feel better while doing nothing, then tell the therapist how you feel when you do try to do something!

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- Tell your therapist at each visit if the exercises during your physical therapy sessions hurt! If they do, then you should stop the exercise that you are doing and tell the therapist what part of your body hurts and duplicate or explain the movement that caused the pain.

- Tell your therapist if you felt pain, stiffness or discomfort *following* your previous therapy session. Tell the therapist that you need to go lighter during this session and make him/her document that the last session was uncomfortable and painful. Again, *it is important to document the pain/injury/discomfort*.

- Remember how important your PT records are – your attorney can only argue what is supported by records.

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CHAPTER SIX

How to Win Your Case

What do juries like?? Juries like it when Mother Theresa is run down by a drunk Charles Manson. Mother Theresa will win. Conversely, if Gandhi runs down Charles Manson, Manson's likely to get little or nothing. So, unfortunately whether it is fair or not, who you are and how the jury perceives you, has a lot to do with your chances of success. It is not a popularity contest, however, nor is it a sympathy contest despite what most people believe.

Juries Like…

- "virgin" plaintiffs
- understated injuries
- consistent stories

The Virgin Plaintiff –

A virgin plaintiff means a client who is new to the legal process, who has never sued before. It means plaintiffs, who have never been injured before, or involved in an accident before. It means a plaintiff, whose health was excellent before the accident. These are the people looked upon favorably by juries.

Plaintiffs Who Understate Their Injuries –

Juries love plaintiffs, who understate their injuries rather than exaggerate their injuries. Remember that exaggerating your injuries will kill your case. Juries will not sympathize with a plaintiff, who is *looking* for sympathy. Conversely, they will appreciate the plaintiff, who demonstrates the effort and willingness to get better.

Plaintiffs with Consistent Stories –

Juries find plaintiffs' claims *much* more compelling, if there are NO inconsistencies between their stories on the witness stand and their doctors' medical records. There must be NO records that are inconsistent with your statements or your claims. There must be no statements by you that are inconsistent with your essential position.

If you have 99 good things about your case and one terrible thing, then you will likely lose your case. It is not rocket science either - it's just common sense. Juries apply common sense in evaluating your credibility, because they do not know you and this is the first and only time they get to see you. Therefore, *your consistency with the doctors' records will win big credibility points with jurors*.

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CHAPTER SEVEN

Insurance Company Tricks and Tactics:
"forewarned is forearmed"

- *Private Detectives*
- *Direct Contact with your Doctor*
- *Changed Stories*
- *Absurd (Comical) Excuses*

Private Detectives –

Insurance companies routinely hire private detectives to snoop around and spy on people with personal injury claims. Even on very small claims like whiplash claims I have seen insurance companies employ private detectives. Not to worry – private detectives are *easy to spot*.

If you see a pervert sitting in a car on your street, staring at your house you should *call the police*. The police will come and make him identify himself. If you do not want to call the police, another way you can address the situation is to *take a picture* of him as proof of the insurance company's over-the-top tactics and unnecessary invasion into your privacy.

Understand, that while it is legal for the insurance companies to do this (under most circumstances), it is unsettling and in most cases completely unnecessary. Plus, if you have proof that the insurance company has had someone following you around, watching you, and you have been acting in accordance with your injuries, then there can be two good results –

1. *credibility* has been added to your story
2. the insurance company looks like a bunch of *conniving creeps*

Example: Jessica's Case

Our office[11] represented a teenage college student, who suffered a disc injury in her back. The insurance company, despite very strong liability in favor of my client, sent out a private investigator on two separate occasions to spy on Jessica.

First he staked out her home. Then on a separate occasion, he went to her college campus and literally followed her around the campus. She was absolutely *terrified* when she found out. Of course the snooping discovered nothing and we went on to win her case.

Point being it is very common for insurance companies to hire private investigators to watch you, specifically to try to catch you doing some activity that is inconsistent with the injuries you are claiming.

Once again, a picture is worth a thousand words, except this type of picture will NOT help your cause. If you have an injury that you claim is causing you pain and keeping you out of work, then you better not be taped doing heavy yard work or engaging in strenuous exercise. It may in fact be perfectly advisable *from a rehabilitation*

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point of view to push yourself to get back to your pre-accident condition; however, juries will NOT believe it if you are exhibiting your physical capabilities in a public display. If the insurance company has a videotape of you raking your yard, lifting boulders or playing basketball you might as well settle your case right then for whatever you can, because ***you*** have just done yourself in, ruined your own case.

Example: Bill's Case
A past client of ours, Bill, claimed a serious back injury and went to trial.[12] At trial the insurance company produced a video of Bill changing a tire in four minutes, which looked like a very strenuous activity.

Upon inspection of the videotape it turned out that the tape had been spliced by the insurance company and/or their private investigator.

In reality changing the tire during this emergency took half an hour, but had been spliced down to only a few minute segment, in order to leave the jury and the court with the wrong impression of what took place that day.

Fortunately the truth came out, and the insurance company's plan backfired.

Direct Contact With Your Doctor –

Medical doctors are used to communicating with insurance companies. Even if they do not *love* insurance companies they still treat them much better than they treat the average plaintiff. Insurance companies know this. Therefore, they will very frequently call your doctor's office to request records or information *without telling the doctor that they are "from the other side,"* or that they adversaries in litigation.

The doctor's office, assuming wrongly that it is your insurance company, very oftentimes gives their records and information to the wrong side. This tactic is wrong and extremely deceitful. Most importantly, even though these actions violate your legal Hipaa rights (your right to have your medical records kept confidential without your express permission to release them), as the saying goes "once the horse has left the barn" the damage has been done.

This means that no matter what method, ethical or illegal, the insurance company uses to obtain your medical information and/or records, it will *not matter*. All that will ultimately matter is *what those records say*.

Warning: Practice Tip –
Our office routinely sends clients' treating doctors letters/notifications that instructs them, pursuant to Federal Hipaa laws, that our clients specifically do *not* authorize the disclosure of any records other than to:
(a) our law office, or

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(b) the PIP carrier (typically the client's own insurance company).

We further advise the doctors that it is a violation to disseminate our clients' records to any other person or party. We also request that day that this letter be placed in the client's file.

No doctor has ever sent records to the wrong insurance company after receiving one of our Hipaa letters.

Changed Stories –

One aspect that tends to remain consistent from case to case to case is the change that takes place in the "other side's" story, once the insurance company has spoken with their insured, the person who injured you.

Our office has conducted over 2,000 personal injury depositions, and out of those our conference room table has heard approximately 1,998 defendants tell blatant lies about how the accident happened.[13]

The excuses go from the mundane to the outrageous to the absurd to the hysterical. 70% of defendants apologize at the scene of the accident and/or tell the truth. For example, if you are rear-ended they might say ***at the scene*** something like, "I am so sorry; my daughter just called me on my cell phone I just wasn't paying attention; I didn't put my brakes on time. I'm SO sorry; are you all right?"

Fast forward six months and here is the testimony with their insurance company present at their deposition: "I did make slight contact with the rear of your car, but you must have been rolling backwards."

They *always* deny having made any incriminating statements at the scene. *It is no coincidence that this change takes place after they have been counseled by their insurance company defense team*. Why else could so many stories change so drastically?

Warning: Practice Tip – Do not relax or rely on any "admission" made to you by the defendant at the scene. Their story will inevitably change!

Rather, the better practice is to somehow record and prove what they said at the scene. The easiest way to do that is to have them repeat what they previously stated to you in front of someone else, such as a witness or a police officer. Otherwise, tell the police officer or the ambulance people immediately, exactly what that driver told you.

The police will follow it up by a talking with and interviewing the defendant and other witnesses if there are any. If you are able and there are police officers on the scene, then you should ask the officer to go verify what the other driver said to you.

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Absurd (and comical) Excuses –

Since the rule of thumb for *all* insurance companies is that no defendant is *ever* at fault, the excuses produced during depositions tend to be pretty ridiculous and sometimes even funny. The following are some excuses reputed to have been used by defendants in action reports and depositions –

- *I didn't hit the pedestrian; the pedestrian hit me and then fell under my car.*
- *The other car collided with mine without giving warning of its intentions.*
- *I collided with a stationary truck coming the other way.*
- *The guy was all over the road. I had to swerve a number of times before I hit him.*
- *I have been shopping for plants all day and was on my way home. As I reached an intersection, a hedge sprang up, obscuring my vision, and I did not see the other car.*
- *I was on my way to the doctor's office with rear end trouble when my universal joint gave way causing me to have the accident.*
- *The telephone pole was approaching. I was attempting to swerve out of its way when it struck my front end.*
- *As I approached the intersection a signal appeared in a place where no stop sign had ever appeared before. I was unable to stop in time to avoid the accident.*
- *To avoid hitting the bumper of the car in front, I struck the pedestrian.*
- *My car was legally parked as it backed into the other vehicle.*
- *An invisible car came out of nowhere and struck my car and vanished.*

While these stories and explanations sound absolutely ridiculous and unbelievable, these are *examples from real life incidents*!! Do not underestimate the insurance company's shamelessness when it comes to avoiding paying a claim…any excuse they can come up with is better than none.

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CHAPTER EIGHT

What Your Case is Worth

There are a *number* of factors that influence what your case is worth. The following are some big ones –

- Geography
- Tort Reform Propaganda
- Type of Case Yours Is
- Insurance Coverage
- Caps and Immunity
- Information on Other Jury Verdicts

Geographical Factors

It may surprise you that where you live and/or where you were in an accident can affect the outcome of your personal injury claim; however, *it does*. There is no uniformity in jury verdicts across this country. Different states and even different counties have pockets where *juries are either friendly or unfriendly*.

As a whole, cases based on negligence claims have been statistically declining in average value for *at least* ten years now. Nevertheless, a *great* case is worth just as much today that it was ten years ago, if not more!!

Tort Reform Propaganda –

The frequent and widespread public propaganda promoted by the Bush administration and the conservative right wing politicians has resulted in *"biased juror pools"* in many communities. These biased juror pools are adverse and antagonistic toward plaintiff's injury claims. This means that before you even begin your case or produce one piece of evidence at trial, you have a hefty hurdle to overcome in the biased juror.

Type of Case –

The outcome of your case often depends, in part anyway, on what *type* of claim you are bringing – i.e. medical malpractice, automobile accident, nursing home abuse, slip and fall, etc.

Medical malpractice cases, because they oftentimes involve death or permanent injury, can result in a very large verdict. However, what people do not realize is the enormous and highly costly risk involved in medical malpractice claims. All people hear about in relation to medical malpractice claims (thanks to tort reform propaganda) is the runaway verdicts that make front page of the paper. What they do not realize is that in many areas and counties *plaintiffs win only a very small percentage (15 to 20%) of medical malpractice cases*. In addition to rarity of medical malpractice verdicts in favor of plaintiffs, medical malpractice cases are *extraordinarily* expensive with costs in the tens of thousands of dollar range.

Car accident cases, however, have a better success rate, probably about 50%. The average soft tissue case, particularly because of tort reform propaganda, has decreased significantly in value over the past decade. However, serious injuries continue to result in larger verdicts. The severity of your injuries influences the outcome dramatically.

Insurance coverage has a very strong effect on the worth of personal injury claims. There are several types of coverage that formally were available, but which are now frequently subject to exclusions and policies. For instance, bar fights and sexual assaults by

psychiatrists are frequently not covered by insurance.

The *good news* is that you are able to control your insurance coverage to a certain degree based on what optional coverage *you choose* to include in your policy. Your coverage options can protect you if the person, who caused your injury, has minimum or no coverage. Otherwise, you risk getting a verdict that is virtually uncollectible, unless that person has significant, personal, unprotected assets that you can go after. If you have questions regarding your policy, contact our office.[14]

Immunity and caps are other factors that affect the value of your claim. For example, legislation promoted by insurance companies has limited the amount of recovery available for certain types of medical malpractice cases against nonprofit hospitals to $20,000. This is known as "charitable immunity." It certainly is charitable to the hospital that caused you the injury, but it sure doesn't help you!

Many states also now have a Pain and Suffering Cap that has been placed into law by pro-insurance lobbies. Frequently, for instance, medical malpractice victims are prevented from recovering more than $250,000 or $500,000 for pain and suffering, regardless of the severity of the injury.

Jury verdict research companies are one last example of factors that can influence the value of your case. Several companies now track published verdicts in every county. In addition, subscription services are available, as well as state legal publications, which frequently take a sampling of weekly verdicts and publish them. For example, Mass Lawyers Weekly in Massachusetts has a verdict reporter every week. When verdicts are published and widespread, then they set the bar so to speak for similar cases.

** Ask an attorney how these factors may affect your case**[15]

IMPORTANT NOTE: **One thing that does NOT have any bearing on the value of your claim is your *friends and neighbors opinions or anecdotes*!!!!** Every case is different - no two cases are the same. The worst, most inaccurate, misleading way to find out what your case is worth is to ask a layperson or another person who had an accident case. Undoubtedly, he/she was not involved in the same accident; did not incur the same injuries; did not receive treatment from the same doctors; and, did not have the same insurance companies involved. Nonetheless, people tend to rely a great deal on the advice of laypeople or friends as to what the case is worth. This is *not smart*. It is much wiser and easier in the long run to have realistic expectations and understanding of the various aspects of your claim, and how those factors will affect your claim.

IMPORTANT NOTE 2: **Another completely unreliable source for estimating the value of your claim** is ***newspapers/the media***. The media sensationalizes lawsuits that have merely been *filed*, but not yet heard by a judge or jury, in order to sell stories and support the political agenda of tort reform, which is designed to turn the public "off" from what they perceive as "ridiculous lawsuits."

For example, a lady's bathing suit falls off at the beach and a tabloid

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has a sensational headline “woman sues bathing suit company for mental distress after her bathing suit fell off - sues for millions.” This headline may sell newspapers, but it has no bearing on reality. 99.9% of those types of cases are thrown out of court, but that fact is never reported, which leaves the public with the impression that we are a “lawsuit-crazy” country, where the tort system serves as “jackpot justice” (a term that the tort reform has invented).

In reality, your case value is determined by the seriousness and permanency of your injury; the makeup and locale of your jury; the type of case involved; and, the skill of your attorney.

Example - Sandy’s Case -Unpredictable results –

Sandy was involved in an accident, leaving her with a “soft tissue” back injury. Eventually, Sandy was allowed her to go back to work. She did not require surgery. She did not suffer a herniated disc. The insurance company dismissed Sandy’s claim as having *very* little value and offered Sandy next to nothing to settle her claim.

Having nothing to lose, we went to trial in Sandy’s case and received a verdict of $875,000. This was not anywhere near within the expected settlement range, and it was many times higher than our own demand.

This is an example of the sometimes wildly unpredictable nature of trial results, and the difficulty in accurately estimating the exact probable value of an individual case.

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CHAPTER NINE

Keys to Winning Your Case

There are the winning secrets, or traits, that winning cases share in common:

- *Pictures and Proof*
- *Extreme Conditions*
- *Target Defendant*
- *Lies, Cover-ups and Denials*
- *Sympathetic Plaintiff*

First – Pictures and Proof

Large verdicts require serious pictures or proof. For example, in a car accident case, juries and adjusters often associate the *amount of property damage* with the *severity of the injuries* and vice a versa. This does not necessarily make sense, but it is reality. It is difficult to explain a permanent injury, as the result of a mere fender bender with little or no property damage. Jurors in such a case will have extraordinary difficulty reconciling how such an injury could have come from so "minor" an accident, and will look for other causes for your injury.

In order to graphically prove your damage, you must have **pictures**. The more substantial the damage to the property involved the better. If your injury involves bed sores then you must have pictures of the bed sores. If you have a permanent scar then you must be ready to show your scar and have pictures of the injury that resulted in that scar. If your car was totaled, you must have pictures of the damage. Pictures and proof will almost always increase the value of your claim.

Second – Extreme Conditions

To take your verdict to the next level, there must be an "oh my God" factor that *shocks, horrifies, or disgusts* the jury. For instance, your doctor didn't just wait too long to deliver your baby via cesarean section, he chose to delay while he took a nap to rest up for a job interview he had the following day.

There must be facts involved in your case that are so extreme, a jury will be shocked, upset or angered by the conduct of the defendant and want to punish him for his actions. Some states even allow what are called "punitive damages." Punitive damages are available for most claims in certain states, not including Massachusetts. Massachusetts only allows punitive damages under limited circumstances. However, depending on the circumstances and the existence of an "oh my God" factor in a case, jurors will use the other forms of damages that *are* allowed in Massachusetts to punish the defendant and award high damages.

Example: Jim's Case

We represented an 86-year-old man, Jim, who suffered from Alzheimer's and who resided in a nursing home. While he was a resident at the nursing home, a nurse's aide grabbed and twisted his testicles while she was changing him. She repeatedly slapped him, hit him in the head with a slipper, and verbally abused him on a daily basis.

Although there were ***no*** medical bills or significant physical injuries requiring treatment, the trier of fact

was angered and outraged by the defendant's conduct.

The insurance company had previously offered our client only $10,000. The judge awarded Jim a winning verdict and an award of **$450,000**.[16]

Third – Target Defendant

Juries are much less likely to render a large verdict against an individual (i.e. a little old lady), than they are a large *powerful, rich corporation*. Large corporations with "deep pockets" that act in an outrageous manner are at a much higher risk for being smacked with a large jury verdict. Conversely, juries tend to be reluctant to punish individuals in the same manner. Poor, individual defendants are rarely the targets of huge verdicts, unless the conduct is or is nearly criminal in nature. Therefore, unfortunately or fortunately, *who* you are suing can be just as important as *what* they did to harm you.

Fourth – Lies, Cover-ups, and Denials

If the defense denies the obvious; tells a ridiculous story to explain away allegations or facts; contradicts their own previous statements or stories; lies; destroys evidence, etc., it will offend and anger the jury. When defendants offend or madden juries, juries tend to give larger verdicts.

If the defendant offends the common sense of the jury, or is seen as evasive or dishonest, the jury sometimes will react by "driving up damages." When a defendant appears *contrite, humble, truthful and apologetic* for any damage that they have caused, jurors appreciate their sincerity and will rarely smack them with a "runaway" verdict.

The defendant's demeanor can have a *huge* effect on the outcome of your case; therefore, it is essential to combat a sorrowful, remorseful defendant by painting as poor a picture of them as possible to combat the jury's compassionate instinct towards the remorseful.

Fourth - The Good Plaintiff

People who have been *truly victimized* surprisingly rarely complain about their condition. They tend to be stronger and more heroic in nature. They let other people do the complaining for them, such as their doctors and family members. They are too busy recuperating and trying to regain function to feel sorry for themselves, or worry about how much money they can get out of the situation.

Juries do not like whiners, exaggerators or seemingly money-hungry victims. They are very skeptical of victims and they are *very* careful about whom they give money to. They like people who try to overcome injuries. They don't like people who exaggerate their claim and look for every last dollar. They like people who understate their obvious disabilities and downplay the pain and difficulties they have had to endure due to their injury.

Juries are great *equalizers* – they help the downtrodden, the poor, and the disenfranchised. If you appear to be rich, arrogant and powerful, you will not do as well. In addition if you have been involved in previous civil claims, or even suffered prior injuries, you will not do as well.

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Example – Mary's Case

Our office represented a woman, Mary, who had a simple soft tissue injury. The insurance company would not pay a fair amount, so the case went to trial.

During trial testimony came out that Mary had a disabled minor son, an abusive, unsupportive husband and worked 50 hours a week as a house cleaner. The verdict came back **five times larger** than it should have for the type of injury she received.

We cannot know for certain why this is, but from experience, I can tell you it was that Mary was the *perfect sympathetic plaintiff*.

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CHAPTER 10

Finding the Best Attorney for Your Personal Injury Claim

Tip One: The best lawyers cost the same as the worst

Because of the "contingency fee" contract, you will never pay an attorney up front or hourly for his or her services in a personal injury claim. Therefore, when bringing a personal injury *you can always "afford" the best attorney*, because there are no considerations or stress over costly retainers or varying hourly fees.

In fact, as far as personal injury claims go, it will likely cost you more in the long run in the form of lost recovery to hire a bad attorney to handle your claim. Almost all attorneys charge the ***same fees*** for personal injury cases. Specifically, most attorneys charge a *one third contingency fee*. So, ask yourself, why would you ever hire the worst personal injury lawyer when you can get the best for the same fee?

Tip Two: American Associate of Justice Membership

There are certain memberships and associations that the attorney you choose should be involved with. For instance, there is no excuse for any trial attorney not to be a member of the *American Association of Justice*, formerly known as ATLA (American trial lawyers Association). Every attorney in our firm is a member of AAJ.[17]

AAJ is an organization that is exclusively plaintiff's bar. Any good plaintiff's personal injury attorney worth his salt is a member, period. In fact, the first question you should ask an attorney when contemplating hiring him/her is whether they are a member of AAJ.

There are many other bar associations and troops, many of which are phony and self congratulatory in nature. Some associations have literally no standards for acceptance, and others are merely business development trade groups similar to unions. However, if your lawyer is a serious personal injury lawyer he or she is in the AAJ. There is no other way for him or her to hook into the latest advances in plaintiff's trial techniques and tactics. It is 100% worth your while to ask.

Tip Three: Experience – Years and Cases

You want to have an attorney with *experience*. And by experience, I do not only mean years of experience, but also the number of personal injury cases the attorney has handled *and litigated*. It is absolutely true that young lawyers are still cutting their teeth on the law and make mistakes that they would never make in later years. However, as I said before, years of practice alone though is not the sole guide. Ask your attorney, how many similar types of cases he or she has successfully handled in the past?

Tip Four: Questions to Ask Your Prospective Attorney

1. Tell Me About Your Experience.
2. What is Your Success Rate?
3. Tell Me About Your Toughest Case – *what happened?*

1. Experience

It is important to ask the attorney what types of cases he or she handles most often. How many cases has he or

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she handled that is similar to *your* case. In what ways are those cases similar to yours, and how did the attorney handle these cases. What were the obstacles in other similar cases and how did the attorney overcome them. Are these the same obstacles that will likely affect your case? Etcetera, etcetera – you get the point. Bottom line is that it is helpful and reassuring to know that the attorney understands your case, has handled similar situations in the past, and therefore, is more likely to know how to handle your case going forward.

2. Success Rate

It's great to know that your prospective attorney has handled similar cases in the past, but what is his or her track record for winning?? He may have already handled 100 cases like yours, but did he win any?

Ask the attorney what the winning percentage (%) of the cases is that he or she has handled? In asking this question, however, it is very important to understand that *different areas of law have different average probabilities of success*.

For example, in some areas medical malpractice plaintiffs only win 15 to 20% of the cases. In some areas nursing home victims succeed 65% of the time. If your attorney specializes in those areas what is his/her success rate as compared with the average rate? You want to pick an attorney, whose success rate is substantially higher than average. ***Our law firm has a success rate winning cases for our clients of MORE THAN 98%!!***[18]

3. Toughest Case

Anybody can settle a case for the passenger who suffers a broken neck in a car accident, especially where the policy is a modest one. Therefore, what you need to learn is how your prospective attorney does in difficult situations, in cases with seemingly unbeatable facts and detrimental facts and circumstances. How does this attorney do then – buckle under the pressure, or get creative and pull a rabbit out of a hat for you?

Example of a "Tough Case": Andrea's Case

Andrea was a 31-year-old motorcycle operator. She was run off the road by an oncoming car that crossed the double yellow line onto her side of the road and then took off.

Not only did her insurance company *not believe her story* that another car ran her off the road, but they also *accused her of drunk driving and speeding*!!

As such, they issued her a surcharge notice for "speeding," we appealed and were able to have overturned for her at the surcharge hearing.

In addition, they offered her no money for her injuries (severe road rash and scars, which were evidenced by pictures and permanent scarring).

Refusing to offer anything, we went to trial. The insurance company made the following accusations at trial:

- Andrea was speeding

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- Andrea was extremely intoxicated, drunk driving
- Andrea was lying about the accident

The insurance company *even offered the expert opinion of a doctor* who said that Andrea "must have been very intoxicated" and who accused our client of being an alcoholic.

We fought the expert testimony with testimony from an eyewitness from the scene of the accident.

Despite the insurance company's brazen accusations and expert witness testimony, we won for Andrea. **Andrea received a $100,000 verdict which was paid promptly**.

***** Now might be a good time to check out our firm's track record…. sign onto the link below NOW and read about some of our case verdicts!!!! *****

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CHAPTER ELEVEN

Massachusetts Car Accidents

This chapter will outline eleven things you need to know about handling a Massachusetts automobile case.

- Bodily Injury Claims
- Claims You Can Handle Without an Attorney
- Notice Requirements
- PIP Claims
- Your Car: tow, store, rent, repair
- Accident Reports
- Your Insurance Policy
- Photographs
- Your Doctor
- Do NOT Speak to Anyone
- Consumer Power

1. Bodily Injury Claims

Quick Tips –

- BI claims include pain and suffering, disability, etc.
- Do NOT bring a BI claim without an attorney

In Massachusetts car accident claim, you are eligible for a bodily injury claim when you have reached Two Thousand Dollars ($2,000.00) in **medical expenses**, or have suffered a **broken bone or permanent disfigurement**. Money recovered in a BI claim goes to you rather than medical bills.

BI claims are adversarial against the person who was at fault and their insurance company. You will need legal representation for this claim. Do NOT attempt to handle this claim on your own, or you are guaranteed to NOT recover even close to the worth of your claim.

2. Claims You Can Handle Without and Attorney

Separate from the Bodily Injury claims discussed above, you are entitled to other benefits as well. Some claims, or benefits, that you may be entitled to collect, you can resolve without an attorney.

These benefits include…

- No-Fault Claims
- Car Property Damage
- Car Rental Fees
- Towing and Storage Bills

Warning: Practice Tip – You should *always assume* that you must make your *own arrangements* for towing, storage, repair and car rentals, unless an insurance company tells you otherwise.

3. Notice Requirements

You MUST notify *your* insurance carrier immediately and request a "PIP" form if you have been injured or have seen a doctor. **NOTE: HIT & RUN** accidents must be reported generally within twenty-four hours. Cases involving a car that hits you that does not carry enough insurance must be reported promptly to your insurance company.

4. PIP Claims

PIP claims, or Personal Injury Protection claims, are to compensate you for medical bills and/or lost wages and are paid regardless of fault, so these are usually claims that you can process yourself. These are paid by your insurance company (or the insurer of the

car you were driving in if you were a passenger), unless you were a pedestrian, in which case PIP benefits will be paid by the insurance company of the person whose car struck you. **PIP benefits include:**

Wages and Earnings Lost – It is important to keep an accurate record of all days lost from work because of your injuries. Theoretically you have up to $8,000.00 in combined wage loss and medical benefits. In reality, if you have medical insurance (i.e. Blue Cross, etc.), then this coverage drops down to $2,000.00 in most cases. Having your own medical insurance is the sensible, responsible thing to do, but the insurance companies penalize you for having it. *Note that health carriers usually require payback to them when you settle your bodily injury claim*.

Medical Bills – You must obtain and keep duplicate copies of all medical, hospital and prescription bills and records. Also, keep records of any other expenses that you may have incurred as a result of your accident and injuries, such as the hiring of household help or transportation to and from the doctor's office. *Submit bills to your insurance company promptly, along with the accompanying medical records and doctor's notes*. Once you have done this, the insurance company must pay within thirty (30) days by law! Keep a diary of medical visits and costs. Send copies of all bills to your insurance company and keep copies for yourself.

In order to receive these benefits, you must complete a "PIP" Form which is usually a long form on yellow paper.

Keep a record of all calls to the insurance company (note the date and who you talked to). Sometimes there are delays in processing these claims. You should feel free to call the insurance company directly to expedite payment of bills or wages you are concerned about. Request to speak to a supervisor if bills are not paid promptly.

Contact our office if you have questions regarding *your* benefits.[19]

5. Your Car – tow, store, rent, repair

Car Repair – If you do have "collision" coverage on your insurance policy, then have *your* insurance carrier repair your car!!

If you do *not* have collision coverage, then the insurance carrier for the person, who caused the accident, must be notified immediately about the property damage claim. They will *ordinarily* settle promptly. Tell them the location and condition of the car.

NOTE: You must make your own arrangements for towing, storage, repair and car rentals.

Car Rental – The law requires the *person at fault* to pay for your substitute transportation. You are entitled to transportation that is similar to what you have been driving. For instance, if you are driving a new large Cadillac, you cannot be forced to rent a "Yugo" for $15 per day.

However, you may be required to pay for the rental up front if the insurance company initially refuses to pay you what is rightfully yours. You then can join that rental claim as part of the main suit later on and recover the full amount of the rental charges. Legally you will be entitled to be reimbursed by the person, who caused your accident; it may just take some time.

Cars may be rented for *"reasonable" amounts of time* usually

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until an offer is made to you for your property damage claim. You cannot assume that because another person caused the accident it will be automatic to obtain reimbursement for the car rental charges. Check before you rent. Even if you have collision coverage with your own insurance company, you may have to get rental reimbursement from the company of the person who hit you.

Towing and Storage – Unless the other driver's insurance company or yours agrees to pay, ***you are responsible for these charges, so do NOT allow these to accumulate***. Just be sure that you, the insurance company and the garage are all on the "same page" regarding storage fees and who is paying them.

6. Accident Reports

Submit a copy of any and all accident reports to the police after you have completed them. Do NOT fill out accident reports requested by the adverse party's insurance company without consulting an attorney.

7. Your Insurance Policy

Immediately find your policy's Coverage Selections Page, and contact an attorney.[20] You may have important benefits waiting for you, such as additional medical payments and/or underinsurance coverage.

8. Photographs

As soon as you are able, you should take pictures of damaged cars and of personal injuries. For the reasons discussed earlier in this guide, pictures are extremely important in personal injury cases, including pictures of damage to your car, injuries you sustained, and even of the accident scene.

9. Your Doctor

You should return to each of your doctors as often as necessary and must always tell him about ***all*** of your complaints. It is important to tell your doctor *everything* that is going on with you at every visit. If you fail to mention even one symptom, pain or injury at any visit to the doctor's office, you can bet that when the other driver's insurance company will pick up on it and try to use it against you. Be thorough in seeking treatment. If something is wrong or you are experiencing discomfort, then mention it, ask your doctor about it.

10. Do NOT Speak To Anyone

With the exception of your insurance company and your attorney, do NOT speak to anyone, ***especially*** not the other driver's insurance company!! If your own insurance company wants a recorded statement, call an attorney.

11. Consumer Power

In addition to the claims and benefits that you may be entitled to, which we've discussed so far, including BI claim, PIP benefits, etc., you also have avenues of recovery based on your *rights as a consumer*!! For example, if an insurance company wrongly denies your claim, then you can file legal claim against them based on their bad faith conduct.

In Massachusetts you have CONSUMER RIGHTS when dealing with ***any*** insurance company. Specifically, Massachusetts General Law ch. 93A and 176D give you rights as a consumer. For instance, M.G.L. ch. 176D Sec. 9 states, "unfair insurance

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settlement practice shall consist of any of the following acts or omissions:

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverage's at issue;

(b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) Failing to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(f) Compelling insured's to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insured's;

(g) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application. Chapter 176D has been incorporated by Statute into M.G.L. ch 93A."

Let our office evaluate whether *you* qualify to bring one of these claims!! If an insurance company has violated this law, then you may have a separate additional claim against the insurance company, aside from the claims you are entitled to under the applicable insurance policy. For these "bad faith" claims, you will need to consult with an attorney.

FINAL THOUGHTS

You deserve everything – justice, and the rights and benefits you are entitled to under the law and insurance policies. Do NOT hamper yourself – get the right attorney, do the helpful things that this guide recommends, and win the compensation you deserve for your injuries.

Knowledge is power and this guide is just the start.[21] Call our office NOW for a free evaluation of your claim.

HAMILL LAW OFFICE

Call our office 24 hours a day at 617-479-4300!!

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[21] *Disclaimer* – This guide does NOT constitute legal advice or create an attorney-client relationship. If you have been in an accident, you should contact an attorney *immediately* and follow his or her advice.