WEST VIRGINIA SERIOUS INJURY GUIDE

Righting The Wrong

Jeffery L. Robinette

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About The Author

Jeff Robinette is a personal injury lawyer with decades of experience in handling serious and catastrophic injury claims. Prior to representing injured individuals exclusively, Mr. Robinette was a partner in a major West Virginia law firm where he focused his law practice on *defending* serious and catastrophic injury claims. **He now devotes his *entire* law practice to representing injury victims with a focus on catastrophic injury claims.**

Mr. Robinette has handled *hundreds* of serious and catastrophic injury claims caused by motor vehicle and tractor-trailer collisions and unsafe work environments, the two leading causes of serious and catastrophic injuries

in the United States. He also has handled a wide range of serious and catastrophic injury cases caused by: airplane crashes, vehicular collisions with motorcyclists, bicyclists, and pedestrians, underground coal mine explosions and equipment malfunctions, surface mine operations, natural gas explosions, carbon monoxide and chemical poisoning, heavy equipment and timbering operations, structural steel construction, commercial and residential construction, elevator malfunctions, electrical power plant operations, electrical transmission line construction, electrocution and electrical shock, chemical, electrical and fire burns, defective equipment and defective consumer products, swimming pool hazards, recreational boating, and violent criminal acts.

Mr. Robinette is a former editor and contributing author of the *West Virginia Law Review,* and is a leading author on West Virginia injury victims' rights. In addition to this title, ***Righting the Wrong, West Virginia Serious Injury Guide***, he has authored several other resources on West Virginia injury victims' rights: ***Collision Care, West Virginia Auto Injury Guide***; and ***Beside Still Waters, West Virginia Fatal Injury Guide***.

Mr. Robinette is a life-time member of the Multi-Million Dollar Advocates Forum and Elite Lawyers of America, whose memberships are limited to lawyers who have attained *multiple, multi-million dollar recoveries* for personal injury

victims. He is a former Adjunct Instructor on Appellate Advocacy at West Virginia University College of Law. He is also an U.S. Army veteran, serving as an artillery, intelligence, and psychological operations officer, and was an accomplished paratrooper (Jump Master Qualified) in the acclaimed 82nd Airborne Division.

Mr. Robinette is the founding member of **Robinette Legal Group, PLLC,** a personal injury law firm devoted to advocating the rights of injured people throughout West Virginia. You can learn more about ***Robinette Legal Group*** at http://www.RobinetteLaw.com

Introduction

I will bind up the broken.

-Ezekiel 34:16

No one expects their life will be suddenly and permanently changed by a catastrophic injury. Nor do families make advance preparations, save the purchase of disability insurance, for the serious or catastrophic injury of a family member as a result of a sudden, tragic event. Because wrongdoers give no advance warning of their careless behavior, even safety-minded people, like yourself, are not always able to avoid injury. Wherever tragedy occurs, it leaves its permanent scars on people's lives, and its victims can only try to pick up the pieces of their damaged lives and start over again.

That's why this book was written: to provide to injury victims and their families the essential information that will enable them to maximize their efforts to rebuild their lives.

What Is a Catastrophic Injury?

When injuries are debilitating and permanent, such that an individual cannot fully perform one or more of their basic life functions, e.g., thinking, seeing, hearing, walking, speaking, sleeping, driving, reading, lifting, etc., their injuries are classified as a *catastrophic injury*. There is a rather wide range of severity even in assessing catastrophic injuries. Some catastrophic injuries are so severe, such as a coma patient or a patient in a persistent vegetative state, that life support and 24 hour care are needed to keep them alive. Other catastrophic injuries are less severe, but still very debilitating, like paraplegia or a brain injury, or the loss of a leg or arm or loss of eye-sight. Examples of less severe catastrophic injuries include the impairment of sight or hearing, significant scarring of the face and other body parts from burns; the loss of full use of the hands, arms, legs or feet; torn ligaments and herniated discs in the neck and back that prevent normal walking and movement; chronic pain syndrome; and psychological injuries such as depression. If *your* injuries are permanent and life-changing, then you should read this guide carefully to ensure that you don't forfeit any of your legal rights to fair compensation for those injuries.

Most catastrophic injuries occur as a result of workplace exposures and highway collisions. I have litigated hundreds of catastrophic and serious injury claims stemming from: underground and surface coal mine operations involving

methane explosions, malfunction of mining equipment, and blasting operations; power plant construction and operations involving falls from structural steel, electrocutions and high-temperature heat burns; timbering operations involving industrial loggers and dozers, and felling of timber; natural gas explosions, heavy equipment turnovers, carbon monoxide poisoning, and hundreds of automobile, motorcycle and tractor-trailer collisions on highways.

To rebuild you life, you will need to learn new ways to accommodate the limitations you now have stemming from your injuries, and this will require that you make some changes about how you view life, both physically and mentally. And, it's not just you who will be adversely affected; *all* your close family members will be affected, too. In fact, you and your family will have to make some significant adjustments in each of your daily lifestyles in order to accommodate the individual personal care needs related to your injuries.

Serious Injuries Cause Similar Losses

Sometimes it is difficult to distinguish between a *catastrophic* injury and a *serious* injury, at least at the outset. You may be one of those individuals who averted a truly catastrophic injury, as described above, but your injuries are, nonetheless, still serious and you are very concerned about your future. Many such individuals who have suffered an obvious, but less serious injury, are naturally optimistic about their chances of

full recovery. Later, however, they learn that a full recovery is not possible.

Many serious injuries, such as broken bones and muscle tears, are generally considered to be fully treatable. However, this is not always the case. Even though the initial injury site was repaired, such as a broken bone, there can be *secondary injuries* that stem from the primary injury. Examples of secondary injuries may be torn ligaments or muscle tissue. Or, your secondary injury may be neurological, such as an impingement of a nerve in the neck. When symptoms from the secondary injury continue for weeks and even months, like pain, numbness, and discomfort, such secondary injuries are considered *chronic.* If symptoms persist for a year or more, and don't respond to physical therapy or other non-surgical treatment, most medical doctors consider such injuries likely to be *permanent.* Older adults, those who are in their 50's and above, generally don't recover as quickly as younger adults. There are many variables that affect a person's ability to recover from a serious injury, such as age, weight, prior medical conditions, and type of occupation. So, what is a treatable serious injury for one person, may turn out to be a permanent, debilitating injury for another.

Unfortunately, many seriously injured people don't know at the outset of their medical treatment that their injuries may be permanent; they are later astonished that such injuries compromise their ability to earn a living. This

scenario occurs fairly often when *middle-aged individuals* who have physically demanding jobs, such as coal miners and construction workers, have been injured. The means of injury, however, doesn't have to be that significant. Even a low-impact automobile collision or a common fall from a step-ladder can cause serious and permanent injuries. Because the fifty year-old heavy laborer is already struggling with the physical demands of his job, even a seemingly minor back or neck injury from an auto collision can prevent him from doing the same kind of work. So the effects of even less serious, but permanent injuries, can cause significant losses to such injury victims.

Loss of Financial Support

One of the most significant areas of your life that will be affected by your injuries is your ability to provide financial support for your family. Before you were injured, you may have been able to provide for all your family's financial needs through full-time employment. But now, you haven't been back to work for weeks on end, and this causes you much concern; bills don't stop accumulating just because you are not working. Perhaps you are like many injury victims who don't have significant savings to meet their day-to-day living expenses now, much less those bills that are coming due in the future. Many injury victims become depressed and discouraged because they cannot provide the same financial support for their family as they could previously. Perhaps you are feeling like that, too, and you

fear that you won't be able to return to the employment you held previous to becoming injured.

Many catastrophically and seriously injured people can't return to the same kind of employment they had previously; they have to change jobs, and even occupations, in order to return to any gainful employment. As a result, you now face, perhaps for the first time in your adult life, real uncertainty about your future employment and financial condition.

Effect on the Family

Perhaps you are reading this guide because your close family member is the person who has been seriously injured. If your injured family member is unable to make important decisions relating to their medical care and legal needs, your help and support is vital at this time. Whether you are the spouse, parent, or sibling of the injured family member, your decisions on behalf of your injured family member will involve all of your family, in one way or other, so mature consideration will need to be given to how each family member will be affected by this traumatic loss.

Some close family members, especially the spouse, may have to adjust their sleep and work schedules to accommodate the care needs of their injured family member. Although you would never complain to your injured loved one about how much their injury has affected you, there are nonetheless a lot of challenges and disappointments you now silently face.

So the decisions you make regarding your injured family member are *vitally* important, and they will affect many people's lives for a long time.

Practical Legal Advice Available

You need, right now, *practical legal advice* on how to address your most pressing concerns: how you are going to be able to meet your present medical and financial obligations; and how you are going to build a financial future for yourself and your family. Having the right information about your legal rights is part of your *first step* in recovering from your traumatic injuries and building a hopeful future.

Righting the Wrong is written in easy-to-understand language, straight talk without the "legalese," to provide you with timely advice on how to build your future by obtaining fair compensation for your tragic injuries and losses. As you read this helpful guide, you will discover that there are laws that *protect* you and your family from the consequences of negligent and wrongful behavior of others who caused your injuries and losses. Your *damages*, which include your medical and financial losses and obligations, *should* be paid by the parties responsible for causing your injuries and losses—but they won't pay, that is, not without a legal battle. This guide will teach you how to *enforce your legal rights* against the wrongdoers that caused your injuries and losses in a fair and professional way to obtain the compensation you deserve for your injuries.

No Substitute for Legal Advice

Righting the Wrong will also show you how to navigate through the complexities of the insurance claim process and civil court system so that you will not be taken advantage of by insurance adjusters and their defense lawyers who are determined to *minimize* your serious and catastrophic injuries and losses.

A word of caution: while this guide will provide helpful insight into the insurance claim process and civil court system, it is *no substitute* for sound legal advice from a qualified personal injury lawyer about the unique details of your serious or catastrophic injury claim. Thus, I strongly recommend that you speak with a qualified personal injury lawyer about your injury claim. ***Accordingly, no client-lawyer relationship is created by this guide***. To obtain such a client-lawyer relationship, you must consult with and retain your own qualified personal injury lawyer. Throughout this guide I will explain how you can easily accomplish this important process.

Jeff Robinette

CHAPTER ONE

Your Legal Rights

One of my most solemn responsibilities as a personal injury lawyer is to counsel severely injured individuals and their families. It takes many months for injury victims and their families to begin to realize just how *all* their lives will be different, especially considering the financial hardships they will all face. It is understandably difficult for you just now—when your life has been so dramatically changed—to consider what *first steps* you need to take to protect *your legal rights* for future compensation for the injuries and losses you have sustained. But as you will learn, taking the right first step *now* will secure your *future* rights to just compensation for your injuries and losses.

Right to Justice

Most people don't think that much about their rights as citizens—that is, what freedoms and responsibilities we have as citizens—that often. We're too busy taking care of all the things that usually occupy our time. But *time* seems to

stand still for injury victims; they spend a lot of *time* sitting and recuperating. That's when it starts to dawn on them that there ought to be some protection afforded by the law, protection that will require the responsible parties to pay for their injuries and losses. Fortunately, there is protection and we enjoy that protection because others paid an extremely high cost for it.

Over the last two hundred plus years, countless men and women have given up their possessions *and their lives* for the freedoms and rights we enjoy today. Right now, all over the world, there are civil wars and conflicts over the same civil rights we already possess here in West Virginia. One of the greatest rights we have, and should cherish, is the right to petition a court of justice when we have a grievance. This is called *civil justice*. When we have been harmed by the wrongful conduct of others, we have the right to pursue civil justice against the responsible parties. Without the right to civil justice, no injury victim would be guaranteed a fair hearing on their injury claim. Experience has borne out that we can't rely on the good will of wrongdoers to compensate injury victims.

The right to civil justice, that is, the right to trial by jury, was contemplated by the founding fathers of our great country and considered by them to be one of the most important rights we have as citizens. John Adams, one of our founding fathers, wrote in 1774, "Trial by jury [is] the heart and

lungs of liberty. Without [it] we have no other fortification against being ridden like horses, fleeced like sheep, worked like cattle, and fed and clothed like swine and hounds." This right was set forth in the Seventh Amendment of our Constitution. The right to civil justice and the lawyers who exercise that right for injured people have created the best court system in the world. It is your *privilege* as a citizen to exercise this right when you have been injured by the careless conduct of others.

Wrongdoers Don't Care About Your Rights

I hardly need to remind you that habitual wrongdoers, such as intoxicated and careless drivers, place little value on your safety. They don't have any respect for the law or the civil justice system; their conduct proves it. Neither do profit-centered corporations care much about your safety; otherwise, they wouldn't knowingly produce defective products that injure consumers. Because of wrongdoers' unacceptable attitudes about safety, our civil courts open their doors daily to injury victims who wish to pursue fair compensation from those who caused their injuries. *And that's where my job as a lawyer comes in*: to make sure your legal rights are protected where it counts, and that's in a court of law.

When Your Rights Are Not Excercised

If your legal rights to civil justice are not asserted, however, then the wrongdoers who caused your injuries will learn that there are no serious consequences for their wrongful

conduct. That is an unfortunate result. It enables wrongdoers to prosper and the number of injured to multiply. It explains why we have so many drunks on the road killing and maiming others. Bars and sellers of alcohol have learned how to avoid financial accountability for serving patrons too much alcohol. It explains why bad companies exploit consumers by making defective products that hurt consumers. It explains why unsafe companies put their employees and others at risk of injury so they can make more money. They have all learned how they can get away with hurting other people. *Thus, the financial burden of injury is shifted from the wrongdoer to the injury victim and their family, and even society.*

You can make a difference, though, by showing the people who don't care about the safety of others that you will stand up for what is right and not allow such individuals and companies to get away with such behavior. Your decision to assert your legal rights against the wrongdoers will ensure that not only you will benefit, but others as well, including your children and grandchildren.

Right to Counsel

Your success as a participant in the civil justice system depends, in large part, on the quality and experience of the lawyer you choose to represent you. This means that you need to choose a lawyer who is well suited to handle your injury claim. Although demands for your attention are constant—dealing with medical appointments and insurance adjuster

inquiries—you should nonetheless make time to talk with a personal injury lawyer. Feeling overwhelmed by all the demands on your time, you may contemplate waiting a while to find a good lawyer. But, as you will learn, your delay in consulting with a lawyer could be a big mistake.

Loss of Evidence

If you think that waiting a few months to speak with a lawyer won't impact your injury claim, think again. Waiting even a few weeks to get legal advice about your case may be just enough time for evidence to be lost or destroyed or an important witness to disappear. Loss of vital evidence and witness testimony *will cause* permanent damage to your injury case; in fact, you may not have a case left. I recently heard about a break-in of a police department's evidence locker where key evidence that was used to convict criminals was stored. Know what happened? That's right. All the criminals that were convicted on that evidence had to be set free—all because the evidence that convicted them disappeared. Let nobody kid you; without *evidence* you have no way of obtaining compensation for your injuries.

The problem is you don't know when your evidence will disappear or be destroyed. An important witness to your case will not likely call you up, out of the blue, and give you their testimony and forwarding address before they skip town. When they skip town, there goes your evidence, too. And that documentary evidence, the tangible information

like records and parts, you need to prove your case can disappear. Nobody is going to alert you to this either.

Legal harm is akin to radiation, you can't see it or feel it, but it will cause serious harm. It doesn't matter if your evidence is *accidently lost* or *intentionally destroyed;* both have the same adverse impact on your injury claim. All these things happen without you knowing it—these are legal ramifications of waiting too long to get legal counsel. You don't have to end up being further harmed; you can exercise your right to consult with your own lawyer about your injury claim.

Advantage of Representation

Perhaps by now you see that having your own lawyer early in the process is not such a bad idea after all. It actually works to your *advantage.* What does it take to get this advantage? Only *an hour* of your time. That's right, an hour of your time is all it will take to secure the *advantage* you need to win your case. Now, you can spend countless hours, or even days, worrying about your situation, to no avail. Or, you can dial my law firm's number **right now**: **1-304-594-1800** and discuss your case with me over the phone. The call is ***free***, and it will set your mind at ease. The choice is yours. But remember, delaying a free consultation with a lawyer will yield the same result as not hiring a lawyer—in both circumstances you end up not having **your** interests protected.

When You Don't Need a Lawyer

I receive hundreds of calls a year from individuals with various types of legal problems. There are almost countless types of minor civil disputes that occur every day. Although people do consult lawyers for relatively less significant disputes, many of these minor disputes can be resolved without legal counsel. Sometimes just good common sense is all that is needed to end a dispute.

Another factor to consider is the cost of hiring a lawyer, which I will discuss further in this guide. If the dispute is over $500 in damages, and the lawyer services will cost more than the disputed amount of damages, it makes a lot of sense for people to handle these small disputes themselves. But when it comes to *serious* personal injury claims, it is wise to seek experienced legal counsel. The amount of potential compensation can be in the millions of dollars, and that fact alone warrants professional legal care. Otherwise, you may end up with a very bad result.

Bad Results Follow Bad Decisions

A few people, though, may still think about handling their own serious injury case. They reason that if they get into trouble doing so—no big deal. If they run into trouble, they'll just call a lawyer then to bail them out. They figure the risk of messing things up is worth the chance to avoid paying legal fees. When they find out, however, all the work required

of trial lawyers, they generally have *second thoughts*. Among the many other things that trial lawyers have to do, they will have to:

- Conduct a proper scene investigation without missing or destroying evidence.
- Locate all the fact witnesses and obtain their sworn statements and affidavits.
- Locate *all* the parties responsible for causing their injuries and damages.
- Locate all the insurance coverage potentially covering their injuries and damages.
- Argue and even litigate insurance coverage disputes with the insurance companies *simultaneously* with preparing the personal injury case.
- File a proper lawsuit, naming only the correct parties and claims in order to avoid monetary sanctions for filing improper lawsuits.
- Respond to the defendants' defenses and motions to dismiss the lawsuit.
- Prepare written discovery to the defendants, requesting appropriate information about the claim and the defenses.
- Prepare all the plaintiff's witnesses for deposition and trial testimony.
- Prepare for and conduct cross-examinations of all the defense witnesses.

- Conduct legal research and write legal briefs on key issues in the case.
- Prepare a Pre-trial Memorandum to the trial court judge addressing all legal and factual issues to be tried by the court.
- Represent their client in court proceedings on all pre-trial issues.
- Prepare the personal injury case for trial, including the preparation of legal arguments, entry of evidence, and witness testimony.
- Conduct a jury trial of their case following complex trial court rules and evidentiary rules, and file post-trial motions.

For those few individuals who may still want to handle their own case, I would like to also point out that they will need to *be prepared to file an appeal to reverse the bad result that is almost certain to occur.*

As a former defense lawyer, I have witnessed some people who have attempted to handle their own personal injury case. Without exception, their cases were either thrown out of court or ended in an unfavorable way.

Lawyers, however, are not the only professionals who see this type of misfortune occur. Medical doctors can tell of their experiences in trying to help patients who delayed treatment because they thought they could self-treat their own serious

medical condition. Unfortunately for some, an otherwise treatable condition turns out to be even more serious, or fatal, when early treatment is not obtained. **In the same way, handling your own serious or catastrophic injury case has its risks: you may squander your only chance to obtain fair compensation for your serious injuries.**

Avoid Helping the Insurance Company

Those who are responsible for causing your injuries are interested in the decisions you make, especially whether you will retain legal counsel or handle your own injury case. They actually prefer that you handle your own case, because they know you won't do all the things that a skilled trial lawyer will do to prepare the case. You see, while you are trying to figure out what the next step is, their own defense lawyers are getting to the evidence to manipulate the facts of the case to their favor. Whoever gets to the evidence first has a head start on the case.

Don't think this is not important. I previously explained what happened when evidence is lost or taken in a criminal setting—convicted criminals are released from prison. So whoever gets to the evidence first has a significant advantage over the other side. A good trial lawyer knows how to use evidence that favors your position, and how to dispel false evidence presented by the other side. A trial lawyer manages the case like a good coach manages an athletic team. If you viewed a sporting event where one team had

been professionally coached, but the other team hadn't been coached at all, which team would have an advantage? What would be the likely outcome? Your legal case is a competition, a legal debate, with a winner and a loser. Each party marshals evidence and legal theories to convince the court their position is correct. If you are the only person on your legal team, how will you do against the legal team of the other side? You will have to face off, alone, against the insurance company, its seasoned defense lawyers, their expert witnesses, and unlimited financial resources. If you think you have a problem, the time to act is *now*—call my law firm for a free consultation to discuss your case.

Medical Treatment Disputes

Insurance companies routinely refuse injury victims the necessary medical treatment they need to obtain a full recovery. Their motivation for disputing medical treatment is because they know that *ultimately* they are going to be responsible for paying those medical bills. *If the insurance adjuster can keep you out of necessary medical treatment, they save more money!* Skilled personal injury lawyers make sure their clients get the necessary medical treatment they need and deserve, irrespective of who has to pay for it. This is why the insurance company does not want you to have your own lawyer; it interferes with their ability to keep you out of treatment. When you are able to get the necessary medical treatment you deserve, don't expect the claims adjuster to give up minimizing your injuries. The insurance

adjuster will just accuse you of getting more treatment so you can get more money (called secondary gain), or accuse you of faking your injuries to get more medical treatment (called malingering). You really can't win with the insurance adjuster: you are always going to be at odds with them over your medical treatment.

The insurance adjuster is trained to get their way with you. They will insist that you don't need much, if any more, medical treatment. They also want to discourage you from getting diagnostic testing because they are supposed to pay for this treatment, too. Because insurance companies have a lot of financial power, they can manipulate and even thwart your efforts to obtain necessary medical treatment and diagnostic testing to help in your recovery from your injuries. You need a skilled lawyer to level the playing field so you can get the medical attention your injury claim deserves.

You Need Specialized Legal Care

When it comes to *your* sudden and serious medical and financial needs, the insurance company wants to discourage you from having your own legal counsel; lawyers make it hard on wrongdoers and insurance companies to duck responsibility. Sadly, they have persuaded some injury victims that they don't need a lawyer's advocacy at a time when it is most needed. I once heard about a man who had fallen in a store and couldn't get up. The store manager, selfishly not wanting to have an ambulance pull up to the

front door in full view of other shoppers, insisted the man be moved to the back room. A concerned family member demanded that an ambulance be called to provide urgent medical treatment. It turned out that the man had fractured his hip in the fall. Don't let the insurance company tell you what to do when you know that their advice is wrong. Call for legal help. It is the right thing to do.

With your own counsel, you can turn the tables and get the upper hand. Your lawyer can get the head start on your case by inspecting the scene where the catastrophic injury occurred, consulting with experts that are objective in their opinions, collecting evidence that supports your position, and making sure that no evidence is destroyed. *But rest assured, the insurance companies will have their own defense lawyers get to the scene quickly, consult with their bought-and-paid-for experts, and even change or destroy evidence that is favorable to you.* **The question is, who will get to the evidence first? Your lawyer or theirs?**

So think this important decision through. Waiting to call a lawyer will harm your case. Why should you carry the extra burden of complex legal issues on top of your other concerns? You can relieve yourself of your legal burdens by making a simple telephone call. Since the phone call is *free*, there is no reason to delay. So call a lawyer *right now* and ensure the preservation of your future legal rights against the parties responsible for causing your injuries and losses.

Right to Progress

Our laws have not always protected the rights of injured people like they do today—it has taken over two centuries of *legal progress* for this to happen. Consider the untold number of injury victims from recent prior decades who received no compensation for their injuries because laws favored business and industry and practically ignored workers' safety. If your injuries had occurred even fifty years ago, you would not have the opportunity to obtain full compensation for your injuries. Sadly, so many injury victims of prior decades received *no compensation* for their injuries. The injury victims of by-gone years basically had to just accept their bad lot in life; and even when wrongdoing was acknowledged, they still weren't compensated because it was conveniently thought back then that money wouldn't alleviate suffering. Sounds like a corporate executive thought of that idea.

Hawks Nest Tunnel Disaster

In 1927, Union Carbide made plans to blast a three mile tunnel through Gauley Mountain, West Virginia. It hired the contracting firm of Rinehart & Dennis to blast through the three mile tunnel. During blasting operations, workers discovered silica—a mineral used in producing steel—and were directed to mine the mineral in addition to conducting the tunneling operations. The unexpected money gained by the sale of the silica was not used to purchase any type of safety equipment for the exposed miners. In fact, the miners were not given *any* protection from breathing the silica dust

during blasting operations. Ironically, the management officials were provided such protections and wore them right in front of the unprotected miners.

Consequentially, these unfortunate workers developed *silicosis*, a severe, even deadly lung disease brought on by their exposure to silica dust. Young, healthy miners collapsed like old men with emphysema. The company covered up the tragedy by having these miners evaluated by their company doctors, who diagnosed other causes of illness, like pneumonia, instead of the correct diagnosis of silicosis. The company eventually admitted to 109 deaths, but a Congressional hearing placed the death toll at 476. Other investigations found over 1,000 deaths. Because many of the workers left the area after they were exposed, it is impossible to determine the exact number of silicosis deaths involved. **This is one of America's worst, yet least known, industrial disasters.**

Effects of Coal Mining

I understand that when the coal barons first sent their land agents into this state, they enticed landowners, especially farmers, by offering to buy something *beneath* the surface of the land. This was foreign to those early mountaineers, that someone would want to buy something you couldn't see—mineral rights like coal, oil and gas—and that the extraction of the minerals would not adversely effect how they would use the surface of their property. The farmer was told that

he could go on farming, just as before. No one but the coal and steel barons knew the true worth of those mineral rights. The early natives of West Virginia certainly didn't know the true value of those mineral rights. That's why they thought that *any compensation* they got was a good thing, especially for something they couldn't see way beneath the surface of their property. So, they gladly accepted this extra money—enough to pay their property taxes and buy a few extras for the home. Little did they know how their decision would not only ruin their own property, but would change the face of West Virginia permanently.

Mineral rights were purchased, well, dirt cheap, for practically nothing. Many native West Virginians feel the coal companies have treated them as they do the coal they have mined—as a resource that can be exploited. When you visit the mansions of the absentee coal barons that profited gloriously from coal mining, and then view the squalor of the coal camps and the absolute harshness of the coal mines, you really begin to feel the plight of these earlier coal miners. You can understand why many West Virginians feel the way they do about the coal companies.

If I were an outsider, I would be hesitant to talk about West Virginians' feelings concerning the effects of coal mining in this state. But I am not an outsider, nor am I ignorant of coal mining operations. I was born and raised in the southern coal fields of West Virginia. I attended and graduated from two

colleges in West Virginia. Outside of my military service in the Army, I have always lived in West Virginia. My maternal grandfather was a union organizer in the southern coal fields in the earlier part of the last century. My mother was born and raised in a coal camp in southern West Virginia. My paternal grandfather worked on the railroads that hauled the coal from the mines. I grew up in the coal fields and have seen some of the needless damage that coal companies have caused to our people and land. I have also, as a defense lawyer, represented many coal companies and have inspected their underground and surface mining operations.

What I am getting at is there have been *countless billions* of dollars of assets funneled out of this state, but very little money, comparatively speaking, has been put back into the state or its people by the coal companies who profited from coal mining. Just look at the damage coal mining has caused to our ground and surface water and natural beauty of our state. You can try to cover it up and make the best of a bad situation. Some people have that option. One local developer decided to use *Copper Creek* as the name of his housing development that had an acid-run-off stream running through it. I see his point, as *Copper Creek* does sound better than *Acid Creek* or *Orange Creek*. But not everybody can ignore or cover up the fact that our ground water has been polluted with acid run-off—many towns in the southern coalfields have no safe water to drink at all.

Coal Mining Disasters

The truth is, coal companies historically have been careless about the safety of the miner and their well-being. The old "company store" still stirs the mind to the time when miners never got out of debt, lived in filth, and died an early death. Because accurate records do not exist for the earlier stages of coal mining in this state, there is no way of knowing precisely how many thousands of coal miners have been seriously injured or killed because of unsafe working conditions in the mines.

Take the 1968 Farmington Mine Disaster as an example. Inadequate ventilation, inadequate control of explosive methane gas and coal dust, and inadequate testing for methane—all these were contributing factors to the ferocious blast and fire that killed seventy-eight miners. Also consider the 1972 Buffalo Creek Disaster caused by the rupture of sediment ponds built by the coal companies over a period of several decades. One hundred and twenty-five men, women, and children perished when the massive torrent of muck swept down the valley of Buffalo Creek.

In time, state and federal laws were enacted to require better protection for coal miners, but enforcement was inadequate and sophisticated coal companies learned how to skirt around compliance. Consequently, more coal mine disasters resulted. Just in the last decade alone, three more fatal mine disasters occurred claiming the lives of dozens more miners:

the 2006 Sago Mine Disaster; the 2006 Aracoma Alma Mine Disaster; and the 2010 Upper Big Branch Mine Disaster. But even with more exacting laws requiring miner safety, mining deaths still continue because coal companies are still more motivated to make bigger profits than to provide better safety for coal miners.

Remember John Adams' warning? We still need to be on guard against being "ridden like horses" and "worked like cattle" because the modern-day companies have the same tendencies as their predecessors—to take advantage of their work force. Like their predecessors, our modern-day companies don't want to fairly compensate the people they injure or the families of the people they kill. Just like in earlier times of corporate abuse, little to no compensation will be offered to injury victims who must nurse their own injuries with inadequate financial support.

Lawmakers Respond

Lawmakers normally respond to public sentiment; this is how our representative system of government works. When enough interested citizens and injury victims voice support for better laws, it is up to the lawmakers to respond. In recent decades there has been steady public support for better laws for injury victims. But, corporations and insurance companies don't want more restrictive safety requirements—that means more liability exposure.

In response, lawmakers have had to choose between helping the corporations make more money and helping injury victims get recoveries from wrongdoers. Lawmakers thus far have not completely caved in to the desires of the corporations and insurance companies, because a majority of people have voiced their outrage over corporate greed and their role in causing an increase in incidents involving serious injuries and deaths. But it takes a constant flow of information to lawmakers about injury victims' plights, and that's where trial lawyers associations are effective in protecting your rights. My law firm is a member of the American Association For Justice and the West Virginia Association For Justice, organizations that work on a state and national level to protect the rights of injury victims.

Our present laws reflect how *society* feels about victims receiving compensation for their injuries: that the parties responsible for those injuries—and the insurance companies insuring those risks—should be liable to pay fair compensation for *all injuries and losses*. So, you should not feel that you are overstepping the protection the law affords you by pursuing fair compensation for your injuries. Nor should you be concerned about what a few other people may think—both the law and social opinions agree that you deserve to be fairly compensated for your injuries.

Family Story

I would like to share this family story to emphasis the value of having a *good* lawyer, without which, you cannot get the protection our current laws afford you. Some 75 years ago, when my father was a young boy, he fell and broke his right elbow. The hospital doctor was not a specialist in setting broken bones, but the hospital didn't tell my grandparents that information. The doctor told them that he needed to re-break the arm at the elbow to set it properly. So, under extreme pain my dad's right arm was re-broken and set at a 45 degree angle. Because the doctor didn't know what he was doing, my dad's arm *locked* in that position! So, to add more damage to the mess he already created, the doctor re-broke the arm again! Can you imagine the trauma and pain? But the doctor *still* could not get it right because of his botched first effort. He considered re-breaking my dad's arm yet, again. Fortunately even *he* finally recognized that he was making things worse, and that one more re-break would unquestionably cause irreparable nerve damage to the already impaired condition of the arm. So, the doctor just decided not to see my dad any longer, leaving my dad with a permanently disabled arm.

My grandparents had the wits to know that things should not have turned out the way they did. They searched for a personal injury lawyer, but there were not that many around—they all seemed to work for the big companies. They finally found a lawyer who would meet with them, and they

were told that they had no case against the hospital or the doctor. So, without other options, they just accepted the bad result. They later found out, however, that the lawyer they had consulted was a good friend of this doctor! By this time the full effects of the Great Depression were being felt. My grandpa had already lost his job on the railroad, their farm was foreclosed on by the bank, and they were living in an old chicken coup, barely scratching out enough food to survive on. As a share cropper's son, my dad had to work in the corn fields and was expected to do the same amount of work a normal boy his age could do. My dad learned to improvise and got jobs that didn't require the full use of two strong arms. But that "bum arm" bothered him all his life, and in his final years, he actually begged the doctors to amputate it because of the intense pain it caused him. **My dad got nothing for his injuries, other than physical suffering.**

My grandparents and dad had to accept their bad result, but you don't have to. You can do something about your circumstances, no matter how bad they may seem at this time. There are *better laws* and, may I say, *better lawyers* that can help you obtain just compensation for your injuries. A free consultation with a skilled personal injury lawyer is a *privilege* we have today that prior generations did not have. Take the time, right now, to speak with a good lawyer.

When It Is Too Late To Help

I am saddened when I receive calls from injury victims who gave up their rights to recovery because they listened to an insurance adjuster's dogma that their injury claim had no merit, and now they have to pay all their medical bills and they have no means to earn a living. This is a *secondary harm* caused by insurance companies: your initial injuries didn't heal after all—contrary to what you were told by the insurance adjuster and *their* doctors—and because you waited too long to pursue your injury claim, you have *forfeited* your right to future compensation for your injures and lost wages.

Right to Legal Process

An injury victim's most potent weapon against wrongdoers is the right to *legal process*—that is, the right to file a *lawsuit* for personal injury damages. In the end, it is the *threat* of a lawsuit and the *outcome* of a lawsuit that forces wrongdoers and insurance companies to compensate injury victims. Statistically speaking, however, most personal injury claims are settled out of court, meaning that *no lawsuit* was required to satisfactorily resolve the claim. In fact, when a lawsuit is required to be filed, the vast majority of lawsuits, about 90%, are settled before the parties have to go to court and try the case before a jury. What this means to you is that odds are in your favor that your injury claim will most likely be settled before trial. *It is the threat of the outcome of the lawsuit, however, that forces insurance companies to pay fair compensation to injury victims.*

Obviously an injury victim, with or without legal counsel, can settle an injury claim for a lot less than the damages sustained. All you have to do is accept the "low-ball" offer of settlement from the insurance adjuster. Not so with skilled lawyers, they don't settle cases cheap just to avoid litigation or trial. Skilled lawyers use the litigation process to their client's advantage. Remember, it is the *threat of litigation* and the *filing of a lawsuit* that actually causes the fair value of an injury claim to be realized. The fair value of claims is intangible in some ways. What is it worth to you not to be able to walk without pain for the rest of your life? The insurance company will offer you a pittance for your suffering, while a jury may very well find you deserve compensation ten times the amount offered by the claims adjuster.

So you should view a lawsuit not with fear, but as an ally or aide to your cause. A lawsuit, however, should never be used for a wrong purpose, such as to harass another party, or to "get even" on a long-standing personal feud. The law only affords you the right and opportunity to seek *fair compensation* for all your *legitimate* injuries and losses. The ultimate goal of any lawsuit, then, is to pursue *fair compensation*. But fair compensation is usually contested vigorously by the insurance company. That's why lawsuits end up being filed, because the insurance company refuses to offer fair compensation for your injury claim. You should not turn back from just compensation just because a lawsuit must be filed.

Right to Legal Proceedings

As stated previously, most lawsuits for injury victims are filed primarily because the insurance adjuster will not offer fair compensation for the injuries and damages sustained by the injury victim. It is this same prevailing attitude of the insurance adjuster that forces *litigation* in some cases. *Litigation* is the term that lawyers and judges use to describe the *legal proceedings* which the parties engage to find out what evidence exists for both sides on all issues. Trial lawyers spend most of their practice in the *litigation process*: it is the spring board to understanding the strengths and weaknesses of each side's case.

Focus of Injury Litigation

Injury litigation focuses on two primary subjects: the cause of the traumatic event; and the nature and severity of the injuries sustained by the injury victim. In many cases liability is adamantly denied, which means that there will be a lot of discovery of the cause of the traumatic event. If the claim has any merit at all on liability of the wrongdoer, the insurance company may not flat-out admit liability, but the focus of discovery will be *the amount of compensation that is due*.

Both sides may hire experts to give opinions on liability and damages, but in the end, neither side can say for sure that they are absolutely right. Fair compensation is hard to

define because it is so individual. Identifying what is fair compensation for an injury can involve many factors.

That's why experienced lawyers rely on what juries say about compensation for injury claims. Only a jury can say for certain what fair compensation is going to be in any given case. When a jury deliberates, they consider what would be *fair compensation* to an injury victim, and they must all agree on the amount of recovery. A *unanimous* consensus, called a *verdict* (a Latin term meaning "to speak the truth") will state the amount of compensation the injury victim will receive. If six people who don't know any of the parties or each other can agree on the amount of compensation, then that's a pretty good indicator of what the claim is worth. While your case will not likely get to the verdict stage of litigation, it is the legal process of litigation that moves the case toward resolution.

Distrust of Juries

Insurance companies are *financially motivated* to distrust juries because the claims adjuster doesn't have control over juries like they do over the claims handling process. That's a primary reason why they distrust them—they can't manipulate them around to their way of thinking. When jury verdicts go against the insurance company, they say the jury was tainted with sympathy for the injury victim. I don't believe this at all. People believe what they *want* to believe. Because judges instruct jurors *not* to sympathize with any

injury victim, jurors do, in fact, put sympathy aside—I have witnessed this dozens of times at personal injury trials. In fact, I have witnessed plenty of so-called defense verdicts which are verdicts *against* a sympathetic injury victim. If anything, jurors are *too hard* on injury victims, not the other way around.

Insurance companies also *want* to believe that juries award injury victims way too much money. Again, experience proves that jury verdicts are fair to both sides. If a case is not meritorious, and cannot meet the requisite *burden of proof* to substantiate the injury claim, the jury will issue an adverse verdict to the plaintiff. However, if the insurance company is not being fair to the injury victim because paying the claim for what it is actually worth will greatly exceed their low-ball assessments, and a jury subsequently awards the injury victim fair compensation, the insurance company declares the jury was tainted with sympathy.

What the insurance companies are really afraid of is how juries upset their methods of obtaining minimal settlements of injury claims. Every time a jury awards a fair recovery to an injury victim, the jury verdict is an *indictment* against the insurance company for offering inadequate settlement offers to injury victims. *The charge against the insurance company is that they won't consider all the damages that are legally available to injury victims.* The trial judge ensures that each juror knows the *full range of damages* an injured person

may receive for compensation for their injuries. Because juries follow the trial judge's instruction, their verdicts often include fair compensation for the *future pain and suffering* of the injury victim—a category of damages deliberately overlooked by insurance companies. Good lawyers use jury verdicts as a valid reference point to obtain better settlements for injury victims.

Why Adjusters Want To Settle Now

Insurance companies know that if your injury claim is in the hands of a capable personal injury lawyer, skilled in insurance issues and trial tactics, they don't have much of a chance getting a "low-ball" settlement on the injury claim. They know this for a fact. They also know that going to trial is not always such a good idea either. They could pay fair compensation on the front end of the claim and save everybody a lot of trouble. But, insurance companies can't make the swelling profits they need to make if they are paying *fair compensation* to every injury victim. The one thing they can do, though, is to try to get to you *now*, before you hire a lawyer, and try to talk you into a settlement. By swiftly convincing unrepresented injury victims that the money they are offering now, will be more than they will get to keep if they hire a lawyer, many injury victims will accept less than they deserve—a lot less.

You should know that "low-ball" settlement attempts by insurance adjusters are frowned upon by West Virginia law,

and in some cases, can be rescinded. If you are a victim of a "low-ball" settlement with an insurance company, you must immediately contact a personal injury lawyer to assess the fairness and viability of the settlement. It may not be too late, and even after paying a lawyer, you can still end up with a better recovery. As will be pointed out in a later section, even the insurance companies' own studies show that injury victims get better settlements with legal representation, even *after the lawyer has been paid*.

So, you now have the information needed to decide whether or not you need a lawyer. Will you forfeit your legal rights and allow the responsible parties and the insurance companies to keep the compensation you deserve? Or, will you pick up the phone and call a qualified personal injury lawyer to discuss your legal need?

Right to Forfeit Claim

As I stated previously, my grandparents had to accept their bad result, even though they attempted to obtain compensation for my dad's injuries. But you have the opportunity to *choose* to accept your injuries and forfeit your legal rights to compensation—or not—you are within your legal rights to do so. Before you give more thought to that possibility, I would like to explain to you how your decision to essentially "drop the claim" will mean that others will more likely be injured by the same harms, because you would not hold the wrongdoers accountable for their conduct.

What It Will Mean To Accept Nothing

Your forfeiture of your legal rights will mean that you will be solely responsible for paying all of your medical bills, including all those bills that may be incurred in the future. And, may I add, that you will not receive any compensation for your lost wages or pain and suffering you have already endured and will continue to endure into the future.

Because this decision is so important, I want to stress how easy it is for you to relinquish your rights to future compensation for your injuries. You may *intentionally* forego just compensation—that is, you consciously decide you don't want any compensation from the responsible parties and insurance company. Or, you can *inadvertently* forgo just compensation simply by delaying too long to pursue your injury claim.

Few people intend to just "drop their case." Most just procrastinate too long to do anything about it. In either event, the responsible parties and their insurance companies will be relieved from their obligation to compensate you for your injuries.

But your injury claim doesn't have to turn out this way, you can make a phone call to a skilled lawyer to discuss your legal rights to pursue fair compensation for your injuries.

CHAPTER TWO

Legal Liability

News reports are full of tragedies that occur everywhere and every day—earthquakes, hurricanes, war casualties, terrorist bombings, school shootings, highway collisions, and countless other tragic events that adversely alter people's lives. Obviously, not every serious or catastrophic injury is caused by the legal negligence of someone else. Earthquakes and hurricanes are not legally accountable for the devastation they cause. Careless people, unfortunately injure themselves. If a careless person ignores warning signs and drives their car off a cliff, there is all likelihood that their consequential injuries will be considered their own fault, for which the civil justice system will not hold others accountable.

Liability Based On Fault

The cause of many serious and catastrophic injuries, however, are clearly the result of someone else's fault. Legal fault is called *negligence.* Proving negligence is no

simple matter; there are dozens of real defenses that may apply to any given injury claim. As will be discussed further, it is *your responsibility* to prove that the person who caused your injuries was *negligent* in the manner of their conduct toward you.

Time Limitations

West Virginia law provides that you have **two years** from the date of your serious or catastrophic injury to take legal action. That is, you have two years to file a lawsuit against the responsible individuals and companies, including insurance companies, to seek compensation for your injuries, called *damages*. If you do not file a lawsuit within the two-year statute of limitations period, your injury claim will be *forever* barred. This means that you will collect nothing for your injuries and losses. In many cases, a lawsuit can be avoided if legal counsel is obtained soon after the catastrophic event. Legal counsel will need this time to prepare the injury claim for settlement negotiations well before the time limit expires on filing a lawsuit.

Exceptions to Statute Of Limitations

There are a few notable exceptions to the applicable two-year statute of limitations period for personal injury claims. One exception is when a responsible party commits *fraud* by hiding their identity or evidence of their culpability. But evidence to prove fraud is very difficult to locate, and even

skilled trial lawyers have a hard time proving that a fraud has been committed.

A more common exception to the two-year statute of limitations period is when a *minor child* sustains a serious or catastrophic injury. For now though, you need to know that if a minor child is seriously injured, the parents or legal guardian have the legal right to file a claim on behalf of the minor child within the two-year statute of limitations period. The law does permit an injured child, once they have turned eighteen years of age, to file their own claim or lawsuit, but they must file the lawsuit within two years after they have reached their eighteenth birthday. Waiting to take legal action until your minor child is an adult, however, is risky—the evidence you will need in order to prove your child's injury claim may be lost by then.

Two Years Is Not That Far Away

To some, two years may sound like a long time from now. But it is not, when considering all the things that must be done to secure your legal rights against the responsible parties. In fact, some states even allow three years to file a lawsuit, but as stated previously, West Virginia only allows two years to file a lawsuit. Every day that you wait to seek legal counsel equates to a loss of opportunity to obtain full compensation for your injuries. *In reality, it is the first 30 days following your serious or catastrophic injury that are most critical to your case.* It is within this relatively short time period that

necessary evidence and testimony should be secured, and initial medical evaluations and diagnostic testing completed. *It is always best if a lawyer is consulted within the first few days following the tragic event, because certain evidence won't last even thirty days.* If you wait too long to develop your claim, it will make the job of even a good lawyer more difficult to obtain a full recovery for you.

Be advised, if you procrastinate and wait until you are months or weeks away from the two-year statute of limitations period to consult with a lawyer, it is almost guaranteed that your injury claim has already been compromised in some manner. It is somewhat like getting cancer diagnosed early—your chances of a good result are greater the earlier the cancer diagnosis is made. So, don't wait to get your legal claim diagnosed by a qualified lawyer—your right to compensation for your injuries depends on it.

Burden Of Proof

In order for you to be compensated for your serious or catastrophic injuries, you have the legal obligation to prove your *entire* claim: the cause of your injuries and the amount of your damages. The law refers to this requirement as the *burden of proof.* Thus, you must first prove that someone other than yourself caused your injuries. Unless you can *first* prove that someone other than yourself caused your injuries, you will have no right of recovery for your

damages—again, you must prove someone else caused or contributed to your injuries.

Your Injury Claim Is Unique

Because each serious or catastrophic injury claim is *unique*, it is absolutely necessary to gather *all* the evidence relative to your case—every piece of evidence will be used in some manner to meet your *burden of proof* of the cause and severity of the injuries you have sustained. Unless you gather all the evidence to meet your burden of proof, the parties who caused your injuries will be relieved of any responsibility they would otherwise have to compensate you for your injuries. Be aware that they have *no obligation* to prove or disprove anything in court. They are motivated to deter you from properly preparing your claim. If they succeed, they win. This is why waiting to marshal and preserve your evidence is so critical—without evidence, you can't meet your burden of proving your injury claim.

Burden Of Proof Case Study

Since many serious and catastrophic injuries occur from automobile collisions, let's explore what key evidence is essential to prove the causation of a typical automobile collision. Authors note: Realizing your injury may have been caused by a different means—like an equipment malfunction or an unsafe working condition—keep in mind that the same burden of proof analysis used in *this* case study can be used in your injury case as well. For instance, in this

case study, a police officer would be called to the scene of the automobile collision. But in a workplace injury case, an OSHA representative may investigate the injury; and in a coal mine injury case, an MSHA representative may investigate the miner's injury. Witnesses, too, will be questioned and official reports would be prepared regarding the cause of the traumatic event. This case can also be used to help you understand how to use similar evidence in other types of injury claims.

The Liability Investigation

Referring back now to our case study of an automobile collision, the first responders to automobile collisions are usually other motorists who happen to come upon the scene. In catastrophic and serious injury cases, it is seldom that the severely injured person involved in the collision is able to call for help. Usually someone else calls "911" and reports the collision. Because injuries are obvious, and will be reported during the "911" call, both the police and ambulance services will likely respond to the scene of the collision.

Police officers assigned to traffic duty are normally younger, less experienced officers, and are not well-trained in accident reconstruction or witness examination. Moreover, police officers, like other government inspectors, have no legal training to determine what actually is a "*proximate cause*," or "legal cause" of an auto collision or other traumatic event. Thus, their findings of *contributing circumstances* of the

collision may not turn out to be a proximate cause of the traumatic event. Only those contributing circumstances that trigger *legal liability* of the responsible party for causing the collision will matter in a court of law. The trial judge has ultimate authority on what evidence is relevant to proving your case, not the police officer or safety inspector.

For example, when the at-fault driver was not supposed to be driving a vehicle at all, because their driver's license had been suspended for unpaid parking fines, one could easily reason that the collision would not have occurred if the other driver had not been driving at all. But the law does not follow that reasoning—only the conduct of the other driver related to the actual operation of the vehicle they were driving is considered to determine legal liability of the collision. Nonetheless, police reports and other findings are *an important part* of the liability evaluation. But standing alone, they are not always a reliable basis for establishing legal liability of the cause of the automobile collision.

The Injury Investigation

In very serious, high-impact automobile collisions, occupants of the vehicles often sustain life-threatening injuries. Emergency medical personnel don't have to ask such injury victims if they think they are injured. The serious injuries are self-evident. Extraction equipment like the "jaws of life" is used to remove injury victims from demolished vehicles. Sometimes, though, serious injuries are not as visible—no

bleeding wounds, and the like. So a lot of people, including other motorists or witnesses, or police officers, and even family members, may wrongly assume there is not a serious injury because the driver or occupant stated they were okay. Often injury victims actually *deny* any serious injury and will decline medical treatment. We know *now* that there are many types of serious injuries that don't immediately produce symptoms when something is very wrong. Two of the most common *silent*, but serious injuries are brain injuries and spinal injuries.

Adrenalin Shock

Because the body immediately gives the body a strong dose of adrenalin upon impact to the body, *adrenalin shock* can mask symptoms of serious injuries. An hour later, however, when the adrenalin shock starts to wear off, symptoms of pain, dizziness, nausea, etc., begin to set in. Recently a well-known celebrity fell while snow skiing and struck her head. Other skiers inquired about her condition, but she didn't seem to be seriously injured. She *thought* she was going to be alright, so she didn't pursue medical attention. Shortly, thereafter, she died from a brain hemorrhage. So just because an injury victim doesn't report an injury, that doesn't guarantee they were not injured. Some rather serious injuries show up many hours later.

When You Say, "I'm Okay"

The most common response from injury victims with non-life threatening injuries is, "I think I'm okay." Because some injuries are not immediately obvious, even a serious injury can be overlooked. The problem is that the first responders—the police and ambulance services—can't wait around for several hours at the collision scene to observe you for oncoming symptoms of an injury. Even if the police had the time to observe you for hours following a collision, they are not trained to know what kind of symptoms to look for. An injury victim doesn't have to *deny* an injury for the police to report "No injury." All they have to say in response to questioning about injuries is "I'm not sure." That will suffice for the police officer to report that nobody was injured. As far as the police officer is concerned, *you were not injured*, and that is the end of their inquiry. The police officer won't easily change his or her opinion, because they don't want people to think that they don't know how to do a proper injury investigation.

No Injury Reported

When someone denies any injury in an auto collision, the police officer will annotate that information on the crash report. If your injury claim has this type of history, you have a problem to overcome. Since the police officer has already reported that you were *not injured*, even though now you know that this was not the case, you need to get the record cleared up, and quickly. It is your burden to show that you

were, in fact, injured. This is why the insurance companies get *their lawyers* on the scene immediately—talking to the police officer and medical personnel—so that they can get *sworn statements* from witnesses and medical responders attesting that you sustained *no injuries* from the collision. This is why *unrepresented* injury victims have a more difficult time meeting their burden of proof of showing causation of the auto collision and their injuries.

Police Officers Change Their Opinions

You may feel that your case is different because the police officer told you that the other driver was at-fault for causing the collision. And, you did report that you were injured in the collision. As stated previously, just because the police officer says something that favors your position, that does not necessarily mean that you will meet your burden of proof. Even these favorable facets of your claim are often contested by the defense lawyers. Moreover, police officers can neutralize even favorable opinions when they forget important facts or misstate information they had earlier relied upon. Even when you think that all the evidence is on your side, it isn't. You always need to bolster your favorable evidence through the use of *expert* testimony and other eye witness accounts of the collision and your injuries. Remember, the insurance adjuster can, and often does, reject your favorable evidence and they will create their own.

As an example, in a recent automobile collision, the police officer found that the collision was caused by a particular driver. Eye witness accounts of the collision supported the police officer's findings. However, the insurance company did *their own* investigation, manufacturing their own conclusions contrary to the police officer's findings, causing needless litigation. It takes skilled lawyering to defeat the abusive tactics of the insurance companies to prove, in a court of law, the legal liability of the parties responsible for your injuries.

When Police Officers Are Wrong

Perhaps your case involves just the opposite finding of the police: that *you* (or your family member) were the at-fault party causing the collision. Because police officers (or other safety inspectors) do not spend the time, or have the training, to *thoroughly* investigate incidents of serious injuries, important evidence and key witnesses can be overlooked, causing innocent parties to be blamed for causing their own catastrophic or serious injuries.

For instance, several years ago police officers investigated a tragic highway collision involving a minivan and a bicyclist. Because the police officers had only interviewed a few witnesses, who only saw the moment of impact between the bicyclist and a minivan, the police erroneously concluded that my client caused the collision. The police officers did not take the time to interview all the many eye witnesses—there

were dozens—who saw what happened *before* the collision occurred, as well as the collision itself. I obtained all the other eye witness testimony and these witnesses testified in court to my client's innocence. A complete investigation of the cause of the collision proved that my client was innocent, and the police officers *changed their opinions in court of my client's innocence.*

Thankfully, things worked out for my client but the police officer's mistake caused *four years of litigation* and a week of courtroom drama for the truth to finally come out. Our own life experiences have taught us that it is rare that people admit they are wrong, especially in a public setting like a jury trial. Perhaps you can appreciate how much effort it took to get two police officers to admit they were wrong in front of a jury!

Even though jurors know that the police can be wrong—such as when **they, the jurors,** get pulled over for speeding—they still give the investigating police officer's opinions a lot of weight when it comes to **your** injury claim. The jury knows that the police are supposed to be neutral, and they have no financial interest in your injury claim. Also remember that people naturally tend to look for faults in other people, so jurors won't need anyone to remind them to look for fault in your conduct in causing your own injuries.

If the investigating police officer is critical of your conduct, even if that opinion is not supported by all the facts, then jurors may also find that you have not met your burden of proof. Thus, you may receive no compensation for your injuries. This is a very good reason why legal representation should be obtained soon after the catastrophic event, so that *all* the evidence can be preserved.

When the Police Are Right

Of course, police officers and safety inspectors are not wrong all the time. Most of the time, they are right. So, when they are right, and they are "on your side," remember that you nonetheless have an adversary that will endeavor to change the minds of the police officers and safety inspectors, especially in a case where the cause of the traumatic incident is arguably debatable. Sometimes your adversaries—the insurance adjuster, their lawyers and experts—succeed in persuading police officers and other officials to change their opinions. Unless you have your own lawyer looking out for your interests, you will not be able to prevent the insurance company from taking such adverse action against your claim.

Comparative Fault

In order for you to pursue a liability claim against someone else for your injuries, the cause of your injuries must have been *predominately caused by their conduct, and not your own.* For instance, if you were severely injured in an auto collision, and your driving merely contributed in some small

way (e.g., you were traveling 60 mph in a 55 mph speed zone), you will not likely be foreclosed from pursuing your injury claim against the other at-fault driver. However, *the percentage of your own fault* (called "comparative fault") will reduce your compensation by the same percentage of fault you contributed to causing the auto collision. So, if you are found by a jury to have been 20% at fault in causing the auto collision, your compensation will be reduced by 20% of the total verdict.

Insurance adjusters *exaggerate* the impact of your conduct—like going 5mph over the speed limit—as a basis to *substantially reduce* the value of your injury claim. The same result occurs in construction injury or coal mine injury cases, where the adjuster exaggerates the impact of the employee's conduct to show that the injuries would not have occurred if the employee had followed safe work practices.

When You Get Nothing

While the law permits your own comparative fault to be as high as 49%, the closer your own fault gets to this maximum percentage, *the less you will be compensated*, and you run the risk that you will be completely foreclosed from recovering anything at all. If your fault equates to 50%, then you will be foreclosed from any recovery or compensation for your injuries. For instance, if a construction worker decides to remove his safety equipment in violation of safety rules, and is injured, it is likely that the worker's conduct will be viewed

as a significant contributing factor to his own injuries. The law *and jurors* take a dim view of parties whose own conduct significantly contributes to their own injuries. Be aware that insurance adjusters try to craft reasons why your alleged negligent conduct equaled or exceeded that of their own insured, which has the end result of you receiving little to nothing in settlement of your injury claim.

CHAPTER THREE

Proving Your Claim

If you polled a large group of citizens on what legal standard applies to proving a civil claim for personal injuries, many people would *incorrectly* tell you that injury victims have to prove their injury claim *beyond a reasonable doubt.* This standard is for *criminal cases,* not for *civil cases.* Claims adjusters try to confuse injury victims by making it sound like they have to remove all doubt about their injury claim in order to prevail. This is not true. You don't have to remove all doubt to prove your case.

Unfortunately, and for a host of reasons I will not elaborate on, even jurors are confused about what the correct standard is for civil cases, like personal injury claims. They have watched too many crime shows and televised criminal trials of celebrities—they have heard "beyond a reasonable doubt" over and over. Consequently, when they report for jury duty, they are surprised that there is a different standard

that applies to civil trials. As the judge explains to the jurors before the trial begins, the reason injury victims don't have to meet the criminal standard of proof is because injury claims for damages are *civil cases*, not criminal cases—no jail sentence will be required of the wrongdoer if a verdict is rendered against him. They just have to pay monetary damages to the injured party. In order to prove your injury claim in a civil court, there are two different standards that apply: the *preponderance of the evidence standard* and the *reasonable degree of certainty standard* .

Preponderance of The Evidence Standard

Preponderance of the evidence simply means that if your evidence was placed on one side of a scale, and the other party's evidence was placed on the other side of the scale, in order for you to prevail in court, your evidence must outweigh the other party's evidence. If your evidence is *even slightly* more convincing, you have *proven your case* by a preponderance of the evidence.

This does not mean that you need more witnesses or more documents to prove your case. Your evidence, however much you have, must be *more convincing* than the other party's evidence. For instance, if an uninvolved, *unbiased* witness testifies that the at-fault driver ran through a red light and crashed into your vehicle, it won't matter if the at-fault party rounds up a couple of family members to testify the light was yellow. Although the at-fault party has *more witnesses* than

you, these witnesses are family members and not *unbiased* witnesses. The police and jurors tend to believe *neutral witnesses* more than the parties themselves. As long as your evidence is even slightly more compelling than the other side, you have met your burden of proof. Be aware, however, that there are several key parts of your injury claim that fall under this standard—such as proving liability and past medical and economic damages—so a thorough evaluation of all the relevant facts and supporting evidence is needed in order to prioritize what evidence is most critical to each part of your injury claim.

Reasonable Degree of Certainty Standard

Because no one knows the future with 100% certainty, courts require that *future damages*—such as *future* medical costs and *future* wage losses—be attested to by an "expert." So, a medical doctor or chiropractor may testify regarding the necessity for future medical treatment and its cost. Likewise, a forensic economist may testify regarding the amount of future lost wages and medical treatments. The standard that courts require to prove *future damages* is *reasonable degree of certainty*. This civil standard, however, is *not* the same standard as the criminal standard—*beyond a reasonable doubt*—although the word "reasonable" is included in both standards. The *reasonable degree of certainty* civil standard requires that an injury or condition be *permanent* and that

an "expert" testify that *future damages* are *more certain to occur, than not occur.*

For instance, when a coal miner is seriously injured by an explosion due to a defective air compressor, in order for the coal miner to receive *future lost wages* due to his injuries, he must first prove that his injuries are *permanent.* As stated above, whether an injury is permanent can be proven by a preponderance of the evidence. An expert is not always required to prove permanency. Because the coal miner could not return to work and had to take a job as a sales clerk in an automotive parts store, he sustained a substantial reduction in his wage earning capacity which will last the rest of his life. These are *future economic damages.* In order to prove these future economic damages, a vocational rehabilitation specialist, as well as his own treating doctors, may testify that he could not perform the arduous work of a coal miner without further injury. This testimony has to be stated by a *reasonable degree of certainty.* An economist may testify that he has calculated the future earning capacity of the injured miner, and this testimony must be stated by the same standard as well.

Proving Your Case in Court

Do not be misled by an insurance adjuster, or anyone else for that matter, who trivializes the need to have a trial lawyer in order to prove your personal injury claim. I have seen many people attempt to "handle" their own case, and have failed.

Proving your case in court is no easy matter, even for skilled trial lawyers. It takes many years of the study of law and a lot more years of trial practice to become competent and successful at trial.

The insurance company has unlimited financial resources to hire seasoned trial lawyers to defeat your legitimate injury claim in court. I should know; I spent decades successfully defending hundreds of injury claims in court. It is my seasoned observation that without experienced legal counsel on your side, the insurance adjuster and their defense lawyers will use your inexperience to their advantage to minimize and even defeat your legitimate catastrophic injury claim. Please take a word of advice: leave the lawyering to the professionals.

What Damages Are Compensable?

In a typical catastrophic injury case, the injured person is entitled to pursue compensation for their past and future pain and suffering, past and future medical bills, past and future lost wages, and their loss of enjoyment of life. It is common for a severely injured person's spouse to have *loss of consortium* damages for the loss of physical and emotional intimacy in their relationship, and compensation for the additional services provided by the spouse. Keep in mind that West Virginia is not a common-law marriage state, meaning that you must have a marriage license to be lawfully married in West Virginia. West Virginia will, however, recognize

other states laws on certain points of law, so it is best to consult with a lawyer about the specifics of your relationship if it is anything other than a licensed marriage. Finally, in some types of cases, such as where the other party is guilty of gross or wanton conduct—like driving under the influence of alcohol—*punitive damages* may also be rendered against the wrongdoer by a jury in a court of law.

All Damages Must Be Proven

With each category of damages, however, there are complex substantive laws, evidentiary rules, and trial court procedures that must be strictly followed in order to *prove* your injuries in a court of law. If you are *unrepresented*, there will be no one to advise you on the law, the evidence, or trial court procedures to ensure that you meet your burden of proof in court. Any failure on your part to follow these strict standards will have an adverse impact on your ability to obtain a fair recovery for your catastrophic injuries. **Remember, only those damages that can be proven in a court of law will be considered for compensation. Thankfully, there's no need for you to try to prove your own case, because there is help available from my law firm which offers a *free consultation* to discuss your catastrophic injury claim.**

Compensation Sources

In order for you to actually *receive* fair compensation for your injuries, there must be an *actual source* of payment. A verdict awarding you a **million dollars** that is *uncollectable,*

is **worthless**. Irrespective of whether your recovery is being sought from an individual or a corporation, there is a substantial risk that you will not receive all the compensation you deserve. This result often occurs because many wrongdoers don't have any financial assets and are too irresponsible to purchase liability insurance. The ones that do have assets often have hidden these from detection.

Bankruptcy Options

Verdicts for personal injury damages, unfortunately, may be *discharged* in bankruptcy. When a wrongdoer—especially a small company—does not have the financial ability to pay the debt they owe, our bankruptcy laws allow them to file a petition for bankruptcy protection. A bankruptcy trustee will be appointed over the assets of the debtor, and after all the priority debts are considered and paid, your verdict will be considered. That is, if there is anything left over. Most of the time there isn't anything left.

Insurance Is Best Source of Payment

Insurance companies have made a contract with their policy holders: they will assume the risks of paying all losses for a set premium amount. It is an educated gamble. It's all about playing the odds. When there are fewer injury claims, the insurance company does not send back portions of premiums to their insured drivers who have not caused a collision during the policy period. No, the insurance company keeps the profits. When, however, there are a lot of injury claims,

and they have to pay more in a given year, the insurance company cannot demand more money from their policy holders. They have to pay—and that's the rub.

Insurance companies know that they are the target of payment of injury claims because they are contractually obligated to pay personal injury damages. They cannot easily file for bankruptcy or receivership protection to avoid payment. And the few times that this has occurred, there is a guarantee association of insurance companies that act as an excess policy of insurance so that insured policy holders are not left in a lurch without insurance coverage. Ideally, one or more of the wrongdoers that caused your injuries will have some amount of insurance coverage to compensate you for your injuries. Most often, even when liability coverage is present, it is insufficient to meet the amount of your damages and losses.

Because insurance companies don't make it easy to ascertain insurance coverages, you need an experienced insurance lawyer to find these coverages. Insurance companies pride themselves in making insurance policies as complex as possible, hiding insurance coverages under hundreds of exclusions. I should know, I interpreted insurance policy terms and wrote exclusions for insurance companies, in addition to litigating hundreds of insurance coverage disputes. *Now, I use all my insurance knowledge and experience to obtain compensation from insurance*

companies for my catastrophic and serious injury clients. It pays to have an experienced lawyer to handle your catastrophic injury or serious injury case; it will likely involve an *insurance coverage dispute*.

Types of Recoveries from Insurance Companies

In a significant number of catastrophic injury and serious injury claims, there are various types of insurance coverage that may cover part or all of the injury claim. Your recovery then, may be linked to your being able to convince an insurance company that your injuries are covered by the insurance policy. There are many types of insurance coverages that routinely apply to catastrophic injury cases: workers compensation coverage, third-party liability coverage, third-party medical payments coverage; third-party excess liability coverage; first-party underinsured and uninsured automobile insurance coverage, first-party medical payments coverage, and personal excess insurance coverage. These insurance coverages not only sound complex and confusing, they are. So, it takes a highly-trained legal eye to find the applicable insurance coverages you will need to obtain fair compensation for your injuries and losses.

Subrogation & Medicare

The resolution of injury claims has many complex facets to it. One such facet is what is called *subrogation*. It is a fancy legal term that literally means that one party gets to step into the shoes of another party. Subrogation comes up often in

personal injury cases and involves the repayment for medical expenses. If your medical bills have been paid by your own health coverage or medical payments coverage from your auto policy, those medical insurers have a statutory and contractual right to be paid back if you receive a settlement. Additionally, if you are Medicare/Medicaid qualified, your injury claim and recovery must be reported to those federal entities because they have a right to be reimbursed for any bills they have paid or may have to pay in the future.

Finally, there are some injury victims that owe for back taxes, child support and alimony. Some injury victims think that they can avoid paying these debts out of any settlement with the insurance company. So when they accept the low-ball offer of settlement, and deduct all the medical bills, and then deduct other debts the insurance company must honor before issuing payment, there is little to nothing left.

So, just because you have a solid case of liability against the other party who caused your injuries, that does not necessarily mean that you will ultimately collect a fair recovery from them. They may not have sufficient financial assets. They may file for bankruptcy, and unless you have a lawyer who is well-versed in insurance coverage law and subrogation laws, you may not collect a plug nickel for your injuries and losses.

CHAPTER FOUR

The Insurance Company

In the previous chapters I explained how important it is to have legal counsel to preserve your legal rights against those responsible for your injuries. I briefly mentioned how skilled personal injury lawyers can protect you from unfair dealings of the insurance adjuster assigned to your injury claim. This chapter, in greater detail, explains what the insurance company intends to do about your injury claim.

Financial Motivation of the Insurance Company

For centuries modern societies have encouraged the use of insurance coverage to guard against the risk of financial ruin. We pay monthly premiums for health insurance because we don't want to incur the significant cost of treatment for cancer or another unexpected serious illness or surgery; that risk is spread out to thousands of other policy holders. The same type of principal applies to the purchase of *liability insurance coverage* (called "casualty" insurance) to guard against the risk of injuring someone in the pursuit of our day-to-day

activities. The risk of certain liabilities is also spread out to hundreds, or thousands, of other policy holders covering the same kinds of risk

Insurance companies know exactly how much money to charge policy holders for insurance coverage. They assess the frequency and severity of certain risks (like damages caused by fires or injuries caused by auto collisions), and the information gathered dictates how much the insurance premium will be that is charged to individuals who purchase insurance for the same risk of loss. Again, the cost of the premium is based on the type, severity, and frequency of the risk, and the number of premiums sold. Theoretically, the more premiums that are sold, the lower the premium will be. In automobile insurance, for instance, the more frequently collisions occur and cause injuries, the more money the insurance companies charge for the insurance premiums. In turn, the more auto insurance policies that are sold, i.e., spreading out the risk of loss, the less the premiums *should be* to those purchasing the same coverage.

Financial Statements Show Big Profits

Insurance executives are paid huge salaries to successfully manage insurance companies to make larger profits. If they don't succeed, just like in any other corporation or business, they lose their job. Part of their strategy for success is to find creative ways to increase profits. The common favorite is to decry that their company will go broke unless there

is a reduction of claims and lawsuits. In other words, they don't want to keep their end of the bargain. As stated before, they are under contract to pay all claims that come due, but instead of paying the claims, they want to withhold the money for their own profit.

A review of their financial reports show, however, that they are not going broke. Large insurance companies are primarily funded by insurance premium dollars and investors who buy other insurance products, including company shares on the stock market. Insurance companies covet the highest ratings from *A.M. Best* and *Moody's*—two important rating institutions in the insurance industry—which are used to bolster their bragging rights as affluent, strong insurance companies. Their marketing strategy to get these ratings is simple: convince people to pay more in insurance premiums and pay out as little as possible to injury victims.

When demands are made to lower premiums, they argue they can't, because there won't be enough money to pay all the claims that are filed every year. The insurance companies won't lower their premiums even when they make money hand-over-fist—the goal is to make *more* money, not less, if they are going to satisfy the expectations of insurance executives and stockholders. So this debate is not about the number of claims or lawsuits, but about the lack of integrity in the insurance industry as they are making billions of dollars a year, but telling the public that they are going broke. They

are laughing all the way to the bank when people respond to their cries.

How Their Money Is Spent

Understandably, successful insurance executives command million-dollar salaries and lots of other benefits. And, the salaries of the claims supervisors and adjusters aren't too shabby either—most claims supervisors and claims adjusters make as much, if not more, as many lawyers. Because the payment of legitimate injury claims reduces the insurance companies' profits, there is constant tension between company management and claims adjusters and supervisors. The adjusters can't settle the injury claims cheaply enough for their bosses, and any "over payment" on a claim produces a bad mark on the adjuster's performance evaluation.

So, you have on the one side of the equation the contractual obligation to pay injury claims, and on the other side of the equation the absolute resistance to pay those claims because it makes the company look less profitable. That's a bad mark on the insurance executives, and investors are not too keen on investing in a poorly performing company. Since the insurance companies don't like to reduce their salaries or the number of their adjusters, they try hard to make the company profitable by denying insurance claims.

Regulatory Restrictions

State regulatory authorities are on to the schemes of the insurance companies. They know the insurance companies are out to make billions, and the job of the regulatory authorities is to keep them honest, as best as they can. So, the business of selling insurance and adjusting injury claims is regulated by the West Virginia Insurance Commissioner's Office. Insurance companies must get approval to sell insurance in this state, and the insurance policies must be approved for use. There are also some restrictions on how much insurance companies can charge for certain types of insurance coverages. Insurance companies view the insurance commissioner's office with respect, but they prefer to have as little to do with them as possible. So insurance companies typically don't want to involve the insurance commissioner in the way they conduct business, especially when it comes to making profits.

How Insurance Profits Are Increased

Insurance companies have two preferred ways to increase their revenues: sell more insurance policies and pay less on injury claims. Selling more insurance is competitive and requires a lot of money to be invested. Yet, every major insurer spends this money seemingly without reservation. While healthy competition for insurance coverage may help lower insurance rates for some people, you have to keep in mind that lower premiums mean that the margin of profit on these policies will be smaller for the insurance company.

In turn, the insurance company must reduce salaries of the executives and staff, or reduce the amount that can be paid on legitimate injury claims. In the decades that I worked for the insurance industry, I was told *countless* times that the payment on claims must be reduced by some percentage, like 10% or 15%. I never heard, however, of an adjuster getting a pay cut because of shortfalls in income – it's always the injury victim that pays.

Role of Claims Adjusters

Although I have devoted the entire next chapter on the role of *claims adjusters,* it is important to understand, at this juncture, that in order for the insurance company to carry out their business model of high profits, they must have a "hatchet man" who can say "no" to injury victims. That "hatchet man" is none other than the *claims adjuster.* Their job is to delay payment, deny payment and minimize payment to injury victims. The lower the claims adjuster can "adjust" your claim, the more money the insurance company has to pay the huge salaries of insurance executives and their adjusters. The claims adjuster also gets rewarded with promotions and pay raises for doing such a "good" job for the insurance company.

Assignment of Claims

When a traumatic event occurs, causing injury to another person, the at-fault party who is insured under a policy of insurance is required to notify their insurance company of

the incident. A *claims adjuster* will be assigned to investigate and "adjust" the claim. Insurance adjusters have stressful jobs. They spend eight to twelve hours a day behind their computer desk handling *hundreds* of injury claims at the same time. They have the same goals in mind for all their claims: deny the claim, or delay payment on the claim and minimize payment on the claim. They get audited every year for performance, and they are always stressed out, trying to find creative ways to legitimize their denials or downward adjustments of injury claims.

Expect Many Adjusters

Because insurance coverage is required for many kinds of activities such as driving motor vehicles and trucks and conducting certain kinds of businesses, it is likely that your injury claim will involve more than one type of insurance coverage. The typical injury claim may involve many of the following insurance coverages: automobile insurance coverage (including liability, uninsured and underinsured motorist coverage, and medical payments coverage), worker's compensation coverage, personal health insurance coverage, commercial lines of liability coverage for corporations, and various umbrella and excess coverages. Because your injury claim will involve more than one insurance coverage, you will have to deal with more than one adjuster. Each adjuster has the same motivation—to deny or minimize your claim.

Adjusters Are Insulated From Reality

Insurance executives are smart enough to know that their claims adjusters can be persuaded to deviate from company policies to minimize payments on claims. They think their adjusters are too vulnerable to the "smooth talking" tactics of *familiar* personal injury lawyers (lawyers they have day-to-day contact with on injury claims). Several years ago they put an end to this practice. Here's how they did it: instead of allowing their claims adjusters to handle claims where they live and work, they rotate claims to other adjusters in different cities. That way every personal injury lawyer is a *stranger*. People tend to distrust strangers and don't let their guard down easily. The insurance company has figured out how to use this to their advantage. Things went so well for them, they decided to use it on their own defense lawyers, too! Now they haggle over the legal bills of their own defense lawyers without concern of ruining a good relationship; there is no relationship to ruin.

So what's the net effect on your claim? The insurance adjuster only hears one voice, the voice of their master. The mantra of their master is, "Don't overpay claims." No other voice matters. The personal injury lawyer's voice is a stranger to them, so they disregard it completely. Even their own defense lawyer's voice is ignored. The defense lawyers know to keep their mouths shut and do what the adjuster wants; that's the trade-off for getting the work.

This method of adjusting claims is being followed by all the major insurance companies. It keeps their claims adjusters "objective" in assessing values to injury claims. The insurance companies know that it is easier for their claims adjusters to disregard "persuasive" arguments from unfamiliar lawyers, and stick to company policies of paying next-to-nothing on injury claims.

Role of Claims Supervisors

The insurance company has numerous *claims supervisors* in each regional claims office to provide oversight to the dozens of *claims adjusters* that work in that office. *A primary goal of the claims supervisor is to keep their adjusters from deviating from company policies. Claims supervisors* are the lowest level of company management, and they report directly to *claims managers*, who, in turn, report directly to upper management on the progress of accomplishing company goals in minimizing payment on injury claims. *"Policy Number One" for every claims supervisor is to reduce payment on all personal injury claims.*

I cannot count the hundreds of times, as a defense lawyer for the insurance companies, that I advised a claims adjuster that a particular injury claim was legitimate and needed to be settled fairly. Even when I succeeded in persuading the claims adjuster to make a fair offer of settlement, the claims supervisor often *refused* my advice to make a fair settlement offer to the injured party. Why would they ignore the advice

of their own lawyer? Any advice that recommends the fair payment of an injury claim *automatically* conflicts with Policy Number One: to reduce payments on all injury claims.

Insurance Company Resources

Insurance companies are very powerful players in the corporate market. Aside from the banking community, insurance companies are perhaps the most powerful corporate entities in the United States. In order to be powerful in the corporate world, you need capital, that is money, and a lot of it. And they've got it—hundreds of billions of dollars. Insurance companies obtain that money by selling insurance and investment products. *The way they keep most of their money is by denying or minimizing payments on injury claims.* They then take the money they have been able to keep back from injury victims, and invest it to make even more money. They have accumulated substantial *financial resources* to fund all the staff and resources they will need to maintain this pattern of reducing payments on injury claims.

Modern Computer Technology

Perhaps the most important innovation that has changed how insurance companies do business is the computer. There is no more paper file to clutter office spaces, and many adjusters work from home, using their computers. But computer systems cost a lot of money, especially the kind of computer systems that are used by insurance companies. Just twenty years ago, adjusters read paper files in order to adjust

claims. Now, through the use of powerful computer systems, claims adjusters can review your entire claim file, including photographs, audio/video recordings, court documents and medical records, anywhere and anytime.

The insurance adjuster has the ability to research your personal background instantly, and discover a lot of information about you, your family and even your friends. They use this personal information to scrutinize every facet of your injury claim and find ways to minimize, if not deny, fair compensation for your catastrophic injuries.

Injury Assessment Software

All major insurance companies now use computer software programs to assist adjusters in placing a "value" on injury claims. These specially-designed programs purportedly allow adjusters to "standardize" claim information so that claims evaluations are efficient and consistent. The problem is, the programs were written *for* the insurance companies, using *their* input as to what was fair compensation. So the whole program is flawed in favor of the insurance company.

Some insurance companies have developed their own adjustment software programs, while others have opted for the commercially marketed software programs. The leading adjustment software programs that are commercially available are *Colossus, Claims Outcome Advisor,* and *Claims IQ.* These programs systematically assess claim information

and assign a reduced value to each injury claim. The program assesses all your past medical conditions and treatments and your current and future medical treatments and then *arbitrarily* places a "value" on your claim. Some programs also assess the skill and experience of the personal injury attorney, and whether he or she is capable of getting a substantial verdict against the company.

Claims adjusters are instructed not to deviate from the computer assessment of the injury claim. What they personally may think about the value of the injury claim is completely taken out of the picture; it's not important or relevant. This is why the adjuster's "low-ball" offer of settlement doesn't bother them; their personal opinion doesn't matter.

Example of a Computer Assessment

Let's consider how a claims adjuster would use computer assessment software to assess the value of a serious injury claim. Suppose the serious injury being evaluated is a crush injury to the foot. Because no surgery would adequately repair the damaged ligaments in the foot, the surgeon is reluctant to try surgery unless the injury victim reports that they can't walk at all. So, the medical bills are just a few thousand dollars for initial treatments. But the injury victim can't work on his or her feet without pain, and can't participate in many other activities previously enjoyed.

The claims adjuster will enter information about the claim on the computer program, and the assessment program will indicate a *highest possible value* on the claim. The problem is, the assessed value may be as low as only 25% of the full value of the claim. Nonetheless, the adjuster will not offer even this *grossly inadequate amount* as a settlement offer—they are prohibited from doing so without special company authorization. The adjuster is only permitted to negotiate a settlement significantly below the computer assessment. The adjuster will attempt to withhold payment of at least 50% of the full value of claim to the injury victim.

In the assessment of this injury claim, the computer assessment may be as low as $10,000. The claims adjuster then will offer only $5,000 in settlement, which is half of the computer assessment value. The computer assessment completely ignores the possibility of future surgery costs, which may be as much as $30,000, because the surgeon is hesitant to say exactly when a future surgery would be needed. Although it is clear that there is a permanent injury—a torn ligament—and all other previous treatments have failed to correct the symptoms, there is a "minimal" value placed on the injury claim.

The claims adjuster can't even consider any lost wages because the person can still walk, albeit, in a lot of pain—thus, no reason not to work! The claims adjuster remains convinced that her low-ball offer is fair because she has a computer

program assessment to support her position. Even if the adjuster felt compelled to offer more money in settlement, she's not allowed to offer more without authorization from management. Because computer assessment software is written for the benefit of insurance companies, there is a built-in bias *against* your claim, and it should be no surprise that the claims adjuster's assessment of the value of your injury claim is grossly inadequate to compensate you for all your injuries.

Arsenal of Defense Lawyers

Because insurance companies' model of profitability is dependent upon obtaining low-ball settlements in injury claims, they *must* have a powerful weapon to threaten those injury victims who don't want to accept a minimal settlement offer for their catastrophic injury claim. The most effective way insurance companies achieve minimal settlements is through the *threat of force*: that is, threatening not to pay the claim and forcing injury victims to file a lawsuit and litigate their injury claim all the way to trial. Injury victims know that insurance companies have the money to pay their defense lawyers to contest their case in court. This is intimidation. So the real weapon insurance companies have at their command is *their defense lawyer.* What the insurance adjuster doesn't tell the injury victim is that they don't like to get their expensive defense lawyers involved unless they have to. They disdain legal bills as much as they do paying injury

claims. The truth is, defense lawyers are a constant financial drain on insurance companies, too.

Insurance companies demand their defense lawyers to be "yes" men and women to the claims adjuster. Their lawyers *must* do exactly as they are instructed, or they will be replaced. Insurance companies don't like defense lawyers who disagree with their adjuster's assessments of claims, either. In a major brain trauma case I recently handled, the insurance company went through *three* sets of defense lawyers from three different firms. Why? Because the prior defense lawyers indicated that the company would need to pay a significant settlement to resolve the claim; so, they were replaced.

Social Influence

Insurance companies use their financial resources to effectively promote their policies to minimize payments on injury claims. While severe and fatal injuries occur every day in West Virginia, not all of these injuries and deaths are caused by the careless acts of others—many of them are due to the unfortunate individual's own fault. On the whole, there are not that many catastrophic injuries that actually trigger a liability claim against an insurance company. In fact, there are a relatively small number of people who have sustained a catastrophic injury that was caused by someone else's carelessness or fault. The voice of these few injury victims are no match against the powerful voices of

the multi-billion dollar insurance companies. But that's not the message you hear in the mainstream social media. The insurance companies make it sound like the "sky is falling" every time an injury victim is given fair compensation for their injuries. And people tend to start believing what they continually hear. Hopefully, what people mostly hear is true, but if what they hear is wrong, like propaganda from the insurance companies, then that is a loss to society, especially to the injured.

Insurance Company Propaganda

The insurance industry spends countless millions of dollars each year alerting the public that they could have *cheaper car insurance* if they didn't have to pay baseless injury claims. They say all these injury claims drive the price of insurance up. Don't believe it. They are making billions of dollars of profits. The reason they keep saying the same thing over and over is because each new generation of adults haven't yet figured out the truth. It's similar to the advertising and cover-up of the tobacco industry: although the industry was finally held accountable for some of their wrongs, a later generation of adults and kids (who haven't suffered yet) are allured into smoking by the same type of advertising. Insurance companies focus their *propaganda campaigns* on young people's desire for cheap insurance, and they use that desire to their advantage to convince people that injury victims are undeserving of compensation, and that this compensation causes insurance premiums to escalate.

I recently reviewed the public financial disclosure of a large insurance company in West Virginia. The propaganda they used to make more money is the same kind of propaganda I describe previously. They boasted that they collected $1.5 billion dollars in insurance premiums in 2011. Their liabilities were less than a billion dollars, meaning they made a profit of about five hundred million dollars in 2011. That's a lot of money, and I have seen no reduction in my insurance premiums.

Influence on Lawmakers

I must say, the insurance industry has persuaded a lot of lawmakers to their way of thinking. Lawmakers, of course, are politicians. And politicians need two things: financial support and votes. Insurance companies lobby hard and have financial support for those politicians who will support their agendas. Using the fear that jury verdicts were putting insurance companies out of business, and even threatening to leave the state, lawmakers gave in to the pressure and changed the laws to shield the insurance companies for wrongful conduct toward injury victims.

Unfortunately, a lot of injury victims now suffer because well-meaning people listened to the insurance companies' propaganda. Even sadder is that some people didn't stop to listen to the injury victim's side of the debate, and they unfairly have a negative view of real injury victims and

their lawyers. **The truth is, the insurance industry (and big business) took unfair advantage of a lot of people.** Now, even legitimate injury claims are being labeled as "frivolous," and even real injury victims are being portrayed as "greedy" people who ask for more money than they deserve.

CHAPTER FIVE

Insurance Bad Faith

West Virginia law recognizes that insurance companies are financially motivated act in their own *self-interest*, and therefore, they must be regulated and penalized when they commit acts of self-interest against injury victims. The *bad faith adjustment of claims* is the most common way insurance companies act in their own self-interest, meaning they put their interest over and above the interest of the injury victim; they attempt to pay less money to injury victims than they deserve.

Because insurance regulations proved to be ineffective in deterring insurance companies from acting in bad faith, laws were passed to prevent the insurance company from certain acts—misrepresentation, false advertising, defamation, coercion, intimidation, false statements—and provided meaningful penalties when they violated these laws.

History of Insurance Bad Faith

The West Virginia Legislature has recognized that insurance companies are motivated to mistreat injury victims in order to amass more money for themselves. The reason the Legislature *prohibited* conduct like *misrepresentation, defamation, intimidation and coercion* was because the insurance companies were guilty of practicing such behavior!

The West Virginia Unfair Trade Practices Act was enacted to keep insurance companies (and their defense lawyers) responsible to act in good faith in adjusting and defending every kind of injury claim. But, in 1995, the insurance industry finally persuaded a thin majority in the West Virginia legislature to repeal part of this law, as it applies to third-party claims. Now, the insurance company can treat injury victims, a.k.a., *claimants,* just about however they wish, even presenting lies as facts. And they do. One of my clients recently was told by the insurance adjuster from a national insurance company that "Federal law prohibited paying anything more than $5,000 for a soft tissue injury claim." *This is completely untrue!* Before 1995, this kind of lying would have been grounds to sue the insurance adjuster and the company for bad faith. That was then; this is now. Now adjusters can, and do, act with unbridled dishonesty, misrepresentation, coercion, etc., in adjusting third-party injury claims.

As long as the insurance industry is making vast profits from this scheme, rewarding its own executives with million dollar salaries, and promoting adjusters who use such bad faith tactics in adjusting injury claims, there is no reason for them to pay you fair compensation for your injuries. It takes an experienced personal injury lawyer to force the insurance company to pay you the compensation you deserve.

Third-Party Claim Handling Standards

Laws used to require insurance companies to act in *good faith* in adjusting every kind of personal injury claim, whether it was a claim made against a person's own insurance company (called "first-party" claims), or a claim made against another person's insurance company (called "third-party" claims). Because the insurance companies were constantly getting caught acting in bad faith, which cost them some stiff penalties, they lobbied to get the "third-party" portion of the bad faith law repealed. Some insurance companies even created a "crisis" by threatening to leave the state if laws were not changed. By a thin margin, they ultimately got their way. Now, the law only prohibits first-party bad faith, that is concerning claims against your own insurance company. So, insurance adjusters have regressed back to their same old pattern of bad faith conduct in misrepresentation and coercion with injury victims.

The Legislature bought into the approach recommended by the insurance companies to shift the oversight of adjuster's

conduct to the insurance commissioner's office and limit recovery to $10,000 for violations. Let's see how this "fixed" the problem.

Insurance Regulations Are Ignored

Although insurance regulations still require *fairness* in the insurance companies' conduct in handling your third-party claim, the insurance regulations mean practically nothing to the insurance companies. Why? Because there is no meaningful monetary penalty for bad-faith behavior, only a measly $10,000. The experts and costs needed to prosecute such a claim exceed this amount, alone. Even if an injury victim had the time to waste pursuing a regulatory bad faith claim against an insurance company, there would be nothing gained.

Until better laws are passed, personal injury lawyers must skillfully use the present laws and regulations to obtain fair compensation for injury victims. It can be done, but there is always stiff resistance from the insurance industry. A skilled personal injury lawyer knows how to handle the insurance company's tactics and can still obtain fair compensation for injury victims.

First-Party Claims Handling Standards

As stated earlier, the insurance company is still vulnerable to "first-party" bad faith claims, and they hate it. So, whenever you have to deal with your own insurance company for say,

medical payments coverage, that is a first-party claim, and the insurance adjuster and the company can be sued for committing acts of bad faith against you. The same would be true if you were pursuing underinsured or uninsured motorist coverage. That is *your* insurance, and the insurance adjuster can't mistreat you in the same way as in a *third-party* claim adjustment process.

Call for More Tort Reform

The insurance industry responds to the threat of first-party bad faith lawsuits by advocating more revisions to our laws. They call it "tort reform." Because an injury is a "tort"—short for "tort-u-ous" conduct—the insurance industry wants laws to actually protect those who are guilty of tortuous conduct! I suppose if I were born into a family of insurance executives, and pocketed millions of dollars a year, it may be easier to convince myself and others that this is good for society. But to the rest of us Americans, their propaganda sounds more like injury victims will have little to no meaningful rights of recovery even when they are *tortuously* injured by others.

Hence, insurance companies disdain trial lawyers and trial lawyer associations because of their stance against "tort reform." Trial lawyers are a real threat to insurance companies' bottom line on profits. Insurance companies allege that trial lawyers manipulate the civil justice system to obtain run-a-way verdicts for injury victims. We know from previous chapters that it is the *jury*, not the trial lawyers, who

decides what is fair compensation for injury victims. The insurance industry simply rejects any concept of fairness.

Attack on Judiciary

The insurance industry supports tort reform organizations that label West Virginia courts as so-called "judicial hell-holes." This unwarranted labeling of our civil justice system is promoted by the insurance industry and the politicians that receive their support. Because our trial judges (and jurors) routinely disagree with the insurance adjusters' positions on coverages and claims, they are attacked by the insurance industry.

Attack on Juries

But the insurance companies mostly hate that our jurors—in bad faith claims against the company—can punish them harshly for egregious behavior. Some of these jury verdicts against the insurance companies have been in the multi-million dollar range. But to a multi-billion dollar company, this is but pocket change. So, their conduct is hardly affected by even these verdicts. *Their profitability model mandates that they minimize the value of claims.*

Ironically, when the insurance company gets a "defense verdict"—that is a verdict that "agrees" with their assessment of the case—they pat themselves on the back for "calling it right." Juries that go their way are perceived as those who "see the obvious," but when they disagree, "They are blind."

No matter what the result, though, they think that they are *always* right. The truth is, sometimes juries do agree with the insurance company assessment of the claim. But not always. It takes experience and wisdom to know when to settle and when to try a case before a jury.

Juries Decide Value of Claim

Contrary to the "tort reform" agenda of the insurance industry, it is not the personal injury lawyers or judges who determine what is a fair recovery for injury victims—it is the *citizens* of this state, our *jurors*, who decide what, if any, compensation is fair for injury victims. It just so happens that these verdicts upset the insurance companies' *profitability forecasts* and rebuke their "bad faith" practices of offering woefully inadequate settlements to injury victims. **If the insurance companies would only make fair settlement offers to injury victims, there would be no need for a jury trial, or for that matter, personal injury lawyers! But we know that is not possible.** So, it is the jury system that is the real safeguard of justice for injury victims. Good trial lawyers know how to use the civil justice system to obtain fair and just recoveries for injury victims.

Judges and Jurors Are Fair

Insurance companies have spent an enormous amount of money to persuade the public that there are too many lawsuits and frivolous claims. The insurance industry supports the

labeling of West Virginia as a "judicial hell-hole." They want to discredit our state judiciary by asserting that some of our judges allow trial lawyers to stir up jurors to get big verdicts. Numerous insurance and defense associations rant and rave about how bad West Virginia's court systems are compared to other states' court systems. The truth is, all of their arguments are based on their own self-interest and financial greed. Instead of paying fair recoveries to needy injured people who deserve the compensation, the insurance companies put their own financial interest first, ahead of the interests of victims of catastrophic injuries.

Our state and federal court judges have a very good understanding of the positions of both sides of this debate. They are sworn to uphold the law and not favor one position over the other. They try their level best to be fair to both sides. Unfortunately, many jurors have already been influenced by the insurance companies' dogma that bad things will happen if damages are not capped, or more tort reforms are not passed. As a consequence, many jurors hold a dim view of trial lawyers and injury victims. That is, until *they* are injured—then they realize their prior views were wrong.

Front-Line Defense

Your representation by an experienced personal injury lawyer is a front-line defense against the unfair tactics of the insurance industry. In fact, the Insurance Research Counsel, which is funded by the insurance industry, did a

study several years ago to see if represented parties got better recoveries. They were hoping to prove that people were no better off with lawyers, but their own studies recognized that *represented individuals* indeed got better recoveries! This particular result was not what they had hoped for, so they created a "new study" and found that unrepresented injury victims had *lower medical costs* than represented injury victims. What the study really showed was that unrepresented injury victims received less medical treatment because they received less money for medical treatments. **Thus, even the insurance industries' studies show that *represented* parties get more money for necessary medical treatment, and they received more money for their injuries, too.** But the insurance adjuster does not want you to know this, and will not encourage you to seek legal counsel because it would mean the insurance company would be forced to compensate you more fairly.

CHAPTER SIX

How to File an Insurance Claim

In previous chapters I described how your rights must be guarded and asserted by you in order for you to have an opportunity to receive fair compensation for your injuries. This chapter will address how to file an insurance claim, and what kind of response you can expect from the insurance company. You must keep in mind that the mere filing of an insurance claim is not an alternative to filing a lawsuit—only a lawsuit will preserve your rights to compensation.

Because you have the *burden of proof* to substantiate your insurance claim—under same legal evidentiary standards previously discussed—the insurance adjuster assigned to your claim can reject your claim on-the-spot if your evidence is, in their eyes, insufficient. Or, as stated before, they can reject it because there is nothing you can do to them for denying your claim.

Filing an Insurance Claim

The first thing you will need in order to file an insurance claim is the accurate identity of the at-fault party or company. Because insurance coverage is private information, you will need to write to the individual or company. Tell them you are making a claim against them, and that they should turn this claim in to their insurance company. If they ignore you, which is likely to happen, you end up being frustrated and you've wasted precious time that could have been better spent getting your evidence together. On top of that, you've given your opponent every opportunity to destroy evidence and coerce witnesses before you have a lawyer or even an insurance claim filed. If the company or individual does turn your claim in to their insurance company, a claim number will be assigned to your claim and an insurance adjuster will contact you regarding your claim.

Injury Victims Are Claimants

Nowhere in the claim file will you be described as an "injury victim." That descriptive term evokes sympathy, so that term is not used anywhere in the claim process. A neutral, if not negative, term is used to describe you: a *claimant*. You are a *claimant* because you are making a *claim* for personal injury damages against their insured policyholder. "Claimants" is quite a convenient word for insurance companies to describe injury victims. They don't evoke sympathy, and they can be viewed as capable of making a *false claim* to get money they don't deserve. Victims can't be viewed this way. Thus,

claimants can be denied fair compensation with no feeling of remorse. Victims, on the other hand, can evoke a sense of sympathy—even from adjusters—and that is precisely why the insurance industry does not refer to you as a victim. You're a *claimant*!

Disadvantages of Claimants

The financial benefit to insurance companies of characterizing injury victims as *claimants* is huge. Injury victims evoke a sense of compassion and a desire to help. Claimants, on the other hand, evoke a sense of suspicion, if not distrust. Take a driver who speeds down the highway, under the influence of alcohol or drugs, and runs someone over, killing them. One would think the person who was struck and killed would be considered a *victim*. Not to the insurance company: the estate of the deceased person is a "claimant." Victims have to be made whole. Claimants can be ignored and rejected. *Every insurance company has denied an injury victim a recovery because the insurance company does not have to pay claimants anything without litigation.*

Reaction to Your Claim

It's not just the insurance adjuster that is financially motivated to minimize your injury claim – it's the entire insurance industry. Some of the ways insurance companies succeed in minimizing injury claims is to force injury victims to defend smaller, yet legitimate claims, all the way through trial. The message they send is that if you don't take their smaller

settlements, they will make an example out of your claim, and show you and other injury victims that it will cost more to litigate their injury claim than they could possibly get in a recovery at trial. These practices discourage injury victims from pursuing full compensation for their injuries.

The insurance companies believe their practices work to lower the number of injury claims that are made each year. The way they see it, if their insured drivers cause one thousand auto collisions in a given year, and they can persuade even 10% of those claimants to drop their claim, or accept a paltry recovery, they will save millions of dollars for the company per year. But they don't get away with this very often with experienced trial counsel.

Fair Compensation vs. Overpayment

Insurance companies justify their business practice of minimizing the value of legitimate injury claims on the basis that they have an obligation to protect their policyholders from baseless claims and the overpayment of claims. Paying such improper claims, they say, raises insurance premiums. They have made significant progress in convincing society at large that their business practices are always fair to injury victims. But, because of the influence of jury verdicts that exceed their evaluations of claims, their whole business model is in jeopardy, and so are lower insurance premiums.

Or, so they say. This is what they have told the public. But is it true?

We know that a baseless claim can waste money and court time, but the few baseless claims that are filed are rather quickly weeded out. Such claims are minimal compared to the thousands of legitimate injury claims that are adjusted each year in this state alone. So, this dispute is not about a few baseless claims. This dispute is about *fair compensation vs. overpayment of claims.* The insurance company says that the trial lawyer's definition of fair compensation *is* overpayment of claims. The trial lawyers say fair compensation is what the juries award. The insurance companies say fair compensation is what *they* offer in settlement. So, who is right? The answer: the trial lawyers are right—it is the juries' job to determine what fair compensation is in a given case when the parties can't agree on the value of the injury claim. And that is a real threat to the insurance company.

Critique of Your Conduct

In most instances of catastrophic injuries and wrongful death, the victim gives little consideration, if any, to how others would view their conduct leading up to the traumatic event or thereafter. As will be discussed throughout this guide, all the actions or omissions (failure to act) will have an effect on your ability to pursue your legal rights for full and fair compensation for your injuries.

The insurance company will be evaluating the validity of your catastrophic injury claim based on your *pre and post-injury conduct.* Be advised that it is the claims adjuster's job to blame *you* for your injuries and losses. The reason pre- and post-injury conduct impacts your catastrophic injury claim is because complex laws and trial court procedures—which claims adjusters manipulate—require that both *liability* against the at-fault party and the severity of *damages* you sustained be proven in court.

Your Conduct Matters

Pre-injury conduct is a major factor in determining whether liability can be proven in a court of law against the at-fault party. The insurance adjuster will compare your conduct with the at-fault party's conduct to make a *liability evaluation* of your injury claim. Likewise, post-injury conduct (e.g., whether you timely sought medical treatment, whether you kept all your medical appointments, what you told the doctor, etc.) is an equally significant factor in determining whether your *damages* can be proven in a court of law.

This information has a significant impact on the insurance adjuster's *damage evaluation* of the claim. As stated previously, neither the insurance company, nor its defense lawyers, will provide any assistance to you in preserving evidence, seeking the right medical doctors, or getting expert opinions that support your claim. Their job is to ambush you, not help you. Only an experienced trial lawyer, focusing on

catastrophic injury claims, knows how to preserve *all your legal rights*, not just some of them, against the attempts of the insurance adjuster to defeat your claim.

Resources Used by Adjusters

As I have already discussed, the insurance company has many resources to minimize your injury claim. When these resources are combined, they are a significant weapon for the insurance company to use against your injury claim.

Adjuster Research

When the responsible party notifies their insurance company that they have seriously injured or killed someone, a claims adjuster will be assigned to that claim. The adjuster will investigate and research any information on the claimant, including any prior claims or injuries the claimant may have had. The insurance company has sophisticated insurance networks, databases and investigators that are used to discredit injury victim's character and minimize their injury claims. They will also look on social media and find out everything they can about the claimant. If they find anything of interest, that is, in *their* interest, they will make a note of it.

Defense Counsel

Insurance companies have hired their own in-house lawyers to research the law on their practices and procedures. The problem is, these lawyers are not independent lawyers. They are company lawyers who only see the law one way—their

way. So, it is not surprising that the company lawyers always take the side of the company to belittle your injury claim. If that were not enough, they have hundreds of other defense lawyers on stand-by to take immediate phone calls on new claims. These defense lawyers conduct legal research to find legal ways to argue against your case, and obtain witness statements slanted to their positions. Before the ink on the police report is hardly dry, the adjuster and defense lawyer may have ammunition to defeat or minimize your claim.

Medical Reviewers

When the adjuster finds out that there may be a way to discredit your medical injuries, they arrange for *their own* retained medical doctor to provide them favorable medical opinions that minimize injuries. The practice of insurance companies using the same doctors for this dirty business is staggering. These doctors issue reports that are virtually identical to all their reports for the insurance companies: "No injury." "If injured, they've recovered." "If not recovered, pre-existing injury." The medical expert can be used to review your medical records and give a favorable opinion to the insurance company, or you may be requested to attend a medical exam to be conducted by *their* medical expert. As stated previously, these experts invariably give the insurance company the opinions they want—that you were not injured from the trauma, or that your injuries are minimal.

So, the entire system of claims adjustment is rigged with booby traps, and you should ask yourself whether you are comfortable facing the adjuster and their team of investigators, defense lawyers, and medical doctors, alone.

CHAPTER SEVEN

Claim Adjustment Process

In previous chapters I explained why the insurance industry is *financially motivated* to minimize or deny your catastrophic injury claim. During the claims adjustment process, the insurance companies will expend substantial financial resources and hire savvy defense lawyers to exploit your privacy and derail your attempts to obtain fair compensation for your injuries. In this chapter, I will reveal some of the ways in which insurance adjusters use their financial and legal advantages against you in the claims adjustment process.

The "Accidental" Injury

Claims adjusters begin the claims process with an overall strategy of making you feel insecure in your claim – that is in the facts of the case, what caused the traumatic event and so forth. Part of the claim process is to cause you to change your thinking about your claim, to *change* your feelings about the individual or company that caused your injuries. If your injuries stem from an automobile collision,

the claims adjuster will attempt to "sanitize" or clean up the conduct of their insured driver—no matter how egregious their conduct— to create the inference that the cause of your serious injuries were more or less "accidental."

"Accidental" Injuries Means Nobody Is At Fault

By legal definition, *accidents* are "an unforeseen and injurious occurrence not attributable to mistake, neglect, or misconduct." *Black's Law Dictionary,* 7th Ed. 1999. If the cause of *your* injury is deemed "accidental," then neither the other person involved, nor their insurance company, are obligated to pay you anything. Because the term "accident" is used so broadly in society and even legal settings, there is much confusion about what constitutes an "accident" and what was a preventable traumatic event causing injury.

Real Accidents Are Rare

In reality, by legal definition, *real accidents* that cause serious personal injuries rarely occur. This may be difficult for some people to accept because the term "accident" (or some form of the word) is *misused* every day. Phrases like, "That's an *accident* waiting to happen," or, "Sorry, that was an *accident*," reinforce the idea that "things happen" and there is nothing that can be done to prevent it. But that is not true; there are things we can do to prevent serious injuries. We have to change our viewpoints though. For instance, when you lean back in the rocker and crush the cat's tail, you don't think too much about it later on—perhaps that could be considered

an accident. But if the baby sitter leaned back in the same rocker and crushed your infant's fingers, I doubt you would consider *that* an accident—it sounds more like neglect. Again, the reason we have a hard time distinguishing between "accidental" and "neglectful" injuries is because the common usage of the word "accidental" is different from the legal definition of "accidental." Be advised, in order for you to obtain compensation for your injuries, you must be able to overcome the common understanding of the word "accidental," and prove that your injuries resulted from neglectful conduct.

Traumatic Injuries Are Preventable

Now that we know that personal injuries are not, legally speaking, accidental, we can rightly conclude that personal injuries caused by a traumatic event are *preventable*. Thus, *all* workplace injuries and auto collisions are preventable, and not accidental. To illustrate this point, consider automobile collision investigations which show that speed, driver alertness, and lack of mechanical upkeep are all factors that contribute to the negligent operation of a motor vehicle, which are within the operator's use and control of the vehicle. People operate their vehicles negligently by making conscious decisions to exceed the safe speed, or fail to maintain the brakes or tires. The vehicle didn't just evolve into this state of use or disrepair on its own, any more than the vehicle drove itself down the road and collided with another vehicle—it was the owner and operator who was

responsible for the operation and condition of the vehicle. Thus, the owner and operator made intermittent decisions that violated some safety law or ordinance—as such, they are *rule-breakers.* Likewise, workplace injury investigations often show that employees are injured and killed because the employer failed to provide a safe work environment for employees. The unsafe work environments must be managed by the company, and when they decide to not follow safety rules, they become *rule-breakers*, too.

Rule-Breakers Cause Injuries

For this reason, I have not referred to the conduct of the at-fault parties, who caused your serious injuries, as hapless, unlucky people who just happened to be at the wrong place at the wrong time. When they decided to drive too fast, or ignored safety rules, they invited injury not only to themselves, but to others. So your injuries were not the result of a mere "accident." If your injuries were accidentally caused, then the law may not hold anyone responsible. This is *not* an outcome you deserve.

Misapplication of Legal Fault Rules

The claims adjustment process is often a precursor to formal litigation. Many catastrophic injury claims can be settled without the formal filing of a civil lawsuit. When a catastrophic injury claim is set up, and a claims adjuster begins the process of evaluating your claim, there are still legal standards that will apply to your claim. The foremost

rule that is applied is the legal fault rule: unless the alleged wrongdoer is guilty of breaking a law or rule, there is no basis for considering your injuries. Thus, unless you can show in a court of law that the person who injured you is a rule-breaker, you will not get the opportunity to present your injury claim—the law requires that you prove *legal liability* against the wrongdoer. The wrongdoer must be found "at-fault" or *negligent* for causing your injuries.

Since most catastrophic injuries occur in automobile collisions, I will use an auto collision as an example of how an insurance adjuster will evaluate legal liability of their insured driver who is accused of causing your serious injuries. Keep in mind that the insurance adjuster has a financial incentive to persuade you to *their* way of thinking: that the facts of your injury claim cannot possibly prove legal liability against their insured driver.

Example of Auto Injury Claim

As we have learned from the previous section, all personal injuries are avoidable in some way or other. Auto collisions are preventable. Thus, when a significant auto collision occurs, causing serious personal injuries, it should be self-evident that *somebody* violated safety laws and caused the collision. In fact, we now know that this is the case. However, the insurance adjuster may still try to argue that the auto collision was unavoidable or accidental. There are several reasons the insurance adjusters take this stance: they know

it will discourage and frustrate you; they get to keep their money longer; and they know they will succeed in a fair number of injury claims.

For support of their position, they have historically relied on the official report forms used by police departments. For numerous decades, law enforcement officers used the "Uniform Accident Report" form to annotate information about the auto collision. Notice the word "Accident" in the title of the form? Insurance companies and defense lawyers used the "accident" report form effectively to devalue cases. During trials, the defense lawyer, the police officer, and even the judge refer to the traumatic collision as an "accident." So, how do juries respond to this? I think they had to be almost over-persuaded that the auto collision was not just accidental, but that someone had to have caused it. I can tell you by experience, the lawyer representing the injury victim had to work twice as hard at convincing the jurors that the collision was not an accident.

Recently, however, the use of a revised auto collision report form was mandated in West Virginia. Now, every auto collision in West Virginia is reported on the revised form: "State of West Virginia Uniform Traffic Crash Report." The word "Accident" has been replaced with the word "Crash" in the title of the report. The insurance adjuster and defense lawyer no longer can use the same tactics they used to use, and even police officers must recognize that they are

investigating car "crashes," not mere "accidents." But, old ways are hard to break, and it will take constant reminders to adjusters and even judges to refrain from referring to the auto collision as an "accident."

Adjusters Act as Lawyer & Judge

Insurance adjusters spend a vast amount of their time reviewing claims for personal injuries submitted by personal injury lawyers. Many of these claims are in litigation, meaning that a lawsuit has already been filed. So, they review even more legal documents, legal opinions on coverage, and liability and damage assessments from their own defense lawyers. Claims adjusters spend a lot of time talking to plaintiff's lawyers and defense lawyers. Naturally, they learn some basic legal principles and are expected to be able to express these principles in basic form to others. After working with hundreds of adjusters through the years, I believe many adjusters enjoy the recognition they receive from their superiors and other lawyers concerning their knowledge of the law. Some, however, think of themselves as being "peers" of lawyers, and attempt to practice law without a license.

Adjusters Control the Case

It should be no surprise that claims adjusters use their knowledge of the law to their advantage. I wish I had a dollar for every time I heard an adjuster say, "I'm not a lawyer, but ...," and then they proceed to tell me *their* interpretation

of the applicable law. They expect their defense lawyers to follow their advice, too. Some claims adjusters even dictate trial court procedures to their own lawyers. In my former days as an insurance defense lawyer, I have had some of these adjusters dictate to *me* how to prepare strategies for the legal defense of cases. As laws have changed to give the adjusters more protection for bad faith conduct, they even took over many of the traditional areas of legal practice from the defense lawyers. Now, it's the adjuster who dictates what kind of defense will be made on any given case. They dictate who will be deposed, when discovery will be conducted, whether an expert will be retained, and the like. As far as evaluating the claim, the defense lawyer has no say in the value of the common personal injury case—the adjuster evaluates the settlement value of the claim and even chooses the mediators. One adjuster even represented to me that lawyers were no longer the "experts" at settlement negotiations, he was! Another adjuster represented that he was the "star" of mediation! Yet, another adjuster informed me that *he* was a trial lawyer, that he was going to take the case "all the way" to trial! I kindly reminded him that a law degree would be helpful. Turns out, he didn't even have a college education. Such is the case of way too many claims adjusters; they wield too much power over unrepresented injury victims. They have become the *judge* of your case.

So when discussions about your injury claim occur between just *you and the adjuster*, who do you think will misuse the

law to bolster their position? If the adjuster is barking orders to their own defense lawyers, what will he or she say to you about your injury claim? Unless you have an experienced trial lawyer on your side (or just happen to have studied law yourself), you are not going to make any headway with the adjuster – they are not easily persuaded.

Avoid Recorded Statements

Insurance adjusters are not permitted to contact represented injury victims directly and question them about their injuries. However, they may contact *unrepresented* injury victims whenever and as often as they want to. When the insurance adjuster contacts *you*, and asks you if the conversation can be recorded, you should decline the request—at least until after you have consulted with a personal injury lawyer. Be careful, though, even speaking on the phone with the insurance adjuster. The insurance adjuster will take notes of this conversation in the claim file notes, in the most unfavorable terms concerning your injury claim. In the hundreds and hundreds of claim files I have reviewed, the adjuster almost *never* reports the injuries in the most favorable light of the injury victim. Often, the injury victim's purported comments are not even consistent with their claim for damages.

Preparation Needed

Many injury victims are charmed by the adjuster's friendly ways over the phone and see no reason to refuse a recorded statement. The adjuster is armed with the tape recorder, her notes about your injury claim, and an outline of questions

that are designed to minimize your injury claims. When an injury victim provides the adjuster with a recorded statement, they invariably make mistakes. The injury victim doesn't have their injury file, so they can't review it beforehand. Importantly, the injury victim has not been prepared by legal counsel, and doesn't have legal counsel present to refer questions about how to answer certain questions asked by the adjuster. They will make mistakes because they were basically "shooting from the hip" in answering important questions that affect their injury claim. They often have no idea that their claim has been seriously compromised until *after* they have met with legal counsel.

Mistakes Provide Cross-Examination Ammunition

The insurance adjuster will not explain just how the insurance company and their hired defense lawyers plan to use this recorded statement against them in a court of law. Again, I should know; I used hundreds of them to defend against injury claims. One particular injury victim had stated something wrong about the timing of the events of the auto collision, and two years later, that account—which was the account closest to the date of the injury—persuaded her lawyer to drop the claim because it showed that she was the person who caused the collision. She was confused by the questioning, she had no lawyer to help her, and her claim was destroyed. So, you should be aware that every word you say will be scrutinized for accuracy and truthfulness. If you make a mistake that is favorable to the insurance company,

they will use this against you, too. It is a chief purpose of the "recorded statement" to make you look like a malingerer, or worse, a liar at trial.

Refuse Medical Release Authorizations

Another way insurance adjusters take advantage of *unrepresented* injury victims is to use private information contained in their medical records to minimize or defeat their injury claim. The insurance adjusters obtain the injury victim's private medical information through *a medical release authorization,* which has to be signed by the injury victim. This medical authorization allows the insurance company to obtain *all* the injury victim's medical records—not just those relating to the injuries sustained from the traumatic event. So when the claims adjuster requests *you* to sign a medical release authorization, tell the adjuster you will provide copies of your records from your treatments for your injuries.

National Data Banks

When your claim file is opened, the first thing the claims adjuster will do is research whether you have ever made an injury claim before on one of several national data banks for injury claims. Irrespective of what they find, the insurance adjuster will enter private information about you about *this injury claim*, including your name, address, social security number and the type of injury sustained. *This information*

will be available for all participating insurance companies to review, nationwide.

Insurance companies argue these national data banks are necessary to prevent insurance fraud. Yes, they do help prevent insurance fraud. But I have also seen how the insurance companies use them against honest injury victims. Once your personal history is listed on the national data bank, you could be accused of making a baseless insurance claim sometime in the future. At a minimum, the insurance companies use these data banks to internally profile you as someone who could take advantage of the insurance claims process to get compensation you don't deserve.

Protection of Private Information

Your privacy concerns can be professionally managed by your own experienced lawyer to provide only relevant information to the insurance adjuster. Under the protection of a *confidentiality agreement*, only relevant medical history related to your injury claim is released, and limitations are placed on its use, storage, and destruction. The insurance company will not be allowed to misuse the private information in your records when you have the protection of a confidentiality agreement.

Social Media Traps

It is a common practice for insurance adjusters to use the internet to covertly find out everything they can about you: your address, what kind of home and vehicles you own, your job and where you work, your family and children, and even your friends. *If you have already disclosed anything about your traumatic injuries on Facebook, Twitter, or other social media, you should be aware that the insurance adjuster has been trained to locate this information and use it against you.* If any other damaging information is found in the public domain of the internet, it will also be used against you when you pursue your legal rights against parties who are responsible for your injuries. Even if you only communicate *privately* to your friends and family about your injuries using the internet, you are not safe. Some courts require disclosure of even private communications. The best practice is to discuss your injuries with your lawyer—those communications are protected. Your best practice will be to completely abstain from using the internet to discuss your injuries with your family and friends.

Social Media Use in Court

At a recent auto injury trial, during cross-examination of my injury client, the defense lawyer brought into court some statements my client unwittingly made on social media about her employment prospects. Her comments about her employment and wages—when taken out of context—were used by defense counsel to show that she was not being honest

about her injury claim. Unfortunately, my client's comments affected the jury's view of her future damage claim, and the verdict (which was still in her favor) showed that the jury discounted the verdict precisely in the areas of which she disclosed private information on the internet.

What the insurance company and their defense lawyer did was fully lawful—they were within their legal rights to snoop on my client's personal information. So, beware of discussing your injuries and losses with other individuals, and certainly do not make your personal information about your injury claim public, to be read and used by the insurance adjuster against you in court.

Beware Of Surveillance

Insurance adjusters also may use surveillance to monitor your activities around your home, while you are at work, when you go grocery shopping, and even while you are driving to church meetings. Though the cost of hiring a detective to snoop on you can be pricey, the rewards for finding adverse evidence about you is well worth the cost to the insurance company.

The goal of surveillance is to catch you on video doing things contrary to your stated injuries. They don't have to catch you doing back flips or cartwheels in your yard for surveillance to be effectively used against you. All they need is evidence that is *inconsistent* with your injury claim. This evidence can

be, and often is, ordinary things people do such as walking, driving a car, mowing the grass, or loading groceries into your car. Anything you are caught doing that is inconsistent with your injuries will be used to portray you as being a malingerer or liar.

Example of Child Surveillance

Several years ago, a teenage child was injured in an accident, and her lawyer claimed she could not engage in normal teenage pursuits. The insurance adjuster ordered surveillance and what did they find? She was caught on videotape jumping on a trampoline, with supposedly a sprained neck. Even though it could be argued that even injured teenagers are going to try to have some fun, pain or no pain, the surveillance was damaging to the injury claim. Because the lawyer said his client couldn't play like a normal child, the insurance company ordered the surveillance to see if what the lawyer said was true or not. The insurance company maximized the use of the surveillance to minimize the value of the child's injury claim. If the insurance adjuster does not know what to look for, you can avoid the risk of surveillance on you and your family. This is one reason why I never permit my clients to even speak with the insurance adjusters outside of my presence.

Example of Adult Surveillance

Several years ago, a lady was rear-ended on a busy highway, and she testified that she badly injured her neck and back, and could not lift her arms over her head without a lot of pain. In her deposition, she practically came crawling into the conference room—the whole thing was overplayed by the lawyer and his client. As a result, the insurance adjuster ordered surveillance and caught her at a football game screaming, and jumping up and down while waiving her arms in the air in excitement! Of course she was excited—her son had just scored a touchdown. No amount of pain was going to deter from applauding her son. But this conduct cost her a lot of money in her recovery. She had to settle her injury claim for a fraction of what it could have been worth. Why? Because she *over-dramatized* her injuries.

Activities to Avoid

What kind of activities should you refrain from if you have sustained a serious injury? While there are too many activities to list individually, categorically they resemble most of the ordinary things we do daily. It can be lifting a 25 pound bag of dog food into your shopping cart at the grocery store; this may be contrary to a claim that you injured your shoulder. It can be riding your bicycle on the rail-trial; this may be contrary to a claim that you developed vertigo from the traumatic event. To the insurance adjuster, and even some jurors, it is not persuasive that you did these activities

feebly or in a lot of pain—the fact is, you did them, and that alone is enough of a negative inference to hurt your claim.

Avoid Surveillance Damage

An experienced personal injury lawyer knows how to educate each individual client on the risks of being videotaped. Each injury victim must know that trying to do even normal activities, despite the pain it may cause, can be a target for the insurance company private eye with a video camera. So follow the doctor's orders and use care in your activities, and you will decrease the odds that the insurance company will want to bother trying to videotape you. If the insurance company does videotape your activities, and they support your claim, they won't tell you. They will just try some other way to discredit your claim.

Spoliation of Evidence

Many people don't know that they have an obligation to preserve evidence that relates to their personal injury claim. If you discard evidence (called "spoliation"), you may be prohibited from asserting part or even all of your injury claim. You have a duty to preserve the evidence that is under your control or ownership. So, you may need to keep your wrecked vehicle (or other items such as equipment or products) in the *same condition* if they contributed in any way to the cause of your injuries. You should immediately have photographs taken of anything involved in your injuries,

because any evidence that supports your injury claim may quickly "disappear" and never be found again. Remember, if you can't locate a key part of your evidence, your injury claim may be denied.

How to Preserve Evidence

Meeting your duty to preserve evidence that you own or control can be confusing sometimes, even for lawyers. For instance, immediately following an automobile collision on a state road, you decide to move your car off the road to avoid another possible collision. The police were not on the scene yet, so no one in authority told you to do this; you took it on yourself because you wanted to be safe. Although your actions were reasonable, the insurance adjuster may still wrongfully accuse you of moving your vehicle to hide your role in causing the collision. But if you decided to leave your car on the road, and were hit again, you would be blamed by the same adjuster for causing another wreck or aggravating your own injuries! So, injury victims often face the criticism of the insurance adjuster and their defense lawyers no matter what they do.

Insurance Adjusters Allow Spoliation

Insurance adjusters know that bad pictures of vehicles make for bad evidence against them at trial. They will eagerly convince injury victims to discard or *salvage* their vehicle before adequate pictures or inspections can be taken of the damage. This is especially the case when *undercarriage*

damage is at issue. To the naked eye, that "little scuff" on the back bumper could hardly support a serious injury claim; however, under the bumper cover was a dent in the metal bumper system. If you allow the vehicle to be salvaged and crushed, then you are stuck with these limitations in presenting your injury claim.

What then, can an injured person do to make sure that they don't destroy key evidence for their injury claim? *Engage experienced legal counsel early in the claim process to safely navigate all the pitfalls the insurance companies will create for your injury claim.*

The "Anti-Fraud" Unit

I discussed in a prior section how the national data banks are used by insurance companies to research personal injury claim histories of injury victims. The bare truth about insurance adjusters is that they have been programmed by the insurance company to have a suspicious nature, and this includes a belief that every person who makes an injury claim has a financial motivation to embellish, or even lie, about their injuries. Insurance adjusters are convinced that part of their job is to weed out fraudulent claims. Because local police forces are busy and inadequately funded, the insurance companies have hired their own in-house detectives to root out potential insurance fraud claims. Although they go by various names, they are an anti-fraud unit. These units are often comprised of former or part-time police officers and detectives who investigate injury victims for insurance fraud.

Example of Actual Insurance Fraud

Several years ago, an individual with a long history of neck and back injuries—stemming from playing high school football—started filing fraudulent claims for minor neck and back injuries sustained from automobile collisions. It turns out that these auto collisions were staged. They never occurred. This fellow, and his accomplices, staged half a dozen of these claims over a two to three year period. Nobody gets involved in that many collisions in such a short period of time. At first, the insurance companies just paid the claims because they were relatively small, and the cost of defending them was a lot more than the amount of settlement.

On his last claim, one of his accomplices "blew the whistle" on him and an investigation was initiated. They found a witness who would admit that the "injury victim" had actually staged the car wrecks. His entire web of co-conspirators turned against him—he had become greedy and had stopped sharing the settlements. His web of lies became apparent even to the presiding judge, who eventually dismissed his case. He was later arrested for other criminal activities and was imprisoned.

Most Injury Claims Are Legitimate

Although some *criminal*s, like the fellow I just described, will attempt to commit *insurance fraud,* they take a huge risk of going to prison. Others may try to embellish their injuries, that is, "stretch the truth" a little. A few others may try to "milk the claim for all it's worth." I have learned through decades of insurance practice, and through the handling

of hundreds of injury claims, that criminals and dishonest claimants comprise a very small number of claimants compared to the multitudes of injury victims who have legitimate injury claims. The insurance adjuster can only see your claim through the lenses of suspicion. It takes a lot of experience to know how to submit a legitimate injury claim to an insurance adjuster. That experience rests solely in experienced personal injury lawyers.

Adjusters Misuse Power

Even though the number of truly dishonest claimants are small, the insurance companies maintain their own *police force,* known as the *anti-fraud unit*, to investigate injury victims. When an honest injury victim won't accept the low-ball assessment of the insurance adjuster, the insurance adjuster can arbitrarily allege the injury victim has misrepresented their injuries, and threaten to investigate them. This scares the heck out of injury victims, and many of them accept the low-ball offer to avoid being investigated by the *anti-fraud* unit of the insurance company.

Most anti-fraud units are comprised of ex-police officers who are trained to pin an *insurance fraud* charge on the claimant, which, by the way, is a felony offense. The incentive for the insurance company to use this weapon to abuse unknowing and innocent injury victims is self-evident, and should be ample reason why injury victims should immediately seek legal counsel.

CHAPTER EIGHT

The Litigation Process

There are many reasons a lawsuit is a necessary step towards obtaining fair compensation for injury victims. Some injury claims are going to be disputed no matter what information is provided to the insurance adjuster. In order to preserve the injury claim, a lawsuit is filed. Some injury claims take a year or more to even develop the facts and ascertain the damages, which means that little time is left to negotiate before the two-year statute of limitations period expires—so, a lawsuit is filed to preserve the claim. Still, some injury victims wait until much of the two-year statute of limitations has expired before seeking legal counsel. Experienced trial counsel will file the lawsuit and withhold service of process on the defendant(s) until a claim can be discussed with the insurance company.

Filing of the Lawsuit

A *lawsuit* is a legal document that sets forth the necessary information to make a legal claim against another party.

The legal document is called a *Complaint*. The complaint has several parts. The first part, called the *style* of the case, lists the proper names of the injury victims, called *Plaintiffs*. The style also lists the parties being sued, called the *Defendants*. The second part, dealing with the particulars of each party, is needed to ensure the proper jurisdiction of the lawsuit. Thereafter, there are many claims, called *counts*, that list and recite the facts as the injury victim views them. These facts are considered *allegations*, because they have to be proven.

Lawsuits are routinely filed in state court, at the county courthouse in the circuit court's office. To determine *which* county is the proper place of filing the lawsuit, consideration must be given to where the injury occurred and where at least one of the defendants resides. Lawsuits can also be filed in federal district court under certain conditions. Most lawsuits for personal injury claims are under the jurisdiction of state circuit court judges that are located in each county of the state. When the circuit court clerk officially files the complaint, a *civil action number* will be assigned to the lawsuit.

Service of Process

In order to complete the process of filing a lawsuit, the responsible parties who caused your injuries must actually be legally notified of the lawsuit. The title of the notice is called a *Summons*. The process by which the defendants are provided a copy of the Summons and Complaint is referred to as the

service of process. Service of process cannot be ignored. Even if you file your lawsuit on time, but you fail to actually obtain proper service of process on any party, your lawsuit will be dismissed. You will not recover anything.

Obtaining service of process on a party sounds simple enough—all you have to do is locate the right party and get the summons and complaint into their possession. The truth is, it is one of the most difficult parts of any case. You have limited time to get all the parties served, and you have to be exactly correct in the names and addresses of the parties being served. The problem is, sometimes wrongdoers hide their true identities and their addresses to avoid being identified. It's not just individuals that can't be located, but corporations, too. The name on the truck that caused your injuries probably is not the correct name of the company that is legally obligated to pay for your injuries. This is because corporations are allowed to use *trade names* to conduct business—but these trade names are not the legal entity you must serve. Because the United States has become engrossed in the global market, more and more companies that are in West Virginia are owned by foreigners in other countries. It is very difficult tracking down these foreign companies because they have lawyers who are experts at concealing the company's identity from the public. Remember, you only have a short time period to effect service of process on each defendant after your lawsuit is filed, so don't try this on your own.

Responsive Pleadings

When a defendant is served with a copy of the summons and complaint, the summons will state that they have a certain number of days (up to 30 days) to respond to the complaint. The defendant's response can be a motion to dismiss and/or an answer to the complaint. If the defendant files a motion to dismiss, the court will make a ruling on the motion to dismiss before the claim will proceed through the court system. If the motion to dismiss is granted, then the case will be dismissed and you will have to pursue a different complaint, if there is time left to do so. If the motion to dismiss is denied, then the defendant must file an answer to the complaint. The defendant normally denies almost every allegation in the complaint that supports the merits of your injury claim. Defendants also recite dozens of *defenses* to your claim—so you should expect to have to prove everything from the cause of your injuries to each of your medical conditions.

Court Appearances

After all the parties to the lawsuit have made an appearance—by answering the complaint or filing a notice of appearance of counsel for a party—the presiding judge of the circuit court will notify all the attorneys for the parties (and any unrepresented parties) of a *scheduling conference*. All the lawyers and unrepresented parties will attend this conference where the judge discusses the lawsuit. Thereafter, the court will issue a *scheduling order* which outlines all the important deadlines for discovery to be completed and the date of trial.

Failure to follow the court's scheduling order can result in *sanctions* against those parties that violate the order.

Formal Discovery Process

Pursuant to the deadlines in the scheduling order, the parties have about six to eight months to conduct all discovery needed for trial. Discovery includes depositions of parties and witnesses, written interrogatories (questions) to the parties, production of documents requests, inspections, and medical examinations. The goal of discovery is to find out what evidence the other side has, and compare it to the evidence you have to support your case. Many cases that appear to be straight-forward before discovery begins, end up being complicated in the end. This happens because at the outset of any case, it is easier to see evidence that supports your position than evidence that contradicts it.

Mediation Process

One particular item that is included in almost every scheduling conference order is a mandate to conduct mediation. Mediation is an informal process where the parties meet together (usually in a law office or courthouse) and discuss settlement possibilities of the case. The mediation process is not the same as going to trial—no evidentiary objections will be made, nor rulings on the validity of any part of the injury claim. A *mediator* is agreed to in advance by both sides, and the mediator is provided some basic information about the injury claim. On the date of the mediation, the parties

will meet with the mediator and discuss the injury claim. Again, the objective of mediation is to settle the case. This will require both sides to compromise aspects of their views of the case. *If the parties cannot come to a compromise and settlement of the case, then the case will proceed to court.*

The parties well know that proceeding to trial is a real threat to a weak case. Thus, both sides will "bluff" their way through a mediation by asserting that *they will go to trial!* The truth is, unless you can foretell the future, you don't know what a jury verdict will render your client—some jury verdicts favor the insurance company, while others favor injury victims. So all sides, the plaintiffs and defendants, and the insurance companies insuring the losses, have a vested interest in trying hard to settle injury claims before going to a jury trial. Trained mediators are used to help the parties see each other's positions and assist in the "negotiation process" of mediation.

Pretrial Process

The mediator will notify the circuit court that the mediation was either successful or unsuccessful. If the mediation does not produce a settlement, the court will have a final hearing before trial, called a *pretrial conference*. The pretrial conference is a very important part of the litigation process. It is at this hearing that the court will hear arguments over evidence that will be offered by one side or the other, and make procedural and substantive law decisions on how the

case will be tried before a jury. Often, because of adverse rulings or favorable rulings of the court, one side or the other reconsiders their prior positions, and the parties come to a settlement of the case. A few cases, however, just can't be settled. So, a few select cases will be decided by a jury. Because jury trials take a lot of preparation of evidence and witnesses, expect to commit about a week of your life to prepare for and appear at a jury trial.

Trial Process

On the first morning of trial, you will arrive at the court house and meet with your lawyer. The first thing that will be done is that the judge will normally hear any final motions or arguments from the lawyers and make rulings. Thereafter, the jury panel will be called, consisting of citizens of the county where the lawsuit is filed. Many people will be called, but in the end, only six jurors and two alternates will sit on your jury. The judge will have numerous questions for the jury panel, and most judges allow the lawyers to question the jury panel as well. When the lawyers question the jury panel, it is called *voir dire*.

From time to time, a potential juror will not meet the qualifications to sit on a jury panel due to knowledge of the parties or witnesses, so that individual will be disqualified to sit on the jury panel. Another individual will be called to replace such individual. When all the parties are satisfied that the remaining panel of potential jurors can sit on their

case, the judge announces that the panel is qualified. The parties and their lawyers then are allowed to remove or "strike" two primary jurors and one alternate juror from the panel. In the end, there will be six main jurors and two alternate jurors. At the end of the trial, the alternate jurors will be released, and will not decide the case—unless they replace a regular juror who was disqualified.

Since the Plaintiff has the burden of proof to substantiate their claim, they proceed first with the evidence at trial. The Plaintiff's lawyer will make an *opening statement* about the case. Then the Defendant's lawyer will make an opening statement, explaining their view of the case. Subsequently, the Plaintiff will present all their witnesses and testimony. The Defendant will cross-examine these witnesses to refute their testimony. After the Plaintiff has completed their case, the Defendant may call their witnesses and present any other evidence. Thereafter, the Plaintiff may have some rebuttal testimony to present. Then both sides *rest their case*.

The court will then instruct the jury on the law that will apply to the case. The lawyers will have fought for weeks, and sometimes, months, over the language that is going into the *jury instructions*. When finished reading the jury instruction to the jury, the court will then allow the Plaintiff and Defendant to make *closing statements*. Because the Plaintiff has the burden of proof, they have the last word and can speak again for a few more minutes to the jury. What

goes into these closing statements is complex and requires much skill and experience to do well. Thereafter, the jury receives the case and goes to the jury room to deliberate on the case. When they have reached a *unanimous verdict*, they report to the court and the verdict is read in open court with all parties present. This is a nerve-racking time for all the parties because there is no going back and accepting previous offers, either way, once the verdict is read. It is final. The only thing left is an appeal for the side that is displeased with the result of the verdict.

The Jury Process Works

Contrary to what the insurance industry has told people, the jury system is fair to all sides of the injury dispute. The reason insurance companies don't like the jury system is because jury verdicts often exceed the claims adjuster's value of the claim. This happens quite often because jurors *must consider all lawful damages* that can be awarded to injury victims. Thus, jurors analyze each injury victim's *entire range of alleged damages* and make their own assessment of the value of the case. Since insurance companies don't evaluate the claim based on the entire range of damages available to the injury victim, jury verdicts are a threat to their way of doing business. The adjuster is trained to not place a very high value on an injury victim's quality of life or their future health needs; but the jury is not so limited. This is why insurance companies are against impartial jurors.

Mutual Risks of Trial

There is no room for bragging about jury verdicts because *no one* knows what a handful of complete strangers will think about their case. That's what makes it so unique and effective—nobody gets an unfair advantage with complete strangers. That's also why it takes a lot of skill to present evidence, you are addressing complete strangers about a very big issue. So, there are risks in going to trial, for both sides.

Most cases, however, are settled. The reason is because jurors *can and often do* disagree with one side or the other on important parts of the case. This is a big incentive for parties to settle rather than to go to trial. Since only 10% of all claims proceed to trial, this means that the few that go to trial can go either way, depending on how the jury feels about the claim. A skilled trial lawyer can often sense how a case is going, long before the jury is given the opportunity to decide the case. Sometimes, a settlement is reached at trial because the jury panel or the way the evidence may be presented didn't turn out to be so favorable to one side or the other after all.

Outcome of Jury Trials

Jury trials over hotly disputed injury claims worry insurance adjusters particularly because jurors are capable of disagreeing with the claim assessment on different types of injury claims. This can disrupt established values of certain kinds of cases. Suppose an adjuster evaluates a neck injury at $50,000. The plaintiff's counsel evaluates the value at $100,000. Because

neither side will budge, the case proceeds to trial. The jury awards $250,000 to the injury victim. Now, there is a new precedent for demanding a higher value on such cases. For those lawyers capable of obtaining the best results for their clients, higher verdicts mean that the insurance company will pay those skilled lawyers more to settle their injury cases.

Goose-Gander Rule

We have all heard of the *goose-gander rule*, that is, what is good for the goose is good for the gander. As indicated previously, no one controls what a jury will do in any given case, and sometimes they agree with the assessment made by the insurance adjuster. It takes a lot of skill and handling of hundreds of cases to know when to fold your cards and settle a case. Not every case is perfect, and each case has weaknesses. So there should be no surprise that jurors can and do agree with insurance company assessments. That is the risk injury victims take when they go to trial. But whenever a jury renders a verdict that is "too high" for the insurance company, the insurance company decries "foul."

As a defense lawyer, I routinely received calls from claims supervisors reporting their "victories" in court when the plaintiff got little to nothing. But as time went on, I realized that the insurance companies only reported their *victories*, but not their losses. They didn't want their defense lawyers to know how bad their evaluations were in the many cases that

went bad. So I started asking about their losses to find out how their attitudes to the adverse jury verdicts changed their views of jurors. Of course, the adverse verdicts against them were viewed as *tainted,* because their evaluation of a claim could never be wrong.

Call for More "Tort Reform"

The insurance industry wants to do away with the strength of the jury system in this state. Although all jury verdicts now have an automatic right to appeal, and will be heard, that is not enough. The insurance industry wants two appellate courts so that they have two chances to reverse adverse verdicts. They have the money to pay for their lawyers to appeal, but this drains the injury victims as they have to wait many, many months, and perhaps even years to get their much-needed recoveries.

This country was founded on the right to trial by jury and it is the cornerstone of liberty for all, even today. "Representative government and trial by jury are the heart and lungs of liberty. Without them we have no other fortification against being ridden like horses, fleeced like sheep, worked like cattle, and fed and clothed like swine and hounds." *John Adams,* 1774. The insurance industry now wants to change all that to their financial benefit.

Post-Trial Process

Despite all that I have said about the outcome of the jury trial, that is not the end of the case. There are procedural safe-guards for all parties to ensure that what the jury (and judge) have decided about the case, is in fact, fair. That process is referred to as the *post-trial process*. For simplicity, I will include in my discussions the *appellate process* as well, since both occur after the jury renders its verdict.

When the jury reaches a verdict in a case, the verdict is read aloud in open court. Often enough, one party or the other will not agree with the verdict or other court rulings made during trial. They must file *post-trial motions* to alter the verdict based on concrete reasons the verdict was wrong. The trial judge may agree with the post-trial motion and alter the verdict in some manner, large or small. Or, the trial judge may let the verdict stand. In either case, the parties to the lawsuit have a short period of time to file an *appeal* to the West Virginia Supreme Court of Appeals, located in Charleston, West Virginia. Legal briefs will be presented and oral presentation of the arguments made. Thereafter, the Justices of the Court will issue a ruling that may uphold the verdict, strike down the verdict, or require a re-trial on some or all issues.

While the jury verdict is not a final statement about a case, it is very persuasive and many parties who could not agree on a settlement value of a case prior to trial are often able to

reach an agreement after the verdict is rendered. Each case is unique, and that is why you need a personal injury lawyer who has litigation, trial, and appeal experience to handle your serious or catastrophic injury case.

CHAPTER NINE

How to Hire A Lawyer

By now, you probably recognize that having your own lawyer would be a good idea. You have a few questions though, about how to hire a lawyer and what kind of arrangements can be made for the payment of the legal services. This chapter will answer these questions, and many others, regarding the retention of the best lawyer to handle your catastrophic injury claim.

Lawyer Advertising

The advertising industry makes billions of dollars a year directing people to various products and services. Magazines and newspapers are full of ads, as well as are the yellow pages of phone books and television commercials. It is challenging to locate a specialized lawyer based on these kinds of advertisements. It seems that it should not be this hard to locate a good lawyer; if someone had a skin condition that needed medical attention, they could easily

find a licensed dermatologist to take care of the problem because dermatologists *specialize* in treatment of skin conditions. There is a problem: experienced personal injury lawyers cannot advertise that they *specialize* in handling catastrophic injury cases. The West Virginia State Bar, which oversees the licensing of lawyers, does not issue a board certification to such class of experienced lawyers, and thus, such lawyers cannot advertise that they are "specialized" in handling such cases.

So, any lawyer may advertise for personal injury cases, even if they only dabble in the "personal injury" practice of law. Unfortunately, the person needing a personal injury lawyer with trial experience cannot easily find such a lawyer because these qualified lawyers are not permitted to say they *specialize* in personal injury and trial law. Hence, not every lawyer who advertises for "Personal Injury Cases" has the necessary experience to successfully handle catastrophic injury cases. It takes *many years* of intense and focused litigation and trial experience, requiring the successful handling of hundreds and hundreds of serious injury and wrongful death cases, to become a *highly qualified personal injury lawyer.*

Because there are no rules prohibiting *inexperienced lawyers* from trying to attract injured victims as clients, they often inflate their credentials. Recently, I noticed a law firm in Washington, D.C. boast that they had "100 years of *combined experience*." I must confess that reaching the "100 years" mark

looked impressive. That is, until I read on that they had 70 lawyers! On average, each lawyer had less than one and a half years of experience! I had a good laugh. But there might be something to it, because some local law firms are advertising the same way. You, however, deserve an experienced lawyer who *personally* has had decades of real legal experience to handle your claim, not some rookie who is trying to learn the ropes of litigation at your expense.

Focus On Catastrophic Injury Cases

Even if a lawyer has practiced law for many years, that alone doesn't mean you have located the right lawyer. Many lawyers have dabbled for decades in too many areas of law to be exceptional in any of them. It is not uncommon to see lawyers with a few decades of experience advertise for personal injury cases in addition to their many other areas of practice which may include: criminal law, bankruptcy law, divorce and family law, employment law, taxation law, black lung law, workers compensation law, social security benefits, elder law, real estates, administrative law, health law, titles and deeds, and estate planning. So, the fact that a lawyer has been practicing for decades doesn't mean anything unless the *focus* of that practice has been on personal injury law, insurance law, and trials and appeals.

I am not suggesting, however, that only the most experienced personal injury lawyers are the only lawyers who can handle personal injury cases. Many good, hard-working lawyers

can handle many types of simple personal injury cases. But catastrophic injury and wrongful death cases are a lot more involved than simple personal injury cases. You will only get one chance at a recovery, so you should choose a lawyer that focuses exclusively on the *area of your needs. That is why my law firm practices exclusively in personal injury law, representing injury victims.*

Focus On Insurance Practice

I have stressed this point throughout this guide that one of the most important parts of your injury case is understanding what kind of insurance coverage will be available to pay for your injuries. This area of law is very complex, and should not be left to an inexperienced lawyer. I have litigated hundreds of insurance issues and have the experience at trial and appeals to handle the most challenging insurance coverage disputes. Don't settle for less than a skilled insurance lawyer to handle your catastrophic injury case—your recovery depends on it.

Focus On Trial Practice

As stated previously, trial experience is extremely important as well because the insurance companies pay attention to their opponent's qualifications and track record. The insurance companies know that good trial lawyers do more and get more for their clients than inexperienced lawyers, and thus the insurance companies pay more for claims that are handled by those skilled lawyers. **Insurance companies have respect for highly-skilled, former defense lawyers**

who now practice personal injury law—*they know* these lawyers can handle the catastrophic injury and wrongful death cases successfully at trial and appeal.

Focus On Appellate Practice

You should be aware that many lawyers who advertise they are a "trial lawyer" may have never tried a personal injury case before a jury, much less argued an appeal before the West Virginia Supreme Court of Appeals. Even the Chief Justice of the West Virginia Supreme Court has commented, "Most lawyers who classify themselves as trial lawyers or litigators have no trial experience." *The West Virginia Lawyer*, Jan-Mar 2012 Ed. Only choose an experienced personal injury lawyer with real trial and appellate experience in catastrophic injury cases to handle your injury claim.

Value of A Good Lawyer

In the mid-1970's, General Chuck Yeager visited my high school in southern West Virginia, and he spoke about his experience as a test pilot for the Air Force and NASA. A West Virginia native, General Yeager broke the sound barrier—a dangerous and courageous feat in those early days space flight testing. Some years later, he appeared on TV commercials for AC Delco batteries and spark plugs. The "You can pay me now, or pay me later" slogan he made popular is still repeated today, at least by those of us in our 50's (or above). Of course, the cost of buying a new spark plug or battery is a lot cheaper than the damage a bad one can cause, so the saying goes. The

same is true about hiring a lawyer. A qualified, competent personal injury lawyer will do more for you than you can do for yourself. Such a lawyer will not only earn their fees, but obtain a greater recovery for you.

We live in a "handy-man" society, and there are lots of people who wire or plumb their own houses. At the time, the do-it yourself approach seemed to be a great cost savings, but when it is time to sell the house, that's when the problems surface and regrets are borne! Perhaps you should give further consideration to obtaining a lawyer to look over your case *before* you take the "handy-man" approach to solving your own legal problems. Remember, the insurance adjusters have their own lawyers. Shouldn't you?

You Can Afford a Good Lawyer

A good lawyer will offer you a *contingency fee contract*, which means that you will not have to advance any money to the lawyer for fees or costs. The fees and costs are paid when the lawyer obtains a fair recovery for you. Good lawyers are worth the fees they charge, which are customarily about one-third of the recovery in a typical personal injury case. Fees may be slightly more for some cases where the legal issues are complex and/or where liability issues are in serious dispute. *Contingency fee contracts* must be in writing under ethic rules, which provides both you and the lawyer with a record of what was agreed to for the representation. Be cautious,

however, of lawyers who advertise for low fees; you get what you pay for.

Malpractice Insurance

Unfortunately, some lawyers are too eager to attract personal injury clients and are not adept at running their own law office at the same time. They forget to file important legal papers, and ultimately, some injury claims are dismissed because of lawyer malpractice. Inquire of lawyers you are considering about *legal malpractice insurance*. Many lawyers do not have any legal malpractice insurance coverage. This means that if that lawyer makes a legal mistake on your case, and it causes your claim to be dismissed or significantly diminished in value, there will be no insurance settlement of your claim of legal malpractice—you will be forced to sue the lawyer, who may not have any financial resources to pay your claim.

The State Bar mandates that all professional limited liability companies must have at least one million dollars in liability protection for legal malpractice. My law firm is a professional limited liability company, and carries mandatory liability coverage for the protection of clients. Even excellent lawyers can make a mistake, but if we do, we want our clients to be cared for properly. By the way, I can proudly report that neither myself, nor any associate of my law firm, has ever had an ethics complaint or malpractice claim filed against us. We try our best to do things right the first time for our clients.

Family Matters

When it comes to looking out for your legal rights, you should also realize that your decision will affect not only you, but your family as well. No one, not even your family, though, can force you to look out for them. *It is your decision and your responsibility to look out for your family and seek legal counsel*. When serious medical conditions are ignored, they usually get worse, if not fatal. Similarly, legal "conditions" that are ignored often get worse. This is why injured people should seek legal advice early on in the claim process—to prevent their legal rights from being lost or compromised. Those who get legal help early don't have to agonize over whether they are making good decisions about their injury claim; they rely on their lawyer for such advice. Be assured that the insurance company will provide no help for you or your family after you have waited too long to act on your claim.

CHAPTER TEN

10 Things to Avoid:

1: Lie About Your Claim

The number one way to ruin your otherwise legitimate catastrophic injury claim is to lie about anything. The veracity, that is the truthfulness of your story of your injury, has to be ultimately believed by a jury, and if you lie about even a seemingly insignificant thing, you may not be believed about your injury. As a true illustration, a client lied to the police about who was driving the vehicle to shield blame from the actual driver who wasn't supposed to be driving. Irrespective of whether my client or her friend was the driver, it should not have mattered since the collision was caused by the driver of the other vehicle who ran a stop sign. The insurance company and defense lawyer used the lie to refute my client's injury claims, even though her injuries were legitimate, permanent, and painful. Ultimately, the jury did not fully believe the magnitude of the client's injuries because she had lied to the police**. Lesson One: Don't lie about the cause or severity of your injuries.**

#2: Guess about Your Claim

From early childhood schooling, we have learned that not knowing a particular subject is looked down upon by teachers and peers. There is a lot of pressure in adult society to be "in the know" as well. When we are asked a question in an area that perhaps we should know the answer to, we will try our level best have some answer—right or wrong. When it comes to giving information that will be scrutinized by the insurance adjuster and defense lawyer, guessing about information is not a good idea. You will be characterized as someone who just "makes up" information to fit their financial motives, or worse, you will be considered a liar. You also stand a good chance of minimizing good testimony based on all the facts, when they are fully developed, because you guessed about things you were not sure about. This creates competing story lines and jurors become suspicious when you change your story. **Lesson Two: Don't guess about the cause or severity of your injuries.**

#3: Conceal Information

The previous two lessons—about lying and guessing—are closely associated with the third lesson: don't conceal information. While lying is an act of *commission*, that is **what you do say,** knowing it is untrue; concealing information is an act of *omission*, which is **what you didn't say,** knowing it to be true. Both are wrong and both will ruin your catastrophic injury claim. Let's consider an example of concealing information. Suppose the insurance adjuster

asks if you ever have had a neck injury before. You think a moment or two and then remember getting chiropractic treatment on your back and neck about ten years ago. The treatment was not specifically for an injury, and after several treatments the symptoms went away, and you have not had to go back since. So, you answer "No" to the insurance adjuster's question. It later turns out that the insurance adjuster not only finds out about the chiropractic treatment, but asserts that you concealed this treatment. While there is a technical distinction between treatment for a neck injury and treatment for a neck condition, most jurors will think you tried to conceal information.

So, before you decide to discuss your case with the insurance adjuster you ought to give careful consideration to the difficulties you will face without legal counsel. It is easy to get confused and say the wrong thing when the insurance adjuster is firing questions at you and you feel the sense of urgency to answer each one, hoping your responses will satisfy the insurance adjuster. Take my word for it, the insurance adjuster is laying traps for you to fall into and will allow you to hang yourself if you are not very careful. **Lesson Three: Don't conceal information about the cause or severity of your injuries.**

#4: Exaggerate Symptoms

Suppose you are standing in line at the customer service counter at a large department store. The product you bought

just didn't work well, and you want to get a refund. The person in front of you is arguing with the management on another return and you start to get anxious, that is, more anxious than you already are. Even though the product you bought could have worked for someone else, it didn't work for you. But you have already taken the product out of the box, and after all efforts to put it back in the same way you bought it, it doesn't look like a new package anymore. So, you start thinking of *every reason* the product didn't work for you—just in case the management doesn't like your first reason for wanting to return the product.

Well, if you are the type of person that doesn't like this type of confrontation, you are going to feel a lot more nervous when the insurance adjuster calls to have a chat about your injury claim. Sure, you want to tell the truth, but you also want to receive just compensation, and the questions that are asked make you feel uncomfortable (if not intimidated). If you try to play the injuries down, like a lot of people do, you will not be taken seriously. And when your injuries don't get better, you will be accused of being a *malingerer* (a person who fakes their injuries). But, on the other hand, if you exaggerate at all the symptoms of your injuries at the outset, you will be labeled as a faker or money-grubber.

For instance, if you are losing quality sleep because of neck pain from the auto collision, you should not say that you haven't slept a wink for two nights. You should say you have

tried to sleep, but could not get restful sleep because of the neck pain. Because your symptoms change, sometimes day to day, it is not advisable to speak with an insurance adjuster early on after your auto collision. Of course, it is best to consult an attorney before you speak with an insurance adjuster. **Lesson Four: Don't exaggerate your injuries—that is just another form of lying.**

#5: Ignore Doctor's Orders

When you visit the emergency room or medical express clinic for your injuries you are routinely given a form that tells you what is expected of you upon discharge from the hospital. If you are prescribed medications it is expected that you will promptly go to a pharmacy and fill the prescription and take the medicine. If you don't, you will not be taken seriously when you tell an adjuster or jury that you had pain. Likewise, if the physician instructs you to apply hot or cold compresses to your neck and stretch every day, and you don't, others will minimize your injuries. Many people work in pain, even with a lot of pain. I know many persons who have worked for years with chronic, constant pain. But early on in your assessment, if you attempt to do normal things in pain, you will be viewed as normal. Pain is invisible; nobody can see your pain. What they can see is how you respond to the pain. So if your conduct resembles that of a normal person, even though you are in pain, your injury will be minimized and so will your compensation. **Lesson Five: Follow the doctor's orders to the best of your ability.**

#6: Give a Recorded Statement

We have all watched the news programs that tell of the latest investigations or indictments for wrongdoing. Have you noticed how many times the newscaster stated that the accused or involved party was unavailable for comment, or they have no comment? Well, there's a good reason for this—they don't have all the information and they know that if they say something wrong, it will be used against them. I have previously explained the hidden dangers of giving a recorded statement to an insurance adjuster. There are times when giving a recorded statement to an adjuster may be in your best interest, but only an experienced lawyer will know when to do so. **Lesson Six: Don't give a recorded statement without counsel.**

#7: Sign a Medical Release

When you are injured in an auto collision, which was not your fault, you're viewed in the eyes of the law as a *victim*. You should be compensated as a victim. The insurance adjuster, however, doesn't view you as a victim, but a *claimant*, a money-grubber (someone who is motivated to get something they don't deserve). The more the insurance adjusters cheat you out of your recovery, the more applause and promotions they receive. When you are told that you won't get any recovery until you sign a medical release, you feel like you don't have any choice in the matter. But when you sign the medical release, an entire world of your personal information is given to the individual who looks on you as a money-grubber, and

your records will be used to prove it. I have seen this scenario work out hundreds of times**.** The motivation of the insurance company to get your records is to disprove or minimize your claim. Additionally, all your medical history will be recorded on national insurance indexes that the insurance industry uses to defeat claims. You have to ask yourself whether giving the insurance adjuster access to all your medical records is necessary and wise. **Lesson Seven: Don't sign a medical authorization without legal counsel's advice.**

#8: Represent Yourself

There is a common saying in the practice of law, "Don't hire yourself to act as your own lawyer." The reason for this is that the client lacks objectivity. Objectivity means that you can analyze the law correctly and evaluate the facts of the case in a neutral way. That way you are not overlooking a key weakness in your case. I have known many who represented themselves, and even filed their own lawsuits, but in the end finally come around to the obvious need to have a professional oversee and handle their legal matters. If you had a common cold, you would likely go to the local grocery store and buy some cold medicine. But if you had a severe laceration on the leg, you wouldn't likely stitch your leg. Many people try to represent themselves because they think it will be like treating a common cold. By the time they realize that a professional is needed, a lot of damage to their claim has already occurred. **Lesson Eight: Don't hire yourself as your own lawyer.**

#9: Hire a Bad Lawyer

By now you know that handling your own catastrophic injury claim has many significant challenges, and you have come to the conclusion that hiring a lawyer is the best decision for you. As I pointed out in chapter nine, not every lawyer who takes personal injury cases has the necessary experience to provide excellent representation. There are plenty of average lawyers who are looking for quick answers to solve their client's complex problems, because they don't have the experience and knowledge to answer their own questions. Hiring an inexperienced, but well-intended lawyer, to handle your case will be no substitute for an experienced lawyer with a thorough knowledge of complex personal injury law, and trials and appeals. And, if you expect to collect any money from the insurance company, you had better hire a lawyer that knows insurance law, too. Without question, having no lawyer is a worse mistake than hiring an inexperienced lawyer. But since you are wisely choosing to hire a lawyer, hire a good one. **Lesson Nine: Hire a good lawyer.**

#10: Do Nothing

Last, but not least, the tenth way of ruining your claim is to be undecided.

That's right. Just sit on the fence post in a perpetual state of indecision. This often resembles "doing nothing" about your claim. The problem is that "doing nothing" is actually "doing something" after all, but not the "something"

that will help your case. While you wait week after week, month after month, the clock is ticking on the statute of limitations on your claim, witnesses vital to your claim are not interviewed and move out of the area, evidence about the collision is destroyed, the police officer can't remember the collision anymore, the time period when you are expected to seek treatment has passed, and a whole host of other negative things happen to your claim while you are making no decisions.

So, as it turns out, waiting around for things to get better on their own actually worsens the situation. Many individuals, though, have difficulty taking the first step to meet with a lawyer. The insurance industry and big business have teamed up to advance a negative view of personal injury lawyers. Pejorative names like "sharks" and "ambulance chasers" are commonly used by insurance adjusters and the insurance industry. But when you have been helped by a good lawyer, your view about lawyers will change. A lot of people find out that lawyers do a lot to help their local communities, over and above providing legal services for individuals who have been injured. Take the step to make the phone call to schedule the free consultation with a competent personal injury lawyer. You'll be glad you did.

Lesson Ten:
Do the one thing that matters–
hire a good lawyer.

Conclusion

The purpose of this guide is to educate you on the basic facts that you must know in order to achieve the best result possible regarding your catastrophic injury or death claim. You may not have been able to avoid the collision or other circumstances that caused your catastrophic injuries, or the death of your loved one, but you can avoid the unnecessary pitfalls of dealing with the insurance adjusters who are motivated and trained to devalue your claim, if not destroy it altogether.

It would be my pleasure to be of further assistance to you by speaking with you personally about your catastrophic injury or death claim. You may reach me at www.robinettelaw.com or call my law office at 1-304-594-1800.