

# HOW TO HANDLE THE BASIC AUTO ACCIDENT CASE.

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- I. Basic Questions To Figure Out Whether The Case Is A “Dog”
  - A. Is There Any Applicable Insurance Coverage?
  - B. Photographic Evidence of Damage to Vehicles:
  - C. What is the total amount of property damage?
  - D. Injuries: What to Look For?
- II. What The Client Must Answer These Questions in Answer in Your First Meeting:
  - a. When did the accident occur?
    - i. Statute of Limitations;
  - b. Where did the accident happen- city/ county/ streets?
  - c. Set the applicable statute of limitations for yourself and the client?
  - d. Who are the potential defendants?
    - i. Driver of the Vehicle;
    - ii. Owner of the Vehicle;
      1. Important when . . .
        - a. Permissive User Claim;
        - b. Negligent Entrustment;
        - c. Government Claims;
    - iii. Driver within the course and scope of employment;
    - iv. Negligent Free Passenger;

- e. Any other potential Defendants?
  - i. Construction Zone;
  - ii. Municipality;
  - iii. Pedestrian;
  - iv. Homeowner;
- f. What were the client's activities for the 24 hours preceding the accident;
- g. What is the client's driving history;
- h. What was the condition of the client's vehicle;
  - i. Did it need any repairs or have any known defects;
- i. Does the clients have uninsured or underinsured motorist coverage;
- j. Was the client charged as a result of the accident;
- k. Who are the available witnesses who will support the client's version of the events;
- l. What damages were suffered by the client and what is their value ;
- m. What health care providers have treated the client for injuries resulting from the accident;
- n. How long was the client out of work;
- o. What earning capacity did the client have, separate and distinct from his or her particular occupation at the time of the accident;
- p. What kind of witness will the client make;
- q. Are there other potential plaintiffs (spouse or children); What kind of witnesses will they make;
- r. Are there any special problems which may arise regarding your ability to prove liability or to collect damages;
- s. What kind of witness will the defendant make;

- t. What affirmative defenses are available to the defendant (assumption of the risk, contributory negligence, comparative negligence, last clear chance);
  - u. What is the likelihood of collecting a judgment;
  - v. How bankruptcy fits into the Auto Accident Case;
  - w. Tortfeasor collectability or is there a reservation of rights on the policy;
  - x. Underinsured Motorist Insurance coverage – did the policy lapse;
- III. The Contingency Fee Agreement: You The Lawyer Must Accomplish These Tasks With the Client.
- a. Explaining the fee agreement;
  - b. What does the Fee represent;
  - c. Pure Contingency v. Hybrid:
    - i. Client pays for the reimbursement of expenses in handling the case;
    - ii. Always get the money up front.
    - iii. Explain you will sacrifice your time if you are not paid on the settlement;
  - d. Duty to Cooperate;
  - e. Termination;
- IV. Documents The Client Must Sign.
- a. Hipaa Release;
  - b. Specific Hospitals Have Releases;
  - c. Medicaid;
  - d. Lost Wage Release;
- V. Instructions for Client: What the Client Must Do!!!!
- a. What documents they must provide:
    - i. Bills;

- ii. Paystubs;
  - iii. Tax Returns;
  - iv. Photographs;
  - v. Diary into the future;
- b. Time- setting the client's expectations.
  - i. Explain how much time will lapse for the case to settle;
  - ii. Explain each phase and how much time it will take;
  - iii. Explain what will add additional time onto the settlement of the case;
- c. Medical Treatment: Pit Falls and How to Avoid;
  - i. Gaps in treatment;
  - ii. Referring to a doctor- everyone's own choice as a lawyer;
  - iii. Failure to follow doctor's orders;
  - iv. Statements made against interest to the Doctor;
  - v. Client's credit score and their medical treatment;
  - vi. Journal- what needs to go in;
  - vii. Chiropractic Treatment Only and the Pit Falls;
  - viii. Solicitation of your client by Chiropractor;
  - ix. Excessive Treatment;
- d. How Medical Bills Should Be Paid- The Best Way to Handle;
  - i. Health Insurance;
  - ii. Medicaid;
  - iii. Medicare;
  - iv. Bureau of Workers Compensation;
  - v. Auto Insurance;

- vi. Letters of Protection;
- vii. Affidavit of No Insurance;
- e. Discussion of the case with others;
  - i. Clients Discussion with others and witnesses;
    - 1. “Do not talk to anyone about this case with the possible exception of your immediate family members and members of this office.”
    - 2. “Do not, under any circumstances, discuss the case with potential witnesses, insurance claim representatives or even your friends as your statements will be used against you.”
- f. Maintain a separate file/binder regarding this case in which you keep the following items in a safe place:
  - i. Purpose: If the client ever comes back against you in the future;
  - ii. Purpose: ask for a copy of the file in the end;
  - iii. Purpose: write in the binder so you can prepare the demand letter at the end;
    - 1. Details what they do much like a diary;
    - 2. Needs to state in the binder- “for litigation purposes and for my lawyers eyes only.”
  - iv. What to keep in the file;
    - 1. Lost Wages/ Impairment to Earning Capacity;
    - 2. Keep a separate record of your time lost from work or loss of income so that it can be compared with lost wage statements which we will obtain from your employer;
      - a. This request is absolutely imperative because your lost wages and lost income are crucial factors in your case;

3. Client needs to ask his doctor for an off work slip immediately on everything;
4. List witnesses, including their addresses, phone numbers and what they saw;
5. List events where having trouble or problems;

v. Photos:

1. Instruct the client to obtain:
  - a. Pictures of the subject automobile;
  - b. Place of injury if it is a premises liability case or item which caused the injury (if it is a product liability case);
  - c. Tell him to have those pictures developed immediately;
2. Photographs of the healing of injuries:
3. Scars;
4. Photographs in different lights;
5. Bruising and then changes in color;
6. Photographs of the accident scene
7. Photographs from different vantage points where witnesses are at.

g. Witnesses:

- i. Maintain a list of the witnesses in your file and request they notify you of any change in address, telephone number, etc.;
- ii. Tell the client to bring in the names, addresses, and telephone numbers of any witnesses to the incident;
  1. The importance of this request must be emphasized to the client;
  2. They are called “first responders” – includes ems;

- iii. With respect to witnesses, the client cannot discuss the case with the witnesses other than to obtain the names, addresses, and telephone numbers;
- iv. Advise the client to notify us of any additional witnesses, change of address of witness, or any other important information regarding witnesses who have either seen the occurrence which is the subject of this claim or who are witnesses to your pain and suffering;

h. Communication:

- i. Explain that they will call you more than you may call them;
- ii. Why- they have questions as to what happens let them know they can call;
- iii. Why, tell them the 30-60-90-120 occurrences, they should call if they have questions outside what you tell them;
- iv. Emphasize that it is absolutely imperative they provide your office of any change in address, telephone number, marital status, or employment;

- 1. This request cannot be overemphasized. A delay or failure to contact you will drastically affect their case;

i. Money and Settlement;

- i. Never advise them up front what they will get.
- ii. Set expectations;
- iii. Robinson v. Bates;

j. Subrogation;

- i. Why is this important to them;
- ii. What needs to be paid back;
- iii. When is it paid back;
- iv. Compromises;

- k. Bankruptcy;
  - i. Exemption in Ohio;
  - ii. Plaintiff's attorneys must be appointed as a special counsel to the debtor;
  - iii. They may owe money to the trustee depending on the settlement;
  - iv. Money may go to pay debts owed to creditors;
- l. Loans and Advances on Cases;
  - i. Amounts v. Interests;
- m. Prior Health History:
  - i. Need an overview of the health history form youth to present;
  - ii. Obtain every doctor, hospital, medical facility or otherwise which you can get records from;
- n. Damages:
  - i. Likes/Dislikes;
  - ii. What they are all about;
  - iii. How life changed- cover the entire basis;
- o. Diary – different than most:
  - i. Address the correspondence directly to you, as the attorney, in letter form;
  - ii. Write about:
    - 1. How the injury has affected his day-to-day activities:
      - a. Inability to sleep;
      - b. Play with children;
      - c. Perform leisure activities;
      - d. Or perform marital activities and household duties;

- iii. Describe the type of pain he experiences, its duration, and the body parts affected;
- iv. Keep a record of medication used and the side effects from such medication;
- v. Keep a list of potential pain and suffering witnesses such as neighbors, friends, relatives, and fellow employees including a brief summary of what such witnesses would testify about;
- vi. Keep a separate record of lost income to compare with records provided by the employer;
- vii. Prepare a summary of visits to the doctor's office, physical therapist's office, or other medical facilities with a brief description of what the doctor advised and what treatment occurred;
- viii. Keep a separate record of medical bills to compare with those received by the attorney;

VI. How To Communicate With The Client So You Do Not Draw an Ethics Complaint:

- a. End of conversation with the Client: 30/60/90/120 day rule when Dealing with Client;
- b. Explain to the client what will occur within the next 30/60/90 Days;
- c. 30 Days:
  - i. Obtain Police Report;
  - ii. Letter or representation to Tort Feasor's Insurance;
  - iii. Letter of representation to Underinsured Motorists Insurance;
  - iv. Telephone Discussion with Insurance;
  - v. Touch base with Witnesses;

- vi. Send For Medical Records;
- vii. Place health insurance on notice;
- viii. Monitor Insurance;

d. 60 Days:

- i. Set the Reserve with the Insurance Carriers'
- ii. Update the Carriers on your injuries;
- iii. Give the Client a Status as to where they should be at;
- iv. Have a decision on liability;
- v. Property Damage should be resolved.;

e. 90 Days:

- i. Finish Treatment;
- ii. Expert Discussions;
- iii. Liens from Insurance Carriers;
- iv. Finalize the Diary;

VII. What The Ohio Code of Professional Conduct Requires You To Do After The Meeting With The Client.

- a. Why;
- b. Ethical Concerns;

VIII. Insurance: How to Get the Most Money Out of the Insurance Company From Day One;

a. Reserve:

- i. Insurance must place money into a "reserve" to pay the claim at some date in the future;
- ii. Never disclosed;

iii. Based on information they discover during their initial investigation;

b. What to give insurance:

i. Damage Photos – Severity of the Injuries help tremendously;

ii. Photos of the Client's Injuries;

iii. An overview, in detail of the client's injuries;

1. Head Trauma, - discuss in detail;

2. Type of Treatment receiving;

3. Potential for Surgery;

iv. Employment;

1. Time off of work;

2. How much they make;

3. When they will return to work;

4. Whether they can work again;

v. Behavior of the Defendant- Aggravating Factor:

1. cell phone usage;

2. distracted driving;

3. punitive issues;

vi. Must update this 60 days out and 90 days out;

vii. Goal- drive the Reserve up as high as possible;.

IX. Sending Letters To Insurance – The Simple Methodology to Winning Insurance

Adjuster Over;

a. Initial Letter to Insurance:

i. Letter of Representation Form:

ii. What goes into Letter to Tort:

1. Acknowledge your Representation;
2. Date of Accident;
3. Any specific requests;
  - a. Preservation of documentation or evidence;
  - b. Request Black Box Information from the Defendant's car;
  - c. Drinking and Driving Evidence;
- iii. Letter of Representation to Underinsured Motorist;
  1. Letter of Representation to UIM Carrier;
- iv. What goes into the Letter of Representation:
  1. Acknowledge Representation;
  2. Date of Accident;
  3. Specific Contract Provisions that you request;
- b. Second Letter to Insurance;
  - i. Timing- a week or two later;
    1. Content:
      - a. Ask them about their determination of liability;
        - i. If they do not have the police report, offer to give to them;
        - ii. Witness statements- if favorable;
      - b. Damages:
        - i. Details on Injuries- go through each body part at length;
        - ii. Where and Who treating with: Ortho consult in the ER;

- iii. How long treatment;
    - iv. Limitations in Life- Work, Family, Recreation;
  - c. Send them photographs of damage to vehicles;
  - d. Job;
    - i. How much make an hour;
    - ii. What type of education they have;
    - iii. Build their reputation and character;
    - iv. Length of time in the job, Length of time working;
    - v. Type of worker;
  - e. Health Insurance;
  - f. Punitive Damages;
    - i. Hit and Run;
    - ii. Drinking and Driving;
    - iii. Texting;
    - iv. Phone or any Distraction Driving;
    - v. Medication;
    - vi. Behavior at the scene;

2. Aggravating Factors;

- a. Behavior of the Defendant at the scene;
- b. Background of the Client- pregnant, priest, Sunday school teacher;
- c. Location of where the accident happened- school zone; mall; residential area;
- d. Time of the year- holiday;

- e. Look to the statements made by the police or by the Defendant in a written statement;
- f. Focus- on anything that will make a juror upset or angry at the Defendant;

3. Request Insurance Limits:

- a. Why;
  - i. Investigation;
  - ii. Decision on whether to make UIM claim;
  - iii. Determine whether filing suit is necessary;
- b. Insurance Response;
  - i. Not our policy to release;
  - ii. None of your business;
  - iii. Confidential Information;
- c. Tactics to Handle Any Answer;
  - i. Risk Issues:
    - 1. The Insurance Company owes a Fiduciary Duty to the Insured;
    - 2. The Insurance Company has a duty to be fair to the Plaintiff;
    - 3. The Insurance Company will have a duty to full disclosure;
    - 4. There is no law which prevents the disclosure;
  - ii. Insurance Company's Position:
    - 1. Unreasonable;

2. No Just Cause;
3. They are unreasonably exposing their insured;
4. Gambling the Insured's position;
5. Liability is Clear then only an issue of facts.

iii. Duty to Their Insured:

1. They must be completely candid with their insured;
2. If there is even the slightest possibility of excess, they must notify them;
3. Go over the Unfair Settlement and Practice Act;
4. Notify the Insured of the Time Limited Policy Demand;
5. Look to Consent to Settle;
6. They have to give the insured piece of mind;
7. They cannot breach the trust of the insured;
8. Cause or claim against the insurance
9. Company for Excess Verdict;

ii. Ask the Insurance carrier if a third party is responsible for the case;

1. Ask for the insurance carrier of these potential parties;

c. Third Letter to Insurance;

i. Request Black Box Information from the Defendant's car;

1. Request in First Letter if Liability is clearly going to be in play;

ii. Defendant's factual defenses;

1. Speed;
  2. Light Sequence;
  3. Defendant's statements;
  4. Witness Statements;
  5. Clients decisions;
- iii. Insurance will use Comparative Negligence to Leverage the Settlement
1. Seat Belt;
  2. Drinking;
  3. Any Factual argument;
- d. Damages:
- i. Cover all potential areas of damages;
    1. Head Trauma;
    2. Joint Trauma;
    3. Bones- Broken otherwise;
    4. Soft Tissue;
  - ii. Limitations;
    1. Work;
    2. Home;
    3. Family;
    4. Recreation;
  - iii. Aggravating Factors;
    1. What will make the jury upset;
    2. Behavior of the Defendant;
    3. Significant Story about how the Plaintiff's injuries affected them;

- e. Punitive Damage Issues to Discuss
- X. Your “Punch List” For Document And Information Collection.
- a. Police Report;
    - i. Written Witness Statements are in Report;
    - ii. Photographs (OSHP- Always);
    - iii. Accident Reconstruction Report- Death Claims;
    - iv. Diagrams;
    - v. BAC Tests;
    - vi. Dash Camera Video;
    - vii. 911 Calls;
    - viii. Dispatch Recordings;
  - b. Police Photos of the Accident Scene and Car;
    - i. Ohio State Highway Patrol;
  - c. Client Photographs;
  - d. Photographs Taken by Insurance;
  - e. Google Earth Photos of Intersection;
  - f. ODOT;
    - i. Blue Prints;
    - ii. Diagrams;
  - g. City and County Diagrams;
    - i. Blue Prints;
  - h. Initial records;
  - i. Place Health Insurance on Notice;
  - j. Send Client Affidavit of No Insurance to Client;

- i. Only send if the client does not have any health insurance;
- k. Send Client Copy of Contract and Documents Needed to Fill Out;
- l. Obtain all the Witness Names and Addresses;
  - i. Obtain a witness statement;
  - ii. Obtain First Responders Names and addresses (EMS Run Report);
- m. Begin the List of Medical Providers who have treated client;
- n. Obtain the List of the Prior Medical Providers or facilities the Plaintiff treated with 15 years prior;
- o. Begin a Ledger of Medical Expenses;
- p. Send for the Lost Wages Letters;
- q. Obtain all of the Client's W-2 Statements for last three years;
- r. Obtain the Property Damage Estimate;
- s. Any Recorded Statements given to Insurance;
- t. Obtain the Miscellaneous Documents;
  - i. Employment file;
  - ii. Military Records;
  - iii. Criminal Records;
  - iv. Termination Notices;
  - v. Light Sequence;
  - vi. Background on the Defendant;
  - vii. Television stories;
  - viii. Newspaper Articles
  - ix. Review Intake – determine if you can document any of the facts that are alleged either through witness accounts, video, photos;

- XI. How to Discuss the Value of the Case with Your Client.
  - a. Always Under Promise and Over Deliver;
  - b. Always demonstrate how you are fighting the other side and their position;
    - i. Start with what the Insurance Carrier believes is their strengths;
    - ii. This is how we are combating their position;
  - c. Damages are always on a sliding scale;
  - d. Basic Method for Presenting Your Value to the Client;
    - i. Can the injury be objectively proven in the records;
      - 1. Broken Bones, MRI- torn tendon, scar, etc.;
    - ii. Was the area of the body symptom free before the accident;
      - 1. Requirement: have all the prior records;
    - iii. How long did they treat;
      - 1. Look for areas of over treatment;
      - 2. Length of treatment impacts the pain and suffering;
    - iv. Type of Treatment;
      - 1. Chiropractic v. Orthopedic Surgeon;
      - 2. Type of Treatment;
    - v. Does Doctor Need To Draft a Report;
      - 1. Does the Doctor in his records infer it may be caused by something else- usually pre-existing;
    - vi. Determine the actual loss of income;
      - 1. Is it well documented and what is the success of the defense attacking it at trial;
      - 2. Did the doctor write the plaintiff off work;

3. Self Employed;
  4. Working under the table;
- vii. Permanency of the injury;
1. Is there a report of the doctor keeping them off work;
  2. Assessment of the Chiropractor has some value, but...;
    - a. Not as strong as a medical doctor;
    - b. Look at the facts- is there any credible evidence that she will be able to never work again. "Coming to Jesus Meeting.";
  3. What daily living activities is she not able to do;
    - a. Witnesses to back up her story;
    - b. Is it credible;
- e. Value Range to Settle the Case:
- i. Floor and Ceiling Approach: TO THE CLIENT -This is the amount I would recommend you accept today. DURING YOUR EVALUATION - This lower amount is the amount I would state is a definite "no". This bottom figure should be your assessment what the minimal amount of money the insurance carrier should offer you here. TO THE CLIENT- At this number, I would accept the money since if you do not, and then you are definitely at risk of not receiving the same amount at trial. DURING YOUR EVALUATION- the ceiling amount is the amount of money the insurance carrier would offer if the stars aligned. TO THE CLIENT - The amount in the middle is a decision you need to ask yourself am I willing to walk away from today;

- ii. The figure you come too you will need to have some reasonable explanation and justification as your settlement authority;
- iii. “The Demand Figure” This is the figure you get which allows you significant room to move if suit is commenced and proceeds toward trial;
- iv. Additional topics to discuss with your client to get them into agreement to set the range:
  1. Discuss the range in a broad sense: every case is different, every case insurance company is different and there are weaknesses in the case which require incorporating into your range;
  2. There is a difference between settlement range and a verdict range. In every case, the insurance carrier is offering money to minimize their risk. Meaning, this is a compromise on what the verdict would be;
  3. IF the insurance carrier does not get into your range, or refuses to get into your range, the case will require litigation. Explain litigation may not change their position;

XII. How to Deal With The Client When They Believe Their Case Is Worth More Than What You Believe.

- a. Find out where the client is coming from and how they came to their value.
  - i. Who are they talking to;
  - ii. What facts or experiences are they relying on to justify their decision;
  - iii. How did they come to that amount;
  - iv. Why is their amount the right number and not yours;
- b. Step 1. Start off with addressing the questions above. Get them to concede to your points;

- c. Step 2. They came to you because of your experience. Make it clear that you hope they take your recommendations and advise seriously;
  - i. Pursuant to the contract for representation, they have the final say in the settlement; however, you hope they trust your judgment and part of that trust means listening to what your experience says about the case. You need to build their trust so that later down the road the case can get either settled or tried. \*\*\*\* Most of the time, the trust part of the case is what is weak with the client;
- d. Step 3. Listen to the client. Look to see if they have left the “plantation”. You want to address their concerns. You want to tell them when they are wrong and why. You want to get their agreement when this happens. You may need to see them face to face;
- e. Step 4. Explain what money they may get at trial verdict and what money they will get here at mediation. For example. 10,000.00 is offered. Robinson Number is 3,000.00. The fee is 3333,33. The expenses are 1000.00. They pocket close to \$3500.00, if you reduce your fee to \$2500. If you are required to try this matter the verdict range may be 13000, \$2000 for doctor testimony. \$1000 for court reporter. They will only pocket \$2710.00. The trial will add additional costs, but does not allow you to reduce your fee. Discuss other issues;
- f. Step 5. Explain how the juries react to certain evidence, such as photographs, medical treatment, the discussion of payment of money for injuries. Discuss with them the topics they are unfamiliar with and how eight strangers will react to the evidence;

- g. Step 6. Go over all the weaknesses of the case. Ask them to place a value on them or ask the client to tell you whether they believe they will or will not impact the judgment of them and their case. Get concessions of the weaknesses of the case. You must lead them to the conclusion you have recommended;
- h. Step 7 Explain the time element of the case. The addition of another year could impact their decision process;
- i. Step 8. Explain to them the likelihood of a bad verdict and why;
- j. Step 9. Ask them to get a second opinion if they are so confident in their assessment. A second lawyer may confirm your opinions. A second lawyer may not and take the case. This is the risk;

### XIII. How To Win Over The Client- Send Them A Copy Of The Demand Letter.

- a. Drafting the Demand Letter - Ideas to think about;
  - i. The blue print of your case;
  - ii. Focus on Damages 7/8 of the time; Focus on Liability 1/8 of the time;
  - iii. Highlight strengths and confront weaknesses;
  - iv. Focus on the uncertainties of the case which benefit your client;
  - v. Many Insurance Carriers Follows the “Check the Box” method at a minimum;
- b. Basic Framework of the Demand Letter:
  - i. The Introduction: reasons for why you are sending the demand letter to settle the case;
  - ii. Liability Overview;
  - iii. Injuries and Recovery;

- iv. Calculation of Economic Damages;
- v. Projection of future damages and losses (Economic and Non-Economic);
- vi. Pain and Suffering;
- vii. Conclusion;

c. Introduction:

- i. Why sending over the demand:
  - 1. Avoid costs: expense of litigation;
  - 2. Avoid time: reasons not to prolong- issues are clear;
  - 3. Clients Injuries have plateaued;
  - 4. Permanent Injury – will continue to live for the rest of their life;
  - 5. Case is ready to be tried;

d. Liability:

- i. Move through Facts in Detail;
- ii. Tell the story one fact at a time;
- iii. Discuss the laws that the Defendant Broke;
  - 1. Discuss how the Defendant knew the law;
  - 2. Discuss how the Defendant broke the law;
  - 3. Discuss how the Defendant could of avoided the accident or breaking the law;
  - 4. Paint the picture that your client was the innocent victim.
- iv. Discuss the decision making process of the Defendant and how it is flawed;
- v. Talk about what the Defendant should of done;
- vi. Discuss the following:

1. Discuss the terror or mental anguish right before the accident occurred;
2. What did they see before the impact;
3. How did they feel moments before the collision- fear, anxiety, and anger.

vii. Impact itself

1. Describe all the pain which the Plaintiff suffered after impact;
2. Focus on the areas of the body injured in the accident;
3. Fear from injuring those body parts- being able to go to work, etc.

viii. Post Impact:

1. Jaws of Life;
2. Unable to get out of vehicle;
3. Smells- burning, etc. What these smells made the Defendant do.
4. Rescue- Pain when they first move the body.

e. Injuries

i. First Aid at the Scene:

1. No pain meds;
2. Rating Pain;
3. Most Suffering;

ii. EMS:

1. First Responders: Describe what happens immediately after.
2. Key People

iii. During Transportation in the Ambulance

1. Anything occur abnormal;

iv. Emergency Room Care:

1. They locate the area of injury and stabilize;
2. They do not cure the pain, begin the treatment.
3. Focus on the lack of information provided to the client- is they truly aware of what is going on.

v. Consults:

1. Ortho/Neuro/Psych/Pulmonary, etc. ;
2. Why are they called down- life threatening;
3. Permanent damage to the leg;
4. Focus on these injuries and why they came to see the Plaintiff;

vi. Length of Time in the Hospital;

1. Why in the Hospital for long period;
2. What the doctors are concerned about;
3. Who came during this time;
4. Treatment during this time;

vii. Discharge Summary:

1. Key: it gives you the most information about what happened in the hospital;
2. Tells the Plaintiff what treatment they must follow up with;

viii. Home:

1. Degree of difficulty;
2. What not able to do;
3. Costs to the Plaintiff out of pocket – would not have been required to pay this if the Defendant did not do what exactly;

4. Assistance;
  5. Restrictions- from Doctor;
- ix. Getting Better or Getting Worse – avoid restating what is in the medical records;
1. When does the recovery take a step back;
    - a. Infection;
    - b. Spike in Pain- why;
    - c. Intervening event that spikes the pain;
  2. When is the first time he feels relief;
    - a. How long did it take to get there;
    - b. How many doctors' visits;
    - c. How many pt visits;
    - d. How much medication had they taken;
  3. Focus on each injury;
    - a. Improvement in one area, one area gets worse;
    - b. Describe how treatment for one injury one hurt or aggravate another injury;
    - c. Multiple injuries- multiple treatment plans;
    - d. Look at the treatment plan for each injury- is there an increase in pain when they go through treatment for the injury;
  4. Pain;
    - a. Frequency;
    - b. Duration;

- c. Intensity;
- 5. Medication/Therapy/ Doctors' visits;
  - a. Describe those times where it was less than pleasurable;
  - b. Doctors fail to listen to you;
  - c. PT fails to appreciate how much pain you are in;
  - d. Medication causes problems with other parts of your system;
- 6. When do you go back to work;
  - a. Fight with the doctor over going back to work;
  - b. Light Duty/Full Duty;
  - c. Impact on your ability to do the job;
  - d. Fear in being fired or demoted;
  - e. Time- how you need more of it to do the job;
- 7. Able to do hobbies;
  - a. Unable to do what you worked hard all week to have time to do;
  - b. What able to do and what not able to do;
  - c. Need witnesses to corroborate this;
- x. Calculation of Damages:
  - 1. Robinson v. Bates:
    - a. What are write offs;
    - b. What is owed;
    - c. Who is owed and how much;
    - d. Documentation of who is owed;
    - e. Insurance information- who is owed what;

2. Lost Wage Claim;
  3. Impaired the Plaintiff's earning capacity;
  4. Future Lost Wages;
  5. Future Medical Costs;
- xi. Projection of Future Damages and Injuries;;
1. Expert Reports;
    - a. Reputable Physician attributes permanency;
    - b. Occupational;
    - c. Life Care Plan;
    - d. Economist;
  2. Future Problems – Non Economic;
    - a. Caring for ailing family members;
    - b. Having the client cared for;
    - c. Lost opportunities into the future;
  3. Look for what impact this will have on your client;

XIV. Convincing the Adjuster To Give You Their Top Dollar Of Their Evaluation;

- a. Be nice, be respectful, do not interrupt, and understand where the adjuster is coming from;
- b. How to handle the process;
  - i. The Insurance Carrier has your number;
  - ii. Step 1. Ask the adjuster to go first. Let them Explain their case;
  - iii. Step 2. Ask them questions about how and why they came to their conclusion;
    1. What treatment of my client do you believe is unrelated;

2. What injuries do you believe pre-exist;
  3. Do you believe they are aggravated or not;
  4. Do you believe she over treated and why;
  5. Do you believe my client's lost wages are not credible;
  6. Do you believe she should have gone back to work earlier;
  7. Do you question the client's credibility and why;
  8. Do you believe the client should not receive any money for the pain and suffering they went through;
  9. Do you dispute my doctor's report;
  10. What weaknesses in my case require me to reduce my demand to your number;
  11. Do you believe a jury would offer such a low number;
  12. What is the justification for your number;
- iv. If they ask you why you are asking these questions, tell them you need to inform your client of where the insurance carrier is coming from;
  - v. Follow up with a letter or document this discussion if you have to file suit at a later date;
- c. Discuss the matter with your client and go back to the adjuster to get them into the range;
  - d. When discussing the matter with the adjuster;
    - i. What is the Risk Elements to the Defendant;
    - ii. What is certain with your case and what is uncertain with their case;
      1. Examples: credibility of client, rear end collision;
    - iii. Jury Value Verdicts;

1. If the value of the verdict will exceed the policy;
  2. Will the Defendant be able to cover the jury verdict;
- e. If they do not get into the range, file suit;
- XV. Deciphering the Adjuster and Filtering the Bull#\$%@;
- a. Here is my final number, there will be no negotiation;
  - b. They make you a number and they have less than \$3000 to work with after that;
  - c. They make an offer on the records and bills they have and anything they are missing they are not relating;
  - d. They evaluate the case on not all the treatment or bills being reasonable and necessary;
  - e. They make a low ball offer and want all the prior records;
- XVI. How To Leverage The File: File Suit;
- a. Do I do anything different;
  - b. All the weaknesses of your case, you try to bolster with testimony;
  - c. Strengths- minimize the attacks;
  - d. All the questions the insurance carrier had, you figure out whether you can disprove them;
- XVII. Mediation – Just Another Opportunity To Show Off To Your Client and While Making Money;
- a. Mediation is simply a continuation of the case you developed pre-suit;
  - b. When approaching mediation, review discovery and highlight the evidence which will obtain a beneficial outcome has influence often by how you design your case agenda;
  - c. Go back to the questions of the carrier and include answers in your demand letters;

- d. Topics the mediator will rely on in evaluating your case. Look at these and be prepared to answer these at the mediation;
  - i. What counts is a similar case;
  - ii. How many such cases were filed;
  - iii. What have been the settlement outcomes;
  - iv. What percentages of the cases are tried;
  - v. What have been the trial outcomes;
  - vi. What kind of financial gap is between the negotiated settlements and in the case that have been actually tried to a jury;
  - vii. What are the critical characteristics of the case that have gone to trial, opposed to those settled;
  - viii. How many trials have resolved in favorable verdicts for the plaintiff and for the defendant;
  - ix. How many have produced only nominal damages the plaintiff won;
- e. The grounds where mediation discussions cover: Uncertainty Creation and Certainty Enhancement ;
  - i. Discussion will occur as to how the jury will handle your facts and arguments;
  - ii. Approach your opponents case where their evidence or arguments are substantially more uncertain than yours and the outcomes they rely upon is not as likely as they think;
  - iii. Demonstrate how your facts, arguments etc. will provide an outcome which is much more certain than they can argue about;

- iv. Before you get to mediation, you need to identify those obstacles that they either can't get around, or the facts which are detrimental to your case;
- v. Negotiation is about accurate diagnosis in providing your case to opponents with sufficient weight and clarity that will result in outcome for you more often than for them;

XVIII. Ending the Case On High Note;

- a. Trial is a decision made at the end. The process applies as it did pre-suit.