



# PROTECTING YOUR FAMILY *FROM ACCIDENTS*

Practical advice on insurance choices,  
the insurance claim process and Personal Injury  
and Wrongful Death lawsuits, including:

- **A Lawyer's Guide To Purchasing Car Insurance**
- **A Lawyer's Guide To Personal Injury Cases**
- **A Lawyer's Guide To Wrongful Death Claims**

**TIM RAYNE, ESQUIRE**

PROTECTING  
YOUR FAMILY  
***FROM ACCIDENTS***

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YOUR FAMILY  
**FROM ACCIDENTS**

**TIM RAYNE, ESQUIRE**

To my wife, Ameer,  
and two children, Sierra and Mac.

I thank you for your love  
and support.

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Printed in the United States of America.

ISBN: 978-1-59571-899-0

*Designed and published by*

Word Association Publishers  
205 Fifth Avenue  
Tarentum, Pennsylvania 15084

[www.wordassociation.com](http://www.wordassociation.com)  
1.800.827.7903

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# Introduction

In my years of practice as a Personal Injury attorney, I have seen clients and their families devastated by the aftermath of serious injuries and wrongful deaths. I’ve also been privileged to be able to help many of them start to rebuild their lives by winning fair compensation from insurance companies.

I’m proud of what Personal Injury trial lawyers do for their clients. We stand up for injured victims and battle large insurance companies to ensure that our clients get fair treatment.

In addition to representing injured accident victims, I’ve made it my mission to educate the public on how to protect themselves and their families from accidents. This education has taken the form of books, articles, videos and my website, [timraynelaw.com](http://timraynelaw.com). I offer advice on protecting yourself and your family from accidents through wise car insurance choices and through advice on your legal rights and the insurance claim and litigation process in Personal Injury and Wrongful Death claims.

This book is divided into three sections: Section I: A Lawyer’s Guide to Purchasing Car Insurance; Section II: A Lawyer’s Guide

to Personal Injury Cases; and Section III: A Lawyer's Guide to Wrongful Death Claims.

In Section I you will learn how to protect your family with proper car insurance choices with topics including: Liability Coverage; First Party Coverage (Medical, Lost Wage, Funeral and Accidental Death); Uninsured/Underinsured Coverage; Full Tort/Limited Tort and others.

In Section II you will learn about the Personal Injury insurance claim and litigation process. Specific topics include: Ten Steps to Follow if You've Been Injured in a Car Accident; How to Hire a Personal Injury Attorney; Anatomy of a Personal Injury Case; Ten Ways to Maximize Your Compensation and others.

In Section III I explain how Wrongful Death claims are pursued after the death of a loved one.

For more educational information, articles and videos on these and other topics, please visit my website at [timraynelaw.com](http://timraynelaw.com).

## **SECTION I:** *A Lawyer's Guide to Purchasing Car Insurance*

# 1

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## *Why is the Car Insurance Coverage I Buy So Important?*

If you are injured in a car accident, several questions usually come to mind. Who will pay to fix your car? Who will pay your medical bills and lost wages? Can you receive money compensation for your pain and suffering? What happens next?

In my experience as a Personal Injury trial lawyer, I have found that what happens next and how your life and the lives of your family members are ultimately impacted by the accident often depends on the choices you made when you bought your car insurance. Those choices impact how your car gets fixed, how your medical bills and lost wages get paid, whether you can recover compensation for your pain and suffering and, if so, whether you can receive adequate compensation.

Because your car insurance coverage choices are so important and, for the most part, consumers have only a basic understanding of car insurance coverage, I have made it my mission to educate the public about this important topic. This section will teach you how to review



your car insurance coverage and will offer advice about Collision, Comprehensive and Gap Coverage, Liability Coverage, First Party Benefits (coverage for medical bills, lost wages, accidental death and funeral bills), Limited Tort versus Full Tort and Uninsured and Underinsured Motorist Coverage.

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## *How Do I Check My Car Insurance Coverage?*

Because Pennsylvania law requires you to have car insurance, I assume that, if you own a car, you already have a car insurance policy. To check the coverage on your current policy, you need to look at your “Declarations Page” which usually looks similar to the following:

<b>POLICY DECLARATIONS</b>	
<b>COVERAGE</b>	<b>LIMITS OF LIABILITY</b>
Bodily Injury Liability	\$100,000 each person \$300,000 each accident
Property Damage Liability	\$50,000
Uninsured/Underinsured Motorist (stacked)	\$100,000 each person \$300,000 each accident
Medical Benefit	\$10,000
Income Loss Benefit	\$5,000 total \$1,000 monthly

### **POLICY DECLARATIONS**

<b>COVERAGE</b>	<b>LIMITS OF LIABILITY</b>
Accidental Death Benefit	\$10,000
Funeral Benefit	\$5,000
Comprehensive \$500	Actual Cash Value
Collision \$500	Actual Cash Value
Full Tort	

Your Declarations Page shows the types and amounts of coverage and your Tort Election—Full Tort or Limited Tort.

## **3**

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# *Collision, Comprehensive and Gap Coverage*

Car mishaps involving crashes, deer, snow and ice, floods, thefts, vandalism, and other unfortunate events are common. The car insurance coverage that you purchase often determines what money you will receive to repair or replace your car.

### **COLLISION AND COMPREHENSIVE COVERAGE**

On your own car insurance policy, you can purchase insurance to protect your car from peril. “Collision” Coverage protects you from accidents which are deemed your fault. If you crash into another car, building, tree, etc., Collision Coverage will pay for it.

“Comprehensive” Coverage protects you from damage caused by deer or other animal crashes, theft, flood, vandalism, or other events not involving collisions. If your car is damaged by one of these events, your Comprehensive Coverage will reimburse you.

If you finance or lease your car, you will likely be required to purchase Collision and Comprehensive Coverage. It is also a good

idea to purchase this coverage if you have a relatively new car which would be expensive to repair or replace. The cost of Collision or Comprehensive Coverage can be reduced by increasing your deductible, which is the amount you have to pay yourself before the insurance company must start paying for damage or loss.

### **GAP (GUARANTEED AUTO PROTECTION) INSURANCE**

If your car is wrecked and “totaled” (cannot be repaired for less than its value), then you might end up owing more to your bank or lease company than your insurance will pay you for your car. Insurance must pay the Actual Cash Value (ACV) of the car, which is often much less than you owe because vehicles depreciate in value quickly. GAP insurance will make up the difference so that you do not end up upside down on your loan or lease. If the ACV is \$10,000, but you owe \$15,000 on your loan or lease, GAP insurance makes up the \$5,000 shortfall.

## **4** .....

# *Liability Coverage— Protecting Your Assets When You Cause An Accident*

### **YOUR INSURANCE COMPANY HAS A DUTY TO DEFEND AND PAY**

Your Declarations Page lists your amount of Liability Insurance Coverage for “Bodily Injury” and “Property Damage.” Liability Insurance Coverage protects you in the event that you cause a car accident which results in property damage and/or personal injuries.

Your insurance policy is a contract between you and your insurance company which promises that in exchange for your payment of premiums, the insurance company agrees to defend you and pay for the damages which you cause up to the limits of your policy. So, if you cause an accident resulting in property damage and/or injuries, your insurance company must hire a lawyer to defend you and pay for any damages up to the amount of coverage which you purchased.

## **HOW MUCH LIABILITY COVERAGE IS REQUIRED BY LAW?**

Pennsylvania law requires a minimum of \$5,000 for Property Damage and \$15,000 of coverage for each person and a total of \$30,000 per accident for Bodily Injury.

Property Damage Coverage protects you for property damages resulting from accidents which you cause. For example, you might damage a car, fence, sign or even a building in a car accident. Property Damage Coverage would pay for such things to be repaired or replaced.

Bodily Injury Coverage protects you from claims brought by the people whom you injure in a car accident. Such coverage would pay for the injured person's unpaid medical bills, lost wages, pain and suffering and other damages.

The minimum Liability Coverage required by law would pay \$5,000 for Property Damage and \$15,000 per person up to \$30,000 total per accident for Bodily Injury.

## **WHAT IF THE LIABILITY COVERAGE YOU HAVE IS NOT ENOUGH TO COVER THE DAMAGES YOU CAUSE?**

It is not difficult to imagine a scenario under which the minimum Liability Coverage would not be enough coverage to pay for the damages caused by a car accident. Damaging or totaling a car can

result in property damages of more than \$5,000. Seriously injuring one person can cause more than \$15,000 of Bodily Injury damages, and an accident resulting in moderate injuries to multiple people can cause more than \$30,000 of Bodily Injury damages.

Your insurance policy is a contract with the insurance company which only obligates it to pay for damages up to the limits of the policy. If the damages exceed those limits, the injured party could pursue your personal assets to make up the difference. For example, if you cause \$500,000 worth of Bodily Injury damages and only have \$15,000 worth of coverage, the injured party would receive \$15,000 from your insurance company and then try to collect \$485,000 from your personal assets.

## **HOW MUCH IS ENOUGH LIABILITY COVERAGE?**

You should discuss the issue of how much Liability Coverage is appropriate with your insurance agent and financial advisor. From a legal perspective, I believe that you should have sufficient coverage to protect the value of your personal assets from potential legal claims. The more assets you have, the more insurance you should have.

For high net worth individuals who require high Liability Coverage, it is often advisable to consider substantial Liability Coverage on your car insurance as well as an Umbrella Policy. An Umbrella Policy provides additional coverage on top of your car insurance coverage and Umbrella Coverage protects you from other types of liability claims in addition to car accidents.

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## *First Party Coverage*

### ***PAYMENT OF MEDICAL EXPENSES, LOST WAGES, FUNERAL EXPENSES AND DEATH BENEFITS REGARDLESS OF WHO CAUSES AN ACCIDENT***

Under Pennsylvania law, the coverage on your own car insurance policy determines how much you will initially receive by way of payment of medical bills, reimbursement of lost wages, payment of funeral bills and payment of death benefits, regardless of who is at fault for a car accident. This coverage is called First Party Benefits.

### ***WHAT FIRST PARTY BENEFITS ARE REQUIRED BY LAW?***

Pennsylvania law requires you to have First Party Medical Coverage of at least \$5,000. That means that the first \$5,000 of medical bills for each person will be paid by your own insurance company. So, if you are driving your car and are injured in an accident caused by you or another driver, your own insurance company will pay your reasonable and necessary medical bills up to the limits of your coverage.

There are no deductibles or co-pays when car insurance pays medical bills. Once your medical coverage on your car policy has been exceeded, then your health insurance, if any, will pay your medical bills. Although \$5,000 is the Pennsylvania minimum Medical Benefits Coverage, you are permitted to purchase more than the minimum coverage.

You are not required to have any coverage for lost wages, funeral expenses or death benefits. However, depending on what other insurance you carry, it is often advisable to carry coverage for lost wages, funeral expenses and death benefits. If you do not have Disability Coverage, wage loss protection is advisable. Similarly, if you do not have substantial life insurance, you should carry Funeral Expense and Death Benefit Coverage on your car insurance policy.

### **WHAT AMOUNTS OF FIRST PARTY BENEFITS ARE AVAILABLE?**

Under Pennsylvania law, all car insurance carriers must offer the following First Party Benefits:

- Medical Benefits up to at least \$100,000.
- Income Loss Benefits up to at least \$2,500 per month to a maximum of \$50,000 total.
- Accidental Death Benefits of up to at least \$2,500.
- Funeral Benefits of \$2,500.

### **WHAT AMOUNT OF FIRST PARTY COVERAGE SHOULD I HAVE?**

Given the high cost of health care, as well as the popularity of deductibles and co-pays in health insurance plans, it is often advisable to have substantially more than the minimum \$5,000 of Medical Benefits Coverage.

Regarding Lost Wage Coverage, coverage is available which will typically pay 80% of your lost wages with a maximum monthly and total amount. It is wise to investigate what other sources of lost income you will have in the event of an accident (Sick Pay and/or Disability Policies) when deciding how much Lost Wage Coverage makes sense for you.

Funeral Expense and Death Benefit Coverage will be paid in the event of a death arising out of a car accident. As with Lost Wage Coverage, how much coverage for Funeral Expense and Death Benefit Coverage to buy depends on the cost of the coverage and whether the people insured under the car insurance policy have life insurance.

Please consult your insurance agent and/or financial advisor regarding these issues.

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# *Full Tort Versus Limited Tort—Preserving Your Legal Rights*

### **WHY WAS THE TORT THRESHOLD CREATED?**

In 1990, the Pennsylvania legislature created the Limited Tort versus Full Tort election for the purpose of decreasing car insurance costs. Before such an election was created, anyone injured in a car accident retained the right to seek full compensation for any injuries and damages. With the change in the law, the Pennsylvania legislature allowed the purchaser of car insurance to pay a lower premium by selecting Limited Tort. The tradeoff, however, was a limited legal right to be compensated in the event of a car accident. Specifically, the election of Limited Tort led to a waiver of the right to seek certain types of compensation, unless the injury was “serious.”

### **WHAT DOES IT MEAN TO BE FULL TORT?**

A person who elects “Full Tort” car insurance preserves full legal rights to seek compensation in the event of a car accident.

A person covered under a “Full Tort” policy can seek both “economic” and “non-economic” damages from another driver who causes a car accident.

“Economic” damages would include things like unpaid medical bills or lost wages. “Non-economic” damages would include damages such as compensation for pain and suffering and emotional distress.

If “Full Tort” is elected, none of your legal rights are sacrificed. Instead, you pay higher insurance premiums to preserve those rights.

### **WHAT DOES IT MEAN TO BE LIMITED TORT?**

A person who elects “Limited Tort” compromises legal rights in exchange for lower insurance premiums. A person covered under “Limited Tort” is able to recover economic damages from a driver responsible for a car accident. However, non-economic damages cannot be recovered unless there is a “serious injury.”

The law defines “serious injury” as “a personal injury resulting in death, serious impairment of a bodily function or permanent serious disfigurement.” The courts have been reluctant to find injuries “serious” unless the injured person has sustained a very long-lasting and seriously disabling injury.

### **HOW IS THE FULL TORT VERSUS LIMITED TORT ELECTION MADE?**

When you purchase car insurance in Pennsylvania, you are given a form which describes Limited Tort and Full Tort. The election form also provides the cost difference between the two tort elections. The policyholder must date and sign the form, electing either Limited or Full Tort. Once the tort election is signed, it applies until a new one is signed.

### **WHO IS AFFECTED BY THE TORT ELECTION?**

Although the policyholder makes the tort election, it applies to the spouse and relatives of the policyholder who live with the policyholder and do not have their own car insurance. If you have your own policy, your tort election applies no matter what car you are injured in. If more than one car insurance policy covers an injured person who does not have a car insurance policy, and each policy has a different tort election, the election covering the vehicle that the injured person was in at the time of the accident applies. For example, assume that a husband and wife have separate policies, husband with Limited Tort and wife with Full Tort. If their daughter is injured in wife’s car, she is Full Tort; if in husband’s car, she is Limited Tort.



### **WHEN DOES LIMITED TORT NOT APPLY?**

Under certain circumstances, a person who is bound by the Limited Tort election is not prevented from recovering non-economic damages even if a “serious injury” is not involved. Under the following circumstances, a Limited Tort person is converted to Full Tort:

1. If the person who caused the accident was a drunk driver who was convicted of drunk driving or accepted into the Accelerated Rehabilitative Disposition (ARD) Program.
2. If the person who caused the accident was driving a vehicle registered outside of Pennsylvania.
3. If the person who caused the accident intended to cause the injury, rather than was simply careless in causing the accident.
4. If the person who caused the accident had no car insurance.

### **SHOULD I ELECT LIMITED OR FULL TORT?**

Limited Tort is less expensive coverage, but significant legal rights are waived through the election. Full Tort is more expensive coverage, but no legal rights are compromised.

In my years of practice, I have seen many clients switch from Limited Tort to Full Tort after having been involved in an accident

and having their legal rights affected by that election. Of course, switching to Full Tort only protects your full legal rights for accidents which occur *after* the switch.

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## *Uninsured and Underinsured Motorist Coverage*

### **HOW TO PROTECT YOURSELF AND YOUR FAMILY FROM IRRESPONSIBLE DRIVERS**

There are tens of thousands of people driving in Pennsylvania with little or no car insurance. Statistically, these drivers are guaranteed to cause accidents and injuries but will have little or no ability to pay for the damages caused by their carelessness.

Luckily for you and your family, there is car insurance coverage which you can purchase to provide protection from these irresponsible drivers—Uninsured and Underinsured Coverage. If you have the foresight to purchase Uninsured and Underinsured Coverage in adequate amounts, you and your family will be protected in the event that you fall victim to an accident caused by an uninsured or underinsured driver.

## **WHAT IS UNINSURED MOTORIST COVERAGE?**

Uninsured Motorist Coverage (UM) provides protection for an accident caused by the driver of a vehicle who has no insurance or a hit-and-run driver who leaves the scene of an accident and cannot be located. If you were injured in an accident caused by an uninsured or hit-and-run driver and did not have UM Coverage, you would have no way of seeking compensation for your injuries.

UM Coverage is coverage which you purchase on your car insurance to protect you from uninsured and hit-and-run drivers.

If you have UM Coverage, your insurance company must compensate you for your damages up to the amount of your coverage. So, if you purchased \$100,000 of UM Coverage, you could collect up to \$100,000 from your own insurance company to compensate you for injuries and damages (lost wages, medical bills, pain and suffering, etc.) caused by an uninsured or hit-and-run driver.

## **WHAT IS UNDERINSURED MOTORIST COVERAGE?**

Underinsured Motorist Coverage (UIM) provides protection for an accident caused by a driver who has Liability Coverage, but not enough coverage to pay for all of the injuries and damages caused by an accident. For example, if a driver having only the state required minimum Liability Coverage of \$15,000 causes \$100,000 worth of injuries and damages to someone, that driver

is underinsured by \$85,000 (\$100,000 - \$15,000 = \$85,000). In such an accident, if the injured person was covered by a UIM policy, he or she would be compensated by the UIM Coverage to make up the \$85,000 difference.

## **HOW MUCH UM/UIM COVERAGE CAN BE PURCHASED?**

In Pennsylvania, all car insurance companies must offer UM and UIM Coverage and must obtain signed waivers if UM or UIM Coverage is rejected. The law requires the insurance companies to offer up to at least \$100,000 of UM/UIM Coverage for each person and \$300,000 per accident if more than one person is injured. Insurance companies can sell higher limits of UM/UIM Coverage, but the amount of coverage cannot exceed the amount of Liability Coverage purchased. So, if you want \$500,000 of UM/UIM Coverage, you are required to purchase at least \$500,000 of Liability Coverage.

## **WHAT IS UM /UIM “STACKING”?**

In addition to choosing the amount of UM/UIM Coverage, if you insure more than one vehicle on your policy, you are given the option of whether or not to “stack” your coverage. “Stacking” provides extra coverage by multiplying the amount of coverage by the number of vehicles insured under the policy. For example, if you stack coverage limits of \$100,000 per person/\$300,000 per accident on a three-vehicle policy, you are actually insured for three times

the face amount of the policy or \$300,000/\$900,000 (\$100,000 per person/\$300,000 per accident x 3 vehicles = \$300,000 per person/\$900,000 per accident).

Because “Stacking” Coverage is relatively inexpensive, it is a good idea to consider Stacking Coverage for multi-vehicle policies.

### **HOW DO I RECOVER UM/UIM BENEFITS?**

UM/UIM Benefits are recovered through filing a claim with your own insurance company. Because you are seeking to recover compensation for your injuries and damages, your interests are adverse to those of the insurance company. Insurance companies lose money when they pay such claims, so they have a financial interest in paying you as little as possible on your UM or UIM claim.

Given this adversarial relationship, it is wise for you to be represented by an attorney in UM/UIM claims in order to have your rights protected. If an agreement cannot be reached for a fair amount of UM/UIM compensation, the case must proceed to either an arbitration hearing or a trial, depending on what the insurance policy provides as the forum for such cases. Again, you should have an attorney to represent you in any UM/UIM hearing.

### **CAN MY INSURANCE RATES BE INCREASED IF I FILE A UM OR UIM CLAIM?**

Unless you are responsible for causing the accident, your insurance rates may not be increased as a result of you filing a UM or UIM claim.

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# *How Do I Change My Car Insurance Coverage?*

If, after reading this book and reviewing your car insurance Declarations Page, you want to change coverage, you should immediately contact your insurance agent. Coverage can be changed almost instantaneously without you having to wait until the end of the policy period. You should always make sure to get a new copy of your Declarations Page from your agent to confirm your updated coverage.

### **IMPORTANT CHOICES—FREE HELP**

Car insurance coverage choices are important and difficult. If you are involved in a car accident, the selections you made will substantially impact you and your family. If you need advice or want a review of your car insurance policy, please call or email me, and I will be happy to review your policy free of charge.

**SECTION II:**  
*A Lawyer's Guide to  
Personal Injury Cases*

# 1

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## *When Do Accidents Result in Legal Claims?*

Each year, thousands of people are injured in accidents - car, truck and motorcycle accidents; bicycle accidents; pedestrian injuries; slip and falls; accidents caused by defective and dangerous products; medical malpractice; dog bites; construction accidents and other accidents. Some accidents result in legal claims. Some do not. Some accident victims deserve reasonable compensation for their injuries because the accident was caused by another person's carelessness. Some accidents are unavoidable and not caused by carelessness, so there are no legal claims.

One of the most common questions I hear in my Personal Injury practice is: *I've been injured in an accident, do I have a legal claim?* The answer depends on how it happened. If we can prove that someone else was careless and caused the accident and your injuries, the answer is probably yes. If you do have a legal claim, the law provides that you are owed fair compensation to make up for your injuries and all of the harm you have suffered (medical bills, lost wages,

physical and emotional pain and suffering and the negative impact on your life and activities). A Personal Injury trial lawyer helps clients understand their legal rights and receive fair compensation from insurance companies.

## 2 .....

### *Ten Steps to Follow if You've Been Injured in an Automobile Accident*

Being involved in an automobile accident is frightening and legal issues are certainly not on the top of your mind during the first few minutes after the crash. Nevertheless, the actions you take, starting immediately after the accident, can have substantial impact on what will happen to you in the legal system. For this reason, please review these Ten Steps and, to be extra safe, call or email me to get a guide to put in your car's glove compartment along with your proof of car insurance and registration.

#### **1. CALL THE POLICE**

Having a Police Investigation and Police Report will help to establish who was at fault for the accident. Insurance companies rely heavily on the Police Report when reaching their conclusion on who was at fault for the accident. If the Police do not investigate, determining who was at fault can become a battle between the two drivers.



**2. PRESERVE EVIDENCE**

Do not move your car unless it is creating a dangerous situation or you are ordered to do so by the Police. If possible, take photographs of the scene of the accident and the vehicles. Later, have photographs taken of any visible signs of injuries such as cuts, bruises, casts, braces, etc.

**3. IDENTIFY WITNESSES**

Get names, addresses and telephone numbers of any witnesses to the accident. Often, witnesses will try to leave the scene before the Police arrive. Encourage them to stay to give a statement.

**4. GET THE OTHER DRIVER'S VITAL INFORMATION**

Be sure to get the other driver's name, address, phone number, license plate number, car registration number and automobile insurance company name and policy number.

**5. SEEK IMMEDIATE MEDICAL ATTENTION**

If you have any symptoms, it is advisable to get checked out at the Emergency Room or by your family doctor as soon as possible.

**6. REPORT THE ACCIDENT TO YOUR AUTOMOBILE INSURANCE COMPANY**

Your automobile insurance policy requires you to report accidents. Be sure to call immediately. You should be able to find a 24 hour 800 number on your car insurance company's website.

**7. BE CAREFUL TO WHOM YOU TALK**

You should not talk with anyone about how the accident occurred, other than the Police and your insurance company. Any statements you make can be used against you. Avoid talking about the accident while you are medicated or in great pain. Never talk to the other driver's insurance company or give a recorded statement without your Personal Injury attorney being present. Your words can be twisted or misinterpreted and used against you.

**8. LOCATE AN EXPERIENCED PERSONAL INJURY ATTORNEY**

The laws regarding Personal Injury cases and automobile insurance are constantly changing. You need an attorney who focuses on Personal Injury cases to get proper representation. You are best served by an attorney who regularly fights for clients against insurance companies and who is prepared to negotiate a resolution to your case or, if necessary, to take your case to trial.

**9. CONSULT WITH AN EXPERIENCED PERSONAL INJURY ATTORNEY AS SOON AS POSSIBLE**

Depending on the accident and your injuries, you may not need to hire an attorney to represent you. Nevertheless, you should consult with an experienced Personal Injury attorney as soon as possible. The accident may require investigation before the scene changes or skid marks fade. An expert reconstructionist may be needed. Witnesses may need to be located and interviewed. The vehicles may need to be preserved. You should have an experienced Personal Injury attorney advise you on how to deal with both your insurance company and the insurance company for the other driver.

I offer free consultations regarding Personal Injury cases and will meet with you at a MacElree Harvey office in Kennett Square or West Chester, Pennsylvania or in Centreville, Delaware, your home or at any other convenient location.

**10. DON'T SIGN ANYTHING**

Do not sign anything without first getting the advice of an experienced Personal Injury attorney. A private investigator or insurance adjuster may ask you to sign a statement. The insurance adjuster may offer you a money settlement and ask you to sign a release of your claims. You should not sign anything without reviewing it with your Personal Injury attorney.

**3**

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## *How to Hire a Personal Injury Attorney*

### **DO I EVEN NEED A PERSONAL INJURY ATTORNEY?**

Just because you have been involved in an accident, that doesn't automatically mean that you need to hire a Personal Injury attorney to represent you. The accident might not have been caused by anyone's negligence, so a legal claim may not exist. The injuries might be so insignificant that they do not justify the hiring of an attorney. In these cases, you may not have a valid claim or the claim may not justify retaining a Personal Injury attorney as opposed to dealing directly with the insurance company.

### **SHOULD I CONSULT WITH AN ATTORNEY?**

Regardless of whether you think you actually need a Personal Injury attorney, it is advisable to meet with one. Such initial consultations are free of charge and allow you to have an expert determine whether or not you have a case and need an attorney.

## **HOW DO I FIND A PERSONAL INJURY ATTORNEY?**

Any attorney with money can buy a television commercial, take out a full-page Yellow Page advertisement, put up a billboard or have a fancy website. In my opinion, the best way to find a Personal Injury attorney is to get a referral from a family member, friend or business contact or colleague. These people have likely had hands-on experience with the attorney and will be able to tell you whether or not the attorney does a good job. Once you get the name of an attorney, you can perform your own investigation into that attorney's experience and qualifications in handling Personal Injury cases.

## **WHAT QUESTIONS SHOULD I ASK PROSPECTIVE ATTORNEYS TO SEE IF THEY ARE QUALIFIED PERSONAL INJURY ATTORNEYS?**

In these days of "tort reform" and increasing jury hostility to Personal Injury claims, it is critical to find an experienced Personal Injury attorney to handle your case. In my opinion, you should have an attorney who focuses on Personal Injury cases and has the knowledge, training, experience and resources necessary to take your case all the way to trial, if necessary.

Here are some good questions to ask prospective attorneys:

- Where did you go to law school?
- Did you have any special training or receive any awards relating to trial practice during law school?

- Do you take continuing education courses related to Personal Injury cases?
- How long have you been practicing Personal Injury law?
- What percentage of your practice is devoted to Personal Injury cases?
- Have you handled both sides of Personal Injury cases; that is, the side of the victims (plaintiffs) and responsible parties (defense)?
- Have you actually taken Personal Injury cases to trial?
- Do you have sufficient backup and resources to try a Personal Injury case?
- What is your fee structure?
- Who pays the litigation expenses and what happens regarding those expenses if the case does not result in recovery?

I will answer some of those questions myself. I have been practicing law since 1995 when I graduated from Widener University School of Law in Wilmington, Delaware. In law school, I took an Intensive Trial Advocacy Program and an Advanced Trial Advocacy Program. At graduation, I received the Philadelphia Trial Lawyers Association James J. Manderino Award for Trial Advocacy.

In addition to having a law degree, I also have a Master's Degree in Trial Advocacy which I earned from the Temple University Beasley School of Law in 2008. The Master's Program is the only one of its kind in the country and is focused on enhancing the trial skills of practicing litigators.

My practice is entirely focused on Personal Injury law and I represent only victims of accidents, no defendants or insurance companies. Early in my career, I represented both injured victims and a trucking company. Handling the defense side of Personal Injury cases for that trucking company gave me insight into how insurance companies and defense lawyers think.

Since 2008, I have been recognized each year by *Main Line Today* magazine as a Top Personal Injury Attorney. Since 2009, I have been named as a Super Lawyer in Personal Injury in *Philadelphia Magazine* and, in 2012, was named as a Top 100 Lawyer in Philadelphia and Pennsylvania.

I have a different approach compared to other Personal Injury attorneys, which is centered on educating my clients on their legal rights, keeping them updated and involved in their cases and fighting to ensure that they receive fair compensation through either a settlement with the insurance company or a verdict at trial.

Although most Personal Injury cases settle before trial, I also resolve Personal Injury cases through Mediation, Arbitration, Bench Trials and Jury Trials. My firm has many attorneys, paralegals and office assistants who are prepared to assist me in the trial of complex Personal Injury cases.

In terms of our fee structure, we handle our Personal Injury cases on a Contingent Fee basis in which we charge no fees unless we achieve a recovery for our clients. We pay all out-of-pocket

expenses associated with your case and are reimbursed out of any recovery. If we do not win compensation for you, we do not ask you to pay any fees or expenses.

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## *Common Injury Cases*

Not all accidents result in legal claims. Some accidents do not result in injuries. Some accidents are unavoidable and not caused by the carelessness of another person. Some accidents are actually caused by the carelessness of the victim.

In order to have a valid Personal Injury case, you need to be able to prove that you suffered injuries because of someone else's carelessness. In Pennsylvania, you can recover if your carelessness contributed to causing the accident, but not if you were more than fifty percent responsible for the accident. In addition, in Pennsylvania, any monetary award that you receive for your injuries is reduced by the percentage of your responsibility for the accident. So, if you were twenty percent responsible for the accident, your recovery is reduced by twenty percent.

The compensation that you can recover in court includes your past and future lost wages, past and future medical bills and reasonable compensation for your pain and suffering and the negative impact of the accident upon your activities.

The following are common Personal Injury cases:

### **CAR ACCIDENT CASES**

Car accidents are the most common Personal Injury cases. If you are injured in a car accident caused by another driver's carelessness, you have the ability to seek compensation for those injuries.

### **MOTORCYCLE AND BICYCLE ACCIDENT CASES**

Motorcyclists and bicyclists face grave dangers when riding on the roads and highways. Careless car and truck drivers cause countless accidents each year resulting in serious injuries and deaths. If you've been injured in a motorcycle or bicycle accident, you may be entitled to money compensation for your injuries and losses.

### **PEDESTRIAN INJURY CASES**

Car and truck drivers have an obligation to look out for pedestrians, but each year thousands of pedestrians are seriously injured or killed by careless drivers.

### **SLIP AND FALL CASES**

It is common for injuries to occur from a slip or trip and fall. Such accidents include things like slipping on spilled liquids in stores, slips on ice or snow, trips on defective sidewalks, falls down defective stairs and other defective conditions on properties that cause

accidents. If you fall and are injured on another person's property, you may have a Personal Injury case.

### **DEFECTIVE PRODUCT CASES**

Another common cause of injury is from defective and dangerous products. If you have been injured while using a product, you may have a Personal Injury claim if the product was defectively designed or manufactured or if it did not have proper instructions or warnings.

### **MEDICAL MALPRACTICE CASES**

If you have been injured as a result of improper medical care, you may have a valid medical malpractice Personal Injury claim. If it can be proven that your medical provider failed to treat you with reasonably competent medical care, you might have a Personal Injury case and be able to recover compensation for your injuries.

### **CONSTRUCTION ACCIDENTS**

There are federal regulations and other safety standards mandating safe construction procedures on worksites. Even so, many contractors and subcontractors are either unaware of or ignore these safety rules and regulations leading to serious injuries or deaths caused by accidents. If someone is injured or killed in a construction accident, there are potential legal claims to be pursued.

## **DOG BITES**

Dog owners have a legal obligation to restrain and control their dogs to prevent attacks and dog bites. In the event of injuries arising out of a dog bite or attack, legal claims for compensation can be pursued.

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## *Anatomy of a Personal Injury Case*

Hopefully, you have been fortunate enough to avoid being injured in an accident and will continue to have good luck in the future. However, in the event that you do find yourself injured and involved in a legal claim, the following is a brief description of the process – the *Anatomy of a Personal Injury Case* – which consists of Pre-Lawsuit Activities and Lawsuit Activities.

### **PRE-LAWSUIT ACTIVITIES**

Not all injury cases have to result in a formal lawsuit which is filed with the court. Not all cases have to go to trial. The majority of all injury cases are settled with the defendant's insurance company. In a settlement, the insurance company agrees to pay compensation to the injured party in exchange for the injured party releasing all claims against the defendant.

My goal as a Personal Injury attorney is to obtain full and fair compensation for my client's injuries and damages. In my practice,

I try to settle my clients' cases without actually filing a lawsuit, because litigation is time-consuming and stressful for my clients. In addition, lawsuits result in out-of-pocket expenses which, although paid in advance by my law firm, ultimately reduce the amount of your recovery. However, I recommend Pre-Lawsuit settlement only when the insurance company offers fair compensation.

## **INVESTIGATION**

In terms of Pre-Lawsuit activities, I perform all work needed to prove the defendant's responsibility for the accident. This involves investigation of the accident; interviewing the client and witnesses; obtaining Police Reports and/or Incident Reports; photographing the accident scene, vehicles and injuries; and researching legal theories.

Pre-Lawsuit activities also include evaluating injuries and damages. This involves client and damage witness interviews; obtaining medical records and bills; and quantifying lost wages and other economic damages. Often, our Pre-Lawsuit activities involve hiring experts to prove that the defendant was responsible for the accident and/or to determine the amount of damages.

## **SETTLEMENT NEGOTIATION**

In the final phase of Pre-Lawsuit activities, I offer my clients my expert opinion of the settlement value of the case and then prepare a comprehensive settlement package to send to the

insurance company to convince it to settle the case for full value before litigation.

The last phase of the Pre-Lawsuit activities is to attempt to negotiate a settlement with the insurance company. This usually involves a back-and-forth process between me and the insurance adjuster. During these negotiations I communicate all settlement offers to the client, and it is always my client's decision whether or not to settle the case.

If the case is settled, the client must sign a Release provided by the insurance company giving up all claims arising out of the accident. After the Release is signed, the insurance company pays the settlement funds.

## **LAWSUIT ACTIVITIES**

If a case cannot be settled with the insurance company, a lawsuit needs to be filed. In most Pennsylvania Personal Injury cases, the Statute of Limitations time limit for filing a lawsuit is two years. If a lawsuit is not filed in court within two years of the date of the accident, the injured party loses all rights to seek compensation.

## **PLEADINGS**

The Pleadings stage is the beginning of a Lawsuit. Once it is decided that a case cannot be settled and court intervention is required, the injured party, or Plaintiff, files a Complaint with the court. A



Complaint is the written document starting the Lawsuit and it sets forth the Plaintiff's dispute with the other party, the Defendant. The Complaint also describes what the Plaintiff seeks to recover in the Lawsuit.

Once the Complaint is filed and served upon the Defendant, the Defendant is required to respond to the allegations and set forth any defenses in an Answer. Thereafter, the Plaintiff files a Reply to the defenses contained in the Answer. Then, the Pleadings stage is over.

## **DISCOVERY**

After the Pleadings stage, the parties engage in Discovery in order to prepare for Arbitration or Trial.

The purpose of Discovery is to allow each party to learn about the other party's case, such as what witnesses will be called to testify and what each will say. In addition, each party can ask the other what documents or other evidence will be used in the Lawsuit. In Discovery, each party can send written questions to the other side (Interrogatories) and ask that the other party provide copies of relevant documents (Requests for Production). Each party can also take the Deposition of the other party, which is an interview under oath regarding the subject matter of the case. Other witnesses can be subpoenaed for Depositions and either party can issue Subpoenas for relevant documents from people other than the other party. In a Personal Injury case, it is common for the Defendant to subpoena all of Plaintiff's medical records to learn about his or her medical history. In addition, the Defense has the right to request that the

Plaintiff be examined by a doctor of their choice (Defense Medical Exam) so that doctor can testify for the Defense at trial. If properly done, the Discovery process ensures that there will be no surprises at the Arbitration or Trial.

## **SUMMARY JUDGMENT MOTIONS**

After completion of the Pleadings and Discovery phases, one party may feel so confident in the strength of his or her case that he or she will feel that a Trial is not necessary. In such a case, that party will ask the judge to decide in his or her favor before Trial by granting Summary Judgment. The procedure involves the party filing a Summary Judgment Motion explaining why he or she feels so strongly about the evidence and asking for a judgment without a Trial. Then, the other party must file a response explaining that there is evidence supporting his or her case and a Trial is necessary. If the Summary Judgment Motion is granted, judgment is entered and the case is over. If the Motion is denied, the case proceeds to Arbitration or Trial.

Once the Pleadings, Discovery and Summary Judgment Motion phases are complete, the Lawsuit is ready to go to Arbitration or Trial.

## ARBITRATION

In Pennsylvania, if the Plaintiff is seeking money damages of less than \$50,000, the Lawsuit proceeds to mandatory Arbitration, rather than directly to a Trial in front of a judge or a jury. The procedure followed in an Arbitration is similar to that of a Trial. However, instead of a judge or jury deciding the case, the ruling is made by a panel of three local attorneys. If either party is dissatisfied with the arbitrators' ruling, an appeal can be filed which results in a brand new Trial in front of a judge or jury.

## TRIAL

Both appeals from Arbitrations and cases seeking more than \$50,000 result in Trials. Depending on the preference of the parties, the Trial can take place in front of a judge or jury. There are generally six phases of a Jury Trial: (1) Jury Selection; (2) Opening Statements; (3) Testimony and Evidence; (4) Closing Arguments; (5) Jury Charge; and (6) Verdict.

In a Jury Trial, the first phase of the Trial begins with *Jury Selection*. A pool of jurors (usually about 50) is brought into the courtroom and each juror has a number from 1 to 50. Then, the judge and/or attorneys for both parties ask the jurors questions to determine whether they know any of the parties, attorneys, and witnesses or whether they have had any experiences or have strong feelings on certain issues which would not allow them to be fair and impartial. Once the questioning is complete, each attorney can ask that certain

jurors be stricken from the jury pool due to some disclosed bias prejudice or another reason making them unable to serve such as school, job or family obligations. After the judge rules on the "for cause" challenges, each party can also strike a set number of other jurors (usually around 4) who they think would likely favor the other side. These are called "peremptory strikes." Once the strikes are complete, the first 12 remaining jurors constitute the jury panel for the Trial.

After Jury Selection, *Opening Statements* are presented to the jury. The Plaintiff's Opening Statement is intended to give the jurors a "roadmap" of the Trial – to describe to the jury what the Plaintiff intends to prove. Normally, the facts of the case are outlined and the witnesses and important evidence are discussed. Argument is not permitted in the Opening Statement. The Defendant can decide to give an Opening Statement or defer the statement until after Plaintiff presents its testimony and evidence.

After Opening Statements, the parties present their *Testimony and Evidence*. The Plaintiff goes first by calling witnesses and offering exhibits into evidence. Each witness may be cross-examined by the Defense. Next, the Defendant may call witnesses and introduce evidence to support its defenses. The Defense witnesses can be cross-examined by the Plaintiff's attorney. Thereafter, the Plaintiff may present witnesses or evidence in rebuttal to the Defendant's case.

Once all testimony is complete, the attorneys deliver *Closing Arguments*. During the Closing Arguments, the attorneys are able to

argue why the facts and applicable law should lead to a verdict in their favor. The Plaintiff goes first. After Plaintiff's Closing Argument, the Defendant presents its closing. Finally, after the Defendant's closing, the Plaintiff's attorney usually presents a brief rebuttal argument.

After Closing Arguments, the judge must give the *Jury Charge*. In the charge, the judge explains to the jury all of the law applicable to the case so that the jury can reach a proper verdict. The *Jury Verdict* itself marks the conclusion of the Trial.

In the case of a Trial in front of a judge only (a Bench Trial), the procedure is the same except that there is no Jury Selection, Jury Charge or Jury Verdict. Usually, the judge will take additional time to consider the evidence and prepare a written decision, rather than announce the decision immediately after Trial.

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# *What We Do For You in a Personal Injury Case*

When you hire me to represent you, I personally manage your case from beginning to end. Unlike other Personal Injury attorneys, I do not handle hundreds of cases and rely on paralegals and secretaries to do most of the work. Instead, I carefully select my cases and manage all of them myself.

The following are the things I normally do in a Personal Injury case:

### **BEFORE DECIDING TO FILE A LAWSUIT**

- Initial client call
- Initial client meeting (interview client, photograph injuries and obtain documents from client)
- Visit and photograph accident scene
- Locate and interview witnesses
- Review insurance policies
- Research legal issues
- Identify target defendants and define legal theories
- Communicate with defendant's insurance company

- Gather medical records and bills as well as lost wage information
- Obtain doctor reports and reports from other experts
- Prepare comprehensive settlement demand package to send to defendant's insurance company
- Negotiate settlement or advise client to file a Lawsuit
- If case is settled, negotiate reduction of medical bills and other liens on settlement proceeds

### **AFTER DECIDING TO FILE A LAWSUIT**

- Draft and file the Lawsuit
- Draft written discovery requests to defendant
- Answer defendant's written discovery requests
- Prepare client for deposition
- Attend client's deposition
- Prepare for and take depositions of defendant and other witnesses
- Prepare client for and attend Defense Medical Exam
- Work with experts to prepare expert reports
- Attempt to settle case with defense attorney
- Attend mediation
- Attend settlement conference with judge
- Prepare for trial - prepare exhibits, prepare witnesses, write opening statement and closing argument, work on pretrial motions, prepare jury instructions and verdict slip
- Try the case before a judge or jury
- Analyze verdict
- Advise client on appeal issues and handle appeal

## **7** ..... *Ten Ways to Hurt or Kill Your Personal Injury Case*

If you have a Personal Injury case, it is critical to get advice from an experienced Personal Injury attorney. If you do not get and follow proper advice, you can hurt or kill your case. Based upon my experience, the following are Ten Ways to Hurt or Kill Your Personal Injury Case:

### **1. FAILING TO DOCUMENT THE ACCIDENT**

It is important to document the accident as best you can. If it is an automobile accident, call the police to the scene, get the other driver's personal information, get contact information from witnesses and, if possible, photograph the vehicles and the accident scene. If it is a slip and fall case, notify the store or property owner immediately, get contact information from witnesses and photograph the scene. Failing to document the accident can hurt or kill your Personal Injury case.

## 2. **FAILING TO GET IMMEDIATE MEDICAL TREATMENT**

If you have an accident, you should get medical treatment as soon as you feel any pain. You should either go to the hospital emergency room or your family doctor. Insurance companies evaluate the value of Personal Injury cases based, in large part, on medical treatment. If there is a delay in seeking treatment, the insurance company will argue that you must not have been injured seriously or that something else, not the accident, caused your injuries. A delay in medical treatment hurts your Personal Injury case.

## 3. **DELAYING CONTACTING AN EXPERIENCED PERSONAL INJURY ATTORNEY**

Personal Injury attorneys are experts at properly documenting and then presenting cases to insurance companies and juries. This job can be best performed if the attorney is involved immediately after the accident.

You may not have a case or need an attorney to help you. If you consult with an experienced Personal Injury attorney, he or she will tell you if you truly need an attorney. This advice is usually free of charge.

If you have a case and need an attorney, the attorney can: investigate the accident, locate witnesses, photograph the scene, photograph your visible injuries, identify the parties who are responsible for the accident, and advise you on how to protect yourself.

Delaying contacting an experienced Personal Injury attorney can hurt or kill your case.

## 4. **DEALING DIRECTLY WITH THE OTHER INSURANCE COMPANY**

You have a duty to report an automobile accident to *your* insurance company and should cooperate in their investigation. However, before you give any statement, especially statements to the insurance company for the other party to an accident, you should seek advice from an experienced Personal Injury attorney. You should also get advice *before* signing any authorizations for release of records to the insurance company. You have a right to privacy and do not need to sign very broad releases. Never agree to accept money and sign a release of your claims before getting advice from an experienced Personal Injury attorney. If you sign a release, your legal claims will be gone forever, regardless of how your injuries may affect the rest of your life.

## 5. **NOT FOLLOWING MEDICAL ADVICE**

It is important to listen to your doctor – for medical and legal reasons. Your doctor knows what is best for you. If you don't trust your doctor, get a new one. If you do trust your doctor, listen to his or her advice regarding recommended treatments, diagnostic tests, therapy and surgery. If you miss appointments or ignore medical advice from your own doctor, it gives the insurance company powerful

ammunition to use against you in your case that you did not cooperate and try to get better.

## **6. HIDING PAST ACCIDENTS**

Always tell your attorney about prior accidents, legal claims and work injuries. Insurance companies know how to find out about them – and will. If you are not truthful about prior injuries, it will hurt and can kill your case.

## **7. HIDING PAST INJURIES**

Do not hide past injuries either. The insurance company's attorney will subpoena your medical records and find out about past injuries. If you try to hide them, it can destroy your credibility and hurt or kill your case.

Although your case is better if the accident actually was the sole cause of your injuries, the person responsible for an accident will be held liable for any aggravation or worsening of a preexisting medical condition. For example, if you had preexisting neck injuries which were made worse by the accident, you can recover for the worsening of your neck problems. Juries lose trust for clients who try to hide past injuries.

## **8. EXAGGERATING OR MISREPRESENTING YOUR INJURIES OR ACTIVITY LEVEL**

Another way to hurt or kill your Personal Injury case is to exaggerate or misrepresent your injuries. During your case you will be asked many questions under oath about your condition and the affect on your life. These things can be verified by the insurance company. Its attorneys can subpoena medical records and have private investigators interview people who know you, or even perform video surveillance on you. Being caught in a lie or a clear exaggeration can hurt or kill your case.

## **9. HIDING SUBSEQUENT ACCIDENTS OR INJURIES**

Sometimes accidents happen twice or maybe three times. If you have another accident, it is important to tell your attorney. It is likely that the insurance company's attorney will find out about it. Let your attorney know about it immediately.

## **10. FAILING TO LISTEN TO YOUR ATTORNEY**

The last way to hurt or kill your Personal Injury case is to ignore your attorney's advice. If you have chosen your attorney wisely, you will be given sound advice on all issues that arise during your case, both before the lawsuit is filed and throughout the litigation process. Your attorney is the expert on how to prepare your case and obtain fair compensation for you. Your attorney also knows best about

the value of your case and whether it should be settled or taken to trial. Trust and follow your attorney's advice, because if you don't, you may hurt or kill your case.

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# *Ten Ways to Maximize your Chance of Recovering Fair Compensation*

In helping my Personal Injury clients since 1995, I have learned that there are many ways that the clients can assist me in ensuring that they receive full and fair compensation after an accident. The following are ten ways to maximize your chance of recovering fair compensation:

### **1. MAKING THE RIGHT CAR INSURANCE CHOICES**

How much I can help someone after a car accident often depends on the choices they made when they selected their car insurance. Important choices include having appropriate Medical and Lost Wage Coverage, selecting Full Tort not Limited Tort, and buying substantial Uninsured and Underinsured Coverage. Please see Section I of this book, *A Lawyer's Guide to Purchasing Car Insurance*, for extensive advice on appropriate car insurance choices.

## **2. DOCUMENTING THE ACCIDENT AND YOUR INJURIES**

If you are involved in an accident, it is important to document the accident with photographs and to keep a record of all of the names of the witnesses to the accident. It is also important to document your injuries by taking photographs of any visible sign of injury. Following these directions can help maximize the value of your case.

## **3. TRACKING EXPENSES AND LOST WAGES**

Accident victims are entitled to fair compensation to make up for their injuries and losses. Two of the items of compensation include out-of-pocket expenses and lost wages. In order to maximize your chance of recovering fair compensation, it is important for you to track your out-of-pocket expenses and lost wages. Please keep copies of receipts and prepare a log of all of your out-of-pocket expenses. Also keep track of all of your time lost from work. Proving lost wages often requires production of pay stubs and tax returns. Please keep all of the relevant lost wage information so it is available for use in your Personal Injury case.

## **4. JOURNALING PAIN AND LIMITATIONS**

Another main source of compensation in a Personal Injury case is for non-economic damages, which includes your physical and emotional pain and suffering and the negative impact that the accident has on your life and activities. It

is important to keep track of these items so that, at the appropriate time, proof can be presented to the insurance company and Defendant. I request that all of my clients keep a daily journal of their physical and emotional pain and suffering and the negative impact that the accident and injuries have on their activities. This information is critical for me to have when attempting to value your case and communicating the extent of your losses to the insurance company and Defendant.

## **5. HELPING YOUR ATTORNEY WITH DISCOVERY RESPONSES**

If your case cannot be settled without litigation, after the lawsuit is filed you will need to assist me in preparing responses to Discovery Requests served by the Defendant. Your help in providing complete and accurate responses to Discovery helps me to maximize the ultimate value of your case.

## **6. PREPARING FOR AND PERFORMING WELL AT YOUR DEPOSITION**

Part of the Discovery process involves you giving a deposition in which the defense attorney asks you questions concerning the accident, your injuries and the impact on your life. Performing well at your deposition is critical to the success of your case. Because of this, it is important to use maximum effort when preparing for and testifying at your deposition. Doing well increases the value of your case, while doing poorly will decrease the value.



## 7. **FINDING THE RIGHT WITNESSES FOR YOUR CASE**

Personal Injury cases are stories. Because of this, presenting your Personal Injury case at trial involves having the right characters to tell the story about how the accident happened and how it has impacted your life. When preparing the case for trial, I will ask you to identify witnesses who can help tell the story of your case. In particular, I always ask for good witnesses who can tell the story about the difference in your life before versus after the accident. Choosing the right witnesses who can tell that story and relate well to the jury can maximize your chance of recovering fair compensation at trial.

## 8. **AVOIDING CONTRADICTIONS**

Personal Injury cases and trials are all about credibility. It is critical for the insurance company, defense attorney and, ultimately, the jury to believe the story of your case because it maximizes value. If you are ever caught in any lies or contradictions relating to the accident, your injuries or any prior or subsequent injuries or medical problems, it can harm your case. It is critical to avoid these potential contradictions in order to maximize the value of your case.

## 9. **CONSIDERING MEDIATION OR ARBITRATION**

Alternative Dispute Resolution, including Mediation and Arbitration, have become very popular venues for settling

cases because they reduce the expense, risk and stress of a jury trial.

Mediation is a voluntary process which involves both sides of the case meeting with a neutral third party who attempts to help the parties negotiate a resolution. Neither party is forced to settle the case, but mediators are often effective in arriving at an agreement which allows both parties to avoid the expense, risk and stress of trial.

Arbitration is an alternative to a jury trial which involves having one or more arbitrators hear and decide the case. Usually, Arbitrations are binding and result in final decisions that cannot be appealed. Benefits of Arbitration include the ability to schedule the hearing based on your schedule, not the court's, a quicker hearing, and a more predictable result compared to a jury trial.

## 10. **LISTENING TO YOUR ATTORNEY**

Over the years I've seen many clients fail to follow my advice during their case and pay the price in terms of decreasing their ultimate recovery. My job as your attorney is to attempt to maximize your recovery and minimize your risk. Following my advice can help you increase the likelihood of recovering fair compensation.

**SECTION III:**  
*A Lawyer's Guide to  
Wrongful Death Claims*

# 1

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## *When Can a Family Pursue a Wrongful Death Claim?*

Under Pennsylvania law, if someone is killed due to violence or negligence, his or her surviving family members have legal claims for fair compensation against the person who caused the death. Since we cannot turn back the clock and prevent the violence or accident from occurring, the law provides legal claims to the survivors to try to account for their losses and bring justice against the wrongdoer.

Although it may seem morbid to think about legal claims after the death of a family member, the claims can help ease the financial burden caused by the sudden loss: medical bills, funeral and burial expenses, estate administration costs, and lost income to the family. Having the responsible person held accountable can also bring justice and help the family get closure after a wrongful death.

Like in any other Personal Injury case, the family has the burden to prove that the death was wrongful (caused by violence or negligence), and there are time deadlines for pursuing claims that

must be strictly followed. In addition, unlike other Personal Injury cases, court approval is required to settle Wrongful Death cases, and there are tax implications that must be considered.

For all of these reasons, it is advisable to seek advice from an experienced Personal Injury attorney soon after the death so that the family's legal rights can be protected.

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# Common Wrongful Death Claims

Although any death caused by violence or negligence can lead to a Wrongful Death claim, the following are several common claims:

### **MURDER**

A criminal murder can give rise to a Wrongful Death claim for compensation. Probably the most famous Wrongful Death claim arising out of an alleged murder was the claim brought by the family of Ronald Goldman against O.J. Simpson. Although O.J. was acquitted of murder in the criminal courts, he was found liable for Wrongful Death, and a judgment for \$33.5 million was won by the Goldman family. Even so, the Goldman case illustrates a common challenge with a Wrongful Death case arising from criminal violence; namely, the problem of collecting the compensation. Insurance policies do not cover acts of intentional violence. So, collecting compensation requires pursuing the personal assets of the defendant. This can be difficult to accomplish, unless the defendant is wealthy. Fortunately, an experienced Personal Injury attorney will know how to find assets if they exist.

## **VEHICLE ACCIDENT CASES**

Car, truck, motorcycle, bicycle and pedestrian accidents are the most common Wrongful Death cases because each year thousands of people are killed by careless drivers. Fortunately for the survivors, most of the time the defendant will have insurance to cover the accident. Legal assistance will involve proving the negligence case, recovering the compensation and navigating court approval and tax issues.

## **MEDICAL MALPRACTICE**

Medical errors kill thousands of people each year. If a family member dies due to the negligence of a doctor, hospital, nursing home or other medical professional, a Wrongful Death claim can provide compensation to ease the financial burdens.

## **DANGEROUS PRODUCTS**

Defectively designed and manufactured products can cause Wrongful Deaths. When they do, the survivors can present legal claims against the manufacturers and sellers.

## **CONSTRUCTION OR OTHER WORKPLACE ACCIDENTS**

If a loved one is killed in a construction or other workplace accident, legal advice should be sought concerning potential Workers' Compensation and/or Wrongful Death claims. An experienced Personal Injury attorney can provide the advice that is needed to handle such claims.

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## *What Compensation is Available in Death Claims?*

If a death is caused by violence or negligence, two claims arise: a Wrongful Death Act claim and a Survival Act claim.

### **WRONGFUL DEATH CLAIMS**

The Wrongful Death claim is a claim available to immediate family members of the victim, such as the spouse, children or parents. The following are the types of compensation that are available:

1. Hospital, Funeral, Burial and Estate Administration expenses.
2. Compensation for the immediate family's (wife, children, parents) loss of money contributions to their support for things like shelter, food, clothing, medical care, education, entertainment, gifts and recreation.

3. Compensation for the value of the services, society and comfort the victim would have provided to his family, such as work around the house and the provision of society and comfort.
4. If the victim was a parent, the value of the guidance, tutelage and moral upbringing the victim would have provided to his children.

### ***SURVIVAL ACT CLAIMS***

The Survival Act provides that any legal claims the victim would have had personally against the defendant survive his death and can be pursued by his Estate. The specific claims for compensation under the Survival Act are:

1. The net amount the victim would have earned between the date of his death and the end of his life expectancy, which is when he would have statistically been expected to die but for the defendant's violence or negligence. Net earnings are calculated by taking gross earnings minus probable living expenses and minus the monetary contributions the victim would have given to family members (which is awarded under the Wrongful Death claim).
2. An amount to fairly and adequately compensate for any mental and physical pain, suffering, inconvenience and loss of life's pleasures that the victim experienced from the moment of the injury until the moment of death.

The main factor that makes up the value of the Wrongful Death and Survival Act claims is the economic claim of lost future earnings. So, the younger a person is and the more he or she was expected to earn based on education, experience, earning history, etc., the greater the value of the claim. Another major factor driving the monetary value of a death case is whether or not the victim lived for any period of time so as to experience conscious pain and suffering. If so, the value of the case increases, and justice requires more compensation to make up for this sad fact.

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### *Who Can Make the Claims?*

Under the court rules, an action for Wrongful Death may be brought only by the personal representative of the victim during the first six months after the death. The personal representative is the person named by the victim in his Will as Executor or Executrix. If the victim had no Will, then the court will appoint someone as Administrator of the Estate and that person becomes the personal representative. Usually, a family member (spouse, child or parent) will be appointed Administrator by the court after filing a Petition with the court and giving notice to other interested parties.

After six months after death, if no Wrongful Death claim has been filed, anyone entitled to recover monies under the death action can file a claim. If no one files any death claims within two years of the death of the victim, all claims are forever barred by the Statute of Limitations.



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# *Who Receives the Compensation From Death Claims?*

There are different people who are entitled to compensation from the Wrongful Death and Survival claims.

The proceeds from the Wrongful Death claim go to the family of the victim according to Pennsylvania's Intestacy Law (the law that says who gets your Estate if you die without having left a Will). Intestacy Law describes all of the rules, but these are the most common: If the victim had no spouse or children, the Wrongful Death proceeds go to his parents. If he had a spouse but no children, the first \$30,000 goes to the spouse and then half and half between spouse and parents. If he had a spouse and children, then the first \$30,000 goes to the spouse and then half and half between spouse and children.

The Survival Act proceeds go to the Estate of the victim. Then these monies are distributed to the people named in the victim's Will. If the victim had no Will, then the Survival Act proceeds go to the people named in the Intestacy Law, just like the Wrongful Death proceeds.

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### *What Court Approval is Required?*

In a death case in Pennsylvania, a court hearing is required so that a judge can approve the resolution of a death case and decide on a fair apportionment of the compensation between the Wrongful Death Act and Survival Act claims. The attorney will file a Petition and conduct the hearing. In advance, the attorney will also seek approval of the proposed allocation from the Pennsylvania Department of Revenue.

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## *Are Death Claim Proceeds Taxable?*

Personal Injury settlements and verdicts are not taxable. However, part of a death case proceeds is subject to taxation. Specifically, any funds allocated to the Survival Act claim are received by the victim's Estate and are subject to state and federal estate tax. Wrongful Death Act proceeds are received by individual beneficiaries (spouse, children, parents) and are not taxable.

Because of this tax issue, if the ultimate beneficiaries of both the Wrongful Death and Survival Act proceeds are the same, then it makes sense to try to allocate as little money as possible to the Survival Act because those monies are taxable.

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### *What a Personal Injury Attorney Does in a Death Case*

Losing a loved one due to violence or negligence is an overwhelming and emotionally devastating experience. Pursuing legal claims will be the furthest thing from your mind, the last thing you would think about. Nevertheless, bills will keep coming and income from the victim will not.

The job of a Personal Injury attorney is to thoroughly and efficiently investigate, pursue and resolve all legal claims and to obtain justice and fair compensation for the family of the victim.

The claims must be investigated and a personal representative must be appointed. The claims are either settled through negotiation or proceed to litigation or trial. Once a resolution occurs, the attorney must negotiate tax issues with the state and obtain court approval of the resolution. The Estate of the victim must be administered and closed. Finally, the proceeds of the claims are paid to the beneficiaries.

To pursue a death case it's important to retain an experienced Personal Injury attorney and to ensure that he or she also has qualified estate and tax attorneys available to see the case through to a successful conclusion.

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# Tim Rayne

is a partner in the Chester County, Pennsylvania, law firm MacElree Harvey, where he focuses his practice in Personal Injury law. Since 1995, Tim has been helping people who have been injured in accidents receive fair treatment from insurance companies by negotiating settlements and representing clients in mediations, arbitrations and jury trials involving all types of Personal Injury claims: car, truck, motorcycle, bicycle and pedestrian accidents; slip and falls; medical malpractice; dog bites; construction accidents; dangerous products; and wrongful death.



Tim's recent honors include *Main Line Today* Top Personal Injury Litigator, Super Lawyer in *Philadelphia Magazine*, Super Lawyer Top 100 Lawyer in Philadelphia and Pennsylvania, *Suburban Life Magazine* Awesome Attorney, and Lifetime Member of The Million Dollar Advocates Forum.

Tim is the author of four books: *Protecting Your Family From Accidents*, *A Lawyer's Guide to Purchasing Car Insurance*, *A Lawyer's Guide to Personal Injury Cases*, and *A Lawyer's Guide to Wrongful Death Cases*.

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WORD ASSOCIATION  
PUBLISHERS  
[www.wordassociation.com](http://www.wordassociation.com)  
1.800.827.7903

\$16.95  
Law

ISBN 9781595718990



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