EVERYTHING YOU NEED TO KNOW ABOUT AUTO ACCIDENTS BUT ARE AFRAID TO ASK

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I. WHAT TO DO IF YOU'RE IN AN ACCIDENT?

A. BASIC TIPS & SUGGESTIONS:

- **TELL THE INVESTIGATING OFFICER EXACTLY WHAT HAPPENED, but do not speak to anyone else until you have discussed your case with a lawyer.**

- **DO NOT SPEAK WITH STRANGERS ABOUT THE ACCIDENT. It is also best not to discuss it with your friends.**

- **DO NOT SPEAK WITH THE INSURANCE ADJUSTER or so-called "investigators" without the advice of an attorney. They are experts at twisting what you say from innocent and honest statements into generalized falsehoods.**

- **DO NOT SPEAK WITH THE INSURANCE ADJUSTER or so-called "investigators"! *<u>This is not a typo.</u>* It is simply the second time you are being warned. That's how important it is!**

- **WHEN NEEDED, GET IMMEDIATE MEDICAL ATTENTION! The biggest mistake many injured people make is trying to grit their teeth against the pain, while refusing or avoiding medical care for a long period of time. When the injury doesn't go away, they finally break down and seek out the care they need. Unfortunately, not only does this gap in treatment often make their long term recovery less likely, but also gives sleazy insurance companies, looking not to pay what they owe, the opening they need to say that you are not seriously hurt, and that your claim of injury was just "an afterthought to get money."**

- **DEMAND THE OTHER PARTY'S INSURANCE POLICY INFORMATION AT THE TIME OF THE ACCIDENT.**

B. OTHER VERY IMPORTANT THINGS TO DO ASAP!

Take photographs or have someone you trust take photographs of the accident scene right away. Things do change over time and having a record of conditions, including what the road looks like if traffic or weather conditions are at issue can be important. Even more important, however, is to take extensive photographs of your injuries WHILE THE INJURIES ARE STILL VISIBLE AND PREFERABLY WHILE THEY ARE AT THEIR WORST. Bloody injuries, black & blue marks and otherwise horrible looking results of the accident make good evidence in your case.

Remember, the outer appearance of even the worst injuries fades over time. In a year or two, when your case goes to trial or is settled, most of the signs of the trauma you experienced will be gone. The jury, and everyone else handling your case, should be able to visually identify with what you went through. Illustrative photographs of your injuries go a long way toward convincing the insurance adjuster that he or she is dealing with a serious injury case rather than a nuisance claim.

By illustrating the seriousness of your case, extensive pictorial evidence can mean thousands, tens of thousands or even hundreds of thousands of extra dollars, depending on the circumstances of the case. For similar reasons, you should also extensively photograph all the physical damages to your vehicle. You should check your auto insurance policies to find out what types of insurance you have and the extent of your policy limits.

It is very important to retain an experienced lawyer as early as possible. The best time is immediately after the accident. Make sure you have your insurance policy documents ready and available for review. Scan as many documents can with a scanner or, if you don't have one, use the camera on your phone to photograph the documents. After that, they will be electronic and easy to email to your attorney before your appointment. Make sure you also email him the photos of your injuries and of the damaged vehicles.

Once your case is accepted, any good lawyer is going to start taking steps to preserve evidence, including writing formal evidence preservation letters where applicable. He'll seek 911 call transcripts, black box recorders, onboard computer systems, police reports and witness statements, depending on the facts in your particular case. When a commercial truck is involved in the accident, he'll review US Department of Transportation regulations to see if any were violated. Licensing, hiring, training etc. may end up important. For example, federal law prohibits any truck driver, under the age of 21, from driving in interstate commerce. Yet, when short-handed, trucking companies sometimes send your truck drivers, under the age of 21, over state borders.

The issue of insurance coverage is always an important one. For convenience and to help you better understand the issues, we've split it into two parts, "first party" and "third party" insurance. "First party" means your own insurance, whereas "third party" means the insurance of the person at fault for the injuries. Ultimately, both the amount of your own insurance and the at-fault party's insurance will have an effect on the total amount of compensation you'll be able to recover.

II. FIRST PARTY INSURANCE

Proving who is at fault takes time, but bills begin arriving right away. Your own insurance can often pay for out of pocket expenses, like medical care, lost wages, fixing your car, etc. As a part of gathering the facts, we'll investigate your insurance situation. If necessary, we'll even help you make the appropriate claims. So, let's talk about first party insurance.

A. "NO-FAULT" INSURANCE?

Under current Colorado law, the person at fault for causing an accident pays for the other person's damages. However, residents of Colorado also drive in other states. Suppose you are on vacation in Florida and end up in a crash? You'll be in a so-called "no-fault" state. Other examples of "no-fault" auto insurance jurisdictions include New York, New Jersey, Michigan and more. I say "so-called" because, generally speaking, it is always possible to bring a claim for fault based damages in ALL states, including no-fault states. You usually need prove nothing more than the fact that you've sustained some sort of "significant injury".

If your accident occurs in certain no-fault jurisdictions, however, you may be entitled to have a significant amount of medical bills, sometimes as much as $50,000 or even $100,000, paid immediately from a type of insurance known as "PIP" or personal injury protection. In other situations, "no-fault" protection benefits are not available to non-residents. Whether or not you are entitled to no-fault benefits depends upon state law and the particular facts of your case.

B. WHAT IS “MEDPAY”?

Although it is not a “no-fault” jurisdiction, Colorado law requires all auto insurers to include a *minimum* of $5,000 worth of so-called “Medpay” coverage with every auto insurance policy issued in the state. To lose this, you must specifically opt out of paying for it. Most people have it. It’s a part of the overall coverage you may not even be aware of. In fact, many insurers offer much higher limits, occasionally reaching $100,000 or more. So, you may have more coverage than you think. Medpay coverage is narrower than the PIP insurance available in no-fault states. But, it also covers “reasonable medical expenses” arising out of accidents, regardless of fault.

In other words, even if you caused the accident (are the “at-fault” party) the insurer must pay your medical bills. In theory and, most of the time in fact, you won’t have to file any lawsuits to get this money. Medpay covers you, other people riding in your car, and even pedestrians injured in an accident involving your vehicle. It may even cover you if you are in a car of a person who opted out of paying for Medpay themselves and can take care of emergency care at the scene, ambulance rides, emergency room care, medical imaging (X-rays, CAT scans, MRIs), diagnostic services, surgeries, drugs, hospital bills, physical therapy and, in a worst case scenario, even funeral expenses.

C. HEALTH INSURANCE:

General health insurance is often used as a method of paying the hefty medical bills that often arise after an accident. It does comes with some caveats and is not a perfect substitute for Medpay. The primary drawback is that a general health carrier has a right to be repaid from your settlement. Medpay insurers have no such right. Also, general health insurance policies usually have co-pays and deductibles. Medpay doesn’t. Therefore, if it is available, Medpay should always be used first.

In serious injury cases, where the medical bills exceed the available Medpay limits, you’ll hae no choice but to turn to health insurance coverage, if you have it. Thankfully, there are two aspects of law that we can use, later on, to potentially reduce or eliminate the health insurer’s lien. Colorado Statute 10-1-135 provides that injury victims be “made whole” and also that health insurers must pay a proportional share of all costs and fees associated with getting a judgment or settlement.

If we can prove that you have not recovered the full amount of your theoretical damages, we can, in theory, entirely eliminate the health insurance company’s reimbursement claim. This is often possible if the case, like most cases, is settled before trial. If a jury verdict then the decision as to the “full amount” of your damages will have already been made, and there is less room to negotiate. In most cases, a settlement happens, and a compromise is found. The health insurer will often be willing to reduce its claim, mildly or dramatically, in return for avoiding litigation.

The health insurer should always pay your bills if you’ve exhausted Medpay, unless you have some other means of payment. You shouldn’t worry about the lien. Remember, serious injuries are associated with high medical expenses and high lawsuit recoveries. As a result, other people will find it much easier to understand the extent of your pain and suffering if it is accompanied by hefty medical bills. The bills themselves, frightening though they may be, are in some sense, evidence of your misery. They can be used to illustrate the terrible ordeal you went through. Bottom line? Get the care you need and let us worry about the health insurer’s lien.

D. WORKER’S COMPENSATION:

If you were injured in an accident while carrying out your job duties, you may be entitled to worker's compensation. Similar to Medpay and health insurers, worker's compensation can be used to pay your medical bills. Like health insurers, worker's compensation insurers also have a lien on your recovery. The treatment of the lien under the law, however, is different.

The biggest potential difference is that Colorado Code § 8-41-203 gives worker's compensation insurers an independent right to sue. This right is separate from that of the injury victim. You have the right to bring a lawsuit for your injuries and the compensation carrier has a right to bring a lawsuit to recover whatever it has paid. The comp carrier can sue on the basis of something called a "subrogation" claim. That continues to be true even if you are already suing and/or intend to sue in your own right. If it does assert a claim against the at-fault party, whatever costs it recovers will not be paid a second time. Thus, the gross settlement or verdict you receive is reduced by the settlement or judgment in the separate case, if any.

Filing an independent lawsuit to recover the payments it made, however, requires proving a liability case to the same extent that you need to. In the case of an insurer, that means paying upfront attorneys fees and litigation costs. There are few attorneys willing work for insurance companies on a contingency fee. The insurer takes the entire risk of loss. If they lose the case, therefore, they can often lose a very substantial litigation investment. For this reason, unless the liability is very clear and the amounts paid very large, compensation carriers won't normally bring a separate lawsuit.

Instead, they will usually try to enforce their "subrogation lien". A worker's compensation lien does not include non-economic damages such as pain and suffering, inconvenience, emotional stress, or impairment of quality of life. It is only for the amount the carrier has paid. But, since most cases settle, rather than go to a jury verdict, the special categories of damages are difficult to segregate out. This leads to a lot of negotiation.

Pursuant to Colorado law, notice of a negligence lawsuit against a third party must be given to the worker's compensation insurer. Then, 90 days must pass. If the insurer allows more than 90 days to pass after the notice is given, without taking an active role in the litigation, it is required to pay a proportional share of your fees and costs of bringing the lawsuit. In the end, it is sometimes possible to convince worker's compensation carriers to take substantially less than the full amount they've paid out on a case.

E. COLLISION COVERAGE:

Collision insurance pays to repair your vehicle after an accident. Everyone who has a car loan or is leasing a car will normally be required to have collision insurance. It covers mostly body work that must be performed because of the accident. However, if the crash caused damage to the engine, electrical system, etc., the collision insurance must also pay for mechanical damages in order to return the vehicle to working condition.

From our experience, collision insurers usually pay without causing excessive trouble. On the other hand, however, if your car has depreciated to the point where it is cheaper for them to pay for the depreciated value of the vehicle, rather than the cost of repair, the insurer will always insist on paying only the depreciated value. That can mean you end up stuck with the expense of buying a new car at a very inconvenient time.

Because collision insurers habitually refuse to pay for the repair of cars that are worth less than it costs to repair them, most financial institutions demand that people who are leasing or paying off car loans also maintain "loan/lease gap" coverage. This type of insurance pays the remaining payments on the car if it cannot be driven after an accident.

F. OTHER FIRST PARTY COVERAGE:

There are a number of minor insurance coverages that can help you after an auto accident. Too many, in fact, to cover comprehensively here. The main secondary coverages are 1) Rental car coverage which reimburses for the cost of renting a vehicle while yours is being fixed; 2) Loan/lease gap coverage, as noted above, which pays the difference between the actual cash value of your vehicle and the unpaid balance on your loan or lease when the car is totaled; and 3) Roadside assistance/towing coverage which covers the cost of removing the car to a repair facility. If you have a AAA membership, you normally don't need the roadside assistance/towing coverage.

II. THIRD-PARTY LIABILITY (A/K/A "SUE THE GUILTY")

A. WHO IS RESPONSIBLE TO PAY DAMAGES?

In Colorado, careless drivers are legally responsible for the injuries they cause. But, the list of potentially liable persons doesn't end there.

1) Employers:

When an employer allows its employees to drive company cars or trucks, they are jointly responsible for any accidents that happen while their employees are driving as a part of their job duties. This includes states, cities and counties. An employer may even be liable for the injuries caused by its employee while the employee is driving a personal vehicle when that employee is acting within the course and scope of his employment. If a business is set up as a partnership, partners may also be held liable for each other's actions, so long as the negligent partner's driving activity involves or advances the interests of the business.

Claims against government entities are covered by the "Colorado Governmental Immunity Act" (CGIA). The most important limitation is CO Rev Stat § 24-10-109 (2016). The normal Statute of Limitations for filing a negligence lawsuit in Colorado is 3 years. However, under the Act, any claim for damages must be filed in writing within 182 days (less than 6 months) of the loss. It is an example of why you need to hire a lawyer IMMEDIATELY after an accident.

In case you remain unrepresented and were injured by an employee of a governmental entity, click here to download a claim form you need to fill out and file. Fill it out immediately after the accident or as soon as humanly possible. Then, mail it to the Attorney General's Office at the address given, via *certified mail, return receipt requested.* Remember, KEEP YOUR SIGNED RETURN RECEIPT!

2) Car Owners:

A car owner is not directly responsible for all accidents that involve the vehicle, but the vehicle must be insured. Normally, the required insurance can be used to cover the negligent driver's actions. If the driver owns his own vehicle, he may also be covered by his own insurance policy. In that case, two insurance policies are available and the total amount of money available to pay the claim will be higher. In a large damage case, both insurers will pay.

An exception to owner liability exists if the vehicle is driven without the owner's consent. In that case, the owner's insurance will not cover the driver. No owner is liable for injuries caused by a driver who steals his car, for example. If the car owner did something negligent, like allowing someone who is intoxicated, someone suffering from senile dementia, known to be reckless, or an unlicensed person to drive his car, there will be a claim directly against that owner, not just his insurance, for "negligent entrustment".

3) Parents:

In Colorado, parental responsibility for injuries caused by minor children is governed by the "Family Car Doctrine." Parents are legally liable for injuries caused by negligent minor drivers when the parent is the head of the household, the minor is a member of the household, the parent has legal control over the vehicle, and the vehicle is used with express or implied permission. It doesn't take much to prove "implied" permission. A parent can also be held legally liable if he or she allows his inexperienced child to drive without supervision.

B. HOW MUCH MONEY AM I ENTITLED TO?

Injury victims are entitled to recover for past lost wages, reasonably likely future lost wages, past medical bills, reasonably likely future medical bills, and "non-economic" damages. Non-economic damages include things like "pain and suffering", "loss of enjoyment of life", emotional distress, disfigurement, and permanent impairment. The dollar amount is different in every case because each case is based upon unique facts.

C. MANDATORY COLORADO LIABILITY COVERAGE:

Unfortunately, Colorado law hasn't been updated in many years and the amount of mandatory liability coverage is very small compared to the damage that is often caused in an auto accident. Drivers must have the following minimum liability coverage:

- $25,000 **per person** for bodily injury.
- $50,000 **per accident** for bodily injury.
- $15,000 per accident for **property damage.**

Obviously, that is not enough coverage to pay for the damages that occur as a result of a serious automobile accident. Thankfully, many people have their own insurance coverage that may also cover the damage caused by underinsured and uninsured third parties.

D. UNINSURED/UNDERINSURED MOTORIST COVERAGE:

Uninsured/underinsured motorist (UM/UIM) coverage is actually "first party" insurance, but it substitutes for the third party driver own insurance, so it is included here. It pays for bodily injury losses caused by unknown drivers who disappear after the accident, drivers who have no automobile insurance, and drivers who cause substantial injuries but have only minimum insurance limits. It only covers personal injury damages to the insured and the people traveling in the insured's car. It cannot be used to pay for property damage or personal injury to another driver on the road.

Because the insurance company must provide it, unless you affirmatively reject it, most people have it as a part of their overall auto insurance policy. UM/UIM coverage can be an invaluable asset in obtaining sufficient compensation. It is a very important part of your policy. Something on the order of 25% of Colorado drivers are not insured. Even more carry only the bare minimum. Your uninsured and underinsured policy will often be critical in a serious accident.

Under current law, all insurers in the state must offer UM/UIM coverage in an amount equal to your liability coverage for bodily injury, unless you waive it in writing. A policyholder who waives statutory UM/UI coverage doesn't need to reject it entirely. He or she can also opt to carry a lower level of coverage.

III. WHY DO I NEED A LAWYER?

A. INSURERS <u>*WILL*</u> FIGHT MERITORIOUS CASES

People often think insurers will voluntarily pay out on legitimate cases. That is not correct. They may pay something but much less than you are owed, if they think they can get away with it. For example, Colorado law prohibits the introduction of traffic citations into evidence in a civil case. So, the fact that the investigating officer assigned fault to one person or another does not determine the outcome of a civil case. Thankfully, when an officer issues a ticket, he normally does it for a reason. But, the insurer knows that the facts he relied upon ***can*** be introduced at trial even while the citation, itself, cannot. If the insurer knows you are represented by an attorney, it will also know that such evidence will be admitted at trial. Thus, insurer mischief is minimized.

Keep in mind that the insurance company has highly trained insurance adjusters and defense attorneys on retainer. They exist for the purpose of limiting the amount of money the insurance company must pay out, and have developed a toolbox of tricks and techniques to reduce or eliminate the amounts paid. Society expects plaintiff's lawyers to pick out meritorious claims. Lawyers who don't, are reviled and referred to as "ambulance chasers". But, society does not impose any corresponding obligation on insurance adjusters or defense attorneys. They defend against every claim.

Why do they get away with it? How is it possible to convince some judges and juries rule incorrectly even in meritorious cases? The answer lies in a large bag of tricks and tactics. Insurers justify twisting facts to suit themselves, claiming that they have a "duty to mount a vigorous defense."

B. FAVORITE INSURER DEFENSE TECHNIQUES

1. The Seat Belt Defense

The easiest defense always involves seat belt use. Unless there is clear and convincing proof that you were wearing your belt, they will always claim you were not wearing it. Obviously, not wearing a seat belt is no excuse for someone ramming into the rear end of your car. However, defense attorneys will claim that, while failing to wear a belt didn't cause the accident, it caused the injuries. They will claim that you would not have been injured if you were belted and/or that you were at fault for your injuries because you voluntarily chose not to wear the belt.

In many cases, they'll manage to convince the judge to give jury instructions on this issue even without presenting substantial proof that there was a direct relationship between your non-use of a seat belt and your injuries. Thankfully, in Colorado, as opposed to many other states, the "seat belt defense" can only be used to reduce non-economic damages, like pain & suffering, loss of enjoyment of life, etc. It cannot be utilized to reduce economic damages like reimbursement for medical bills. Still, if the insurer succeeds in convincing the jury that you weren't wearing your seat belt, your award will often be much less than you deserve.

2. Colorado's Modified Comparative Negligence Standard

The insurer will also seek out other forms of so-called "contributory negligence" that it can blame you for. The reason is that, for example, if they can convince people that you were partially at fault for the accident, the amount it owes to you is reduced in proportion to the percentage of fault attributed to you. Similarly, if the insurer can point a finger at some other person, and show that the other person had some percentage of responsibility, it can reduce the amount it owes.

In such cases, it is said that you or others "contributed" to causing your injuries. The worst situation occurs if the insurer manages to convince a jury that your actions are more than 50% of the cause of your injuries. In that scenario, you lose entirely. You won't collect, for example, 49% of the cost of your medical bills. You will collect nothing.

3. The Phantom Defendant

A derivation of comparative negligence is known as as the "phantom defendant defense." Because it often requires expensive expert testimony, this gambit is usually reserved for situations in which an insurer is trying to avoid paying in a serious injury case. The defense team thinks up a real or imaginary secondary defendant who is not a party to the lawsuit. Theoretically, they might also point a finger at co-defendants, but phantom people are easier. That's because most of these phantoms don't actually exist. Even if they do exist, if they are not named parties to the lawsuit, they won't have an attorney to defend them.

The insurance attorneys will point to an "empty seat" and argue that the "missing" defendant is really the person at fault. To convince the jury of this nonsense, the defense generally needs to bring so-called "experts" who create a realistic-seeming, but bogus "reconstruction" of the accident. They use this "reconstruction" to convince jurors that the accident "couldn't have happened without the phantom defendant." If they succeed, Colorado's "pro-rata" law (which requires each defendant to pay ONLY his or her particular share of the damages and not a penny more) may significantly reduce the amount the insurance company pays, or even allow it to pay nothing to an innocent seriously injured victim.

In the past, by the time the insurer came up with this phantom scenario, the statute of limitation had often run. Thus, even if they point to real people, it is too late for the injured person to add them to the lawsuit. Widespread abuse of the "phantom defendant" technique led to amendment of Colorado's statutes. Now, defendants are required to give "notice of intent to blame a non-party" within 90 days of the date the lawsuit is filed. The defense can still be devastating, however, to lawsuits filed close to the statute of limitations.

Remember, you should retain a lawyer immediately after the accident happens.

4. Other Tricks & Techniques

Insurance adjusters and defense attorneys have a host of other tricks and tactics they'll use in avoiding paying fair compensation to accident victims. The particular technique will be based on the unique facts of your case. Covering all the possibilities would require a 1500 page book (in small print!) on litigation tactics. Suffice it to say that your own attorney must thoroughly investigate your case, making sure he considers and counters as many of these possible defenses as possible, whether they are fraudulent or not.

C. HOW CAN I POSSIBLY WIN AGAINST SUCH ODDS?

As noted above, insurers can defenses out of nothing. In spite of this, however, they will have an interest in settling your case. No matter how clever they are, they will often still lose if you are represented by a skilled lawyer. The attorneys that insurance companies hire to defend cases don't sell themselves cheap. They bill the insurer hundreds of dollars an hour. It all adds up. By settling, the insurer avoids paying legal fees and expert witness expenses. The cost of paying the bevy of bogus "experts", often necessary to mount a creative defense in a serious injury case, can be almost as much as the cost of settlement.

Indeed, it is the concept of "nuisance value" that motivates the so-called "friendly" adjuster to make a low-ball offer to people represented by "settlement mill" lawyers. These are usually the ones whose billboards are everywhere, who are constantly doing TV commercials, and who settle cases quickly for whatever they can get to go on to the next case. The main secret to winning a good settlement or verdict is to hire a knowledgeable experienced attorney as early as possible. If consulted at an early stage, he can give you the guidance you need to avoid being victimized a second time.

Ultimately, every insurer evaluates every case on the basis of what it thinks a jury is likely to award. Past jury awards are often used by as a base for discussing serious settlements (that are not based on nuisance value). If the company knows that they are going up against an experienced attorney, with a proven record, they will often give up on their hope of using their bag of dirty tricks and manipulations and get down to serious negotiation.

This office does not accept "nuisance" cases nor negotiate "nuisance value" settlements. All our cases are meritorious claims and each one is fought hard enough to insure that you get every dollar you deserve.

D. DEFEATING THE PHANTOM DEFENDANT GAMBIT:

If you have sufficient uninsured motorist coverage, it can give your lawyer an edge in defeating the defendant's best efforts to create an imaginary entity upon which to pin blame. Phantom motorists, imagined by insurance defense attorneys, often don't really exist. If they do exist, their identity is unknown. Such a motorist qualifies as "uninsured". Any damages the defendants' insurance company proves "he" caused can end up as an obligation of your own uninsured motorist carrier. If you have substantial policy limits, your own insurer can assist in defending against such claims.

If the issue of a phantom motorist is raised, your lawyer will put your uninsured motorist carrier officially put on notice. They will be brought into the lawsuit. Your own insurance company can be just as nasty as the opposition insurer. The last thing it wants to do is pay for the obligations of another company especially when the policy limits and the damages are potentially high. It doesn't want to pay money on behalf of a person who doesn't exist.

Indeed, the insurance defense "bag of tricks" is common to all insurers. The UM/UIM carrier can provide effective aid, behind the scenes, by paying the experts needed to disprove the existence of a phantom motorist. If there really is a phantom, they can help prove that he was not the cause of the accident. But, if there is a phantom and he did cause the accident, the UM/UIM carrier will have to pay the verdict.

As an aside, it can be very pleasant to watch as two equally unscrupulous "Goliaths" club each other to death. Meanwhile, as little "David", in the midst of such carnage, you don't even need to cast your slingshot!

IV. THE PERSONAL INJURY LITIGATION PROCESS

In many cases, a fair settlement can be obtained without filing a lawsuit. In other cases, that will not be possible without severely compromising the value of the case. Where an insurer is difficult and unwilling to act fairly, we will file a lawsuit. Settlement before a lawsuit speaks for itself. It is the litigation process that confuses most people, so let's go into some light detail about what you can expect.

A. WHAT DO YOU MEAN BY "DISCOVERY" PROCEEDINGS?

In serious injury cases, a lawsuit must often be filed before an adequate settlement can be reached. This is true for a number of reasons but the primary reason has always been that additional information is needed. For example, in the past, it was often necessary to file suit just to find out what the defendant's actual insurance limits are. Thankfully, in 2019, Colorado joined Florida and other states that require insurance companies to voluntarily disclose policy limits upon request.

In the aftermath of that statutory change, although lawsuits can still be useful to the plaintiff's side in order to evaluate what defenses the other side may succeed in, a lawsuits will now only be necessary due to insurance company's intransigence. In other words, when the insurer refuses to settle for a fair sum of money without a "gun" being pointed at its theoretical "head". Part of the reason they sometimes do this is innocent enough, in that they want more information before paying out "big bucks".

The overall process of getting information during litigation is called "discovery". It involves answering written interrogatories (questions that you answer in writing under oath), requests for production of documents and things, and depositions (oral testimony under oath). Your deposition will almost always be taken in every case. In addition, in most cases, the depositions of independent witnesses will also be taken.

In short, the insurance company often wants to know more about you, your ability to present yourself as an effective witness on your own behalf, and what the other witnesses are going to say about the accident before it coughs up a large amount of cash. Above all, during your deposition, the defense will evaluate your ability to present yourself as a person with whom the jury would be likely to sympathize.

B. WHY CAN'T I JUST TAKE THE MONEY AND RUN?

You can always take whatever the insurance company offers you. We can't stop you from doing that. Sometimes, in a minor injury case, you should do exactly that. No lawyer, including the author, can or should force you to do otherwise. If you do become dazzled at the first dollars they offer you, when your injury is a serious one, you'll usually be screwing yourself over by accepting an early settlement offer. That isn't to say that everyone should hold out for more. Each case must be analyzed on its own merits. An honest attorney will tell you the truth about whether or not it is in your interest to take the insurance company's early offer.

C. WHAT IF I AM PARTIALLY RESPONSIBLE?

Negligence is the failure to perform an act in the manner a reasonably careful person would in order to protect themselves or others from injury. A reasonable person is one who applies the attention, knowledge, intelligence, and judgment that society requires of its members. At one time, in the past, you could be denied a damages award if you were at fault to any degree, even 1%. That system was called pure contributory negligence.

As the years passed, courts and legislatures saw the unfairness of that system and changed the idea of contributory negligence into a comparison. Under the "modified comparative negligence" standard in Colorado, any defendant who is "more at fault" than you are for the damages is required to pay in proportion to his level of comparative negligence. For example, if the jury decides that you were 20% at fault in the accident, but another person was 40% at fault, that person is required to pay for 40% of the damages. If you are more than 50% at fault for an accident, the Colorado Supreme Court has determined that you will be unable to collect damages.

D. WHAT IF TWO OR MORE DEFENDANTS ARE AT FAULT?

Under Colorado "pro rata" recovery statute, liability must be divided in accordance with the degree of fault of each defendant. Let's say, for example, that defendant A is 20% at fault, defendant B is 15% at fault, and defendant C is 65% at fault. Defendant A only has to pay 20% of the damages. Defendant B need only pay 15% of the damages. Defendant C need only pay 65% of the damages. Obviously, this can lead to the phantom defendant defense as described in the section above. If the insurer has an outside chance to pin the blame on a nonexistent person, it will do so, because a person who doesn't exist cannot defend himself.

E. WHAT ABOUT THE COSTS OF LITIGATION?

Regrettably, it costs money to sue. Depositions require court stenographers, who charge hefty per page fees for transcriptions. Transcriptions are critical documents, and that means the stenographic fees must be paid. Furthermore, doctors demand compensation for any time they expend by being involved in your case. Many doctor's offices charge very high document copying fees. We forward such costs in contingency fee cases and get reimbursed when the case is resolved. If you paying on an hourly basis, you will be expected to make a cash deposit to cover these costs. Most personal injury cases are handled on a contingency fee basis, so once a settlement or verdict has been obtained, the fee is calculated based on the gross recovery. After that, the costs are deducted and the lawyer is reimbursed.

F. CAN I LOSE THE RIGHT TO SUE IF I WAIT TOO LONG?

Yes. Like all other legal matters, a statute of limitations applies to auto accidents. The Colorado Statute of Limitations for negligence lawsuits against private persons is three years from the date of injury. If you sue the State, however, you must give formal written notice of intent to make a claim within 182 days. Under Federal law, a claim against the United States is "forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented" Thus, even if you sue the US government within 2 years, if you do it 8 months, for example, after your claim is formally rejected, you lose the right to sue. As you can imagine, these statutes of limitations make it imperative that you hire a lawyer immediately after your accident, especially when the potential defendant is a governmental entity.

G. HOW DO I CHOOSE A LAWYER?

1. Be Careful When You Pick an Attorney

You should be careful when you choose a lawyer because that choice can create a vast difference in the outcome of your case. Many years ago, the Supreme Court of the United States ruled that Bar Associations were prohibited to stopping lawyer advertising. From this leniency, a new variety of attorney was born, known as the "settlement mill lawyer."

The term "settlement mill" is used to describe a personal injury law firm that has developed as a result of massive advertising campaigns. Highway billboards are substituted for quality work. Such firms achieve high profitability by accepting all cases no matter the merits. The settlement mill lawyer can earn a fortune simply by processing a huge volume of meritless cases. While that may be great for the meritless case settlement recipient, for someone who has a genuinely meritorious case, going to a settlement mill can be a legal disaster.

If you happen to have a genuinely meritorious case, going to such a firm can be a disaster. The settlement mill will assign you a paralegal or an associate lawyer and he or she will officially be responsible for your case. In reality, secretaries and paralegals will always process everything. Your case will be “form-packaged”, like a mass produced consumer product. It will be sent to the insurance company with a standardized “boilerplate” settlement demand. When it arrives at the insurance adjuster’s desk, accompanied by the mass of unrelated injury claims, most of which will have no merit, your case will also be viewed as having no merit. They will assume you are simply another person faking or exaggerating injuries to get money.

That’s because insurers are very savvy. They know exactly what they are dealing with. They know which firms are settlement mills and which lawyers are serious practitioners who fight for their clients. They will value your case knowing that the settlement mill will almost never be willing to go to to trial, or fight for a good verdict except in a catastrophic injury case. That’s because to keep the mill running, to pay for the fancy offices and the big billboards, cases must be quickly settled. Naturally, insurance companies love that.

The value that a serious but not catastrophic injury case might have in the hands of a real lawyer, practicing in the traditional manner, will be heavily discounted. The insurance company adjusters know that although the settlement mill lawyers may “hem and haw” for a while, they will always eventually accept just about anything they’ve been offered, just to secure the fee. That’s because the settlement mill wants to get on with things, make its money, and process the next case in line.

Don’t be impressed by their fancy offices, with deep stained wood moldings, marble floors, and other niceties. This is just a show. The firm’s owner usually pretends to be “rich” to encourage people to think he is successful. Indeed, he may well have become rich simply by following settlement mill tactics. The owners of a settlement mill law firm can and sometimes do make large amounts of money, drive very expensive cars, and so on. But, make no mistake about it. That money is not coming from getting top dollar for each client’s case, regardless of brash loud-mouthed ads. It is coming from volume.

How can you tell a settlement mill from a serious lawyer? Settlement mills are usually brashly advertising everywhere. They’re on TV, billboards, and so on. They invent garish slogans, and carry on business like barkers at a carousel. If you see a lawyer’s face on a road sign you should be suspicious! Sometimes, a settlement firm lawyer will boast that the firm has “been in the business so long that adjusters settle our cases early on” or something like that. BINGO! From that statement, you know it is a settlement mill.

That’s because the only way to be “friends” with an adjuster, absent growing up with him, is to accept pitiful low-ball offers. Insurance adjusters do not get promoted by freely handing out the insurance company’s money. Lawyers do not make “friends” by standing in the way of somebody’s career advancement. If a lawyer is actually doing his job properly there will be friction between him and the adjusters in town. They may respect him, but they’ll rarely admit it, and they may even angrily whisper nasty comments about him behind his back.

2. How Do I Pick A Good Lawyer?

The most effective lawyers are the ones who practice in a traditional manner. I am not talking about avoiding the utilization of the latest technology, like Zoom video meetings and the like. You want him to be familiar with technology. What I mean is that the lawyer should be choosy about which cases he accepts. He shouldn’t take every client who walks in the door, in the hope of extracting a nuisance settlement out of the insurer.

A good lawyer doesn’t refer to you by your file number. He could be practicing in a small firm or he could be a sole practitioner, but your case is important to him. Important enough to know your name. If you live in a suburb or a smaller city, do NOT go to the nearest big city to find a lawyer. Don't look for fancy offices. The best lawyers often operate out of modest small offices which do not have marble floors, mahogany moldings or fancy furniture. Instead, the office is often overflowing with litigation papers. Such a lawyer is working hard for his clients, and, is not infatuated with the fancy things money can buy.

In most cases, a modest but excellent lawyer will have considerably more hidden assets than the settlement mill lawyer could ever dream of. But, a good lawyer doesn't flaunt his wealth. After all, he didn't make his money by selling out his clients. He made it by working his butt off on their behalf. When you work hard for your money, you don't tend to spend it on frivolous stuff. By nature, the best lawyers tend to be passionately intense individuals, very involved in their cases, who fight hard out of a sense of duty to their clients.

Good lawyers are often deliberately modest. They intentionally avoid driving flashy cars, especially anywhere near a courthouse. They are experienced enough to know that such extravagances often offend potential jurors. Modest behavior and family style cars, in contrast, never offend anyone. The most important thing any lawyer can offer you, and actually the only reason you need one, is his knowledge of the system. That's because we live in a complicated society. There are a multitude of laws that govern just about everything.

Look carefully at the lawyer and his credentials. Did he ever win a significant verdict? Do other lawyers rely on his lectures, books or articles? The most important thing, however, is whether or not you trust him. Does he give the impression that he is a strong-willed credible person? The only way to find that out is to talk with him. Most lawyers offer a free consultation so talking to a lawyer, before hiring him, should not be a problem.

There aren't any guarantees no matter what you do. Potentially, you could follow all the advice in this pamphlet and still end up with a dud. On occasion, even a very good lawyer can fail to obtain a very good settlement when the case is particularly difficult. A good lawyer, however, will always get as "good" a settlement as the facts allow. If you follow the advice contained here, you will increase the probability of hiring a good lawyer for your case and getting the most compensation possible, under the circumstances.