

WHAT CAR
INSURANCE
COMPANIES DON'T
WANT YOU TO
KNOW

10 Biggest SECRETS TO WINNING YOUR PENNSYLVANIA CAR ACCIDENT CASE

A Guide
for Injured
Pennsylvania
Drivers

MHK ATTORNEYS

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A Guide for Injured Pennsylvania Drivers

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D I S C L A I M E R
THIS BOOK IS NOT LEGAL ADVICE

The Pennsylvania State Bar requires that we inform you that this book is not legal advice. We are not your attorneys until we enter into a written agreement to be your attorneys. We know the arguments the insurance company will make and so should you, even before you file your claim. We can offer suggestions and identify traps, but please do not construe anything in this book to be legal advice about your case, as each case is different and an attorney can give you quality legal advice only when he or she fully understands the facts involved in your case and agrees, in writing, to represent your interest.

FOREWORD **WHO WE ARE**

For more than twenty years we have represented auto accident victims and people injured at work throughout the state of Pennsylvania. Many of these cases are referred to us by satisfied former clients and by other attorneys. If we accept your case and you do not live close to one of our offices, we will come to you.

Sometimes the best advice you can get when you are considering a lawsuit is that you do not have a winnable claim. If that's true, we'll tell you. We'll also tell you when we believe that you're better off handling a claim by yourself, without an attorney. But, if your case passes our test and we accept it, you can be assured that you will receive our personal attention. We will aggressively represent you, keep you informed about what is happening in your case, and give you our best advice as to whether you should settle your case or whether we should go to trial.

We will fully explain all fees and costs to you before we start working on your case. Together, as a team, we will decide the best tactics for your case.

Why We Wrote This Book

Year after year, we see insurance companies take advantage of people before they have a chance to talk to an attorney. For years, one major insurance company encouraged claimants not to hire an attorney. While the law does not require an attorney to represent you in your injury case, you should be armed with this important information right from the beginning of your claim. We wrote this book so you can be informed, today.

How This Book Is Organized

This book is broken down into 3 major segments.

1. **Insurance.** What you need to know about your own insurance policy and the insurance companies.
2. **Personal injury.** What you need to know about personal injuries arising out of car accidents.
3. **Hiring an Attorney.** What you need to know about hiring an attorney and our law firm.

WILL WE HANDLE YOUR CASE?

If you can answer yes to the following 7 questions, we may be the injury firm for you:

1. Do you have total expected medical bills and lost wages of at least \$2,000?
2. Is there visible property damage to your vehicle and was the collision reported to the police?
3. Was the accident at least 51% someone else's fault? See page 29 for a full explanation.
4. Did you get prompt medical treatment after the collision?
5. Have you followed your doctor's recommended course of treatment?
6. Did the accident happen less than 18 months ago?
7. Do you have full tort? If you don't have full tort do you have a "serious injury" or do you fall into one of the limited tort exceptions? See page 24 for an explanation.

FEWER CASES FOR US—MORE TIME FOR OUR CLIENTS

We are different and we try to be different. We don't rely on a high volume of cases generated by a massive television campaign. We don't claim to handle every type of case under the sun. We don't want to. We don't need to. We handle auto accident cases and work injury cases. If you have another type of serious injury, we can help you find an attorney who specializes in that kind of case, but generally we won't handle those cases. Each year we accept a limited number of injury cases from hundreds of people who ask us to represent them. We are not a TV advertising, personal injury and worker's compensation mill. We do not allow our paralegals and assistants to negotiate your case with the insurance company; one of our attorneys always will handle negotiations. Fewer cases means more time for you and, we believe, better overall results both for us and for you.

P A R T 1 .
**THE INSURANCE COMPANY'S MOTIVE:
MAKING MONEY**

UNDERSTANDING INSURANCE COMPANY GREED

There is a reason why big insurance companies spend millions of dollars training their adjusters to stick it to you. There is a reason big insurance companies are some of the world's largest corporations. There is a reason why insurance companies spend billions of dollars on TV campaigns, in Washington and in capitals of every state, trying to get politicians to help them get richer by taking away more and more of your rights. There is a reason that the big insurance companies call you repeatedly after you have been in an accident, hoping you will deal with them directly and not speak to a lawyer. The reason is money. Insurance companies make more money than virtually any other type of company. In large part, this is because insurance companies don't play fair. They are experts at insurance and their clients usually don't know the first thing about insurance. They aren't in the business of paying money; they are in the business of collecting it. MHK attorneys know how to handle insurance companies. For over twenty years we have been successfully outsmarting insurance companies. We'll do it successfully for you. The bottom line is this: the insurance companies' own research shows that people who are represented by attorneys get over three times more money than those that are unrepresented.

CHAPTER ONE

THE TOP 7 INSURANCE COMPANY MYTHS

Before we get into some of the nuts and bolts of an auto accident personal injury claim, let's dispel some of myths you may have heard.

Myth #1: You don't need a lawyer.

Truth: The answer is, it depends. If it is a small claim with an injury that has resolved itself quickly and you believe that it will never resurface, and the liability issues are cut and dried, then with some help from this book and a consult from a qualified personal injury attorney, you can handle your own case. After the initial consultation, we will give out advice for an hourly fee arrangement that we discuss later in this book. However, if you are seriously hurt or if you run into complications, then you need an attorney to assist you in case.

If you answered yes to the seven questions under "Will We Handle Your Case?" you need a lawyer. Most likely, this is your first serious insurance company claim and you are up against a professional insurance adjuster, backed by a team of lawyers. Insurance companies make billions of dollars by paying people less than their claims are worth. The less they pay you, the more they make. The less your adjuster gets you to accept, the happier his boss is. We see client after client frustrated by trying to deal with an insurance adjuster

directly, only to be offered a small fraction of the money we end up recovering for them.

Myth #2: The auto insurance adjuster is a trustworthy person whose job it is to help you with your claim.

Truth: Even though most insurance adjusters are honest, remember who they work for—the auto insurance company. The adjuster’s job is to minimize the cost of your claim for the insurance company. Therefore, his or her job is to get you to settle your claim as quickly as possible, for as little money as possible. The adjusters are trained to earn your trust and get you to listen to what they tell you to do. The adjuster may try to get you to settle your claim right away, even if you are still treating for your injuries. Any attorney does the exact opposite; he or she is trained to maximize the amount you receive from the insurance company in order to compensate you fully for your injuries. Remember, your attorney works for you; the adjuster works for the insurance company. The insurance companies’ own study revealed that when injured parties have lawyers on their side, the settlements or award are 3 ½ times higher.

Myth #3: You are not entitled to any compensation if you had any pre-existing injuries or conditions.

Truth: So long as you have “full tort,” if your pain started as a result of the auto collision, or became significantly worse, then you’re entitled to compensation. Insurance companies almost always try to assert that your pain is being caused by a “pre-existing” or “degenerative” condition. Even if you did have past injuries or conditions, if your pain begins or

becomes worse after you were in an accident, you are entitled to money for your pain and suffering.

Myth #4: You have “limited tort,” so you’re not entitled to any compensation for pain and suffering.

Truth: “Limited tort” means that you can only recover money for your pain and suffering, if you suffer a “serious injury.” “Full tort” means you can recover money for your pain and suffering even if you did not suffer a “serious injury.” The problem is, what you think is a serious injury, may not be according to the law. Therefore, you should always select the “full tort” option, when buying car insurance. If you currently have the limited tort option, you can, and should, change it to the full tort option as soon as possible. In Pennsylvania, you have to sign a specific form selecting the “limited tort” option; if your insurance company cannot produce that document, then the full tort option applies. Even if you selected the “limited tort” option, there are several important exceptions to the limited tort option where you can still be entitled to money for your pain and suffering. Soon after an accident, well before the seriousness of your injuries is known, your insurance adjuster may try and talk you out of seeking a recovery because you chose limited tort. If your injuries turn out to be serious, such as a herniated disc in your back or neck, if you need surgery, or if you suffer from any physical problems that require prolonged treatment, you may still be able to recover for your pain and suffering.

Myth #5: You'll wait forever to get paid if you hire a lawyer.

Truth: The longer your pain and treatment lasts, the more your case is worth. This is why the insurance adjuster wants you to accept their small settlement offer quickly. If you desperately need money before your case settles, there are alternatives to settling your claim too quickly and for too little money. Remember, you can only receive one settlement from the insurance company covering the driver who caused your injuries. Once you sign a release and cash the insurance company's check, you cannot reopen the claim if you later discover that your injuries are worse than you thought, require more treatment, or result in additional out-of-pocket expenses or wage losses. Although everyone wants a prompt resolution of his or her claim, a good attorney knows that you must avoid settling it too soon.

Myth #6: If you sign the insurance company's medical authorization, they will settle your case sooner.

Truth: It is true that the insurance company will need to review the medical records regarding treatment you received subsequent to your injuries, in order to evaluate your claim properly. However, the insurance company is not entitled to unfettered access to all of your private medical information. If you sign a medical authorization, that's what you're giving them. The insurance adjuster wants this access so that he or she can search for any indication in any prior medical record, no matter how old the record is, that at some time in the past you treated for pain in the same part of your body that was injured in the accident. If they find any record of

prior treatment, they will use that access to your very private and personal medical records, and you are allowing them full access to information that they can now control.

Myth #7: The insurance adjuster can help you better if you give him or her permission to record your statement about your accident.

Truth: The main reason the other driver's insurance adjuster wants to record your statement is so that the insurance company can use it against you later. You are under no legal obligation to give a recorded statement, so don't. You may feel you have nothing to hide, so there is no problem letting the insurance company record your statement—but that would be a big mistake. This is because no one ever tells a story exactly the same every time. The insurance company will try to use any small omissions or inconsistencies in your recorded statement against you. For instance, if the adjuster asks you about your injuries, he or she is hoping that you will not tell about every part of your body that hurts. Being trained to do so, he or she may even cut you off so you don't finish answering the question. For instance, during the recorded statement you might forget to mention that you injured your knee. If you later tell the adjuster that your knee injury was caused by the accident, he or she will use your recorded statement to argue that you didn't complain about your knee then, therefore, your knee injury was not caused by the accident.

CHAPTER TWO ABOUT YOUR AUTO INSURANCE POLICY

The Declaration Sheet of Your Insurance Policy and How to Read It

The declaration sheet “dec sheet” of your auto insurance policy tells you what types and how much coverage you have. It is mailed to you as part of your insurance bill at least twice a year, depending on how your insurance payment schedule is set up. Every insurance company has a different method or different codes on the dec sheet, but typically, it is set up in two columns. The left column shows what type of coverage the policy contains and what the maximum amount the insurance company will pay under that particular coverage. The right column shows how much you must pay for the coverage contained in the left side column.

The first coverages listed are usually liability coverages. All personal auto insurance policies in Pennsylvania are required to have these coverages. There will be coverage for “bodily injury.” This is the amount your insurance company will pay to someone that you cause injury to, if you are at fault for causing the accident. There will also be “property damage” coverage, which will pay for any property damage you cause to someone else’s vehicle or property. These, and other coverages, are often set up as “split limits.” For instance, the

bodily injury coverage may show limits of 100/300. The 100 is the “per person” coverage. It means that if you injure one person, your insurance company will pay that person up to \$100,000.00 to compensate for his or her injuries. The 300 is the “per accident” coverage. It means that your insurance company will pay up to a maximum \$300,000.00 to all people injured in any one accident. For instance, if you cause an accident that injures 5 people, your policy will pay up to \$100,000.00 to each person you injure, but it will not pay more than \$300,000.00 total for all the people injured. In this case, if all five people are seriously injured, you may not have enough insurance coverage to compensate all of them fully for their injuries. This means you would be “under-insured” for that accident. Therefore, your “per accident” coverage on your auto policy should equal your net worth, in order to cover you adequately.

Next the dec sheet will typically show your Personal Injury Protection, “PIP” coverages. The main coverage that is required under this section is the “1st party” medical payments. This shows how much your auto insurance will pay for your medical bills if you are hurt in an auto accident. This is the coverage that must pay your medical bills first, even if some other person is responsible for causing the auto accident and your injuries. After your auto insurance company pays out all available coverage to your medical providers, i.e. after your coverage “exhausts,” then your personal health insurance would be responsible for paying for your medical treatment. The only time a different insurance company will pay your

medical bills first, is if your auto injury occurred while you were working, then the worker's compensation insurance policy will be required to pay your medical bills.

Other "1st party" coverages, which are not required, but which are commonly shown on the dec sheet include car rental reimbursement, collision, and comprehensive coverages. The car rental reimbursement is exactly what it is called. The collision coverage pays for property damage to your car caused by a collision with another vehicle, the comprehensive coverage would pay for damage to your car caused by something other than a collision with another vehicle. These are usually shown on the dec sheet in terms of the deductible, which means that your insurance company will pay for the actual cost to repair the vehicle, minus the deductible, which is usually \$250.00, \$500.00 or another amount. This means if it costs \$1000.00 to fix your car, and you have a \$250.00 deductible, your auto insurance will pay \$750.00 of the bill and you must pay \$250.00.

Another common 1st party coverage is wage loss protection. This is what your car insurance will pay you if the injuries you sustain in an auto accident render you unable to work. Normally it will be shown on the dec sheet as a total amount payable and then a monthly maximum payment. For instance, it will show \$25,000.00 / \$1,000.00 monthly. This means that your auto insurer will pay 80% of your actual earnings, up to \$1,000.00 per month for up to 25 months, so long as you can show that your doctor is disabling you from working and you were actually employed on the date of the accident. Optional

1st party coverages also include towing, funeral and others. The Limited or Full Tort option, UIM and UM coverages are also set forth on the dec sheet. They are addressed below.

Minimum Required Coverages in Pennsylvania

All personal auto insurance policies issued in Pennsylvania are required to provide at least \$15,000.00 in bodily injury protection, \$5,000.00 in property damage protection, and \$5,000.00 in PIP protection. All other coverages are optional.

Limited Tort v. Full Tort

One of the, if not the, most important aspects of your auto insurance coverage is the selection of limited or full tort. Which applies to your policy is usually set forth somewhere on the dec sheet, but it is not always indicated on the dec sheet. “Tort” means your legal right to sue another person for causing your injuries and money damages. “Full tort” means you retain your full rights to sue the driver at fault for causing the accident for all of your resulting damages, including damages for “pain and suffering.” “Limited tort” means that in exchange for paying a reduced insurance premium, you give up your right to sue the at-fault driver for your “pain and suffering,” unless you fall into one of the exceptions to limited tort or you suffer a “serious injury” as defined by law. You have to select limited tort affirmatively in writing on a specific form with specific language, in order for it to apply. If your insurance company does not save that document, you will be deemed to have selected the full tort option, even if your dec sheet says limited tort applies. There are exceptions

that apply, if your policy provides the limited tort option. If the at-fault driver is found guilty of DUI, if he or she is driving a vehicle registered in a state other than Pennsylvania, or if you are occupying a commercial vehicle when you are injured, the full tort option will apply to you. Otherwise, if you are injured as a result of someone else's fault and you are covered by a policy which provides the limited tort option, you will have to prove you sustained a "serious injury" as a result of the accident in order to recover money for your resulting pain and suffering. If you have limited tort on your policy, you, and anyone covered by your policy, may not be able to recover any money for your injuries from the driver who caused the accident. Therefore, if you can afford it, you should always have the full tort option on your policy. If you already selected limited tort, you can at any time change it to full tort. However, whatever tort option you have on the date of the accident is the option that will apply to that accident; you cannot retroactively change your tort selection.

UIM and UM

Underinsured (UIM) and uninsured (UM) coverages are also indicated on the dec sheet. These coverages apply when the person who caused the accident and your injuries either doesn't have applicable auto insurance or doesn't have enough insurance. If that person doesn't have any coverage than your Uninsured "UM" coverage will apply; if that person has insurance but not enough, then your Underinsured "UIM" coverage will apply. In such instances, your auto insurance policy will act as if it is the liability coverage for the other

driver. You will recover the same type of money damages out of these coverages that you would have recovered out of the at-fault driver's liability policy. These types of coverages are often "split limits" indicating a per person and per accident maximum, just like the liability coverage on the policy addressed above.

PART 2 . **THE PERSONAL INJURY BASICS**

What Is A Personal Injury Claim?

We attorneys work with “personal injury,” “accident cases,” and “wrongful death cases” every day, and it can be easy for us to forget that you don’t. In fact, people who have known us for years have asked us for a referral to an automobile accident attorney when we thought they knew exactly what we do!

Very simply, a personal injury case, automobile accident, or wrongful death case involves any type of claim where a person has been injured or killed due to someone else’s negligence. Negligence is doing, or failing to do, something that society expects us to do or not do. For example, if you run a stop sign while driving, you have been “negligent” because society expects you to stop at stop signs. If no one is injured as a result of that accident, then you may just get a traffic citation. However, if your negligence causes personal injury to another person, i.e. you run a stop sign and crash your car into someone else’s car, then you can be sued by that person and forced to pay monetary damages if he or she sustained property damages or personal injury.

If you are not injured as a result of someone else’s negligence, you don’t have a personal injury case. If your property gets

damaged as a result, you would be able to sue for that property damage. We do not handle property damage cases but there are many lawyers that do. However, if you are physically injured and your car is damaged or destroyed, then you have both a personal injury and a property damage claim.

There are many varieties and causes of personal injury claims. Personal injury claims can arise from motor vehicle accidents of all kinds; slip-and-fall accidents from a failure to take care of property; medical malpractice cases from a failure to provide proper medical care; and products liability cases arising from injury due to a harmful product.

When a death occurs as a result of someone else's negligence, this is called a "wrongful death" and a "survival action" claim. These are special types of personal injury claims. The wrongful death claim is brought on behalf of the surviving family members; the survival action is brought on behalf of the deceased person's estate. The rules that apply to such claims are different than those for other types of personal injury claims. It is important that you have an attorney who understands the specialized nature of such cases. We have extensive experience handling wrongful death and survival claims.

We almost certainly won't take your case if you're already represented. If you are already represented by an attorney, this book may raise questions for you. Ask your current attorney these questions. Everyone does things a little differently and we almost never accept cases in which another local attorney is already involved. If you are currently represented, use

this book to increase your knowledge and to ask questions of your attorney.

What You Must Prove To Win Your Case

Just because you were hurt in an accident, doesn't mean you are entitled to money. You must prove that someone else was more negligent or careless than you in causing the accident and that it was his or her negligence or carelessness that caused your injury. If you fail to do this, you lose. If you sue the wrong person, you lose. If you had an injury before the accident, then you are only entitled to be compensated to the extent your injury is now worse as a result of the accident.

Pennsylvania follows the "comparative negligence" standard. This means that you can have some degree of culpability in causing the accident, but someone else or multiple other people, must have been more culpable for causing the accident than you in order for you to recover money from them. This is a more relaxed standard than that of some other states. Some states follow the "contributory negligence" standard. In those states, if you are only 1% at fault for causing the accident, you cannot recover any money from any other person, even if that other person is 99% at fault for causing the accident. Other states apply different versions of these standards.

CHAPTER THREE

THE 10 BIGGEST SECRETS TO WINNING YOUR PENNSYLVANIA CAR ACCIDENT CASE

The Necessary Steps For Protecting And Winning Your Car Accident Case

Regardless of the nature or size of your auto accident claim, there are important steps that should be taken in order for you to increase your opportunity to win your injury claim. The following secrets are based upon our experience in handling injury cases for many years, as well as our discussions with many judges, jurors and other attorneys. Although success in a personal injury claim can never be guaranteed, the following rules provide a good foundation for a fair settlement. Further, it is our belief from years of experience that a failure to follow these steps is likely to lead to a bad result where you don't get what your case is worth or what you deserve. Don't be a victim twice. Follow these rules.

RULE #1: Know your limitations.

Unless your claim involves minor property damage and minimal injury, or you have specialized training in handling injury claims and can perform all of the tasks set out in this book, you should seek the advice and counsel of an attorney. In Part 3, we will give you some guidelines on how to select a personal injury attorney. Getting well from an injury while you deal with your everyday life is enough of a task without

adding the requirement that you have the appropriate expertise necessary to pursue a personal injury claim. What you don't know can and will certainly hurt you.

If you make a mistake while attempting a do-it-yourself home improvement project, you can simply re-do it or later hire a professional to do the work. The only thing lost is time and money. If you make a mistake handling your own personal injury claim, it may well cost you your claim. You only get one chance to do it right; there are no “do overs” with settling personal injury claims.

A favorite trick of the insurance companies is to convince you that you can handle your own claim and that there is no reason to hire an attorney. Once you fall into that trap and thereafter attempt to resolve your claim, the insurance company usually will make settlement offers that are clearly unacceptable and far less than the true settlement value of the claim. Unfortunately, once these offers are made, it becomes harder to find an attorney, as many attorneys are not willing to take the case on a contingent fee basis calculated on the recovery over and above the prior offer of the insurance company. In these situations you may be forced to accept less than what you could have recovered had you hired an attorney from the outset.

RULE #2: Keep all medical appointments and follow through with prescribed care.

It is vitally important that you keep all medical appointments and follow through with prescribed care. Insurance adjusters

and jurors look skeptically at injury claims of people who fail to go to their scheduled medical appointments or fail to follow through with medical care prescribed by their doctor. People who are hurt usually treat for their injuries. The only way an insurance adjuster will know if your injuries are to be taken seriously is if the records reflect the kind of injury you have and if you have treated for that particular injury. Obviously, it may not be possible to keep a scheduled appointment from time to time. If this is the case, you should reschedule it, preferably before the date of the appointment. If this is not possible, you should reschedule as soon as possible thereafter and advise the doctor why the appointment could not be kept.

Prescribed medical care is also important. Unless the treatment recommendation is in some way controversial, you will have a hard time convincing anyone that you are still suffering the effects of the injury if you do not follow through with what a doctor has recommended. Remember, the burden is on you to prove the extent of your injuries. Your failure or refusal to undergo treatment suggests that your injury was not that bad or that you are no longer injured.

RULE #3: You must tell your doctors about the extent of your injuries.

When you go to the doctor for treatment, it is vitally important that you tell him or her of the full extent of your injuries. Men are particularly bad about this. Often the doctor will come in and ask how the potential patient is doing. Instead of saying not well and identifying their specific problems, men often simply say they are doing fine. If you are doing fine,

why are you at the doctor? Tell your medical providers of all of your problems. A doctor cannot diagnose and treat something he has not been told about. If you tell the doctor you are fine, odds are that he is going to believe you. Providing a detailed and complete history of your problems is not whining! Doctors are busy people and often in a hurry to get to the next patient. If you need to write your complaints and questions down, do so in order that they not be forgotten in the crush of time. Also, make sure you always tell the doctor the cause of the injury; not only is this important for your claim, but it lets the doctor or other medical care provider the proper insurance company to bill for the treatment.

RULE #4: Do not misrepresent the extent of your injuries and activity levels.

By the same token, you should never misrepresent by overstating the extent of your injuries and restrictions on your activity levels. Doctors have methods of determining whether they believe you are exaggerating your injuries, and insurance companies routinely hire private investigators to conduct videotape surveillance. If you claim that you cannot bend over, squat down or lift certain items and then get caught doing so on videotape, your claim is effectively destroyed. There is virtually no explanation that can effectively overcome the eye of the camera.

RULE #5: You must be honest in connection with any wage loss claim.

Most accident claims will involve a claim for loss of income, even if you have been able to use sick days, vacation time

or disability insurance to cover your time off work. These benefits do not accrue to the benefit of the person causing the accident and “but for” the accident, you would have been able to use such benefits for other illness, injury or time off work. As with other parts of your claim honesty is the key. If you exaggerate your claim and it is discovered, your overall credibility becomes an issue that can and will destroy your claim. Similarly, not having accurate tax returns to document the extent of past income can also be a problem. If there is an issue regarding your tax returns, you should advise your attorney immediately so that he can deal with such issue appropriately.

RULE #6: Be honest with your lawyer regarding past accidents and injuries.

In order to be able to provide the best possible representation, an attorney must know of all prior accidents and injuries suffered by a client, no matter how small and no matter when they occurred. Don’t bend the facts. We work with the facts of the case, whatever the true facts are. We advocate those facts in the most favorable light for our clients, but we don’t change the facts and neither should you. Sometimes you may think that a prior injury has no bearing on your current injury, and you may be right, but you still must disclose it to your lawyer. A good adjuster for the insurance company will find out about any prior claims anyway. All insurance companies subscribe to a database that provides information to them about prior reported injury claims. If you are dishonest with the insurance company about prior claims or

conditions, they will think you're being dishonest about what happened in this accident. Credibility matters. Give the facts as they occurred and allow your personal injury attorney handle them.

RULE #7: Be honest with your lawyer about other injuries and health conditions.

Similarly, it is vitally important that you disclose to your lawyer any injuries occurring subsequent to the accident in question and any other health conditions from which you may suffer. If you saw a doctor or health care provider, there probably will be a record about it and the insurance company will know about it. Whether or not such injury or health condition is relevant to your current claim is a determination that is not up to you. Your attorney can deal with any issues that arise from such information if he or she knows about it. If you are less than honest about such information and the insurance company finds out, your claim's settlement value will be dramatically reduced.

RULE #8: Don't let your lawyer control your medical care by referring you to selected medical providers.

Insurance companies, judges and juries are highly suspicious of attorneys and doctors who have an established referral relationship. If an attorney directs clients to a particular doctor, there is the appearance that the doctor may be less than independent and providing favorable testimony due to a business relationship. You should never go to a doctor simply because your attorney directs you to. If every client is getting referred to the same orthopedist or chiropractor, there will be

a problem. If an ongoing referral relationship is established, the insurance company will have a powerful argument in their favor, regardless of the appropriateness of the treatment provided.

Please be aware, however, that there is a big difference between directing that you see a specific physician and simply recommending a physician or physicians based on a particularized need. You may need specialized care and it is perfectly legitimate for an attorney to suggest physicians to you who may be able to provide the expertise needed. Even in these situations, be certain you ask about a business relationship and understand the nature of it, if any, between the attorney and the doctor.

RULE #9: Keep your lawyer up-to-date regarding your medical care and injury status.

An attorney obviously cannot live with you or be with you each time you go to the doctor or other medical care provider. Because of this, it is important that you keep your attorney advised about how you are doing and what is happening with regard to your medical care. This is vitally important information. If there are particular issues regarding your status or care that need to be addressed, your attorney can help you through such issues and help you in bringing them appropriately to the attention of your medical providers. The failure to keep your attorney so advised, may lead to more care than you need, less care than you need, or even the wrong care.

RULE #10: Do not speak to anyone other than your attorney about your case.

You have probably heard the old adage, “Loose lips sink ships.” We all love to talk. What was true in wartime is true with regard to your injury claim. Your claim is *your* claim. It is a personal matter and should not be discussed with others. Insurance companies and their attorneys not only use video surveillance, but also speak to your friends and neighbors about you and your injury claim. What you say to such people regarding your situation is open to discovery. Inadvertent statements may be misunderstood or taken out of context in a way that could come back to haunt you.

CHAPTER FOUR
**THE PERSONAL INJURY POTHOLE:
THE LIEN AND THE RIGHT OF SUBROGATION**

You should be aware that if your medical bills were paid by the health insurance of an employer's health plan, the health insurance company or plan may want reimbursement out of any personal injury recovery. Your "insurance" turns out to be not insurance at all, but rather a "loan" and the insurance company wants their money back out of your settlement. This is called subrogation. The laws in some states prohibit such subrogation claims by insurance companies, but they often attempt to assert such liens anyway. In Pennsylvania, the law is that only HMOs and worker's compensation insurance companies have subrogation liens against your personal injury recovery. However, there is also a federal law called ERISA (The Employee Retirement Income Security Act of 1974), which supersedes Pennsylvania law. It can be quite complicated, but it generally allows a right of subrogation to health insurance plans that are wholly self-funded by your employer. Also, if a government entity, such as Medicare, Medicaid or the Department of Public Welfare, has paid your medical bills or provided you cash assistance, they will also have a lien against your recovery. Your attorney must understand the implications of ERISA and other liens on your case. We do. We will negotiate and minimize

the impact of ERISA, worker's compensation, HMO and other subrogation claims against your recovery.

PART 3 . **FINDING AN ATTORNEY**

Meeting With An Attorney When You've Got Everything To Lose

Following an accident that results in an injury or death, you will be confronted with a variety of issues that will require your attention. For example:

- Should I speak with the insurance adjuster?
- Should I sign certain insurance company forms?
- Who is responsible for the accident?
- Who is going to take care of my property damage?
- Can I get a rental car? When?
- Who is responsible for my medical bills?
- If I don't have medical insurance, how will I get medical care?
- If I cannot work, who will be responsible for compensating me for lost wages?
- Should I give a statement to the insurance company?
- Who is telling the truth in those legal ads?

Because these questions are of critical importance to you and because they come at a time when you are often least able to deal with them appropriately, we believe that you should consult with an attorney in order to be certain that you obtain the immediate information you need. While you certainly do not need an attorney in every small injury case, it often is hard to tell how significant your injury situation might be immediately following the accident. It is better to be safe than sorry and a consultation with an attorney regarding your injury situation will cost you nothing.

Do You Really Need An Attorney To Settle Your Case?

You definitely do not need an attorney in every injury case. In fact, our office doesn't even accept cases where there's little or no property damage and the injuries are minor. Why would we decline such cases? In the small case, the attorney fee and costs might leave nothing for you after your medical bills are paid, and we don't believe that would be fair to you. If you have a small claim we will tell you so.

How To Find The Right Attorney For Your Case

Choosing an attorney to represent you is an important but daunting task. The decision certainly should not be made on the basis of advertising alone. The Yellow Pages are filled with ads - all of which say basically the same thing. You should not hire based solely on advertising. Anyone can buy a slick commercial. In fact, you should not even hire us until you trust that we can do a good job for you.

1. First, we believe the world of personal injury, auto accidents and work injury claims is too specialized for someone who does not regularly handle these types of cases. Too many times we have seen cases that have been handled by attorneys inexperienced in personal injury matters. The fact that an attorney can handle a divorce, draft a will, or handle a speeding ticket, does not mean that he or she is the appropriate choice for an injury claim. You should be aware that the insurance companies that defend personal injury and accident cases know who the attorneys are in your area who handle these cases regularly and those that will actually go to court to try such cases. The insurance companies use that information to evaluate their risk. If this information is of importance to the insurance company, shouldn't it be important to you? We believe it is so important that you get to an attorney experienced in handling injury cases that we will be happy to provide you with the names and telephone numbers of other attorneys even if you don't become our client. These are people for whom we have a great deal of respect and who share our desire to see that an injured person is appropriately compensated for the negligence of others.
2. Second, we believe experience is an important factor in your decision making process. The longer an attorney has practiced in a given area, the better. Not only is the length of experience important, but also the nature of the experience. The more experience an attorney has

actually trying cases is a definite plus. Past results do not guarantee success, but do demonstrate some level of experience and success.

3. Third, we believe that an attorney should be able to provide you with information just like this book and/or a web site so that you can find out more about the qualifications, experience, and method of handling a case before you walk in the door.
4. Fourth, beware of any attorney who contacts you in writing just after you have had an accident for the sole purpose of soliciting your claim. If you are contacted “cold” it should instead be for the purpose of providing you free information that you can study on your own and on your own time.
5. Fifth, beware of an attorney who has a stable of doctors he wants to refer you to. As discussed previously, this can actually be the “kiss of death” to your claim.
6. Sixth, you should meet with the attorney. The attorney-client relationship is a personal one and you should feel comfortable that you can work with the attorney and trust that the attorney can do a good job for you.
7. Seventh, you should determine how your attorney will keep you informed about the progress of your case. We will be happy to discuss the status of your matter with you at any time. As attorneys, we are often out of the office in court, but we have many excellent paralegals on

staff who are always at the office and can answer your questions when we are out. We also have e-mail and voice mail to do this in a cost-effective manner.

8. Eighth, you should find out who will actually be working on your case. Make sure that you and your attorney have a firm understanding as to who will be handling the matter. There are a lot of things that go on in a case that do not require a senior attorney's attention. On the other hand, if you are hiring an attorney on the basis of his trial skills, you need to be certain that he will be the one trying the case for you.
9. Ninth, be careful about an attorney who rushes you to sign a contingent fee contract. A contingent fee is not the right fee for every type of personal injury case. We have heard of instances where fee agreements are delivered by courier within hours of the time you first call the attorney's office. That's right, before you even have had a chance to meet with the attorney. This is outrageous. We have also heard of some attorneys employing "runners" to personally solicit accident victims, which is illegal and unethical. The "runner" hangs out at the police station or listens to police radio to "run" to accident scenes or hospital rooms to encourage victims to sign contracts with attorneys. Outrageous does not begin to describe this practice!
10. Tenth, get a referral from an attorney that you know. If we do not accept your case, we can help

you find an attorney. This is not meant to be all encompassing or an endorsement of any particular attorney, but simply to give you a good start! If you have any questions, e-mail us at *info@MHKAttorneys.com*.

CHAPTER FIVE OUTRAGEOUS LAWYER ADVERTISING

You may have noticed that all of the attorney and lawyer ads in the Yellow Pages claim personal injury expertise. However, many of the lawyers who run such ads never go to court, and instead will settle each case for pennies on the dollar. The insurance company knows who those attorneys are and so should you. Other attorneys take on any claim and file lawsuits without even trying to settle the case. Good lawyers don't like lawyers who file frivolous lawsuits, because frivolous lawsuits hurt everyone by delaying legitimate claims from getting to court. Frivolous claims are used by insurance companies to create the impression that all claims are frivolous. If you are looking for a lottery win, go elsewhere. If you are looking never to have to work again, because someone tapped you from behind at the red light, go elsewhere. Our firm handles only legitimate claims from legitimate injuries.

WHAT TO EXPECT FROM ANY LAWYER BEFORE YOU MAKE AN APPOINTMENT FOR THAT "FREE CONSULTATION"

Before you make an appointment with any lawyer, you should ask him or her to send you a package of written information, which should include at least the following:

1. A sample fee agreement;

2. A full written explanation of the steps involved in a personal injury lawsuit;
3. A written assurance that they carry errors and omissions (“malpractice”) insurance in the amount of at least one million dollars. (You’d probably be surprised to see how many lawyers carry NO insurance.) Ask for this representation in writing;
4. A full explanation of fees and costs, the difference between the two, and how the percentage fee is calculated;
5. A professional biography that outlines at least how long he or she has been actually going to trial in personal injury cases.

CHAPTER SIX

WHAT YOUR ATTORNEY SHOULD DO FOR YOU

Here is a list of tasks that we may be called to do in your case. Please keep in mind that all of these tasks may not be necessary in every case and that each case is different.

- Perform initial consultation and interview with the client.
- Educate the client regarding personal injury claims.
- Advise client regarding property damage issues.
- Discuss medical care options with client.
- Obtain the police report concerning the accident.
- Interview known witnesses.
- Obtain photographs of the accident scene and injuries.
- Collect any other necessary documentary evidence.
- Analyze legal issues presented by the facts of the case.
- Review and analyze insurance coverages available to the client in connection with accident.
- Offer suggestions concerning what coverages should be in place for adequate future protection.

- Obtain medical records and medical billings concerning client's medical care.
- Speak with client's physicians or obtain written reports concerning client's condition.
- Analyze client's health and auto insurance policies or welfare benefit plans in order to determine whether any money spent to pay medical bills must be repaid.
- Analyze the validity of any liens asserted on the case by doctors, insurance companies, welfare benefit plans, and employers.
- Contact insurance companies and put them on notice of claim.
- When medical treatment has been completed, review and analyze treatment records.
- Prepare demand package.
- Determine appropriate value of client's case.
- Attempt to negotiate settlement with insurance carriers.
- If settlement cannot be reached, file suit on behalf of client.
- Prepare written discovery (questions and answers) on behalf of client.
- Take appropriate depositions.

- Prepare the client, witnesses and healthcare providers for depositions.
- Produce to the defendant all pertinent data for the claim such as medical records, medical bills, wage loss information, and tax returns.
- Prepare the case for trial and/or settlement before trial.
- Prepare the client and witnesses for trial.
- Organize the preparation of medical exhibits for trial.
- Organize the preparation of demonstrative exhibits for trial.
- Prepare for pretrial mediation.
- File briefs and motions with the court to eliminate surprises at trial.
- Take the case to trial before a jury or judge.
- Analyze the jury's verdict to determine if either side has good grounds to appeal the case.
- Make recommendations to the client as to whether or not to appeal the case.

CHAPTER SEVEN

OUR SERVICES

Very simply, we are here to represent you at every step of the way in your personal injury claim. Our mission is to advocate your interests fully and ethically in a manner that is intended to compensate you as fully as possible for the injuries you have suffered. Sometimes, the best advice we can give is that you do not have a claim that can be won. If that is our opinion of the case, we will tell you so. We are not here to pursue claims we believe have no merit. That would not be in our interest and certainly would not be in yours.

If your case meets our criteria for acceptance, you can be assured that we will fully pursue your claim and provide you with the information and advice you need in order to be able to make your way through the legal process. We will keep you advised regarding the status of the case and whether the case should be settled or whether you should go to trial. An initial consultation regarding your case is free. We will fully explain all fees and costs to you before proceeding. Together as a team, we will decide on the best approach to a positive resolution of your claim.

CHAPTER EIGHT OUR FEE STRUCTURE

Our Stepped **Contingency Fee Agreement** simply means that the earlier your case is resolved, the lower our percentage fee is. This may enable you to accept a lesser sum from the insurance company but still come out ahead. We will discuss this with you. One of the main reasons we can offer a Stepped Contingency Fee Agreement is based on the type of personal injury cases we handle. That is, we only work with personal injury clients who have sustained serious injuries or may have a wrongful death claim on someone's behalf.

Our Stepped Contingency Fee Agreement Structure begins at 20% for workers and can go as high as 40% for very difficult cases. Special consideration is given to minors and the elderly.

Hourly Fee Structure. Sometimes we are asked simply to consult on a injury matter. This is usually for cases that are minor and don't meet our criteria set forth on page 1. When requested to consult on a particular matter our hourly fee is \$300 per hour and a \$3000 retainer.

**FREE NEWSLETTERS
FROM MHK ATTORNEYS**

Want to know how best to deal with insurance company denials? Want to find out specific steps you can take to find the best lawyer for your case? Want to read the “inside story” about frivolous lawsuits? Would you like some practical advice about buying insurance from someone who does not sell insurance? These are some of the topics that are covered approximately eight times a year in a free newsletter sent to your home by MHK Attorneys.

If you subscribe and later feel like we are wasting your time, there is an 800 number in every issue that you can call to “unsubscribe.” Don’t worry, this is not the boring, “canned” newsletter that most firms buy and slap their name onto. We are actively involved in the writing process and we aim to provoke people to pay more attention to their legal affairs.

There is no need to destroy this book. Just photocopy this form, fill it out and mail or fax it to us. Fax to 570-839-6723 or mail to MHK Attorneys, HC 89 Box 105, Pocono Summit, Pennsylvania 18346.

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ABOUT THE AUTHORS



For more than 20 years, MHK Attorneys has been representing people injured in car, truck and motorcycle accidents. MHK Attorneys has never represented insurance companies, they only represent injured people. MHK Attorneys will help you secure all the insurance benefits you are entitled to and fight to obtain compensation for your pain and suffering. The firm wrote this book to give people injured in Pennsylvania auto accidents, answers to their most common questions. For more answers, articles, blogs, newsletters and the latest information on Pennsylvania auto accident laws and news, visit *MHKAttorneys.com*.



MERWINE, HANYON AND KASPSZYK, LLP:

- Has been fighting automobile insurance companies since 1989.
- Has received the top rating of AV Preeminent from Lawyers.com and Martindale-Hubbell® lawyers rating system, which rates the firm at the highest level of professional excellence.
- Has authored numerous books and reports.

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