

Full

Disclosure

Your insider guide to auto accident insurance claims, from the people you love to hate.

*By: Alex Tsao*

# Prologue

Why do good attorneys make bad people? To answer that question, we need to explore how attorneys are viewed in popular culture. Clearly, they're vilified. They're portrayed in mainstream media as unscrupulous villains — people with low morals lacking in business ethics, i.e., people who will screw anybody over just to make a buck.

Why is that so? Well, we must start by looking at the nature of the legal industry and law in general. Attorneys are charged by their state bar associations to be zealous advocates for their clients. That means an attorney must represent their clients zealously; to do whatever it takes to pursue their client's interests. For the most part, the clients that attorneys represent are the people who first walk into their office and retain them. In a way, they're kind of like guns for hire. They are, in essence, intellectual mercenaries. They represent the person who first comes and pays them money to retain their legal services.

Now that's not to say attorneys don't exercise discretion and turn cases away when representing a client would mean compromising their own principles and morals, especially when they believe that the client doesn't have the facts on their side and clearly has a losing case. Attorneys often turn away cases because they believe they won't be able to advance the client's agenda. However, by and large, the clients that attorneys represent are the people who come into their office and retain their services. They may end up winning or losing, but the first one who comes in and retains the attorney is the one the attorney represents and zealously advocates for.

That is why attorneys are effectively intellectual mercenaries. They are legal "guns" for hire. While somewhat tongue-in-cheek, that portrayal obviously can lead to a very inaccurate depiction of attorneys and their decision-making process. If you have ever been involved in a lawsuit or other litigation then you probably remember starting to really hate the other attorney at some point. Maybe it was even right off the bat, but at some point, you realized that if opposing counsel were to die tragically the next day, you wouldn't feel the least bit bad for him or her. Obviously, you already had some issues with the other side, which is why you were in the legal proceedings to begin with. However, you began to put actual hate and animosity onto their attorneys, who seem to be the other party's mouthpiece and the bearer of constant bad news. The longer and longer you carried on in litigation, after discovery and especially depositions, you started to focus your animosity on the attorneys — the "scumbags." How can they represent these guys? How can they do this? They're blind! Can't they see their clients are wrong? At the same time, the other side is doing the same thing to your attorneys. Everyone hates the attorneys who don't represent them.

If we had to narrow our focus to the most vilified areas of the law, whose legal practitioners get the worst rap, and in many ways, color the entire industry, we'd be looking at the fields of criminal and personal injury law. Criminal defense and personal injury attorneys are the key drivers of our infamous notoriety. On the criminal defense side, there are private practitioners as well as public defenders who are appointed to represent people who may be criminals, possibly with long rap sheets, who may be accused of heinous crimes and have overwhelming evidence against them clearly establishing the fact that they committed murder, arson, robbery, rape, child molestation, etc. The mainstream thought is, "How can these attorneys defend these guys?" Well, in the case of a public defender, they don't have a choice; they are appointed. Private practitioners who are hired, retained, and paid money by these defendants either (1) truly believe in their client's innocence and/or (2) believe wholeheartedly in the idea that everyone is entitled

to due process, i.e., that everyone has the right to be heard and have the constitutional protections afforded to them.

Like most things, people don't give a crap about "due process" until they're the ones being charged with a crime. Then suddenly they want all the rights afforded to them when perhaps they didn't care about those rights being afforded to other criminal defendants. It's always different when you're the one in the hot seat, but it's an all-or-nothing proposition: either everyone gets due process or no one does.

The bottom line is that many criminal defense attorneys believe in the system, believe in due process, and believe that if a person is guilty, the evidence and the jury will come to that conclusion. If the defendant is not guilty, then the evidence and the jury will come to that alternative conclusion. Either way, the attorney is just the catalyst for that outcome. Without their presence and the existence of due process, innocent people would otherwise be found guilty through a kangaroo court process. A lot of our country's ideas about rights and due process stems from our history with the Salem witch trials, where people were accused of being witches, dragged into the town square, and then set ablaze. The belief was that if the person died in the fire, then all was well and they weren't a witch. However, if they didn't die in the fire, then the mob had to kill them because they were witches. Either way, the accused ended up dying (*and I suspect that no one ever survived being burned alive in the first place*).

Obviously, that wasn't a very good legal system, but from that kind of history was born this idea that people are innocent until proven guilty. Without criminal defense attorneys defending people who are seemingly guilty, the system would spiral out of control and innocent people would start being apprehended, convicted, and punished based only on the word and the whim of people with power, money, and influence. Let us not forget that. Our current legal system is simply a byproduct of evolution, of learning what worked and what needed to be changed in the interest of justice. The system is not perfect and never will be, but it will always be evolving.

What about personal injury? Well, these attorneys are famously referred to as "ambulance chasers," right? They're portrayed as these guys who either themselves or through their minions follow ambulances to the hospital to take advantage of victims and injured parties of car accidents, motorcycle accidents, and catastrophic events for the purposes of making money — to the disadvantage of everybody else. Who do you suppose really benefits from that portrayal of personal injury attorneys? Simple answer: the insurance company. In the vast majority of personal injury cases, the party who defends the claim — and ultimately pays — is the insurance company representing the at-fault driver.

But what is the role of the insurance company? Their role is to take money, in the form of a premium payment, from their insured and then defend and pay out claims that are made against the applicable policy. That's how it is supposed to work — in theory. Let's examine that business model for a moment. If they pay out more in claims than they receive in premiums, that business is going to fail. That insurance company is not going to continue doing business. Insurance is a business like any other and the companies need to make money to survive. If they aren't making money, they aren't providing insurance policies.

Yes, insurance companies do other things. Sometimes they act as private equity funds; they invest in real estate and buy businesses. However, the basis of their business is still collecting

more premiums than they pay out in claims. Think about it for a second. They want to collect premium payments from you throughout your lifetime, whether it is life insurance or auto insurance, and they're hoping they don't have to pay out on any claims on your behalf. That's how they would like it. Then they would maximize your value to their insurance company. However, that would mean you end up paying premiums on a product that you never even use. They don't give you any of that money back, either. You never use the product you purchased and they like it that way.

Insurance companies famously spend hundreds of millions, if not billions, of dollars to block legislation that would force them to pay more in claims. A good example is what they did to MICRA legislation. The Medical Injury Compensation Reform Act of 1975 (otherwise known as "MICRA") is a California act under which people who are victims of medical malpractice bring claims against the medical providers, their networks, and hospitals. MICRA arbitrarily limits the amount of pain and suffering a victim can receive to no more than \$250,000. MICRA set this cap on recovery way back in 1975. By blocking legislation to increase the amount of money victims can receive for pain and suffering, insurance companies have effectively restricted potential compensation for victims of medical malpractice to amounts set over forty years ago!

In recent years, there was a bill to increase the cap on MICRA to adjust for inflation, but California citizens voted it down. As nonsensical as that seems, it was also not surprising because the insurance companies had spent hundreds of millions of dollars that year telling the public that the only people in favor of increasing the MICRA limits were attorneys out to rip you off and line their pockets with money. But in the end, who won? The insurance companies. They ripped off victims and lined their billion-dollar pockets. The victims didn't win, that's for sure.

So, you have these personal injury attorneys out there, hitting the streets, supposedly looking for victims to take advantage of. But what's the alternative? Having these victims go it alone? Victims who don't understand insurance or the claims process? Thankfully, most people don't have experience with catastrophic incidents involving motor vehicles, train derailments, airplane crashes, and the like.

When victims incur injuries through compensable accidents and must deal with the insurance companies, it's usually the first time they've ever had to deal with such circumstances. If these victims filed and pursued their claims without the assistance of legal counsel, the insurance companies would be ecstatic. Remember, insurance companies do not want to pay out claims at all and if they do, they want to pay the lowest amount they can get away with. So, they continue to prop up this image of attorneys as shady, slimy bottom feeders, looking to take advantage of society at large. They don't want attorneys to represent accident victims because they know that they're going to have to pay out more in claims.

What about these personal injury attorneys? What is their motivation? Well, everyone is different. I'd be lying to you if I said I didn't think there are attorneys out there who are in personal injury just to make a buck; attorneys who are out there to try to maximize their own money. But in a way, doesn't that make sense? If the insurance company on one side is trying to maximize their money, shouldn't the attorney on the other side, whose financial benefit is tied to the victim's, try to maximize the money for them and their client as well?

Many attorneys, however, have altruistic intentions. They choose the personal injury field because they see it as an area where people can be preyed upon. It is an area where many non-attorneys exist, where people who, under the auspices of other attorneys' bar licenses, feign to practice personal injury law without any attorney supervision. They represent injury victims to the injured party's detriment. Many times, these non-attorney personal injury "specialists" sit on claims for an extensive period, blowing statutes of limitations, and/or simply fail to maximize the value of a case, leaving the victim not fully compensated. Even worse, these individuals do things that get their clients red-flagged, which means their claims are sent to the special investigations unit of the insurance company. Sometimes, their clients end up blacklisted by the insurance companies so that any future claims will be deemed highly suspicious — all because a non-attorney practitioner mishandled their claim from the outset.

Many attorneys take on a case because they want to ensure that their client, i.e., the victim, gets proper medical attention and compensation for injuries. Maybe they've experienced being a victim of an accident themselves or have experienced such pain through their loved ones. Maybe they have even lost loved ones through someone else's negligence. These legal professionals want to ensure that accident victims and their families receive the care and compensation that they are entitled to and deserve.

Not everything is black and white and don't believe everything you see on TV because you don't know who is sponsoring that advertising material. The more you believe that attorneys are ill-intentioned, that personal injury attorneys especially bad, then the less likely you will be to obtain legal assistance when you need it most. And do you know who benefits instead? The insurance companies.

Choose your poison.

## **Chapter 1:**

# **The Cast of Characters**

So, what happens after a car accident? Who gets involved? Well, you obviously (let's assume you're the driver), maybe passengers, the owner of the vehicle if you are not the owner, your insurance company, the other party (who hopefully was at fault), their passenger(s) if they have any, their insurance company, the owner of their vehicle if they weren't the owner, maybe the rental car company if they rented a car or if you did, and the attorneys on either side, if any are retained.

If you are in a car accident and liability is disputed, meaning you potentially are going to be deemed (accurately or not) at-fault, the insurance companies generally have a duty to defend. This means that they are going to retain counsel at their cost and expense to defend you for your negligence. When we talk about negligence, we are referring to the “negligent” driving. It's your negligence in running the stop sign, making an improper left turn, not keeping a safe distance, and rear-ending another vehicle, etc.

If an attorney is defending the party that has liability, that attorney is generally paid and obtained by the insurance company; the same insurance company that issues the policy covering the driver who has liability or who was at fault. The insurance company does not usually retain an attorney until their adjuster receives notice that a lawsuit has been filed against their insured (i.e., the allegedly negligent, at-fault driver).

If you are the victim, on the other hand, you will be seeking repairs for your vehicle (unless it is considered a total loss) at the expense of the negligent driver's insurance company. Hopefully, everything goes smoothly and the insurance company for the at-fault driver accepts liability under the policy. What happens if they don't? What if the other side's insurance company denies liability or disputes the facts of the accident? Then your vehicle repairs may be delayed for a long time, pending an investigation into liability. That may mean getting statements from all parties and witnesses (which may take a lot of time, especially if one or more of those individuals is actively avoiding communications with the insurance company), obtaining police reports and emergency medical bills, going over physical damages to the vehicles with accident reconstruction experts, etc. However, if you have comprehensive collision coverage on your insurance policy, you could get your vehicle fixed by your **own** insurance company, pending the outcome of the investigation. If you do not have comprehensive coverage, it's something to think hard about, especially if not having a mode of transportation is simply not an option for you.

A whole host of characters is at play here; each one with their own motives and objectives, and each one with their own processes. Some of them are on your side, some of them seem to be on your side, some of them are against you, and some of them are *really* against you. In this interplay of characters and their desires, wants, and needs, it can be hard to tell who is out for what, and who is out for you — even when it comes to your own insurance company.

If you've been in an accident before and weren't at fault, you'll remember how quickly your own insurance company tried to wipe their hands of you. They don't try to assist or even inform you of the necessary steps to process your claim with the other driver's insurance company. Only when their interests are on the line do they inquire further. “Oh, you're triggering your comprehensive collision coverage to fix your vehicle? Then let me tell you what you need to do to subrogate your claim to us so that we can go after the other driver's insurance company for reimbursement.” Short of that, if you are in an accident and you are not at fault, your own

insurance company is prepared to do nothing to help you further your claim against the negligent driver.

Now what do you do? Seek assistance from the auto body shop? What about your own insurance agent who works indirectly for the insurance company? Are they going to help you in filing and moving your claim forward? Do you really want them to? In the end, they'll probably just leave you alone to figure it all out by yourself.

Immediately after you get into an accident, what is your plan of action? Do you have one? Probably not, but don't worry because most people are in the exact same boat. That's why I always tell people that they should have an accident guide that walks you through the steps you need to take after the incident. There are plenty of these guides around. Many law firms have one, including mine. Any decent guide will be better than nothing at all. I guarantee that if you get into an accident, you're going to be flustered. You might be shaken up. If it's bad enough, you may have serious memory loss as to what you are supposed to do next. Something as simple as exchanging insurance and driver's license information might escape you at that traumatic moment.

Here are some more detailed things to think about after an accident and during the initial exchange of information — Is the other driver's insurance policy valid, or has it expired as shown by the effective dates on the proof of insurance? Or if you look at their ID, is it really them? Is the ID expired? If they are driving a semi-trailer commercial truck, do they have a commercial driver's license? Of course, you should take pictures at the scene. Did you take a picture indicating how the cars were positioned after impact (if you didn't move them)? Did you take a picture of the damage to the other vehicle, so that there can't be any manipulation later that may be to your disadvantage?

If there are injuries resulting from the accident and the police were called and came to the scene, did they make an official report? Did you get the reporting officer's name and business card? If reports were taken, did you get the other party's insurance information? If not, you may have to wait weeks — maybe months — for that report to be finalized before you can make a claim against the other driver's insurance because you don't have their information. Yes, the police officer will have it written in his/her report, but sometimes, depending on what law enforcement agency that officer works for, he/she is not going to give you the other party's insurance information in a timely manner.

Is your vehicle in a tow yard? Did you call your medical provider? Did you go to the emergency room? Did you provide your own health insurance information to them? Did you talk to your insurance agent? Did you file a claim with your own insurance company? Did you file a claim with the other driver's insurance company, especially if you believe that you were not liable? Did you open a claim with them to immediately begin an investigation? If you don't do it first, the other driver may give a version of events that contradicts the liability claim that you are making against him or her.

They may also make a claim against your insurance policy, so you may want to call your own insurance company right after an accident to let them know that you were in an accident and give them your version of events first. There are many moving pieces when an accident case is being processed. As soon as you call the insurance company, they are going to ask you some specific

things that will affect your case down the road. Were you injured? Did you, or do you still, need to go to the doctor or the hospital? Are you going to get an estimate and a damage appraisal of your vehicle? The insurance company will want you to go to one of their approved body shops, which will likely *underestimate* and fix your damage at the least possible expense to the company. Do you have a local body shop that you trust? One that would ensure that all the work that needs to be done is done? If you have bumper damage, are they going to take the bumper off and show the frame isn't bent or compromised? On the other hand, if there is some slight bumper damage, are they going to take off the bumper and determine whether the bumper has been impacted to the point where it needs to be replaced? Has the bumper been compromised to the point where it needs to be replaced, even though when viewed externally without taking the bumper off, you can't specifically tell there is damage?

That's why whenever you move to a new town, you need to find certain resources in case of emergency — you need a good dentist and a good doctor, an accountant, an attorney (especially if you have your own business), and an auto body shop. Here in Los Angeles, cars, driving, and traffic are a way of life; people drive essentially everywhere. Unfortunately, we just don't have good public transportation. So, if your car goes down, your day is basically shot. You're running around the entire time trying to fix your car so that you can get back on track. It's a huge inconvenience.

With all these characters mixed together, with their conflicting goals and intentions, each one of them automatically becomes a suspect because you don't know what their true intentions are. As for the other driver, you don't know whether they're going to take responsibility for the accident or pin it on you. You don't know whether their insurance company will believe their insured, do a proper investigation, or completely stonewall you in your attempts to be reimbursed and compensated for your bodily injuries. Your own insurance company, well, they are incentivized to simply not be inconvenienced if they have nothing to do with the accident — i.e., they will not actively seek to give you any assistance if they don't have to defend you or compensate anyone involved in the accident.

Then there are the police/highway patrol/sheriff, who'd rather not come out to a traffic accident scene when there are probably more exciting things for them to be doing, and the doctors, who are trying to treat you as much as possible because they know their medical bills are going to be discounted by the insurance company. They further inconvenience you because you must get to their treatments, take time from your busy day, and maybe take time off work. Your own insurance agent may be in the mix too, and you know exactly what they want. The personal injury industry is ripe with insurance agents getting improper kickbacks for referring clients to attorneys, and that is why they want you to have a case, even if you don't really have one. Trust no one who doesn't have a fiduciary relationship with you.

These are the cast of characters. Is anybody out there really trying help you? To pull you up when you're lost and confused in the process? It's a dangerous thing to count on that because if you really look around and take in the lay of the land, you'll see that there aren't any heroes. The one person who is supposed to put it all together for you is your attorney — hopefully, you can find the right one to help guide you through the insurance maze and come out the other end with your vehicle fixed and your injuries recovered.

Your attorney will act as the middleman in dealing with all these characters (individually and collectively) so that you don't have the headache of dealing with them yourself. The attorney should take the burden caused by the accident away from you so that you can focus on what is most important, getting physically better. Accordingly, they will play all the games the other characters throw your way through the process, go through all the rigmarole, jump through the hoops that they put up, and go through the walls and obstacles in the process — all to maximize your claim.

The only person who is truly tied to you is your attorney. Only if you get compensated will the attorney make any money at all. In personal injury cases, the attorney should be working on a contingency basis, so you don't pay any money upfront. The attorney does all the work first and if you are compensated, they get a commission — generally one-third, plus expenses, if they paid expenses. Their ability to recover is tied to your ability to recover your due compensation. Nobody else is tied to you in that cast of characters. So how do the insurance companies get you away from the attorney? By vilifying him, making you distrust your attorney, making you question his motives, and confusing you about the process so that you think that you're being misled by your attorney.

I've seen it so many times. People get information from here, there, and everywhere else. They start to question the attorney's process, protocol, and handling of the case. When you think about it, the attorney doesn't get anything unless you win — and if you lose, it's everybody else who wins.

## **Chapter 2:**

# **The Crime**

Tires squealing. . . BOOM! An accident suddenly occurs, and worst of all, you are part of it. It's an all too common occurrence: You're driving along in a typical pre-accident scenario, where somebody is following too closely, on their mobile phone and not paying attention, which leads to a rear-end collision. Or perhaps you were involved in another common collision scenario dealing with left-hand intersection turns, when the driver making the left turn at the intersection either got the timing wrong, didn't see you, or was focused only on the traffic light — the latter reason being the most common cause for concern. Instead of staring at the light for stop/go guidance, the driver should have directed their attention to the oncoming vehicles to assess their speed and determine whether each car is actually going to stop before entering the intersection. It doesn't matter what color the light is; if an oncoming driver is determined to plow through the intersection, they are likely increasing their vehicle speed, making it the worst possible time to make a left turn in front of them.

We see left-turn lane accidents all the time. No matter what their stated reason, I think people are often just looking at the light and saying to themselves, “Oh, look. It's yellow and turning red. I'm going to go ahead and make the turn. . .” without really looking at the cars coming the opposite direction to determine whether or not they're traveling at a speed that indicates a stop is imminent. So, they make their left turn and SMASH — a collision.

The speed of the vehicles is another factor. Most streets have a 35-mph speed limit, so the oncoming car is probably traveling at 60 mph — no, I'm kidding. Hopefully, they're traveling anywhere from 35 to 45 mph, somewhere around the speed limit, as they go through the intersection. When the driver making the left-hand turn begins the turning maneuver, it doesn't really give the person going straight through the intersection adequate opportunity to press the brakes or veer away in time. The resulting collision is typically when the oncoming car plows right into the front right side of the turning car. That's the crime.

The parties get out and assess the damage. “Oh my God!” Hopefully, everyone is cordial. “Are you okay?” “All right, what are we going to do about this?” “What do we need to do right now?” If the vehicles can be driven, the parties should move them both to the side of the roadway to not impede the flow of traffic. Otherwise, the vehicles have to remain in place, as they were after the accident. Obviously, if there is an injury then 911 should be called immediately so that first responders such as police, fire, emergency, and fire and rescue crews can come to assist at the scene and transport injured parties to the nearest hospital for treatment.

In most car accidents, thankfully, the parties are not critically injured, and the onset of adrenaline dulls the initial ache of potential muscle and ligament strains. The parties get out of their vehicles and exchange some words, often beginning with “Oh my God, what happened?” Most likely, the turning driver says something along the lines of “I don't know. I was making a turn. The light was red,” or “Oh, the light was red, so I made a left, and I had the right-of-way.” Well, not really. If the light was red, you shouldn't have been in the intersection because you would have been blocking cars about to enter the intersection perpendicular to you. Meanwhile, the other party is probably saying, “No, the light wasn't red yet. I had the yellow light. I didn't have time to stop and I was going through the intersection.” Either way — at the end of the day, most of these cases come out that the person making the left-hand turn did so improperly. The California Vehicle Code obligates the party making the left turn to ensure that they have a clear path of travel before they begin making that turn. Regardless of the color of the light, they must have a clear path of travel. As I said earlier, you don't look at the light first. You look at it as a

secondary reference. Your first reference is the cars entering the intersection from the other direction.

The parties will go through this whole rigmarole of “I had the light,” “No, I had the light,” etc. They most likely won’t agree on that point. Hopefully, somebody comes to their senses and says, “You know what? We’ll let the insurance companies handle it. Let’s just exchange information.” Ideally, the parties will have this information, such as a valid driver's license, an insurance card, and insurance policy numbers, and they will exchange it, each making sure that the other’s information is not expired.

If you're in this situation, you should call the other driver’s insurance company right away. Find the contact number on the insurance document and call to verify that the other driver actually has valid insurance. Because if you drive away and it turns out the guy's insurance is expired (or bogus), then you may be left holding the bag, especially if you only have liability insurance — meaning you’re only covered for the damage that you cause to other people’s vehicles and not your own. Likewise, if the other driver is uninsured and you don't have "UM" (uninsured motorist coverage), then you’re out of luck. Unless you have collision coverage on your policy, there is no insurance company that will accept responsibility for paying for your injuries or property damage; those costs could be all on you.

What happens if the other driver has no license or insurance at the scene? In that case, I would strongly suggest that you call the police. Trust me, make that call. What’s the law enforcement response going to be? First and foremost, they’re going to ask you, “Is anybody injured?” Why do they ask that question? The simple answer is that if there is no injury and no need for first responder support, then it’s a low priority call and they'll focus on responding to more important urgent matters to. So in many cases, if you’re not injured or you can’t feel the injury yet due to the mix of shock and adrenaline, then the 911 operator will tell you, “Why don’t you go ahead and exchange insurance and license information, then depart from the scene. If you are unable to because your vehicle can’t be driven, then you’re going to need to call tow truck support.”

The only way the police are going to assist on the scene is if there is an injury to one or more persons necessitating emergency support (in many instances fire/rescue and EMTs will not respond unless law enforcement personnel are also on-site to ensure safety is maintained). Even then, the police response may not be timely. Nevertheless, if the other driver can produce no insurance card or driver’s license at the scene, you should seriously assess whether or not you’re injured; if you are, you want the police to come to the scene and file a report so that you’ll have evidence that the individual who hit you didn’t have proper documentation related to operation of a motor vehicle, if for nothing else than to support your claim of liability. Taking these actions may skew everything in your favor.

How do you get the police to respond, then? Well, you might have to amplify your story a bit and say that you’re injured; if the collision was serious enough, you probably are — whether you realize it or not. Adrenaline is good at masking pain. So, you might as well go ahead and call the police to come down to the scene. **Note: You will incur significant costs from the fire department/EMS if they have to transport you to the hospital.** Any time that the situation is not your typical “Let’s exchange information and figure this out through the insurance companies to determine liability” scenario, whether because the other party is acting suspiciously, belligerently, or just simply doesn’t want to give you their license or insurance

information, call 911. Get the police down there by telling them that you're injured and that the other party is not cooperating and/or is acting belligerently.

If the other party flees the scene of the accident, they just committed a crime. Police work in this instance is essential to investigate the circumstances of the accident and track the fleeing driver down. If you're able to make a note of the other driver's license plate number, vehicle make, vehicle model, and/or vehicle color (with the license plate number being the most important) immediately following an accident, it will be much easier to track them down through DMV records. The police will be able to locate, apprehend, and cite them for the misdemeanor of fleeing the scene of an accident, and now you'll be able to seek out their liability insurance carrier. Regardless of the facts affecting liability, if an insured driver flees the scene of the accident, their insurance company is pretty much going to accept liability on their policy holder's behalf (in your favor) because running away from an accident scene is almost an indefensible after a collision.

What happens if your versions of the accident conflict? You think he hit you; he thinks you hit him. He said/she said. In this situation, witnesses are extremely helpful. Perhaps you have passengers in your car. While they may be inherently biased (because they're going to have their own cases against the other driver or against YOU, if you're at fault), they are still witnesses and still valuable. The best witnesses, of course, are the unbiased ones — the people who might have been standing on the corner or looking through a store window and saw it happen. Also helpful are drivers who were beside you, in front of you, or behind you who had a good vantage point to observe the accident. Unfortunately, most of them will just drive away once the light turns green. But hopefully, you'll have some good Samaritans stop and assist — both physically and legally — by telling any party who asks them, such as the applicable insurance companies or accident investigators, what they witnessed.

If no good citizens volunteer themselves, your next best bet is to look around and determine whether someone is still present who might have observed the collision. If so, you need to talk with these witnesses and collect the names and contact information of anyone who sees the incident in your favor. You do not want to be in a "he said/she said" scenario if you can help it. In determining liability, the insurance companies will reach out to these witnesses. If you retained an attorney, he or she will also call the witnesses to verify their statements; a good attorney will try to talk to the witnesses first to determine which ones to nudge the insurance companies into interviewing as part of their own investigations.

When it comes to timing in this stage of an accident case, an old schoolyard taunt is apt: The last one there is a rotten egg. What do I mean by that? You want to be the first one to file your claim with the other side's insurance following the accident. You want to give them your statement of facts and tell them what happened. When they ask if you're injured, remember what I said previously: adrenaline is very effective at masking pain. You need to seriously assess yourself as to whether or not any part of your body is compromised — is there any stiffness or soreness in your neck, back, lower back, arms, shoulders, wrists, knees? If you're injured, it's extremely beneficial to report it from the outset.

If you're unsure whether you've been injured, or else just not comfortable making that determination, you can say, "I'm not sure right now. I feel okay, but I might be in a little bit of shock. I'm not sure if I'm injured." That's what you want to say at a minimum. On the other

hand, if you do have some soreness or stiffness or otherwise know that you are injured, you'll want to bring that up right immediately. These first impressions you give when speaking to the other driver's insurance company are important and can change the tenor of how they proceed with your case. Believe me, if you tell them you are not injured, they will hold you to that for the rest of your case.

You should also call your own insurance company right away to give them your version of events so that they are on notice of (and will ideally maintain) your position when they're contacted by the other driver or insurance company to determine liability. You want to put your information and your version of events out there first and file your claims right away to get that going. Liability determinations are going to hold up your case and your ability to get your car fixed through the other party's insurance policy.

You don't want to wait to file because you're going to need your car. As I mentioned, living in Los Angeles means that a car breakdown can ruin your entire day. Arranging for repairs, an interim rental car, etc. and the day's schedule is out the window. I'm guessing it's the same for you. So, remember that until liability is established, nobody is going to fix your car. The body shop might give you an estimate — but they're not going to touch your car until they know that liability has been accepted and the insurance company is going to pay for repairs (or that you will).

This is why I highly recommend having comprehensive and collision coverage as part of your insurance policy. It may be costly, but time and time again I see how people suffer because they only have liability coverage and then end up waiting endlessly for a liability determination. The delay can happen for a myriad of reasons. Sometimes it's something as simple as the other side's insurance company not being able to contact their insured — which they have to do to get their insured's version of events and determine whether or not they're going to accept fault. But it's not always that simple. Even when the other driver gives their version of events, sometimes the insurance company still has to do its own investigation. Other times the opposing party does not admit fault, in which case an independent investigation is necessary for the liability determination to be made. Maybe they're going to call witnesses. Maybe they're waiting for the police report. And so on.

It's absolutely in your best interest to open your case and have your claim started as soon as possible. For that to occur, you must obtain the necessary claim information right at the scene. You don't want to wait for law enforcement to arrive, investigate, and write the traffic collision report. You shouldn't rely on them to get the other driver's pertinent information, such as driver's license and insurance policy numbers. If you have no other choice, such as if you are emergency-transported from the scene, you will have to rely on the responding officers to obtain the necessary claim information, which means you may not be able to get it right away. Let's say for instance the responding agency is CHP (California Highway Patrol). They're going to go to the scene, investigate the physical evidence, take statements, measurements, and even clear the roadway of debris, all in order to complete a traffic collision report, which you then have to track down — something easier said than done. When you call the officer's number (located on the card they will give to you containing the report number) later, you'll likely learn that: the officer is out in the field, they don't know if the report is complete, you need to talk to the desk sergeant, they're going to leave a message for the officer, etc. In other words, they're going to give you the runaround for weeks and weeks.

Then you end up having to beg: “Can you just give me the insurance information to open the claim?” Sometimes they hear where you are coming from and acquiesce, sometimes they don’t. But you just don’t want to be in that position! Get the other driver’s information at the scene if you can: the name of their insurance carrier, the insurance policy number, their driver’s license number, their license plate number, and the make/model/color of their vehicle. Take a picture of the damage, the position of the vehicles after the collision, the surrounding area, including street signs, and even the other driver(s), if you can (this will assist you in the event someone claims they weren’t driving the at-fault vehicle when they actually were). Then file your claim right away at the scene with their insurance company as well as your own. Get your claim rolling!

If you are injured or suspect that you might be, and you’ve told the insurance company that you’re either injured or unable to make that determination at that moment, I would recommend that your next call be to your hired gun: the attorney. You will see that once the attorney comes into the picture, they will clarify a lot of things for you and make the situation much more comfortable. They can refer you to a body shop so you know where and when you are going to get the appraisal done. They will call the applicable insurance companies and start dealing with them on your behalf. They will arrange for the estimator to go to the body shop (or your home, depending on the circumstances) to get the repairs or the total loss settlement underway.

If your car is so damaged that it would cost more to repair than to replace, the insurance company will consider it a total loss and just pay you for the present value of your vehicle. There is a specific process regarding this total loss settlement that your attorney’s office will help you navigate. They’ll go through the total loss specifics with you, deal with the valuation of the property claim, and also help you recover payment for any personal items that might have been damaged in the vehicle, e.g., if you have a baby seat in the vehicle at the time of the accident, it is automatically deemed no longer useable because the integrity of the baby seat has been compromised and the insurance company will pay you for the value of that seat. You may also need a rental car, which your law firm or body shop will help you set up, and hopefully you will be able to set up a direct bill for the rental to the insurance company so you don’t have to pay for it up front.

As I explained earlier, your legal representatives can refer you to the appropriate medical professionals who will evaluate your physical situation. Any good and reputable attorney’s office should have a list of trusted chiropractors, orthopedists, and/or pain management specialists who can conduct the proper evaluations to determine if there is a musculoskeletal injury, as well as acupuncturists, psychologists, neurologists, physical therapists, etc. — all of which is meant to provide you with a holistic approach to bringing you back to how you were before the accident. The goal is to get you near or at 100% health, if possible. That isn’t always going to be the case; in fact, most times it’s not. But that is what medical treatment plans and providers aim to do.

If the other driver's negligence was the sole cause of your injury, it’s only fair that they should compensate you for the medical care required to bring you as close to 100% health as possible. To obtain that level of justice, you may need to hire an attorney experienced in handling these types of cases. Once you call your hired gun, a lot of the processing burdens related to your accident claim will be taken off your shoulders, allowing you to move forward, confident that your claim is being professionally handled.

## **Chapter 3:**

# **The Hired Gun**

If you've been hurt, who is going to help you maximize your bodily injury compensation? You won't be able to turn back time and prevent the accident from occurring, so the justice you seek after an accident comes in the form of compensatory damages, or simply compensation, for your pain, suffering, inconvenience, loss of wages, etc. Perhaps an attorney can assist you in that search for justice, but how are you going to find an attorney? As you'll quickly find out, there is no shortage of folks eager to help you locate an attorney. You see the ads all the time. In Southern California, there's Larry H. Parker. For 30 plus years, he's been running those familiar ads: "I'm Larry H. Parker. I'll fight for you!" There are also many new commercial marketing giants in the personal injury field like Cellino & Barnes, now the Barnes law firm on the west coast (you know it's effective marketing when your children start singing their jingle: ♪800-888-8888♪), Jacoby & Meyers, Juan J. Dominguez, Los Defensores, and 1-800-THE-LAW-2 from Walker and Walker Attorney Network.

Their catchy slogans, advertisements, and jingles may be easy to remember, but what do you really know about these firms? The truth is that many of these companies are just marketing co-ops that are owned and operated by non-attorneys. Yeah, that's right: non-attorneys. Some of the bigger ones in play are Walker and Walker and R.W. Lynch. Those of you in the Southern California area will also remember Jacoby & Meyers well. They were very particularly prolific in the 1980s and 1990s. Then they became a sort of attorney referral service. Recently they may have returned to the actual practice of law, but these are the background stories that the public doesn't really know about.

So, what are these companies if they're not law firms? Basically, nothing but attorney referral sites. Let's say you are seeking legal counsel and contact 1-800-THE-LAW-2 or the Personal Injury Helpline. Guess what? Those fictitious entities are not going to be representing you. These outfits are just buy-in marketing programs for attorneys. An attorney will open an account (or two or three) with them — the more the merrier, they say. They will either buy an exclusive territory such as a zip code or share that zip code with other attorneys. If it's a smaller program, the attorney will just be one spoke in a wheel of lawyers for that region, each getting cases referred on a rotating basis. More typically, you find that people are buying zip codes so they control certain areas.

Usually what happens after you call into one of these referral services is that you're transferred (a warm lead) to one of the representatives for the zip code where the accident occurred or where you reside. Sometimes the referral service representative gets your information and does a quick intake, and, depending on how they're set up, may funnel that information to one of their attorney clients (a cold lead). Then the law firm that received the lead will send its own people to complete a more formal intake and provide the retainer agreement and related documents for execution. This process begins the attorney/client relationship.

As part of this intake process, you sign a whole bunch of documents including a HIPAA form that authorizes someone else to receive medical documents on your behalf. This is signed in favor of whatever legal firm you seek to retain because they need to get your medical documentation as part of your ongoing claim. You also sign a power of attorney that allows the attorney to make certain decisions on your behalf concerning the case. In addition, you fill out an intake questionnaire and give the attorney a rundown of how the incident occurred as well as your insurance information, the other party's insurance information, descriptions of the vehicles, and any other pertinent information.

Then comes the retainer. The retainer is the document that forms the attorney-client relationship between you and your attorney/law firm. The retainer contains some basic terms, such as your agreement to cooperate with the attorney and follow their instructions as reasonably prudent and your approval of the compensation terms (as I mentioned, this is typically one-third of your settlement, should you receive one). Now and then, I'll encounter a retainer form that includes a provision for the payment of a fixed amount of legal fees or even an hourly rate that kicks in before the case has even concluded. You want to steer away from those law firms, period. It's a very bad sign of things to come when an attorney in a personal injury matter asks you for money upfront. That's not how things are done in the industry.

Another term you'll typically find in a retainer spells out that, in the event you change attorneys or law firms, the current attorney has a right to put a lien on your case and charge for his time at a specified hourly rate. The rate could be anywhere from \$300 to upwards of \$500 per hour or more and that amount will need to come from the attorneys' fees portion of your case. You may be thinking, "Great, it comes out of the attorneys' one-third portion so it doesn't cost me anything." This is technically true; however, it is for this reason that many attorneys will not want to substitute into an ongoing case that has already progressed significantly toward resolution. If they do, they will have to resolve the previous attorney's lien on the case and that adds another layer of complexity that will take away directly from their revenue in the matter. Other provisions might provide that the law firm is entitled to seek reimbursement for certain fixed expenses, such as photocopies, mailings, faxes, research, and even costlier components of the case, such as expert, deposition, and discovery expenses. These fees and expenses will most likely be deducted right off the top of your settlement, before the remaining funds are parsed out to the various parties entitled to share in your compensation.

A bodily injury compensation settlement/verdict is typically divided up like this: one-third goes to the representing law firm as attorneys' fees; one-third goes to you as compensation for your out-of-pocket expenses, inconvenience, and pain and suffering; and the final third goes to paying off medical bills and liens. Simple enough, right? Sort of, except for that last portion: medical bills/liens. Medical bills can be unpredictable and can build up quickly — in the worst-case scenario, the victim ends up with medical expenses that far exceed their actual settlement. You need to carefully plan your immediate and long-term care strategies with your doctors and attorneys to avoid this outcome. If you went to the emergency room, you obviously didn't have a choice due to the seriousness of the injuries or because you were transported there by first responders. You were assigned an emergency room doctor, who treated you on site. They evaluated you and possibly prescribed medication, so they're going to charge you an emergency room fee. Generally, you have no control over the procedures or treatments administered in the ER so that is what it is.

You may also see your primary care physician if you have continuing pain or just want to keep your own doctor in the treatment loop. Maybe you're being treated for a preexisting injury or ailment and want your own doctor to weigh in — that's fine. But to get as close to 100% as possible, you'll need to see some other medical providers on a longer-term basis. We call this the pyramid of care. At the top of the pyramid is emergency medicine and acute care. These services are usually mandatory — as in, if you don't seek it out when you need it, you could die from your injuries. However, these are generally short-term care facilities where you're treated and then sent on your way. You may have surgery, and then be transferred to another department,

such as a post-op or rehabilitative unit. Further down the base of the pyramid is your regular general practitioner, such as a primary care or family physician (typically an M.D. or D.O.) These providers are usually going to treat the less urgent, but more medically complex, issues that require a follow-up or two. For example, if you have skeletal injuries, they're going to give you an MRI and perhaps call in an orthopedic physician assistant or nurse practitioner to cast you up and do other things to ensure you don't exacerbate the injuries. If you have deep lacerations, they will stitch you up, bandage the affected area, and give you medication to prevent infection. If you have severe pain, they will prescribe medication for that — possibly Norco, Vicodin, Advil, Tylenol, etc.

The point is that there are many soft tissue injuries that these general practitioners may not treat. Sure, if you tear your labrum or your ACL, LCL, or MCL or pull a shoulder joint out of the socket, they'll reset these things. The orthopedist will do MRIs, x-rays, ultrasounds, and may consult you about possible surgery. Let's say your pectoral muscle has partially been torn off the bone and you need surgery to reconnect some of that tissue to restore full function. Other serious tears that typically require surgery are biceps and hamstring tears.

Even after you're all stitched up, you might still need additional treatment to get you closer to filling in the pyramid, otherwise known as getting back to full health. Or let's say you don't have a significant tear, but you're still not 100% in terms of strength and/or mobility. This is where you need the specialists (the chiropractors, acupuncturists, physical therapists, orthopedists, neurologists, etc.) to come in and take you from the 60 or 70% where the general practitioner left you and restore you closer to the 100% goal. The jobs of these specialists are basically to treat injuries within their subspecialty that are beyond the care provided by general medicine. They treat injuries to muscles, tendons, joints and bones, etc. using a variety of techniques, some of which are not provided by a medical doctor, such as spinal manipulation (generally provided by a chiropractor) or needle work for circulatory support (generally provided by an acupuncturist). For severe skeletal injuries, higher-level specialty medical care is necessary and an orthopedic surgeon will provide surgical care and other treatment as necessary.

Obviously, not every accident involves broken bones or torn muscles, tendons, or ligaments. However, strained muscles and ligaments, including shearing force damage to the spinal column in the whiplash injuries common to automobile accidents, typically occurs to some degree in every crash scenario. The specialists aim to get you to a point where those physical structures within the body that were injured in the accident are realigned and/or restored properly so that you have the necessary joint, skeletal, and muscular support for your everyday functioning. Their treatment goal is to restore full range of motion in your joints and full use of your tendons and ligaments to contract, pull, and bend in all their various ways.

If you are injured — even slightly — in a collision due to the negligence of another driver, you have a right to be restored to 100%. Sure, you could grin and bear it and maybe over time it will get better. After a long period, you might be near 100%. But what about all that suffering you endured, the activities you missed, those workouts you had to skip, the work you missed, the medications you had to take? All of these are part of your pain, suffering, and inconvenience. Shouldn't you be compensated for that? You wouldn't have had to go through any of it but for the negligence of somebody else — somebody who wasn't paying attention, didn't check to see if the path of travel was clear before making a left turn, or maybe just refused to stop at the stop

sign. Perhaps this person felt that looking at their phone was more important than paying attention to the road.

You get my point. Recovering from a car accident injury can involve numerous providers and specialties. You may need to see multiple medical specialists to get the care you need. Many of these doctors will work with an attorney after the fact to place a medical lien on your personal injury case. Essentially, they will provide their services and render medical care to you with the expectation of being paid down the line, from the proceeds of your case settlement or court judgment, should litigation be necessary.

The problem, as I mentioned previously, is that your medical expenses may end up exceeding your settlement. Sometimes, that is unavoidable due to the severity of your injuries or the paucity of your monetary reward. However, in other cases, doctors render treatment beyond what is truly necessary. Granted, it's always difficult to anticipate what the 100% treatment solution will be. To get you as far as possible down the road to recovery, providers sometimes aim to overshoot their mark. For them, this also works out financially: by overshooting the mark and increasing the cost of their overall services, they boost the chances of recovering their expected medical billings, since they all know that the insurance companies are going to discount the submitted medical bills. This may be even more applicable to those non-medical specialists, such as the chiropractors, acupuncturists, and physical therapists.

Again, think about how your medical doctor treats an injury: they will see you, treat you, and then you won't see them again for months pending another evaluation. There is no continuous treatment unless you have a life-threatening injury or are in the hospital, in which case you'll see the doctor on a more consistent basis. Otherwise, they'll treat the symptoms, cast you up, do the surgery, etc. and then you won't see the doctor again except for your post-care evaluation. They may give you medication and/or an evaluation of future care, but likely won't prescribe a continuous plan of recovery-focused treatment.

It's different with chiropractors and other specialists. Upon evaluating a client and determining there are potential lumbar spine issues, such as disc bulges, or a limited range of motion in the neck, knees, wrists, etc., a chiropractor will create a treatment plan involving regular chiropractic manipulation and other supporting and peripheral services, such as manual traction, hot and cold treatments, therapeutic massage, and other kinds of mobility exercises to do at the facility or home.

These non-M.D. specialists create treatment plans involving consistent and frequent application of procedures upon your injuries, with the goal of raising your function and mobility from perhaps 60-70% to 90% or above. Despite providing these crucial medical services, their bills are typically discounted significantly by insurance companies on the grounds that they aren't providing acute or emergency care necessary to keep a patient alive or prevent permanent physical harm. That is why these specialists sometimes treat beyond what is necessary or else increase their billing rates: to make up for what they know the insurance adjusters will do to their bills when it comes time to negotiating a settlement. Is that wrong? Not really. As I said, it's hard to predict what 100% treatment will be. Granted, my knowledge of the medical profession is limited, but if I had to create a treatment plan to get an injured patient to 100%, I would probably overshoot the mark as well. I'd aim for 150%, just to ensure that they could get to 100%. If I

aimed for 100%, the patient might end up only at 80% since it's impossible to know how effective the therapeutic treatment will be on any given individual.

Now back to the question of what happens when your medical bills exceed or greatly surpass one-third of your settlement. Keep in mind, the medical liens on your case will include more than just the bills from your in-person medical providers, they also include bills for any related services such as x-rays, MRIs (magnetic resonance imaging), and ambulance transport. Theoretically, all these service providers are getting paid from that one-third portion of your settlement allocated to paying off liens. How is that going to be possible? Well, that's another reason why you need a good attorney to help you navigate the pitfalls of case management, progression, resolution, and, as we are discussing here, case closure. Your attorney should be reaching out to the medical lienholders to negotiate your bills all along the way to ensure that when your settlement arrives, that one-third is going to cover all your medical bills. Yes, that may seem like a daunting task or even impossible given how expensive medical treatment is nowadays. However, a reputable attorney with a good network will be able to work with the doctors to ensure that all your medical costs/liens will be paid with that one-third allocation.

Occasionally, one or two of the service providers aren't familiar with how things work in the personal injury industry and may fight to have a greater portion of their invoice paid off. If you encounter this scenario, your attorney should talk to you about redirecting funds from your portion of the settlement towards the medical costs. But as I said, an experienced attorney with an established medical network should have those medical costs under control when it comes time to negotiate your settlement — even if your settlement ends up well under the potential case value you had contemplated from the outset.

This is worth repeating: Even if your legal team undershoots your initially optimistic settlement, that law firm should still be able to pay your medical bills off with a one-third allocation of your settlement. To set that up, your attorney should provide you with accident resources, logistical guidance, a medical network, and maybe an auto body shop right out of the gate. He or She is going suggest or set you up with doctors in your area that provide good service, have experience with personal injury claims, and are open to putting a medical lien on your case instead of requiring payment up-front.

One of the main reasons for retaining an attorney is that they will take over many of the inconvenient tasks associated with handling your claim. The attorney and his or her staff will also take a lot of the guesswork and frustration off your shoulders — and honestly, who couldn't use less frustration in their lives? A good attorney will endeavor to step into their client's shoes in a genuine attempt to reassure the client that they don't need to worry, as in: "From here on out, I'll deal with all the headaches." This leaves you able to concentrate on your physical and mental recovery, which, depending on how severe your injuries are, may be a daunting task in and of itself.

You may be bedridden. You may have to take time off from work. You may have to refrain from your usual activities and household chores. You may need to rely on others to lend a helping hand. The last thing you want to do on top of all this is deal with an insurance adjuster trying to manipulate you into saying or doing things to your disadvantage or doctors demanding up-front payment for their services or an auto body shop that's working with insurance estimators and not properly assessing all of the damage to your vehicle.

While looking around at the various options in your quest for an attorney, you may come across people eager to give you advice based on their limited knowledge from being involved in one or two accident claims. Maybe you don't want to go to one of these marketing firms that just sends you off to one of their affiliated attorneys, so you start proactively asking around. At some point you may run into a non-attorney personal injury “expert” who is trying to give you information and control your claim. We call them “cappers” and their activities are at best dangerous to your case and at worst just plain illegal. I guarantee you that some people you already know have personal experience with an accident, an accident claim, or even an accident claim that was handled by an attorney. Either way, you can expect that at some point, people will probably start directing you about your case: what you should do, say, prepare, etc. When it comes to personal injury, everyone is an expert — or it sure seems that way. Be careful though, because what they think they know or don't know could hurt you.

So why are there so many people out there willing to help with your personal injury claim? Well, let's just say there's a reward system that the competitive market has put in place. Many of these unlicensed so-called personal injury “experts” or consultants will ultimately bring your case to an attorney they are affiliated with and in exchange for a little white envelope filled with cash upon delivery. Not only is this type of transaction frowned upon, it's also a violation of the professional rules governing attorneys within the State of California and all other U.S. jurisdictions. Attorneys are not permitted to pay commissions on cases to non-attorneys, including those who bring cases into their office.

Cappers come in many forms. Sometimes they have primary jobs unrelated to personal injury; sometimes they're insurance agents or body shop workers. If you ever wonder why somebody you barely or don't even know is so interested in helping get your personal injury case packaged up for a law firm, there's one main reason: because they're getting something for it. Not every attorney or law firm is guilty of this practice, but often this is how it happens. If you're wondering why it persists when it's prohibited by the state bar, join the club. It has become such a commonplace practice that there now exists an entire sub-industry of non-attorney personal injury “specialists” who tend to lead their clients down the wrong path. Sometimes the damage and delay they cause is irreversible, and there is nothing the client can do because these “specialists” are not licensed by any governing agency.

In a roundabout way, this shady practice is how I got into the field myself. When we started our firm, Venerable, we didn't take personal injury cases; we practiced other types of law, including commercial litigation, business litigation, real estate transactional work, small business formations, corporate dissolutions, and immigration. Then we became aware of some neighbors in our building who were running unsupervised personal injury practices. These individuals were mismanaging client's cases, blowing deadlines and statutes of limitations, making false promises, etc., partly because they knew their clients couldn't do anything to them as unlicensed service providers. Without the assistance of licensed personal injury attorneys, many of their clients couldn't effectively manage settlement negotiations or even properly file a lawsuit - with their only recourse being small claims court, which has limitations as to how much can be awarded.

One of these neighboring offices with a particularly large operation ended up shuttering their doors, leaving all their clients holding the bag. Many of these victims came to us for help, as we were on the same floor. We felt bad for them and helped as many as we could. Unfortunately, we

had to turn away a large majority because their cases were already barred by the statute of limitations. This is how our foray into personal injury began so many years ago, and here we are today, still dealing with these skeletons in the personal injury closet.

We came into this practice with the idea that we would be different; that we would put a better face on the law — especially on personal injury law, the practice area with perhaps the worst reputation and the most reviled practitioners in the entire legal profession. There was very little trust between clients and attorneys, and we have sought to be transparent from the outset. But I would be lying if I said this industry isn't still dominated by these non-attorney consultants/specialists/cappers/market makers. They are the ones that intentionally track, monitor, and seek out people at accident sites, in violation of the standing rules of ethics for attorneys. They seek quick profits above all else, even if it permanently harms the client and his or her case.

The bottom line? Consider your sources of information. If somebody you barely know introduces you to an attorney, you still need to conduct your own due diligence, i.e., you need to check on the background of the practitioner and their firm. You can look up the disciplinary history of any attorney on the relevant state bar website (in California: [www.calbar.ca.gov](http://www.calbar.ca.gov)). Just type in an attorney's name in the field where you verify licensees and you will see their actual disciplinary history. You may see disciplinary actions for attorneys who got too caught up in the business side of the house, especially in personal injury cases. You'll likely see actions for commingling of funds, withholding client settlement money, failure to pay off liens, etc. Consider your sources. Check the law firm and its attorneys. Remember, plenty of folks like to pretend they're an attorney but only the ones listed on your state bar's website are actual licensed attorneys authorized to practice law.

Another piece of bad information to watch out for is when the defendant driver's insurance company tries to convince you that you don't need an attorney to file and handle your accident claim. You may also hear this refrain from other misinformed people around you, "You don't need an attorney. They're going to take one-third!" Admittedly, that one-third part taken as attorney's fees is true — but if you don't have an attorney, I guarantee you the insurance company will take advantage of that and undercut your claim. They will not pay you for the true value of your case if you don't have legal representation; without an attorney on your side, they are not worried about the prospect of their insured being dragged into litigation, costing them potentially tens of thousands of dollars.

Insurance companies have no incentive to work out a fair deal with you. Remember, their business model is to take in all the premium payments they can and pay out as little as possible on claims. That is their baseline operational strategy and their platform revenue model. If you show up without an attorney, they know you're green and you don't know the process. They know they'll be able to influence you and basically paint whatever landscape they want to paint for you, and you'll be none the wiser. In fact, they'd love for you to go at it alone. If they were inviting you to a party, they'd say, "Please RSVP for only one guest." They don't want you to come with legal support because that would interfere with their goal of paying you as little as possible. This kind of bottom-line thinking also informs their approach to medical treatments: they want you to get as little medical treatment as possible. The company will tell you that your

injuries aren't so bad and that time will bring you to full health again. They say all these things to minimize your situation, but you can bet that if any one of them was injured or had a family member injured in an accident, they would go full bore to maximize that case — starting with retaining an attorney. My advice to you is: Don't go it alone. In the end, your net returns will be much less than if you go with an attorney. You don't have to come to our firm, but please go to a reputable attorney. Don't RSVP for one and whatever you do, don't go it alone.

## **Chapter 4:**

# **The Usual Suspects**

So, what happens when you file the accident claim? What should you anticipate? Who are the usual suspects in the lineup of your case? Let's start with when you file the claim with your own insurance company. Depending on your policy, they're going to ask you some questions to determine what kind of claim they need to open. One of their first questions will be, "Are you injured?" (or "Were you injured in the accident?" if you're reporting an accident that happened in the past).

Because it may take a while to become aware of an injury, it's best to refrain from answering with an express "No." People sometimes just don't know in the aftermath of a collision if they've been injured or not. Many injuries, especially soft-tissue injuries that don't involve broken bones or significant internal damage, are latent and won't surface for a couple of days. Depending on your activity level, you may not notice it until you actually use that particular muscle or ligament. Instead of "No," you may want to say, "I'm not certain at this time. I need to be evaluated by my doctor."

Or course, if you know that you're injured then you should answer with a clear "Yes." They'll then ask you about where and how badly you are injured. If you know, you should say so. If you know but are uncertain about the extent of the injuries, you should say the areas where you are definitely injured, but leave open the possibility that physical evaluation will identify additional areas of injury. Until you are evaluated by a medical professional, you really can't be certain.

If you are filing a claim against the other party's insurance company, the conversation will start out much the same. They will ask if you are all right and about your injuries, if you have any. Then they will ask you about what happened. Now, this is important — especially if liability is disputed. You want to be clear about what happened and the location where it occurred. You want to know the name of the street that you were on or the intersection you were near. If you were on a street, you need to know which block it was, perhaps by identifying the intersections that were ahead or behind you. You want to know your direction of travel: eastbound, westbound, northbound, or southbound. Which direction was the other car traveling?

They'll want to know where you were driving, if just to confirm your direction of travel on the street. You want to know what the catalyst for the accident was. In the case of a left-turn collision, was it simply that they made a left turn in front of you? If you were in a rear-end collision, did you glance up? Did you see the person in your rear-view window? Were they perhaps looking down at their phone? Maybe it was distraction that caused them to collide into the rear of your vehicle. What was it?

Maybe it was speeding. According to the statistics, the second leading cause of accidents is speeding (number one is distracted driving, but even a distracted driver take evasive action or prevent against serious accidents if they aren't speeding). People simply drive too quickly. The average speed seems to be around 15 or 20 miles above the speed limit. No matter where you're driving, you're like to encounter one or two impatient drivers who just maneuver around too quickly. Speeding negatively affects the driver's ability to properly respond to unexpected road and traffic conditions — which can result in serious accidents. Speed also increases the severity of an impact due to greater momentum.

You will also want to know the weather and street conditions at the time of the accident. Whatever the other factors were, you will want to know those too. If there was a police response,

you want to know that. You will need to know the extent of the damage to your car. Hopefully, you have pictures to help you accurately identify the areas of the car that have been damaged. Obviously if there are witnesses (which you hopefully have gathered), you want to pass along their information.

At some point, they will likely slip in this question: “Were you wearing your seatbelt? Were you properly restrained?” Hopefully your truthful response is yes, because that can obviously affect the nature of your injuries. If it was at night, did you have your headlights on? They will ask questions about your license and whether you have any restrictions? Corrective lenses? Were you wearing them at the time? They will ask for all other pertinent data such as age, date of birth, last employment, and intended destination at the time of the accident.

If you have an attorney, he or she will open the claims for you with your own insurance as well as the defendant driver's insurance company. Your attorney will act as the gatekeeper in answering questions and doing so in a way that isn't to your disadvantage. If you are the one answering questions, be cautious because what you say will be used against you. If you start out by saying you weren't injured, they will remind you of that whenever they can.

If you say that there was only cosmetic damage to your car but later on your bumper is taken off, revealing back end frame damage, they're going to respond with, “Well, you said it was only cosmetic damage.” Assuming you're not an expert on vehicle frames or auto body damage, leave it to the real experts to give an opinion. Just like someone who makes the mistake of declaring, with adrenaline pumping in the chaotic aftermath of the accident, that they're not injured, your words will definitely be used against you. If you're not a mechanic or a medical doctor, don't offer a definitive answer as to damage or injuries, respectively. It can come back to haunt you.

After your claim intake, your insurance company or the defendant driver's insurance company will try to get you to take your car into one of their authorized repair facilities for an estimate. Now, what does that mean when they say an “authorized” repair facility? A lot of insurance companies certify auto body repair shops to run estimates for them. Obviously, part of the authorization procedure is actually going down to these facilities to ensure they have the right equipment, the right kind of testing facilities, etc., to properly render estimates. But this certification has a dual purpose. Number one, it allows the auto body shop to increase their business through insurance company referrals. Secondly, it reassures the insurance companies that the auto body shops will deal with them in an above-board manner. If an auto body shop engages in practices that cost the insurance company more money than necessary, they could lose their certification and that insurance referral source.

So, what does that mean for you? Sometimes what it means is that one of these “certified” repair shops will give you a very conservative estimate, because the hand that feeds them is the insurance company that may be paying out on your claim. They are kind of incentivized to reduce their repair costs as much as possible — to your disadvantage. Maybe they're not fixing the car 100%; they're fixing it 85%, just enough that you can't see anything wrong with the vehicle, in order to reduce the expense billed to the insurance company.

You may be thinking, “That's crazy! Why would they do that?” It's straightforward actually. The insurance company of the other (defendant, negligent) driver who hit you does not have a fiduciary duty to you. They do not have any responsibility — legal or otherwise — to deal fairly

with you. In fact, they will lie, they will mislead, they will exaggerate, and they will cover up anything about your case that will reduce the amount of money they have to pay out on your claim for property damage, bodily injury, medical treatment, or anything else related to the claim.

That's their job; they have no legal duty to you. They don't even have a duty to be honest with you. These insurance adjusters are going to be audited and reviewed themselves. Their evaluation is not based upon how well they performed their customer service to you, but rather how much they paid out on their claims. The insurance companies don't want employees who are too open-handed and generous with the company coffers. They want insurance adjusters who are frugal, conservative, and sometimes downright unfair. In the end, they have no fiduciary obligation to you. You have no claim against them for fraud, for breach of fiduciary duty, or even for negligence. You will have no organic claim against the other party's insurance company for bad faith because you're not their insured.

That's why I have so often heard clients tell me, "Hey, you know what? When I opened the claim, the other party's insurance company told me I didn't need an attorney. They told me I would be fine without one and they would deal reasonably with me." My response goes something like this: "Of course they would tell you that. They want you to RSVP as a party of one. They don't want you to bring in an attorney because if you have an attorney, they can't lie to you, mislead you, or mistreat you." If you go it alone, they will play games with you, that's their job. Quite frankly, it's a game you just can't win because you don't know the rules and are not familiar with the process. You will have no choice but to believe a lot of what they say and represent to you about the process, which will likely include intentional misrepresentations and inaccurate guidance. Why would you know better unless you're already in the industry?

So, the insurance company will want you to go to their repair shop for your vehicle damage estimate. In my experience, approximately 60-70% of estimates from an insurance company's certified repair shop are short of what is truly necessary to fully repair the vehicle, and I'm probably being generous here. If you ask me, it's all highly suspicious and downright wrong. It is what it is though: buyer beware. In all these cases, we end up having to do a supplemental estimate from one of our own certified shops in order to add on the additional necessary repairs and appropriately increase the amount of documented property damage. This just wastes more of your time.

Once again, the insurance company's revenue platform is to collect more in premiums than they pay out in claims. There are two ways to increase that platform: either increase the premiums or decrease the amount they pay in claims. You had better believe they are trying to do both. They're burning the candle at both ends and there is no reason for us to be naïve about it. This is the way that big business works: by seeking to increase their bottom line for their shareholders, their employees, and their executive staff first and foremost. Customer service is secondary and only becomes a priority when it affects their bottom line.

After the estimate, what's next? They'll probably ask for your recorded oral statement regarding the accident. Insurance adjusters often assert, "We didn't take an oral statement from you (the claimant) and we're going to need that statement in order to process the claim." An oral statement is a recorded statement you give to the insurance adjuster, during which they ask you questions about the accident. Now you might be thinking, "Not a big deal. I'll answer their

questions. I know what happened; the guy hit me.” Fair enough, but don’t forget they do this for a living and are trained to do it in a way that may manipulate your statements to their advantage. While this may be your first or second time at the rodeo, they have done this a countless number of times, maybe in the thousands. They go to training and retraining to learn how to trip you up. Why do you think they record it? Because they’re going to use it against you later if they can.

They might say, “Hey, it’s recorded for training purposes.” Training for what? They’re training other adjusters to learn how to trip people up during their oral statements. They will ask you questions about the time of day, the road surface, your vision, and all kinds of random details about the incident. Any time they sense hesitancy in your response, they’ll focus on whatever gave you pause.

They will start putting doubts into your mind about whether you were in the right. “Hey, didn’t you see the car turning? Didn’t you know that car was in the intersection and when it was yellow, that meant that car had to turn left? Are you sure you didn’t see it turning left? Are you sure you didn’t have time to press the brakes? Couldn’t you have prevented the accident? Were you distracted? Were you listening to the radio? What channel was the radio on? Did you get a call? Do you have a cell phone? When was the last call made?” They will try to find any way to discredit your claim that you were the victim in the accident.

A good attorney will never let their client provide an oral statement on their own — if we even allow them to give a recorded statement at all. Often, when liability is clear (such as in our left turn hypothetical), I’ll just tell the adjuster, “No, my client won’t be giving an oral statement to you. The reason is I’m not going to waste his or her time. Liability is clear. Until you give me a good reason as to why liability is not clear, I’m not going to have my client take time out of their busy day to give a recorded statement.” A written statement can be used in lieu of a recorded statement. Obviously, the written statement goes into the file, so it must be carefully worded with respect to the specific details of the collision. The insurance company wants to latch onto anything that will devalue your claim, remember? To increase their revenue platform, they have two options: increase premiums or reduce the amount paid on claims, which can be achieved by devaluing your claim or invalidating your entire case.

The attorneys by your side will help guide you through the process, which can sometimes resemble a field of landmines due to the insurance company’s primary intention. They’re not there to help you out. That business model wouldn’t work. I’ve often heard in recorded statements an adjuster trying to influence my client, the victim, by questioning their judgment and knowledge concerning the rules of the road. That’s where we run interference and force the adjuster to focus on fact-gathering; knowledge of the vehicle code doesn’t change how the accident happened. What they want to achieve with their statement gathering is not my concern. My client is the victim and we drive the process. They don’t. That is my tone throughout the case.

Often when people try to handle the case themselves, the process ends being driven largely by the insurance adjuster. Why should that be the case? You were the injured party and had you not been negligently struck in your vehicle, none of the inconvenience, pain and suffering, medical expenses, or property damage would have occurred. So why should they drive the post-accident claim process? You should set the tone. You were the one that was harmed and are the only victim of the incident. I am adamant about this issue.

Your own insurance company may want a recorded statement from you as well, in case they need to talk to the other insurance company about property damage and liability (especially if liability is disputed and you have comprehensive collision coverage as part of your automobile insurance policy). After paying obligated amounts pursuant to the comprehensive coverage component of your policy to repair your vehicle, your own insurance company will go after the other side's insurance company for reimbursement (also known as "subrogation"). If there is an issue as to liability, your insurance company will likely need your statement to facilitate their investigation, as they will likely be dealing with a claim for damages from the other driver. But even during these recorded statement sessions with your own insurance company, you will have to be cautious as they may try to go over some questions that aren't expecting, such as policy-specific questions that could invalidate your coverage.

Let's talk about your insurance agent for a minute. Your agent might be someone you know. You might have met them through a mutual acquaintance. You might have gone directly to one of the larger insurance companies, in which case they probably sent you out to one of their affiliated brokers (such as is the case with companies like Farmers and State Farm, which require their agents to be exclusive or captive, meaning that they only can sell insurance policies and products from their company). To be competitive, these agents have to do a myriad of things in order to reduce your premium. It makes sense. But the way they do it can trip you up down the road when you make a claim under the policy.

One way the agent may dishonestly tweak your policy is by lowering the annual mileage estimate you have to provide on your application for coverage. They may say, "Well, this is an estimate, so it doesn't have to be entirely accurate." That's true, but if the insurance agent puts 5,000 miles and in reality, you drove 25,000 miles, that's not really an estimate. That seems more like an outright deception, which may invalidate your policy altogether. In a situation like this, your own insurance company may suddenly start grilling you about policy-specific information after they get your statement concerning the accident. "So, how many miles did you drive this year? Last year? How many people live with you (they want to determine if you were truthful in disclosing all potential drivers in the application)?"

What do you think they're doing here? Are they trying to determine if your disclosures/answers on the application for insurance were truthful? In other words, are they trying to determine if your policy should be invalidated for application fraud? Their actions should seem very suspicious at this point, since they are only questioning you about application-related issues after you made a claim for coverage, though you had been paying premiums on the policy for months or even years. Case in point, sometimes insurance policies require that you list the names of anyone in your household who is above a certain age, say 16, which makes them potential drivers of the covered vehicle. Why? Because the more names you list, the higher your insurance premium is going to be. These people are potential drivers of your vehicle, which adds potential liability and risk to any policy issued to you.

Let's presume for this hypothetical that you have two kids, ages 16 and 18. They are still going to school and living at home. Your own insurance agent might say, "Nah, let's forget it, let's not list their names" in order to keep your premium as low as possible. That way, they can show you a quote with a lower premium and say, "Hey, now you can switch and sign up for this new policy and I can be your broker of record." Now, this insurance broker/agent can make commission off your insurance policy. The problem occurs when you actually get into an

accident. You talk to your own insurance company and they start asking you questions. “Sir, how many children do you have? How old are the children? Do they live at home?” These questions are designed to determine whether you falsified information on your application — and whether they can therefore invalidate the policy, keeping your paid premiums but not paying out on any coverage obligations to you.

So, after all that time, perhaps years, of dutifully paying your premiums, they could simply say your policy is invalid due to a fraudulent application and that they can no longer help you. This is the ultimate way out for the insurance company: collect years of premiums on a policy and then invalidate it simply by stating that you falsified information in your application, even if your agent led you to misstate information to get lower rates. Or worse yet, sometimes people never even knew that their insurance agent falsified information on their application to get their business.

As you know from living in our bureaucratic society, signing up for even just a gym membership involves form after form after form, laying out conditions of use, liability waivers, arbitration provisions, etc., all in 7-point font spread out through ten (or more) legal-sized pages. Everyone has better things to do than spend hours reviewing in detail all the legalese. Even the company representatives don’t know what the terms and conditions are or mean; they just expect you to sign it. It’s pretty typical for people to sign without ever reading what a legal document actually sets forth. It’s understandable but harmful, and unfortunately this has become customary practice. What’s the purpose of writing all those terms and conditions if at the end the parties don’t try to read or understand the contract before signing?

It’s the same situation with your insurance policy: tons of forms to fill out, loaded with terms and conditions such as your rights and entitlements, the company’s duties and exclusions, etc., which they expect you to just sign right off the bat. After all, these insurance agents are just salespeople with ongoing customer service obligations. If they’re effective at their job, they’re probably fast-talking, smooth, and persuasive. You may ask them, “What do these documents say? Do I have to read through them all?” They’ll likely say, “Nah, don’t worry about those. They’re just a formality.” But if someone spends a lot of time and money in creating those formalities, don’t you think that they must mean something?

Say you sign the policy documents, including the application, disclosures, and related paperwork, but you don’t know what the policy terms and conditions really mean. Then 10 years later, after you’ve paid out thousands of dollars in premiums, here comes an adjuster asking you about the application, which you may not be familiar with or don’t even recall. Undeterred, they continue asking questions to help them determine if they can invalidate your policy. I know it sounds ridiculous as well as ethically and morally wrong, but I’ve seen it happen time and time again. As the attorney, what do I do when this happens? I terminate the call. This is my client’s own insurance company we’re talking about. As soon as they start asking questions that are not about the incident, I will literally hang up. If I let you talk to my client, you do so on my terms, and asking leading questions about the validity of the policy is never part of my terms.

Not all the usual suspects are on the other side of the fence. Sometimes they’re circling around you, seemingly on your side. The attorney doesn’t recover unless your case is settled. The attorney has a fiduciary responsibility to you. As I mentioned before, you need to research the

licensing and disciplinary history of the firm/attorney. Take a look at the State Bar's website, the law firm's website, and the lawyer's background; who are they and what do they represent? Make sure you feel comfortable with the office you are going to retain and that they are knowledgeable about the process. This will start you on the right track to a successful claim.

## **Chapter 5:**

# **An Apple A Day**

An apple a day never keeps them away. So, you've been in an accident. The damage to your car is probably being taken care of in the auto body repair shop. Now it's time for you to address your own injuries, otherwise known as bodily injuries. Hopefully, you have retained legal counsel by this point so you're not going through the claim process alone. Hopefully, your attorney or his or her office has suggested a network of doctors — orthopedic specialists, chiropractors, physical therapists, acupuncturists, etc. — and you've gone to see the appropriate one(s) to be evaluated to determine the extent of your injuries, and had an opportunity to listen to their proposed treatment plan(s). Hopefully, you're comfortable with the plan(s).

If it's a chiropractor, the plan will likely involve chiropractic/skeletal manipulation. If it's an acupuncturist, it will probably involve acupuncture/needlework services. If it's an orthopedist, it's likely to involve x-rays and/or MRIs, followed by an evaluation to determine pain management treatment options, such as steroid-based injections, laser treatment, or surgery. If it's a physical therapist, the plan will involve hands-on services, supplemental exercises, massage, and isolated movements.

So what should you do when you go to the doctor's office? First off, recall that the doctor is there to treat your injuries and try to get you back to 100%, meaning your state of physical function before the accident occurred. It would therefore behoove you to tell the doctor how you were before the accident. How physically active were you? What did you do for exercise? Did you go to the gym? Did you lift weights? Were you a marathon runner? Did you do triathlons? Did you compete in bowling or recreational softball? Did you coach? Did you walk every evening? Did you have childrearing duties? Do you do construction? Is your job labor-intensive? Do you stand on your feet all day as a part of your employment? All these things help give the doctor a good idea of how you were before the accident and how they should be setting up your treatment plan to get you back to that physical status.

Should you discuss prior injuries? Well, if you have had previous injuries to the areas affected by the accident, it is reasonable to believe that you are more susceptible to reinjury in those areas of the body. Knees are a good example. Even if you have a history of knee injuries, you might have been perfectly fine right before the accident, though perhaps you were more susceptible to injuring some component of the knee due to past trauma. But after the accident, that knee might very well have been reinjured due to this particular susceptibility. Maybe scar tissue was the culprit. Maybe there is some latent pain that was exacerbated by the accident. Or maybe you had a weak shoulder that popped out of its socket, simply because it happened in the past. You need to be thorough and frank with the doctor so they can get a clear picture of how you were right before the accident happened.

Obviously, you want to let them know if you were injured right before the accident too. That way, they can get a clear picture of how the accident affected that injury. There is a theory of law called the Eggshell Rule, which means that defendants take their plaintiffs as they find them. If somebody who is riddled with cancer and near death is killed in a vehicle collision due to the other party's negligence, is that other party less liable for wrongful death because the victim was already near death? Of course not; you take them as you find them. When the negligent driver encountered his victim, he was still alive but knocking on death's door. That doesn't matter because the accident was still the cause of his death. A wrongful death is still a liability that is hanging over the defendant in that hypothetical case.

You need to be open, honest, and detailed with your medical practitioner, whether that be an MD, chiropractor, acupuncturist, physical therapist, neurologist, or any other type of provider — including a psychologist. Psychologists sometimes get involved when a person is experiencing emotional or mental difficulty as a result of the accident. Maybe you are having problems getting back into a car. Maybe you're nervous every time you have to drive through an intersection or merge onto the freeway. Maybe these fears prevent you from being able to drive freely and consistently. A psychologist or maybe a hypnotherapist would likely be required to return you to how you were before the accident. All these health providers need a complete picture of you as you were before the accident. Full disclosure will paint a more complete picture of who you were and what the after-effects of the accident may be.

Frequently, clients will ask, "Do I really need to follow the treatment plan?" Of course you do. Lawyers have a JD (Doctor of Jurisprudence/Law), not an MD (Doctor of Medicine). They are in no way qualified to assess physical injury or advise clients about medical treatments. Hopefully, as part of the claim process, a legitimate medical practitioner has provided you with a prescribed course of treatment. I am not going to abrogate, add, or subtract from that in any way. I may have my own ideas and experience, but I simply don't have the credentials to be able to evaluate or treat someone for the physical injuries or mental difficulties caused by an accident.

You may have heard rumors on the street that some people don't actually go through treatment and are somehow able to get a doctor to sign off on the paperwork as if they did. Some of them end up appearing more injured than they genuinely are due to the bogus medical paperwork their providers are able to produce. I wish I could tell you that these are just rumors. But, yeah, it's true to some degree. Medical bills are a substantial part of your case valuation when it comes to bodily injury. But here's what I can tell you without reservation: Whatever experiences other people may have had in conspiring with doctors to write up notes/reports and bills for treatment that wasn't actually completed, that type of activity is just straight-up insurance fraud, specifically medical billing fraud, and it's a serious offense.

Whenever a client mentions this type of thing to me, I quickly tell them that what they're talking about is a crime. If they persist in bringing up this kind of activity or I determine that they are engaging in that activity, then I have no choice but to drop their case. As their attorney, I have a responsibility to inform my client if I believe or have reason to believe that they are committing a crime. I may not report them, but I'm sure as hell not going to support them in the commission of insurance fraud — for their own good as well as mine. It's never worth it. You can bet that those unfortunate people who find out the hard way by facing 3-5 years for a felony violation of the penal would pay anything not to serve their upcoming sentences. I tell clients ad nauseam that it's not worth the risk to do something illegal just for a couple hundred or even thousand extra dollars.

What about the doctors? What if you notice something is wrong with a doctor's notes or see extra treatment dates on a bill that you know aren't accurate? Could these inaccuracies benefit you by increasing the value of your case? Maybe. Either way, you should bring it up with your attorney as soon as possible. A good attorney will call the doctor out on it immediately because that doctor is endangering your case. If this kind of billing scam is discovered, it's pretty much going to ruin your case and your chances of recovery. And you may find yourself defending a criminal case as well. It's going to get the doctor in trouble and it will get the attorney in trouble. As soon as a client tells me something like this, I ensure that the doctor corrects it and I will most likely

transfer my client away from that medical office and never use that doctor again. An unscrupulous medical practitioner is flat out dangerous to you and your case.

What kind of legitimate treatments should you expect? If you go to a medical doctor (most likely an orthopedist), they will do examinations, x-rays, and/or MRIs to identify any soft tissue or skeletal injuries. If symptoms are present, they'll address those acute injuries: cast up the fracture, arrange a surgery consultation, etc. Maybe it's just a slight tear and they will advise you to simply ice and rest the area, continue to monitor it, and perhaps put you on a physical rehabilitation course of treatment. A chiropractor, on the other hand, may prescribe a course of chiropractic manipulations/adjustments along with some functional therapies to increase the effectiveness of the adjustments themselves. The functional therapies and modalities may be administered by an assistant and could consist of complementary treatments, including hot and cold compresses, manual traction, therapeutic massage, and rehabilitative exercises. One thing to note here: When you go to the chiropractor's office, you should insist on getting a chiropractic adjustment at least every other office visit. So if you go to the chiropractor's office, say 20 times, and you've only seen the chiropractor for an adjustment one time, something is wrong. And you can be sure that the insurance company will be the first to point it out. If you are going to a chiropractor who is not giving you chiropractic manipulation, what treatment are they giving? If you're being treated by a chiropractor and you start to feel like you never see them or it has been a long time, you need to tell your attorney so they can contact that medical office and determine whether the treatment plan is actually being followed and/or whether that treatment plan is actually devised to assist in your recovery.

It is the same thing with acupuncture treatment. If you go to the acupuncturist and all you're doing is manual traction or sitting on a heating pad, instead of actual needlework services, then something is obviously wrong. Speaking of acupuncture, people sometimes ask, "What are those needles for, and can they actually help my recovery?" From what I understand, acupuncture needles work by tapping into specific nerve endings and other specific points and meridians that help redirect the flow of blood and oxygen, promoting healing in certain areas of the body. That's a layman's understanding; I apologize to all you licensed acupuncture practitioners out there if I oversimplified (or completely bungled) it.

Trust me, follow the treatment plan. I understand that it could be very time consuming and inconvenient. You go before work, after work, or on the weekends. The thing is, if you're really injured, you would and should take the time to get better. Don't forget that it's part of your claim. You can receive lost wages if you lose pay because of needing to take time off work, so you can recoup that as part of your claim. You simply need verification by your employer of the time you've lost from work and you will be compensated for the confirmed wage loss.

You are probably noticing an underlying theme emerging here. It's helping the people on your side get an accurate picture of your losses, injuries, and what you need to fully recover. What happens if you don't follow your treatment plan? Remember, I said that a substantial part of how insurance companies value your case and the associated bodily injuries is contained within the medical report and billing. At the end of your treatment, the insurance company is going to have specific medical codes corresponding to the areas of the body that were treated, day-to-day reports (and hopefully detailed notations) of what they did for you, dates corresponding to each time you visited the medical office, your subjective pain complaints prior to treatment, and the specific treatments that were administered.

Once the insurance adjusters get these medical billings and notes, they will likely put the data through a computer program that extrapolates all of the information regarding your injuries, your age, the treatments administered, the number of office visits you had, etc. in order to artificially create a general idea of how much to offer you for your bodily injuries, including pain and suffering. So if you decide to skip out on your medical appointments, make changes to your treatment plan without notifying the treating physician or other medical office, or otherwise mess around with your medical bills, notes, or treatment records, you're only going to harm your case and eventual recovery. If you need to make changes or if there is some physical issue that needs to be addressed, it behooves you to let the appropriate providers know so they can adjust accordingly and make suggestions, recommendations, or alternative treatment plans as necessary.

To summarize: If you are in a car accident in which both cars are traveling at 40 mph or more, how well prepared you are physically matters very little. With these types of accidents, your health, age, diet, nutrition, physical abilities, and athleticism are almost irrelevant. The likelihood that you are going to sustain an injury is extremely high. We are made of flesh and bone. The instruments that cause the accidents are made of steel, aluminum, industrial rubber, plastic, and glass, and the force generated when these materials collide with our bodies at high speed is going to cause injuries. This will happen to even the strongest of us. To recover from an accident like this, you must be committed to your treatment plan. You must focus on your recovery in order to return to your pre-injury physical status. It doesn't matter how many apples you eat. If the car accident is severe enough, you will need medical attention and treatment.

## Chapter 6:

# Oh, the Games We Play

For the sake of argument, let's say your property damage has finally been taken care of through the other driver's insurance company. Either your car has been repaired or you have a total loss settlement, meaning the other driver's insurance company has determined that the cost to repair your car is greater than its present value and just pays you for the value of your car at the time of the accident. Now, this might be a good situation for you. Perhaps the total loss settlement allows you to afford a new car if you have some additional money. However, total loss settlements often leave people in the lurch because they've been driving a vehicle that they've had for a few, or maybe many, years but was just fine before the accident. But after the collision, the vehicle is deemed "totaled", i.e., it is not drivable and it won't be repaired. The insurance company payout is intended to make you whole by simply giving you the vehicle's value at the time of collision.

That's great, but you can't drive the total loss settlement. You're gonna need to buy another car but you may not be able to purchase a car like the one that was just totaled. Unless you have additional funds to burn, you'll have to buy a used car that has unknown performance. In other words, your original car may have been reliable and consistent, but the new [used] car you buy with the payout proceeds to replace it could turn out to be a disaster. Nightmare used car scenarios are all too common; that's why lemon laws are in place to protect buyers of used vehicles. Ending up with an inferior replacement vehicle leaves the plaintiff in a particularly bad situation. Unfortunately, it happens more than you might think, especially in states like California with low insurance limits.

In California, the term "15/30/5" refers to the minimum auto insurance coverage that drivers must carry. Broken down, this is \$15,000 per accident, per individual, and \$30,000 per accident, in the aggregate, if there is more than one individual injured, to cover the bodily injury damages resulting from a motor vehicle accident. The "5" is the \$5,000 minimum that you must have in your policy to cover the other driver's property damage if you were the at-fault party in an accident. That means that if someone gets into a car accident with you and they carry the minimum coverage of a 15/30/5 policy, the most their insurance technically has to cover on behalf of their insured is \$15,000 for your bodily injuries (assuming you are the sole occupant of the vehicle) and \$5,000 for the physical damage to your vehicle (regardless of much more the damages actually are). In that light, doesn't the minimum auto insurance coverage required in California seem a bit too "minimum"?

To clarify, the \$30,000 aggregate bodily injury limit in a minimum coverage policy only kicks in if there are multiple passengers in the vehicle claiming bodily injuries. It represents the total sum that the insurance company is contractually obligated to cover, on behalf of their insured, for all bodily injury claims of all the passengers in the vehicle(s). And what about that paltry \$5,000 property damage limit on a minimum policy? Let's say your vehicle is a brand-new Chevy Camaro worth \$40,000. You get into a car accident resulting in a total loss and the other driver has a minimum policy. Guess what? Your total loss settlement is going to be capped at \$5,000 and the rest of the bill is coming out of your pocket.

This is why it's worth reiterating: It's critically important to assess your personal financial circumstances and determine how much auto insurance coverage you will need in case you are in an accident, regardless of fault. Even if the other driver is at fault, a minimum coverage policy will only cover the first \$5,000 of property damage. Unless you have comprehensive and collision coverage on your policy, the remaining repair costs are all on you.

Furthermore, in the event of a catastrophic motor vehicle accident, \$15,000 obviously wouldn't even begin to cover your medical bills. If you're concerned about that, another policy product that you could add on is uninsured/underinsured motorist coverage (UIM), which kicks in if the other driver's insurance policy isn't enough to cover your bodily injury treatment expenses.

It's often abundantly clear that people don't have a clue what their automobile insurance policy covers. They just don't know what their policy says. It's shocking to realize how many drivers are simply relying on their insurance agent to create a policy for them and how many drivers only care about the cost of the policy. They don't care about how much it covers; they just want to know that they have some coverage so that they could show proof of insurance to a police officer if they get pulled over for some traffic violation. They just want to check the box, "Yes, I have a minimum policy." However, if you get into an accident with someone who has only a minimum coverage policy, you've got a problem. You better have a policy that covers the shortfall; otherwise, it's going to make a bad situation even worse.

Let's go back to our left-turn accident scenario: someone makes a left turn in front of you and BOOM, your vehicles collide. The front right side of his car hits the left front side of yours. For the sake of the hypothetical, let's say there is significant property damage and significant medical bills. You retain an attorney and then visit all the medical specialists, who provide a course of treatment that you follow. Your property damage has been taken care of and now must deal with all the bills and notes from your medical treatment. At this point, the attorney's office will draft what's called a demand package, which includes written documents and correspondence such as medical bills and notes, perhaps a letter from your employer stating that you have lost wages, and other things that support your claim. This package will show the insurance company and adjuster the extent of your losses and suffering because of the accident. Your attorney's office will then make a demand to settle your claim for a sum certain.

Be aware, however, that in the event of a catastrophic accident, an insurance company that knows their insured is at fault and caused significant injuries to one or more parties will sometimes decide very early on in the process to simply tender the entire amount of the policy. Remember, the minimum policy in California is 15/30/5. Let's say there's one person in the vehicle and they suffered multiple fractures of the arm, leg, and ribs. In that case, as soon as the insurance company can verify that those injuries occurred (which is simply a matter of obtaining the emergency room documentation) it will likely send a letter stating that they're tendering the entire amount of the policy (in this case, \$15,000). Or they might start by giving the attorney's office a heads-up: "Hey, just to let you know, our insured has a minimum policy." This puts the attorney's office on notice that they're dealing with a minimum policy and need to keep that in mind as they guide their injured client through the course of treatment, with a particular eye to the number and cost of medical liens that are accruing on the injured party's case.

What happens if you are the injured party and the settlement amount that the insurance company just tendered is not enough to cover your medical bills or other losses? What do you do in that scenario? Well, typically what an attorney's office will do is find out who the defendant driver is. They want to know if there are any other potentially responsible parties, such as the vehicle's owner if he/she isn't the driver. In that case, there's also going to be an investigation into the owner of the vehicle. If it's a rental car, the rental company will be brought into the matter. If it's a car driven by an employee working in the line of duty, then the employer to which that vehicle belongs will be brought into the claim. Furthermore, the attorney will conduct a background and

asset search to determine what types of assets the culpable parties might have at their disposal to pay off pending claims.

The purpose of this third-party investigation is to determine whether the plaintiff should opt to go after the defendant driver instead of just accepting the insurance policy tender. As I've said, if it's a catastrophic accident and the coverage involves only a \$15,000 policy, it might be necessary to reach past that policy and directly into the defendant's pocket to have them pay for the expenses and losses, to the extent that they can. The attorneys are going to look for assets that can contribute to resolving the claim. Do the defendants have a home? Multiple homes? Do they have multiple vehicles? A job? What type of employment is involved? Bank accounts? All these things are subject to an asset search.

Yeah, it might be shocking to realize that other people can get that exact same information about you. If you're ever a defendant driver, i.e., the driver who caused the accident and caused injury to another driver/passenger(s), you may be subjected to this same type of investigation. This is another critical reason to understand your insurance policy. I have always advised people — especially those with homes or at least significant equity in their homes — to consider not having a minimum policy in order to avoid being subject to an asset search and potentially, a subsequent lawsuit. If you are a defendant with significant assets to protect, having the injured party look for compensation beyond your insurance policy is a worst-case scenario.

When someone has a home or other significant assets to protect, I generally suggest that they consider something more than a 15/30/5: They should at least bump up their liability coverage to a 25/50/25 policy or even a 100/300/50 policy, or if there are significant assets, bump up liability auto coverage to the point where they can purchase an umbrella policy that will cover them past the million-dollar threshold. An adequate insurance policy is an essential part of every person's asset protection planning. Therefore, it's vital to know what is covered in your policy. You want to know what you are buying and paying for every month. You must ask the questions. Review your policy every time it comes up for renewal, because yes, every little thing you tinker with is going to affect your premium amount, which is the amount you pay your insurance company to provide coverage.

In the end, what's the purpose of getting insurance if it doesn't protect you from your liabilities? Why even bother? You're just paying money for no other reason than just to be able to produce the proof of insurance card to the police officer? Is that worth hundreds of dollars a month? You need an insurance policy that's tailored to protect you to the extent you need. At the very least, you need to be aware of what your policy says. You should have an informed opinion as to how your insurance policy is put together.

Unfortunately, far too many people have zero idea what their insurance policy covers. Lots of folks have UM (Uninsured Motorist coverage), but don't have a clue what that is. In theory, insurance companies won't bind a policy when the consumer doesn't know what products he/she is purchasing. For example, say you request a policy with 100/300 liability coverage but only \$5,000 for liability property damage coverage — this should be a red flag to the agent because property damage coverage is too low, exposing the client to excessive risk. An agent who approves a policy like this is acting to the detriment of his or her client.

Another insurance policy option that people have but often don't understand is medical payments coverage (MedPay). MedPay is a certain fixed amount (typically \$2,000 to \$5,000) set in your auto insurance policy that will help cover medical expenses related to the treatment of injuries you sustain in a motor vehicle accident — regardless of fault. Many people with MedPay don't have a clue what it is. They don't remember talking about it with their agent either. In some cases, the insurance company simply adds it to the policy without explaining it. That's scary. It's scary to not be aware of the components of your insurance policy, which may end up protecting your finances and the assets your family relies upon to sustain their lifestyle.

We went a bit off track there, but let's return to our original left-turn hypothetical above. Toward the end of the claim process, your attorneys submit the demand package in your case, saying that the defendant driver acted with gross negligence by making the left turn without first confirming that it was clear, given that you had the right of way. They will have highlighted the key portions of the medical providers' notes, which indicate that you sustained a neck sprain, upper back strain/sprain, lumbar sprain/strain, and/or thoracic sprain/strain. You might have had knee issues, contusions, or a left wrist sprain/strain from trying to brace yourself against the collision. You might have incurred medical costs for ongoing treatment and orthopedic evaluation (which may include MRI, x-ray, and post-imaging evaluation), in addition to follow-up pain management treatment, as necessary).

Thereafter, the insurance company will take all the data provided in the demand package — the doctor's notes, medical billings, your index information, biometric data, etc. — and they will extrapolate it, either through the use of a computer program or a program plus human input, observation, and analysis. They will look at all your physical characteristics and other biometric data, and then determine what they believe the medical bills should have been in a similar type of accident. They will even analyze how many treatments the biometric data and collision parameters indicate you should have had. They will also review the spectrum of injuries that they deem most likely to have occurred in the accident.

Here's the problem: they're treating you as a set of statistics. John Doe, 37 years old, 5'10", 185 pounds, in this kind of accident, these are the injuries that he should have sustained. A computer program analyzes your data in a few seconds and spews it out: these are the treatments you should have received and you should have felt better after this many treatments in this duration of time. Then they'll cut it off right there and value the case based only on that rudimentary information. To justify this cursory calculation, they will say, "We went through our database of cases and analyzed all possible outcomes." Sure they did. The problem is that they could not take into account that people are different, are affected differently by external forces, have different skeletal and muscular structures (even if they are the same height and weight), may have been seated in different configurations within the passenger compartment, may have been turning their head, or looking down, or may have cocked their left leg onto the inside door panel, may have pre-existing conditions making them more susceptible to certain types of injuries, etc. We could go on and on about all of the things their "injury analysis software programs" and "historical databases" cannot possibly consider, but should.

If you go to a reputable firm, or at least an experienced one, that firm may also have a claim database that can indicate for them what types of injuries would likely be sustained in a particular accident by a person with certain biological characteristics. This type of early determination is important because it allows the legal team and the medical providers to assess

what the likely medical costs and bills will be toward the end of the claim/case. This database also gives the firm the empirical evidence to argue against whatever the insurance company or adjusters declare, through use of their own valuation protocols, is a reasonable valuation of your claim.

The truth is that if you look at any random data set, it's clear that the actual injuries that people of a similar size, age, shape, and gender sustain in similar accidents, as well as the extent of medical treatment necessary to allow these individuals to recover, varies greatly. Why? Because we're human beings. Every person is different. We do often find that similar portions of the bodies are injured, but I simply chalk that up to the fact that there certain areas of the body are more sensitive to high-impact collisions. Whiplash, for example, is an injury that occurs in many if not most high-impact collisions. This makes sense though; like other joints, the neck counterbalances two parts of the body that move freely of one another (the head and the torso) — so it is more susceptible to a whiplash-type injury, especially when subjected to extreme impact forces.

Other frequently injured joints are shoulders and the spinal column, which connects both your torso to your head and your upper to your lower torso. Wrists, hips, and knees are vulnerable too. Due to the whiplash effect, all these areas tend to be contorted aggressively, causing pain and injury, in any given accident.

Nevertheless, multiple factors contribute to the precise details and extent of the injuries an individual sustains in a high-impact collision — many of which are difficult to determine on paper. For example, as we discussed briefly above, it's almost impossible to ascertain exactly how a person was sitting at the time of impact, where exactly in the vehicle they were sitting, where exactly the steering wheel was in relation to their body, which angle their head was at in relation to the rest of their body, how their hands and wrist were angled, how their body was angled in relation to the door on the side of the car that sustained the impact, etc. All these little details can have a huge impact on the nature and degree of injury that someone sustains in any level of impact/accident, regardless of vehicle speed.

It is also very difficult to determine exactly how the body responded to the initial impact. What was the reflexive response immediately after impact? Was there immediate turning of the head to view the impact or the direction of impact (which could also lead to injury)? Was there an immediate shift of weight? Was there turning of the upper torso, which may have contorted the lumbar spine or cervical spine? Did the automatic and sudden tensing of the erector muscles cause disc herniations? Frequently, the victims themselves don't even remember these details because it happens so fast. Even if you were right next to the person, it would be difficult for you to have observed all these nuanced details. Yet, they matter and they all contribute to the level and amount of injuries sustained by the people within the relevant vehicles.

This is why two separate accidents with drivers who are the same age, gender, body type, and weight may cause very similar property damage but result in different types and degrees of injuries — and therefore different medical bills, treatments, and requirements for getting those individuals back to 100% health. Minor variations such as how the person was sitting, how their bodies were angled, what their reflexive actions were, etc., can have a major effect on the outcome of an accident. This is why the valuations that insurance companies generate from static computer programs are simply not accurate and tend to underestimate damages in general.

Human beings are not homogenous; we're not all made the same and don't respond the same way to external stimuli. But this is exactly the flawed premise on which the insurance company will base their valuation of your claim. You need a good attorney who can show them that their computer-driven valuation models may assist in determining the spectrum of injury claims, but it doesn't specifically address you, the victim, as a person who was in an actual motor vehicle accident. The insurance adjuster wasn't in the car or on the scene when the accident occurred. He/she didn't observe the parties and didn't know how they were situated within the vehicles at the time of impact. The insurance company(ies) will ask you to believe their valuation models, but they won't reciprocate by lending any credence to your claims about what was necessary and appropriate medical treatment. They'll deny the full extent of your medical bills, saying that you engaged in treatments and services you didn't need, in order to reduce your case valuation. They want you to believe them but they're not going to believe you. That is their theme time and time again.

To them, fairness is subjective and only their opinion counts. It's easy to get upset and frustrated, then target that anger on the insurance adjuster who is handling your claim. But that's not helpful. We must look at why insurance companies approach cases and claims in this manner. I've stated it more than once but it bears repeating: because that's their revenue model. This perspective on collision claims is the key to their profitability; by collecting more in premiums than they pay out in claims. To significantly grow their revenue, they need to reduce the amount they pay out for claims like yours. This basic "revenue first" principle is why it sometimes seems like people are nothing more than statistics to big insurance. It is your responsibility, as the injured party, and your attorney's duty, as your legal representative, to ensure that the insurance adjuster — who, after all, is a person too — remembers that an injured human being, who is emotionally and physiologically unique, is at the heart of your case. Don't let them force-feed you statistics.

## **Chapter 7:**

# **Apprehended At Last**

Ideally, you will eventually convince the other party's insurance adjuster that their insured, i.e., the defendant, caused the accident by making an improper left turn, failing to yield, failing to stop, or for some other reason imputing negligence. Perhaps there was an injury to you and/or your passengers. You called the police and first responders arrived on the scene, where they conducted an investigation and started writing a report. The investigating officer reviewed the facts of the case and determined that the defendant driver executed an improper vehicular maneuver and cited him for doing so in violation of the relevant vehicle code. You've done everything you needed to do; you fixed the car and got medical treatment, which has helped you reach nearly 100% recovery. The rest of the way is kind of left up to you to continue rehabilitation and strengthening exercises. The doctors have conducted a final evaluation, advised you to be careful because the injured areas are susceptible to re-injury, and left the door open for potential follow-up treatment in the event the injuries flare up again. If they do, you may require additional visits to the chiropractor, acupuncturist, orthopedist, or maybe even a pain management physician for epidural injections or cortisone shots for pain and/or inflammation.

All this information has been submitted and/or obtained by your attorney's office, and your legal team has written a settlement demand or other correspondence tying everything together. They will collect all the other supporting documentation and evidence and forward it to the adjuster along with the settlement demand. Now what? Well, for purposes of your pending claim, the defendant has been determined to be liable. If your vehicle has been fixed — by the other side's insurance, rather than your own — that means the defendant, through his/her insurance, has most likely conceded liability. They wouldn't pay to repair your vehicle if liability hadn't already been determined in your favor to a large extent.

To analogize to a criminal case, at this juncture the defendant has been apprehended and is now being arraigned. What is he or she going to do? Plea bargain? Try to settle before litigation? Or are they going to roll the dice by retaining their own legal counsel and fighting the case in court? Yes, usually the biggest fights are over liability — but even after fault has been determined, there's often still an argument over the extent of injuries suffered by the victims of the accident and their medical expenses/treatments. What was reasonable and necessary in terms of medical treatment? What is fair and reasonable when it comes to pain and suffering under the facts and circumstances of the case?

Much of the time, the attorney's office and the insurance company are going to disagree. The insurance company is trying to save money and implement their primary revenue model by endeavoring to pay as little as possible on your claim. An attorney is your zealous advocate; they are trying to get as much money as possible for you. They want to do a good job for you so that you will refer your family and friends. Does it also maximize their own return and profitability? Yes, because in a typical personal injury case, the attorney takes a percentage of any settlement or judgment in your favor.

The attorney also wants to do well on your case because of the marketing factor that can result. The attorney's office wants you to spread the word about what a good job they've done for you. Money from one case is not as important as the client spreading the word about what a particular law firm will do for their clients in the event of a personal injury accident. So, yes, the firm wants to maximize the case because as your compensation grows, so does theirs, but they have other incentives to make you happy. They want to establish an ongoing relationship as your legal services provider, as well as that of your family, friends, and personal networks. And why not?

They are service providers after all and they must make you happy if they want to continue selling you their service.

As I mentioned earlier, the attorney's office doesn't always know what the maximum ceiling is on the other party's insurance policy that they are pursuing medical compensation or other monetary damages. The insurance company might not disclose the policy limits because they haven't obtained authorization from the policyholder to do so (or perhaps because they simply can't get a hold of their insured). When this situation arises and the case involves moderate to severe injury, the attorney's office will likely request the policy maximum in the settlement demand. However, they need to assume the worst when assisting you to set up treatment: that there's only a minimum policy with \$15,000 in liability coverage.

Let's say they've gone ahead and sent a demand for the policy maximum. Typically, the demand letter will include a request that the insurance company only communicate with the attorney's office to accept or deny the demand, and that any counteroffer will be deemed a rejection of the demand in its entirety. If the insurance company denies the request, in whole or in part, or else makes a counteroffer for less than the policy maximum, it sets in motion certain consequences for both sides. A fundamental tenet of personal injury law is that when an insurance company refuses an offer to settle within policy limits, they're exposing their insured to the possibility of a jury verdict beyond the insurance policy limit. In the industry, we say that the insurance policy has been "popped," and the limit is considered "open." Following such rejection of a policy limit demand, litigation typically ensues.

The attorney's office can now sue the defendant for an amount they believe to be just compensation for the victim(s), regardless of what the insurance policy limits are. As you can imagine, this is a nightmare situation for the insurance company. You can probably also imagine that when a policy is popped and the insurance company ends up paying out money above and beyond the policy's original coverage value, heads are going to roll. The adjuster is going to be in some pretty hot water because hindsight showed that they should have settled for an amount within the policy limits — even if it was the policy maximum. By not doing so, the adjuster exposed the insurance company to greater liability than they had chosen to underwrite when they sold the policy.

So, there is a give and take. Different approaches are used. However, the general idea is that the insurance company has a duty to negotiate in good faith. The law doesn't want insurance companies to unnecessarily put their insureds in harm's way. When I say harm's way, I'm talking about litigation and the risk of financial loss. If you've never been a party to litigation or otherwise part of a lawsuit, consider yourself lucky. Litigation is incredibly draining: mentally, physically, and emotionally. It could end up long and drawn out, especially the trial portion itself. Being questioned, cross-examined, sitting for hours on end, listening to the attorneys talk and argue. . . it can all do a number on your mental stability.

Courts don't want insurance companies to drag their insureds through these situations and expose them to financial losses unnecessarily. They want the company to negotiate in good faith and seek to resolve claims within policy limits to the extent possible. And if they can't or refuse all settlement offers within policy limits, there will be more consequences for drawing their insured into a trial. That's really the next step. If settlement negotiations fail during the pre-litigation phase, the case automatically moves into the next phase, which means: litigation.

In litigation, the plaintiff's attorneys will sue the defendant driver directly. They won't name the defendant driver's insurance company as a defendant, even though it was handling the initial claim, because the company wasn't involved in the accident or a proximate cause of the plaintiff's damages. However, the insurance company is still relevant to the proceedings, as they typically have a duty to defend their insured under an auto insurance policy. Accordingly, they will hire/retain legal counsel to act on behalf of their insured in defending the lawsuit. This is where the posturing between attorneys begins. There may be initial conversations in which the defendant's counsel reiterates the unreasonableness of the previous requests or the settlement demand or the cost of medical bills and other expenses. They will claim they have enough evidence to prove their case for excessive treatment and that their client is ready to go all the way, etc. All just usual posturing by counsel during the litigation phases leading up to trial.

Litigation may start with a bang, with defense counsel's responsive pleading and immediate requests for discovery, which can be burdensome for attorneys as well as their clients. The responding parties go through and answer endless questions about their personal lives as well as their injuries, the background of the accident, insurance status, etc. Supplemental written discovery may even be required of the parties after the initial sets have been submitted, and on and on it goes. You can chalk up at least a portion of it to simple posturing: both sides trying to show the other side that they're serious. They mean business and are ready to go all the way.

During or after the exchange of some written discovery, depending on the tone of the negotiations, you might receive notice of the other side's intention to depose certain parties such as the driver/victim (namely you, in this instance), the passenger(s), and any witnesses. Depositions are a type of court proceeding, albeit an informal one since they take place at a non-courthouse location (designated by the deposing party). It will still take time from your day, however, maybe a half-day or even a full day (which are the same thing if you have to deal with Los Angeles traffic). At the deposition, you'll get a little taste of what it might be like at trial when you are being cross-examined on the witness stand. You'll field question after question as they attempt to trip you up and pick you apart; they'll try asking the same questions in different ways — hopefully, your attorney will catch this and object. They'll show you multiple documents and question your ability to observe and remember. You're probably already noticing how draining the process can become by this point.

The parties will then engage in more negotiations after the depositions, maybe more discovery too; they'll continue to posture and might go back to revisit the possibility of settlement. Then they'll posture some more and both try to dissuade the other party from moving forward with their case. The defense might throw out a softball on the settlement amount, hoping that the opposing attorney's office wavers and realizes that the case is not worth spending more money on. Since attorneys in a plaintiff's personal injury contingency case don't get paid unless there's a settlement or a judgment following a trial, there is always some pressure to settle. Moreover, for most reputable firms, the costs of the case are all floated by the firm itself, including depositions (which will cost thousands of dollars), written discovery, labor, brick and mortar rent, office supplies, utilities, third-party vendors such as process servers, consulting and paid experts (accident reconstruction, medical, etc.), and (probably the most expensive part of all) the attorney's own time in preparation for trial. Hopefully, all these costs will eventually be recouped via settlement or a judgment after trial — unless, of course, the plaintiff loses.

The insurance company, with their attorneys and deep pockets, hopes to drown the plaintiff's legal team by dragging them deeper and deeper into the litigation process. The costs that the plaintiff's legal representatives must carry during litigation only increase as the case proceeds toward trial. Remember, they're still posturing at this point, maybe even more now than they were at the outset. Each attorney's office is trying to show that their side is willing, able, and ready to go all the way through trial to a jury verdict. At some point, they will exchange expert information and then pick apart each other's experts at deposition and start preparing for trial in earnest by strategizing the proper motions in limine and all the other pretrial work. Then there's always some last-minute posturing on the eve of trial to determine which side is amenable to reopening negotiations and talking settlement again. Maybe neither side wants to do that; if not, the case and trial move forward to jury selection.

The maximum amount a court can award varies depending on what type of jurisdiction you're in: small claims, limited, or unlimited jurisdiction. The particular department/court within the jurisdiction determines the timing of various milestones, such as a trial setting conference, discovery cut-off, final status conference, motions in limine, and the trial date itself. The judge may even request that the parties try to settle the pending matter on the eve of trial at a mandatory settlement conference, but if no progress can be made, then you are in cue for a trial date that may be floating around for a week or more. At this point, the only way to resolve this impasse is to have a judge and jury decide who is right and who is wrong.

It's important to know that jury trials are a bit of a roll of the dice; nothing is certain, as we've seen in popular culture and media. Look at the O.J. Simpson trial. Who would have guessed? It seemed like the evidence was stacked against him — the world was against him, even — yet the legal team pulled it off: he was found not guilty on all counts. You never know what's going to happen at trial (though skilled counsel can gain certain advantages heading into trial via preliminary motions and selecting a favorable jury composition). Due to that uncertainty, when parties fail to resolve a personal injury case through a pre-trial settlement then both sides have kind of lost before the trial even begins. You'll undoubtedly feel like you've lost at times, maybe even during your deposition, depending on how well you have been prepared. At the very least, you will have lost a lot of time (and probably sleep) that you will never get back.

That's why your legal counsel works so diligently to reach a settlement with the insurance company prior to and even during litigation. We recognize the toll that litigation can take on someone who is not familiar with the legal process — especially someone who's already been victimized and injured by an accident. Personal injury plaintiffs shouldn't have to relive that experience through interminable legal proceedings, only to be questioned or doubted in open court about the extent of their injuries and the impact of those injuries on their life, work, and family. Good attorneys understand this and seek to avoid extended litigation whenever possible. A good attorney will shoulder the burden for you from day one, involving you only as necessary and to the extent you are capable (while allowing you to participate as much as you want) so that you do not feel victimized yet again.

# Epilogue

Automobile accidents happen all the time, literally: the National Highway Traffic Safety Administration approximates that an auto accident occurs every 60 seconds in the United States. Herein, I posed an automobile accident hypothetical and we discussed it, albeit in a unilateral manner. The hypothetical could have been tweaked in countless ways since every accident involves different factors, people, conditions, and so on. To add confusion to the chaos, there are also many types of insurance policies that are underwritten by numerous insurance companies (some of which own more than one insurance entity). Then, to further complicate things, even the insurance adjusters vary in terms of their attitude, knowledge, demeanor, and methodology, even though their training should be similar. Is it any wonder that predicting claim outcomes is a fool's game?

There are so many different factors and considerations involved in any given accident that we couldn't realistically discuss them all here — but I hope you've learned something about the accident claims process anyway. I hope you found our personal injury case study interesting and will take away some functional knowledge about claims.

It does sometimes feel like a game of cops and robbers. On the plaintiff's side, it sometimes feels like we're the cops out there trying to enforce rights. I don't mean to villainize all insurance companies, but it does seem that their case valuation methods often miss aspects of the human condition. Going from a traumatic accident right into the overwhelming tangle of insurance and legal matters, it's no wonder that individuals can be fragile, cautious, reserved in making disclosures, impatient, emotional, and just plain confused. To put it another way, insurance company decision-making can be just plain cold. There's something deeply unsatisfying about how insurance companies don't treat victims as individuals — and that's a problem because the victim is who we ALL should be trying to protect.

To be fair, there is variation among the insurance adjusters of the world, just as there is in every other group of people. There are good adjusters and bad adjusters, just as there are good and bad attorneys. No doubt about it: some personal injury attorneys are just out for themselves. Some of them end up losing entire practices because of the way their self-interested approach to personal injury law. Not every insurance company in every case is the bad guy, but it sometimes feels like that from where we sit, trying to advocate for the victims. In the end, it's up to you, the claimant, to be familiar with the process, have the requisite knowledge to make informed decisions, and be generally able to discern a good guy from a bad one.

Before you take off and hit the road, I want to leave you with some key takeaways. Above all, I hope you've learned the importance of knowing the coverages of your automobile insurance policy. You need to be familiar with its components, what they cover, and what they do not cover. Additionally, when you're purchasing a policy, don't make the mistake of caring only about its cost; if it doesn't provide the coverage that you want or need, what good is it? Take the time to educate yourself about the types of coverage and how much you may need. Don't leave those decisions up to your insurance broker, because they may decide that you only care about how much premium you pay — and that is a bad thing.

Think about it from this perspective: your insurance policy is a key part of your asset protection plan. It should help you mitigate your liabilities. In the event of a catastrophic loss, your policy should protect you and your assets. As the old saying goes, hope for the best but prepare for the worst.

Another key point, which I hope you'll take to heart, is that if you're ever in an accident, don't go it alone. You don't have to call my firm, but please do call a reputable firm that will do good work on your behalf. Have them shoulder some of your burden after an accident. You won't regret it.

Finally, always remember that people matter most. In the event you're in a car accident, the very first thing you should do is confirm that everyone involved is okay. If they are not, call or direct someone to call 911 immediately so that emergency personnel and first responders can get to the scene as quickly as possible. People should always take priority over damaged cars. If the insurance companies could remember that and all attorneys in the personal injury practice area could remember that, there would probably be fewer bad guys all around.