

PROTECTING
YOUR FAMILY
FROM ACCIDENTS

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INTRODUCTION

I'VE BEEN A LICENSED insurance agent in Texas since 2004, and I have seen clients and their families devastated by the aftermath of serious injuries and wrongful deaths. I've also seen insurance policies help them rebuild their lives. I own insurance agencies in both Dallas and Tarrant Counties. Our mission is to put the best policies in place at the most affordable prices to ensure that families are protected.

I'm proud of the work we do in the insurance agencies, and I'm also proud of what I do as a Personal Injury trial lawyer for my clients. Many times over the years, I have seen my insurance clients get treated unfairly by the insurance companies. I went to law school so I could help people who are being treated unfairly. Trial lawyers like myself stand up for injured victims and battle large insurance companies to ensure that our clients' legal rights are protected and that they are treated fairly.

In addition to representing injured accident victims, I've made it my mission to educate the public on how to protect themselves and their families from accidents. This education has taken the form of books, articles, videos, and my websites, thetexaslawdog.com and legalinsuranceagency.com. I help protect you and your family from accidents by:

- Providing education on how to make wise car insurance choices,
- Advising of your legal rights,
- Representing you through the insurance claim/litigation process, and
- Handling all aspects of your Personal Injury and Wrongful Death claims.

This book is divided into three sections: Section I: A Lawyer and Insurance Agent's Guide to Purchasing Car Insurance; Section II: A Lawyer's Guide to Personal Injury Cases; and Section III: a Lawyer's Guide to Wrongful Death Claims.

In Section I, you will learn how to protect your family with proper car insurance choices. Topics include the following: Liability Coverage, Medical Payments, Personal Injury Protection, Uninsured/Underinsured Coverage, Damage to Your Auto, and Additional Coverages.

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

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

For more educational information, articles, and videos on these and other topics, please visit my website at thetexaslawdog.com, or call Aulsbrook Law Firm at 817-775-5364.

To find out if you have the proper commercial, home, or auto insurance coverage in place, or to receive a complimentary quote to see if we can provide you with better coverage at a lower premium, please visit legalinsuranceagency.com or call Legal Insurance Agency at 817-618-6381.

SECTION I:

A LAWYER'S GUIDE TO PURCHASING CAR INSURANCE

CHAPTER ONE

WHY IS THE CAR INSURANCE COVERAGE I BUY SO IMPORTANT?

IF YOU ARE INJURED in a car accident, several questions usually come to mind. Who will pay to fix your car? Who will pay your medical bills and lost wages? Can you receive monetary compensation for your pain and suffering? What happens next?

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

Because your car insurance coverage choices are so important and, for the most part, consumers have only a basic understanding of car insurance coverage, I have made it my mission to educate the public about this important topic. This section will teach you how to review your car insurance coverage and will offer advice about Collision, Comprehensive and Gap Coverage, Liability Coverage, First Party Benefits (coverage for medical bills, lost wages, accidental death, and funeral bills), and Uninsured and Underinsured Motorist Coverage.

CHAPTER TWO

HOW DO I CHECK MY CAR INSURANCE COVERAGE?

TEXAS LAW REQUIRES PEOPLE who drive in Texas to pay for the accidents they cause. Most drivers do this by buying auto liability insurance. Liability insurance pays to repair or replace the other driver's car and pays other people's medical expenses when you're at fault in an accident.

By Texas law, you do not have to purchase a car insurance policy to drive as long as you can provide another acceptable form of financial responsibility. A cash deposit or a cashier's check with a county judge verifying you have deposited at least \$55,000 is accepted as proof of financial responsibility, as is a surety bond or a copy of a self-insurance certificate issued by the Texas Department of Public Safety.

It's also acceptable to drive in Texas with a car insurance policy issued from another state. As long as the insurance comes from a valid agent or company with legal authority to write liability insurance in the state and meets minimum coverage requirements, it's fine.

As mentioned above, there are a few alternatives to purchasing Texas auto insurance, and you can drive legally in the state without it. But keep in mind that, if you are involved in an accident and are facing costly damages and high out-of-pocket expenses, a reliable, dependable insurance policy sure comes in handy.

If you buy insurance to meet the state's financial responsibility law, you must buy at least the minimum amount. The current minimum liability limits are \$30,000 for each injured person, up to a total of \$60,000 per accident, and \$25,000 for property damage per accident. This basic coverage is called 30/60/25 coverage.

Because of car prices and the high cost of medical care, the minimum amounts might not be enough to pay all of the other driver's costs if you're at fault in an accident. Other drivers could sue you to collect the difference. Consider buying more than the minimum limits to protect yourself financially.

Liability insurance doesn't pay to repair or replace your car or to treat your injuries. Other types of coverages—such as personal injury protection, uninsured or underinsured motorist, medical payments, collision, and comprehensive—can help you pay for these expenses.

To check the coverage on your current policy, you need to look at your "Declarations Page," which usually looks similar to the following:

POLICY DECLARATIONS

Coverage	Limits of Liability
Bodily Injury Liability	\$100,000 each person \$300,000 each accident
Property Damage Liability	\$100,000
Uninsured/Underinsured Motorist (stacked)	\$100,000 each person \$300,000 each accident
Uninsured Motorist Property Damage	\$100,000
Medical Benefit	\$10,000 or PIP (medical expenses, funeral expenses, and up to 80% of loss of income) \$5,000
Income Loss Benefit	\$5,000 total \$1,000 monthly
Accidental Death Benefit	\$10,000
Funeral Benefit	\$5,000
Comprehensive \$500	Actual Cash Value
Collision \$500	Actual Cash Value

CHAPTER THREE

COLLISION, COMPREHENSIVE, AND GAP COVERAGE

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

COLLISION AND COMPREHENSIVE COVERAGE

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

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

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

GAP (GUARANTEED AUTO PROTECTION) INSURANCE

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

CHAPTER FOUR

LIABILITY COVERAGE — PROTECTING YOUR ASSETS WHEN YOU CAUSE AN ACCIDENT

YOUR INSURANCE COMPANY HAS A DUTY TO DEFEND AND PAY

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

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

HOW MUCH LIABILITY COVERAGE IS REQUIRED BY LAW?

Texas law requires minimum liability limits for bodily injury of \$30,000 for each injured person, up to a total of \$60,000 per accident, and \$25,000 for property damage per accident. This basic coverage is called 30/60/25 coverage.

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

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

The minimum Liability Coverage required by law in Texas would pay \$30,000 for each injured person up to \$60,000 per accident, and \$25,000 for property damage per accident.

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

It is not difficult to imagine a scenario under which the minimum Liability Coverage would not be enough coverage to pay for the damages caused by a car accident. Seriously injuring one person can cause more than \$30,000 of Bodily Injury damages, and an accident resulting in moderate injuries to multiple people can cause more than \$60,000 of Bodily Injury damages. Damaging or totaling a car can result in property damages of more than \$25,000.

Your insurance policy is a contract with the insurance company which only obligates it to pay for damages up to the limits of the policy. If the damages exceed those limits, the injured party could pursue your personal assets to make up the difference. For example, if you cause \$500,000 worth of Bodily Injury damages and have only \$30,000 worth of coverage, the injured party would receive \$30,000 from your insurance company and then try to collect \$470,000 from your personal assets.

HOW MUCH IS ENOUGH LIABILITY COVERAGE?

You should discuss the issue of how much Liability Coverage is appropriate with your insurance agent and financial advisor.

From both an insurance agent's perspective and a legal perspective, I believe that you should have sufficient coverage to protect the value of your personal assets from potential legal claims. The more assets you have, the more insurance you should have.

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

CHAPTER FIVE

PERSONAL INJURY PROTECTION (PIP) & MEDICAL PAYMENTS (MED-PAY) COVERAGE

TEXAS AUTOMOBILE INSURANCE POLICIES offer the choice between PIP or Med-Pay.

<u>PIP</u>	<u>Med-Pay</u>	
Required under Texas law	Yes	No
Must be rejected in writing	Yes	No
Minimum Coverage	\$2,500 per person	No
Covers Medical Bills	Yes	Yes
Covers Lost Wages	Yes (80%)	No
Right of Subrogation	No	Yes
Provides No-Fault Coverage	Yes	Yes

Personal Injury Protection, also know as “PIP,” is coverage you purchase with your auto insurance policy that covers medical expenses and lost wages as a result of injuries sustained in a car accident. PIP includes physical and occupational therapy and rehabilitation costs, psychiatric expenses, and other professional health services. PIP also offers insurance coverage for wages lost from work, other reasonable non-medical or work-related losses, and a death benefit.

The Texas Insurance Code provides that all policies of automobile insurance issued in Texas must provide for PIP coverage for a minimum of \$2,500 per person, unless rejected in writing by the insured. If you choose not to carry PIP coverage, then the insurance company is required to obtain your signed rejection of the PIP coverage. Therefore, unless you rejected PIP, then you would be entitled to the minimum coverage even if you were never charged a premium for it.

Texas law requires that PIP coverage be provided at a minimum of \$2,500 per person. You may carry more coverage if you like.

PIP provides “no-fault” coverage. This means that you are entitled to PIP benefits regardless of fault in the accident. You can collect PIP even when the accident was your fault.

PIP covers reasonable and necessary medical bills and 80% of your lost wages.

Texas provides that PIP has no right or *subrogation* (explained below) or reimbursement in the event you get a settlement for your personal injuries. That means that you can collect medical benefits on your PIP coverage and also submit those very same bills as part of your injury claim. PIP does not have to be repaid to the insurance carrier.

Medical Payments Coverage (Med-Pay) operates differently than PIP. Med-Pay is not mandated by Texas law. Additionally, Med-Pay coverage may be issued in any amount: \$500, \$1,000, \$2,000, etc.—there is no state mandated minimum. Although Med-Pay also provides no-fault coverage, it only covers medical, surgical, dental, and chiropractic treatments that are considered necessary and reasonable. Some of these services include ambulance transportation, hospitalization, X-rays, nursing care, prosthetics, and funeral expenses. Med-Pay does not cover lost wages.

One major difference between PIP and Med-Pay can make a big difference in your case: unlike PIP, Med-Pay coverage is entitled to subrogation and reimbursement rights.

“Subrogation” refers to the right of an insurance company to get reimbursed in the event you make a settlement with a liable third party. Consider this example:

You are injured in a car accident and have \$5,000 in medical expenses. You also carry \$2,500 in PIP coverage on your auto policy. Once you are done treating and are released from your doctor’s care, your lawyer will submit your case to the other driver’s insurance company as well as your own for PIP benefits. If you settle your case for \$7,500 with the other driver’s insurance company, you can also expect to get another \$2,500 from your policy under the PIP coverage. Therefore, your total recovery would be \$10,000.

However, if you had Med-Pay coverage, then your insurance company would be entitled to reimbursement of the \$2,500 in Med-Pay benefits. If you collect the Med-Pay benefits of \$2,500 and also enter into a settlement for \$7,500 with the other driver’s insurance company, you would not have \$10,000 in total funds to work with. Rather, you would have to account for reimbursement of the Med-Pay benefits, thereby leaving you with a total recovery of \$7,500. In the end, you just paid premiums for Med-Pay coverage and received no real benefits from it at all. This is the most important part of Med-Pay coverage that many insurance agents may not clearly explain.

In my perspective, get PIP! The Med-Pay coverage is a waste of money.

Please consult me or my staff at Aulsbrook Law Firm or Legal Insurance Agency regarding questions you may have involving these issues.

CHAPTER SIX

TEXAS AUTOMOBILE INSURANCE POLICY EXCLUSIONS

TEXAS AUTO INSURANCE POLICY exclusions are clauses within automobile insurance policies that will void coverage under a set of circumstances. These appear in both “standard” and “non-standard” automobile insurance policies.

STANDARD VS NON-STANDARD INSURANCE

Texas has both “standard” auto insurance policies and “non-standard” auto insurance policies. The standard policy is mainly designed for low-risk drivers and typically covers every person in the household of the insured. These policies use standard forms that are mandated by the Texas Department of Insurance. The standard policies pay money into in the State Guarantee Fund which means if the company goes bankrupt, the State of Texas’s Guarantee Fund picks up the bill.

Non-standard policies are not as regulated, tend to be more tailored to fit the needs of the customer, and are more open to drivers in high-risk households. This is because they can carve out more restrictions on what things they cover.

A nonstandard policy may be a good option in select circumstances; however, I recommend choosing a standard policy whenever possible. Both types of policies have exclusions, or designated circumstances in which the insurance company will not provide coverage.

FAMILY MEMBER EXCLUSION

A Family Member Exclusion is a clause within an auto liability insurance policy that states that the insurance company will not cover damages claimed by one member of the family against another member of the family while both are occupying the insured vehicle. This type of clause is an attempt to prevent fraud where two members of the same family might collude to cause an accident so that the passenger can make a liability claim against the driver for damages.

A Family Member Exclusion clause in a Texas auto policy is only enforceable for damages over and above the minimum insurance limits that are required by law. This is because Family Member Exclusion clauses directly conflict with Texas public policy.

INTENTIONAL ACT EXCLUSION

An *Intentional Act Exclusion* is a clause in a liability insurance policy that excludes coverage for injuries intentionally caused by the insured. When an insured tries to cause someone harm, this voids the insurance coverage. The “intent” that is referred to is the intent to cause harm, not the intent to do the act. Otherwise, every time a driver intentionally runs a red light or drives in excess of the speed limit, this would void coverage, and too many drivers would be considered uninsured.

NAMED DRIVER EXCLUSION

A *Named Driver Exclusion* is a clause in an auto insurance policy that specifically identifies a person or several person(s) for which there is no insurance coverage provided if they are permitted to drive the vehicle and they cause an accident. These clauses are most commonly found in nonstandard insurance policies where there are known high-risk drivers living in the same home as the named insured on the vehicle.

Even an unnamed person can be covered by an insurance policy if the owner negligently entrusts the vehicle to the driver. Thus, when a standard insurer is aware that an insured lives with an unsafe driver, the insurer will sometimes charge a higher premium to account for the additional risk. In order to keep the premiums affordable, some insurers will issue a policy that specifically calls out the high risk driver and excludes coverage if they are allowed to drive.

ACT OF GOD EXCLUSION

An *Act of God Exclusion* (also known as a Catastrophe Exclusion) is a provision in an insurance policy that excludes coverage for events that are caused by the forces of nature and cannot be prevented, such as hurricanes, floods, tsunamis, tornadoes, or hail. If you live in an area particularly prone to natural disasters, you should read this clause very carefully.

PUNITIVE DAMAGES EXCLUSION

A *Punitive Damages Exclusion* is a clause in a liability insurance policy that limits coverage for damages by excluding any award for punitive or exemplary damages that a jury might award. Sometimes these exclusions are worded in different ways, such as an exclusion for the driver's recklessness, gross negligence, malicious acts, or exemplary damage award. These clauses only void coverage for that part of the damages that reflect the punitive damages award. For example, if an insured driver were to cause a wreck while intoxicated and go to trial, the jury might award punitive damages on top of actual damages. The insurance policy would exclude the amount awarded for punitive damages but cover the amounts awarded for other damages. Punitive damages exclusions tend to be common in many umbrella and excess insurance coverage policies including auto uninsured/underinsured motorist policies.

OWNED-BUT-UNLISTED-VEHICLE EXCLUSION

An *Owned-but-Unlisted-Vehicle Exclusion* is a clause in an auto insurance policy that exempts from coverage any vehicles that an insured owns or uses regularly but does not own, but which he fails to list as insured vehicles on the insurance policy declaration. The more vehicles an insurance policy covers, the higher the premium will be. Thus, if you own a car or keep a vehicle for regular use even though you do not own it, your insurance policy may exclude coverage of that vehicle under an owned-but-unlisted-vehicle clause.

CHAPTER SEVEN

UNINSURED AND UNDERINSURED MOTORIST COVERAGE

HOW TO PROTECT YOURSELF AND YOUR FAMILY FROM IRRESPONSIBLE DRIVERS

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

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

WHAT IS UNINSURED MOTORIST COVERAGE?

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

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

WHAT IS UNDERINSURED MOTORIST COVERAGE?

Underinsured Motorist Coverage (UIM) provides protection for an accident caused by a driver who has Liability Coverage, but not enough coverage to pay for all of the injuries and damages caused by an accident. For example, if a driver having only the state required minimum Liability Coverage of \$30,000 causes \$100,000 worth of injuries and damages to someone, that driver is underinsured by \$70,000 ($\$100,000 - \$30,000 = \$70,000$). In such an accident, if the injured person was covered by a UIM policy, he or she would be compensated by the UIM Coverage to make up the \$70,000 difference.

Property Damage UM/UIM pays for auto repairs, a rental car, and damage to items in your car. This is subject to a mandatory \$250 deductible in Texas.

HOW MUCH UM/UIM COVERAGE CAN BE PURCHASED?

In Texas, all car insurance carriers must offer UM and UIM Coverage and must obtain signed waivers if UM or UIM

Coverage is rejected. Insurance companies may sell higher limits of UM/UIM Coverage, but the amount of coverage typically cannot exceed the amount of Liability Coverage purchased. So, if you want \$500,000 of UM/UIM Coverage, you are required to purchase at least \$500,000 of Liability Coverage.

WHAT IS UM/UIM “STACKING”?

Stacking refers to the insured’s ability, when covered by more than one insurance policy, to obtain benefits from the second policy on the same claim when recovery from the first policy alone would be inadequate. There are two possible types of stacking: intra-policy and inter-policy.

Intra-policy stacking is the aggregation of limits of liability for coverage of each car covered under one policy. Inter-policy stacking involves the aggregation of coverage under more than one policy. In Texas, inter-policy stacking is permitted. Thus, where two or more first party UM/UIM policies protect the insured, the insured is allowed to stack the coverage of the two policies in addition to whatever is payable by the liability carrier or individual tortfeasor. Intra-policy stacking is prohibited in Texas.

HOW DO I RECOVER UM/UIM BENEFITS?

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

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

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

Unless you are responsible for causing the accident, your insurance rates may not be increased as a result of you filing a UM or UIM claim. Texas law forbids UM/UIM carriers from raising your rates just because you file a claim.

CHAPTER EIGHT

ADDITIONAL OR ADD-ON COVERAGES

WE'VE DISCUSSED THE MOST important elements of car insurance—that it protects you in an accident, whether or not you're at fault. Many policies also include or allow you to purchase additional coverages, such as roadside assistance, rental reimbursement, and rental insurance.

ROADSIDE ASSISTANCE

Roadside assistance is often referred to as a tow truck service. You can call for roadside assistance if your car breaks down, your battery needs a jump, you have an accident, you run out of gas, or you experience any other car trouble. Some problems can be taken care of on-site, such as a flat tire or battery jumpstart, while other problems require a tow to a nearby repair facility.

RENTAL REIMBURSEMENT COVERAGE

Rental reimbursement coverage pays a set daily amount for a rental car if your car is stolen or being repaired. Your company pays for rental reimbursement only if your car was damaged by something that your policy covers, such as fire, theft, or collision.

Roadside assistance and rental reimbursement are typically not standard inclusions to policies. It is important to ask if your policy includes these coverages as they typically do not add much to the premium.

RENTING A CAR

When renting a car, you need insurance. If you have adequate insurance on your own personal car, including collision and comprehensive, this is normally enough. Typically the coverage will extend from your personal auto to the rental as long as the rental is used for pleasure and not for business. Alternatively, you may check with your credit card company to determine if they extend coverage to you as a cardholder for the rental car.

CHAPTER NINE

HOW DO I CHANGE MY CAR INSURANCE COVERAGE?

AFTER READING THIS BOOK and reviewing your car insurance Declarations Page, if you want to change coverage, you should immediately contact your current insurance agent, or contact us at Legal Insurance Agency. Coverage can be canceled, rebound, and changed almost instantaneously without you having to wait until the end of the policy period. You can shop your rates at any time. If you find a better policy during your current policy period, you can cancel your current policy and are due a refund for any prepaid days. You should always make sure to get a new copy of your Declarations Page from your agent to confirm your updated coverage.

IMPORTANT CHOICES—FREE HELP

Car insurance coverage choices are important and difficult. If you are involved in a car accident, the selections you made will substantially impact you and your family. If you need advice or want a review of your car insurance policy, please call at 817-775-5364 or e-mail me at matt@thetexaslawdog.com, and I will be happy to review your policy free of charge.

SECTION II:

A LAWYER'S GUIDE TO PERSONAL INJURY CASES

CHAPTER ONE

WHEN DO ACCIDENTS RESULT IN LEGAL CLAIMS?

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

One of the most common questions I hear in my Personal Injury practice is: *I've been injured in an accident—do I have a legal claim?* The answer depends on how it happened. If we can prove that someone else was careless and caused the accident and your injuries, the answer is probably yes. If you do have a legal claim, the law provides that you are owed fair compensation to make up for your injuries and all of the harm you have suffered (medical bills, lost wages, physical and emotional pain and suffering, and the negative impact on your life and activities). A Personal Injury trial lawyer helps clients understand their legal rights and receive fair compensation from insurance companies.

CHAPTER TWO

TEN STEPS TO FOLLOW IF YOU'VE BEEN INJURED IN AN AUTOMOBILE ACCIDENT

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

1. CALL THE POLICE

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

2. PRESERVE EVIDENCE

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

3. IDENTIFY WITNESSES

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

4. GET THE OTHER DRIVER'S VITAL INFORMATION

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

5. SEEK IMMEDIATE MEDICAL ATTENTION

If you have any symptoms, it is advisable to get checked out at an emergency room or by your family doctor as soon as possible.

6. REPORT THE ACCIDENT TO YOUR AUTOMOBILE INSURANCE COMPANY

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

7. BE CAREFUL TO WHOM YOU TALK

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

8. LOCATE AN EXPERIENCED PERSONAL INJURY ATTORNEY

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

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

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

I offer free consultations regarding Personal Injury cases and will meet with you at my Dallas or Tarrant County offices. I also travel all around the state, so feel free to contact me about meeting elsewhere within Texas. We can also meet over the phone or videoconference call for this free consultation.

10. DON'T SIGN ANYTHING

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

CHAPTER THREE

HOW TO HIRE A PERSONAL INJURY ATTORNEY

DO I EVEN NEED A PERSONAL INJURY ATTORNEY?

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

SHOULD I CONSULT WITH AN ATTORNEY?

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

HOW DO I FIND A PERSONAL INJURY ATTORNEY?

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

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

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

Here are some good questions to ask prospective attorneys:

Where did you go to school?

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

Do you take continuing education courses related to Personal Injury cases?

How long have you been negotiating with insurance carriers?

What percentage of your practice is devoted to Personal Injury cases?

Have you handled both sides of Personal Injury cases; that is, the side of the victims (plaintiffs) and responsible parties (defense)?

Are you willing to take Personal Injury cases to trial?

Do you have sufficient backup and resources to try a Personal Injury case?

What is your fee structure?

Who pays the litigation expenses and what happens regarding those expenses if the case does not result in recovery?

I will answer some of those questions myself. I went to Texas A&M University–Commerce for my BBA in Finance and The University of Texas at Arlington for my MBA. I have been negotiating with insurance carriers since 2004 when I first became an insurance agent in Texas. In law school at UNT Dallas College of Law, much of the coursework I completed prepared me to be proficient at not only negotiating personal injury settlements, but also trying those cases when necessary.

I continue to stay up-to-date on the latest changes in personal injury law by being involved and meeting with the Tarrant County Trial Lawyers, Dallas Bar Association Trial Skills Section, as well as the Dallas Bar Association's Tort and Insurance Practices Section.

My practice is largely focused on Personal Injury law, and I represent only victims of accidents, no defendants or insurance companies. My dad and brother have been in the trucking business all of my life. I have previously helped both them with insurance coverages and advised them on how to be prepared for being sued. This insight into the trucking industry has allowed me to know how insurance carriers and defense lawyers think.

Further, having been a licensed insurance agent in Texas since 2004, I know how insurance carriers work. They try to delay, deny, and defend against paying claims that are due to the insured.

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

Although most Personal Injury cases settle before trial, I am willing to take Personal Injury cases to trial. The staff at my firm work as a team and are prepared to assist me in the trial of Personal Injury cases.

In terms of our fee structure, we handle our Personal Injury cases on a Contingent Fee basis in which we charge no fees unless we achieve a recovery for our clients. We pay all out-of-pocket expenses associated with your case and are reimbursed out of any recovery. If we do not win compensation for you, we do not ask you to pay any fees or expenses.

CHAPTER FOUR

COMMON INJURY CASES

NOT ALL ACCIDENTS RESULT in legal claims. Some accidents do not result in injuries. Some accidents are unavoidable and not caused by the carelessness of another person. Some accidents are actually caused by the carelessness of the victim.

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

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

CAR ACCIDENT CASES

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

MOTORCYCLE AND BICYCLE ACCIDENT CASES

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

PEDESTRIAN INJURY CASES

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

SLIP AND FALL CASES

It is common for injuries to occur from a slip or trip and fall. Such accidents include things like slipping on spilled liquids in stores, slips on ice or snow, trips on defective sidewalks, falls down defective stairs, and other defective conditions on properties that cause accidents. If you fall and are injured on another person's property, you may have a Personal Injury case.

DEFECTIVE PRODUCT CASES

Another common cause of injury is from defective and dangerous products. If you have been injured while using a

product, you may have a Personal Injury claim if the product was defectively designed or manufactured, or if it did not have proper instructions or warnings.

MEDICAL MALPRACTICE CASES

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

CONSTRUCTION ACCIDENTS

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

DOG BITES

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

CHAPTER FIVE

ANATOMY OF A PERSONAL INJURY CASE

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

PRE-LAWSUIT ACTIVITIES

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

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

INVESTIGATION

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

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

SETTLEMENT NEGOTIATION

In the final phase of Pre-Lawsuit activities, I offer my clients my expert opinion of the settlement value of the case and then prepare a comprehensive settlement package to send to the insurance company to convince it to settle the case for full value before litigation.

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

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

LAWSUIT ACTIVITIES

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

PLEADINGS

The Pleadings stage is the beginning of a Lawsuit. Once it is decided that a case cannot be settled and court intervention is required, the injured party, or Plaintiff, files a Complaint with the court. A Complaint is the written document starting the Lawsuit and it sets forth the Plaintiff's dispute with the other party, the Defendant. The Complaint also describes what the Plaintiff seeks to recover in the Lawsuit.

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

DISCOVERY

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

The purpose of Discovery is to allow each party to learn about the other party's case, such as what witnesses will be called to testify and what each will say. In addition, each party can ask the other what documents or other evidence will be used in the Lawsuit. In Discovery, each party can send written questions to the other side (Interrogatories) and ask that the other party provide copies of relevant documents (Requests for Production). Each party can also take the Deposition of the other party, which is an interview under oath regarding the subject matter of the case. Other witnesses can be subpoenaed for Depositions, and either party can issue Subpoenas for relevant documents from people other than the other party. In a Personal Injury case, it is common for the Defendant to subpoena all of Plaintiff's medical records to learn about his or her medical history. In addition, the Defense has the right to request that the Plaintiff be examined by a doctor of their choice (Defense Medical Exam) so that doctor can testify for the Defense at trial. If properly done, the Discovery process ensures that there will be no surprises at the Arbitration or Trial.

SUMMARY JUDGMENT MOTIONS

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

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

TRIAL

Depending on the preference of the parties, the Trial can take place in front of a judge or jury. There are generally six phases of a Jury Trial: (1) Jury Selection; (2) Opening Statements; (3) Testimony and Evidence; (4) Closing Arguments; (5) Jury Charge; and (6) Verdict.

In a Jury Trial, the first phase of the Trial begins with *Jury Selection*. A pool of jurors (usually 50–80 jurors) is brought into the courtroom and each juror has a number. Then, the judge and/or attorneys for both parties ask the jurors questions to determine whether they know any of the parties, attorneys, and witnesses or whether they have had any experiences or have strong feelings on certain issues which would not allow them to be fair and impartial. Once the questioning is complete, each attorney can ask that certain jurors be stricken from the jury pool due to some disclosed bias, prejudice, or another reason making them unable to serve such as school, job, or family obligations. After the judge rules on the “for cause” challenges, each party can also strike a set number of other jurors (six peremptory challenges in district court and three in the county court) who they think would likely favor the other side. These are called “peremptory strikes.” Once the strikes are complete, the first 12 remaining jurors constitute the jury panel for the Trial.

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

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

Once all testimony is complete, the attorneys deliver *Closing Arguments*. During the Closing Arguments, the attorneys are able to argue why the facts and applicable law should lead to a verdict in their favor. The Plaintiff goes first. After Plaintiff’s Closing Argument, the Defendant presents its closing. Finally, after the Defendant’s closing, the Plaintiff’s attorney usually presents a brief rebuttal argument.

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

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

CHAPTER SIX

WHAT WE DO FOR YOU IN A PERSONAL INJURY CASE

WHEN YOU HIRE ME to represent you, you will know that I and a team of experts are personally managing all aspects of your case from beginning to end.

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

BEFORE DECIDING TO FILE A LAWSUIT

- Initial client call
- Initial client meeting (interview client, photograph injuries, and obtain documents from client)
- Visit and photograph accident scene
- Locate and interview witnesses
- Review insurance policies
- Research legal issues
- Identify target defendants and define legal theories
- Communicate with defendant's insurance company
- Gather medical records and bills as well as lost wage information
- Obtain doctor reports and reports from other experts
- Prepare comprehensive settlement demand package to send to defendant's insurance company
- Negotiate settlement or advise client to file a Lawsuit
- If case is settled, negotiate reduction of medical bills and other liens on settlement proceeds

AFTER DECIDING TO FILE A LAWSUIT

- Draft and file the Lawsuit
- Draft written discovery requests to defendant
- Answer defendant's written discovery requests
- Prepare client for deposition
- Attend client's deposition
- Prepare for and take depositions of defendant and other witnesses
- Prepare client for and attend Defense Medical Exam
- Work with experts to prepare expert reports

Attempt to settle case with defense attorney

Attend mediation

Attend settlement conference with judge

Prepare for trial—prepare exhibits, prepare witnesses, write opening statement and closing argument,
work on pretrial motions, prepare jury instructions and verdict slip

Try the case before a judge or jury

Analyze verdict

Advise client on appeal issues and handle appeal

CHAPTER SEVEN

TEN WAYS TO HURT OR KILL YOUR PERSONAL INJURY CASE

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

1. FAILING TO DOCUMENT THE ACCIDENT

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

2. FAILING TO GET IMMEDIATE MEDICAL TREATMENT

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

3. DELAYING CONTACTING AN EXPERIENCED PERSONAL INJURY ATTORNEY

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

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

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

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

4. DEALING DIRECTLY WITH THE OTHER INSURANCE COMPANY

You have a duty to report an automobile accident to *your* insurance company and should cooperate in their investigation. However, before you give any statement, especially statements to the insurance company for the

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

5. NOT FOLLOWING MEDICAL ADVICE

It is important to listen to your doctor—for medical and legal reasons. Your doctor knows what is best for you. If you don't trust your doctor, get a new one. If you do trust your doctor, listen to his or her advice regarding recommended treatments, diagnostic tests, therapy, and surgery. If you miss appointments or ignore medical advice from your own doctor, it gives the insurance company powerful ammunition to use against you in your case that you did not cooperate and try to get better.

6. HIDING PAST ACCIDENTS

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

7. HIDING PAST INJURIES

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

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

8. EXAGGERATING OR MISREPRESENTING YOUR INJURIES OR ACTIVITY LEVEL

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

9. HIDING SUBSEQUENT ACCIDENTS OR INJURIES

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

10. FAILING TO LISTEN TO YOUR ATTORNEY

The last way to hurt or kill your Personal Injury case is to ignore your attorney's advice. If you have chosen your attorney wisely, you will be given sound advice on all issues that arise during your case, both before the lawsuit is filed and throughout the litigation process. Your attorney is the expert on how to prepare your case and obtain fair compensation for you. Your attorney also knows best about the value of your case and whether it should be settled or taken to trial. Trust and follow your attorney's advice, because if you don't, you may hurt or kill your case.

CHAPTER EIGHT

TEN WAYS TO MAXIMIZE YOUR CHANCE OF RECOVERING FAIR COMPENSATION

THERE ARE MANY WAYS that clients can assist me in ensuring that they receive full and fair compensation after an accident. The following are ten ways to maximize your chance of recovering fair compensation:

1. MAKING THE RIGHT CAR INSURANCE CHOICES

How much I can help someone after a car accident often depends on the choices they made when they selected their car insurance. Please see Section I of this book, *A Lawyer's Guide to Purchasing Car Insurance*, for extensive advice on appropriate car insurance choices. Reach out to Legal Insurance Agency at legalinsuranceagency.com or 817-618-6381 to ensure you have the best automobile coverage.

2. DOCUMENTING THE ACCIDENT AND YOUR INJURIES

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

3. TRACKING EXPENSES AND LOST WAGES

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

4. JOURNALING PAIN AND LIMITATIONS

Another main source of compensation in a Personal Injury case is for non-economic damages, which includes your physical and emotional pain and suffering and the negative impact that the accident has on your life and activities. It is important to keep track of these items so that, at the appropriate time, proof can be presented to the insurance company and Defendant. I advise my clients keep a daily journal of their physical and emotional pain and suffering and the negative impact that the accident and injuries have on their activities. This information is critical for me to have when attempting to value your case and communicating the extent of your losses to the insurance company and Defendant.

5. HELPING YOUR ATTORNEY WITH DISCOVERY RESPONSES

If your case cannot be settled without litigation, after the lawsuit is filed you will need to assist me in preparing

responses to Discovery Requests served by the Defendant. Your help in providing complete and accurate responses to Discovery helps me to maximize the ultimate value of your case.

6. PREPARING FOR AND PERFORMING WELL AT YOUR DEPOSITION

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

7. FINDING THE RIGHT WITNESSES FOR YOUR CASE

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

8. AVOIDING CONTRADICTIONS

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

9. CONSIDERING MEDIATION OR ARBITRATION

Alternative Dispute Resolution, including Mediation and Arbitration, have become very popular venues for settling cases because they reduce the expense, risk, and stress of a jury trial. A Mediation is a voluntary process which involves both sides of the case meeting with a neutral third party who attempts to help the parties negotiate a resolution. Neither party is forced to settle the case, but mediators are often effective in arriving at an agreement which allows both parties to avoid the expense, risk, and stress of trial.

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

10. LISTENING TO YOUR ATTORNEY

Clients who fail to follow my advice during their case will pay the price in terms of decreasing their ultimate recovery. My job as your attorney is to attempt to maximize your recovery and minimize your risk. Following my advice can help you maximize the chance of recovering fair compensation.

SECTION III:

A LAWYER'S GUIDE TO WRONGFUL DEATH CLAIMS

CHAPTER ONE

WHEN CAN A FAMILY PURSUE A WRONGFUL DEATH CLAIM?

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

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

Like in any other Personal Injury case, the family has the burden to prove that the death was wrongful (caused by violence or negligence), and there are time deadlines for pursuing claims that must be strictly followed. In addition, unlike other Personal Injury cases, court approval is required to settle Wrongful Death cases, and there are tax implications that must be considered.

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

CHAPTER TWO

COMMON WRONGFUL DEATH CLAIMS

ALTHOUGH ANY DEATH CAUSED by violence or negligence can lead to a Wrongful Death claim, the following are several common claims:

MURDER

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

VEHICLE ACCIDENT CASES

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

MEDICAL MALPRACTICE

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

DANGEROUS PRODUCTS

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

CONSTRUCTION OR OTHER WORKPLACE ACCIDENTS

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

CHAPTER THREE

WHAT COMPENSATION IS AVAILABLE IN DEATH CLAIMS?

IF A DEATH IS caused by violence or negligence, two claims arise: a Wrongful Death Action claim and a Survival Action claim.

WRONGFUL DEATH CLAIMS

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

Hospital, Funeral, Burial, and Estate Administration expenses

Compensation for the immediate family's (wife, children, parents) loss of money contributions to their support for things like shelter, food, clothing, medical care, education, entertainment, gifts, and recreation

Compensation for the value of the services, society, and comfort the victim would have provided to his family, such as work around the house and the provision of society and comfort

If the victim was a parent, the value of the guidance, tutelage, and moral upbringing the victim would have provided to his children

Punitive damages if the act was done willfully or with gross negligence.

SURVIVAL ACTION CLAIMS

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

The net amount the victim would have earned between the date of his death and the end of his life expectancy, which is when he would have statistically been expected to die but for the defendant's violence or negligence. Net earnings are calculated by taking gross earnings minus probable living expenses and minus the monetary contributions the victim would have given to family members (which is awarded under the Wrongful Death claim).

An amount to fairly and adequately compensate for any mental and physical pain, suffering, inconvenience, and loss of life's pleasures that the victim experienced from the moment of the injury until the moment of death.

The main factor that makes up the value of the Wrongful Death and Survival Act claims is the economic claim of lost future earnings. So, the younger a person is and the more he or she was expected to earn based on education, experience, earning history, etc., the greater the value of the claim. Another major factor driving the monetary

value of a death case is whether or not the victim lived for any period of time so as to experience conscious pain and suffering. If so, the value of the case increases, and justice requires more compensation to make up for this sad fact.

CHAPTER FOUR

WHO CAN MAKE THE CLAIMS?

IN TEXAS, WRONGFUL DEATH claims may be filed by certain members of the decedent's family. This includes the surviving spouse, the children, and the parents of the decedent. In some cases, an adopted child may file a wrongful death claim if the adoption was legally and fully completed. Adoptive parents may also file a wrongful death claim for their adopted child. These claims may be filed as a single action, or the members of the family can group together to file a claim.

CHAPTER FIVE

WHO RECEIVES THE COMPENSATION FROM DEATH CLAIMS?

THE SURVIVING SPOUSE, CHILDREN, and parents of the decedent can be entitled to compensation from the Wrongful Death and Survival claims.

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

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

When damages are awarded in a Texas wrongful death claim, they are divided among the surviving family members in proportion to the injury they suffered as a result of the untimely death. If all beneficiaries are adults and are agreeable, they can determine a distribution of the settlement. If an agreement cannot be made, these proportions will be determined by the court.

CHAPTER SIX

ARE DEATH CLAIM PROCEEDS TAXABLE?

THE GENERAL RULE IS that settlements or awards that are compensatory in nature are not considered taxable income by the IRS. Because they are intended to compensate the plaintiff for a loss that has already been sustained, awards should not be treated as new income. On the other hand, damages that are punitive are not intended to compensate a plaintiff for a particular loss, so in certain cases they may be taxed as income.

Unlike compensatory damages, punitive damages are imposed against a plaintiff to punish them for particularly egregious conduct and to discourage others from engaging in similar conduct. The IRS looks to the nature of the claim on which a particular settlement was based in order to determine what portion, if any, will be taxable. In addition, the IRS can challenge a settlement in which the allocation of punitive to compensatory damages does not accurately reflect the “economic substance” of the settlement.

As one may expect, there is an exception to the rule that punitive damages are treated as taxable income. Generally, courts look to the law of the state in which the settlement occurred in order to determine whether there could be compensatory or punitive damages awarded in a wrongful death case. In states in which only punitive damages are available for a wrongful death claim, the IRS allows people to exempt their settlement award from their taxable income.

YOUR TEXAS WRONGFUL DEATH SETTLEMENT MAY BE TAXABLE

Because Texas law allows for both compensatory and punitive damages in wrongful death cases, part of your wrongful death settlement may be considered taxable income by the IRS.

For this reason, people who think that they may have a wrongful death claim should always speak with an experienced lawyer before accepting a settlement offer or taking any other legal action with regard to their claim.

Finally, note that the IRS can change its interpretation at any time and, thus, you should speak to a lawyer about your specific situation.

CHAPTER SEVEN

WHAT A PERSONAL INJURY ATTORNEY DOES IN A DEATH CASE

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

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

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

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