

# HELP for the AUTO ACCIDENT VICTIM

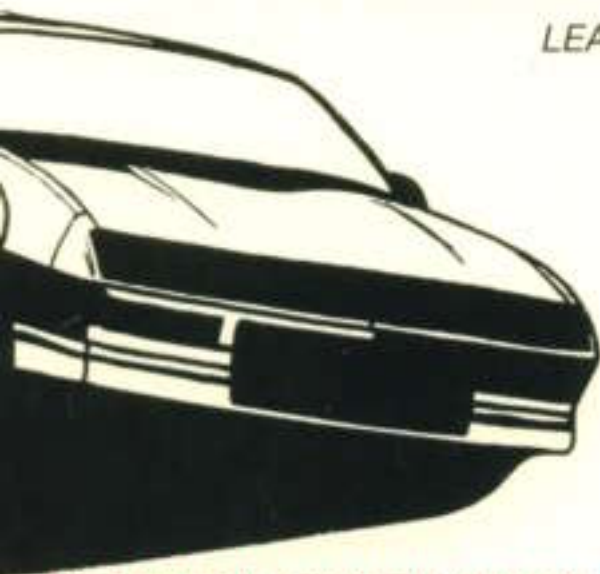
by Charles R. Lipcon  
Attorney at Law

Protect Your Rights: This Book Will Help Your Lawyer Help You

*INCREASE YOUR CHANCES OF A FAIR SETTLEMENT*

*LEARN HOW TO AVOID:*

- unsatisfactory repair of a damaged vehicle
- excessive medical costs
- complicated insurance policies
- busy, uncaring physicians and attorneys
- inequitable settlements
- lengthy, expensive court trials
- extensive delays



*\$25.8 MILLION JUDGMENT-WINNING ATTORNEY CHARLES R. LIPCON  
LEADS YOU STEP BY STEP THROUGH EVERY PROCEDURE FROM  
ACCIDENT TO COURT TRIAL.*

**Packed With Comprehensive Information**

# **HELP FOR THE AUTO ACCIDENT VICTIM**

**by**

**Charles R. Lipcon  
Attorney at Law**

**I. Adels, Inc.  
Miami**

## **Help For The Auto Accident Victim**

Copyright © 1984 by Charles R. Lipcon. All rights reserved.

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the publisher.

Inquiries should be directed to I. Adels, Inc., P.O. Box 490-294, Miami, FL 33149

ISBN 0-932557-00-7

Library of Congress Catalog Card Number 84-73017

Manufactured in the United States of America

## **DEDICATION**

**This book is dedicated to my parents, Harry H. Lipcon, M.D. and Rose Lipcon.**

# TABLE OF CONTENTS

Foreword .....	i
Introduction.....	iii
1 The Accident .....	1
2 Doctors and Hospitals.....	7
3 Insurance .....	17
4 Selecting a Lawyer .....	33
5 What the Lawyer Does .....	41
6 Preparing the Lawsuit .....	53
7 The Trial .....	65
8 Getting Paid .....	75
Conclusion.....	83

## TABLE OF FORMS

Authorization for Treatment . . . . .	13
Notice of Accident . . . . .	24
Application for No Fault Benefits . . . . .	26
Wage and Salary Verification . . . . .	27
Attending Physician's Report . . . . .	28
Uninsured Motorist Proof of Claim . . . . .	29
Authorization for Medical Information . . . . .	37
Attorney/Client Agreement . . . . .	38
Client Letter . . . . .	46
Defendent Claim Letter . . . . .	47
Insurance Carrier Claim Letter . . . . .	48
Letter to Own Carrier . . . . .	49
Hospital Records Request . . . . .	50
Request for Medical Reports . . . . .	51
Complaint . . . . .	56
Answer to Complaint . . . . .	58
Notice of Trial . . . . .	62
Order Setting Cause for Trial . . . . .	63
Jury Instructions . . . . .	70
Verdict Form . . . . .	74
Final Judgment for Defendant . . . . .	77
Final Judgment for Plaintiff . . . . .	78
Satisfaction of Final Judgment . . . . .	80

## FOREWORD

An auto accident can be devastating. It can dramatically change the lives of entire families. Yet, the term “auto accident” does not cause the average person to express fear or even show concern. My work as an attorney has made me all too familiar with the harsh, devastating reality of an auto accident.

Few things are as tragic as a child in a wheel chair, the loss of a parent or child, or a man who cannot work — all the results of a careless driver.

More tragic is the fact that accidents can be avoided. Drivers who are drunk, on drugs, or too sleepy to drive account for a large percentage of auto accidents. Unfortunately, the law does not adequately protect the innocent victim. Too often the accident victim does not receive adequate compensation for his injury and suffering. Too often the incompetent driver is not punished in proportion to the damage and pain he has caused.

**Mothers Against Drunk Drivers (MADD)** is a relatively new organization that is trying to enact fair legislature to deal with inept, dangerous drivers. Its efforts have brought national attention to the inadequacy of our laws and the dangers of drunk driving.

I feel strongly about the need for organizations like **MADD** and the exemplary work they do. For this reason, it is my intent to donate a portion of the sales of this book to organizations such as **MADD**. I hope my contribution will help its members achieve their goals.

## INTRODUCTION

Mark Twain once said that liars can be divided into three categories: liars, damn liars, and statisticians. Still, statistics have become an integral part of our daily lives, and it seems that the grimmer they are, the more fascinated we are. Of course, statistics begin as facts, and it is the statistician's slant that can twist their significance one way or the other to prove a point.

Some statistics, however, speak for themselves. They do not need to be interpreted; they stand alone, perfectly valid. Among these are statistics, compiled by the National Safety Council, which remind us how vulnerable we are every time we drive our cars or ride as passengers:

- One person is killed every 15 minutes in a motor vehicle accident.
- Seven hundred fatalities and 30,000 injuries occur every week at a cost of \$43.6 billion a year.
- In terms of dollar amounts, each fatality costs a community \$200,000.
- Most accidents happen within 25 miles of home, at speeds of less than 40 miles per hour.
- Twenty out of every 100,000 people in the United States are killed by automotive accident.
- **In the state of Florida alone, there are almost 1000 accidents costing one and a half million dollars every single day of the year.**

It is almost impossible to escape at least one accident—even if it's just a fender-bender — during a lifetime.

The solution is not to quit driving. In urban areas made up of commuters, and in rural areas where social activities and shopping are a long drive from home, the car is the only means of transportation that can provide reliability and flexibility. The United States, more than any other country, is a nation almost totally dependent upon its automotive power; so much so that one in every seven Americans is supported, either directly or peripherally, by the automotive industry.



**What to do?** The obvious precautions come first to mind: buckle your seat belt; drive defensively; do not drive while under the influence of alcohol or drugs, including certain medications. **But what if you're in an accident anyway? What if, while making sure the squirming infant sitting in the back is safely buckled, you miss a stop sign? What if someone runs a red light as you drive across an intersection? Prepare yourself to come out fighting. Aside from physical trauma, an accident victim will be faced with some or all of the following difficulties:**

1. unsatisfactory repair of a damaged vehicle
2. excessive medical costs
3. complicated insurance policies
4. busy, uncaring physicians and attorneys
5. inequitable settlements
6. a lengthy and expensive court trial
7. extensive delays at each step.

Coping — and succeeding — in your confrontation with hospitals, insurance companies, physicians and attorneys can be made easier if you are ready for the consequences of an accident, if you know your rights, and if you follow simple procedures. **This book has been prepared as a self-defense manual against such eventualities.** It will lead you through every procedure, from the time of the accident through the court trial, so that you can understand what is happening and what your attorney is doing on your behalf.

**This book is designed to increase your awareness and help you be better prepared in case of an accident. It is not a substitute for legal counsel.** You should not attempt to solve your own legal problems with information gained from this book; instead, use it to become aware of the various factors that can affect you as an auto accident victim.

Learning and using the material presented in *Help for the Auto Accident Victim* will reduce the multiple problems which follow a serious automobile accident. Beyond this we can only add, in the words of the late Sgt. Esterhazy of *Hill Street Blues*, “**Hey . . . let's be careful out there!**”

## **CHAPTER ONE**

### **THE ACCIDENT**

- 1. The Scenario**
- 2. The Accident**
- 3. Aiding the Injured**
- 4. Recording the Facts**

North Miami Avenue



Ivan Tors Boulevard

## **CHAPTER ONE**

### **THE ACCIDENT**

If it's true that calm precedes a storm, then it's that moment of sleepy contentment when you're heading home or that instant when the whole family is in the car deciding which attractions to see at Walt Disney World that disaster — in the form of an accident — is likely to strike.

**Our purpose is to help you live through and succeed in your battle against formidable institutions and difficult situations after you have an accident.** To make things easier and more realistic, we have created a fictitious family out on a weekend excursion to the beach: John, Olivia, and their kids Mikey and Wendy. Let's see what they're up to on a sunny weekend morning.

#### **The Scenario**

John, Olivia and their two children are in their new Chevy station wagon, driving east on North Miami Boulevard on their way to the beach. The station wagon was a joint family decision: the children helped choose it, and this is the first family outing with the brand new car. The kids are having a minor squabble in the back seat. Olivia is checking her beach bag for the fifth time, making sure she hasn't forgotten anything.

John, who is driving, is daydreaming about the pleasant day of bikini-watching ahead of him. He's going about five miles under the speed limit, taking it easy, enjoying the drive. Approaching Ivan Tors Boulevard, he sees the green light and makes no adjustment in his speed. Suddenly, out of the corner of his eye, he notices another car rushing toward him at great speed. It's a red Camaro, heading north, about to run the red light. It is headed straight for John!

#### **The Accident**

John speeds up to get across the intersection before impact, but he doesn't make it. The Camaro is moving faster, and catches the station

wagon on its rear third, causing the family car to spin out of John's control. His is the only seatbelt in use. Olivia slipped out of hers in order to inspect her beach bag more easily, and the kids cajoled their parents into leaving the belts off so they could play comfortably in the back seat. John, fighting the steering wheel, maintains his seat, while Olivia and the kids hurtle in every direction, yelling and crying. After what seems like an eternity, the car comes to a standstill and John takes stock.

The picture before him alarms him and breaks his heart. Blood is gushing from a deep cut over Olivia's eye. She is holding her right arm at an odd angle. She moans with pain and shock. The kids are crying loudly. Wendy is holding her stomach, doubled over. At first glance, Mikey appears relatively unhurt, though he is sobbing and crying uncontrollably.

John is trembling and hyperventilating because of excess adrenalin. He is dazed, panicked, frightened and furious at the Camaro driver. Yet he is aware that he is the only one in condition to take control. **His family's health and financial security depend on it.**

Unlike most Americans, John has trained himself to take over under these conditions. While his friends and neighbors discuss evacuation routes and sources of uncontaminated food in case of nuclear holocaust, he and Olivia have prepared for a more common, probable reality: a car accident. John now puts this knowledge to use.

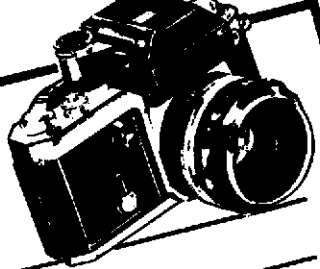
John takes a few deep breaths to regain control of himself. He steps out of the station wagon and finds the crumpled Camaro a few feet away. Three cars have stopped nearby. One driver is running toward him, while the other two are sitting behind their wheels, staring. The Camaro driver is bent over his steering wheel, eyes closed. At this distance, John can't tell if he's breathing or not. He opens Olivia's door and, with the help of one of the spectators, removes his wife very carefully, laying her gently on the side of the road, well out of the way of oncoming traffic. He covers her with a beach blanket to ward off shock. She is conscious but incoherent.

Next, he removes the children from the back seat. Since neither appears to need immediate first aid, he tells them kindly but firmly to stay with their mother until help arrives. He asks a storeowner, who has emerged in response to the excitement, to dial 911 and report the accident to the police and *inform them that there are injured people*. This way, emergency care can be provided.

### **Recording the Facts**

After the injured are attended to, John takes the initial steps to protect his legal rights and those of his family who, through no fault of

# ACCIDENT REPORT



## VEHICLES INVOLVED IN ACCIDENT:

Name \_\_\_\_\_ Address \_\_\_\_\_ Phone \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Insurance Policy Number \_\_\_\_\_ License Number \_\_\_\_\_  
Description of Vehicle \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## EYE WITNESSES:

Name \_\_\_\_\_ Address \_\_\_\_\_ Phone \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

## INVESTIGATING POLICE OFFICERS:

Name \_\_\_\_\_ Address \_\_\_\_\_ Phone \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Accident Report Case Number \_\_\_\_\_ Badge Number \_\_\_\_\_

## ROUGH SKETCH OF ACCIDENT SCENE:

Show streets, traffic control devices and points of collision.

their own, have become auto accident victims. These are the things he writes down:

1. **The name, address and telephone number of each driver of each vehicle** involved in the accident, along with the names, addresses and policy numbers of their automobile insurance companies.
2. **A description of each vehicle** along with the **license tag number**.
3. **The name, address and phone number of each eye witness**.
4. **The name, address, phone and badge number of each investigating police officer**.
5. **The accident report case number**.
6. **A rough sketch of the accident scene** showing
  - a. the streets
  - b. traffic control devices
  - c. points of collision.

John realizes it is important that none of the vehicles be moved until the police arrive so that the exact locations of each vehicle can be accurately recorded.

Since he and his family were on their way to an outing, John also has a camera with him. He photographs the accident scene, the vehicles involved, and the injured persons.

Although his actions at this time may seem cold, the future welfare of his family depends on them. This record is the basis for his case, should legal proceedings be necessary. Having accurately gathered all pertinent information, John has successfully completed the first step toward protecting his legal rights and those of his family.

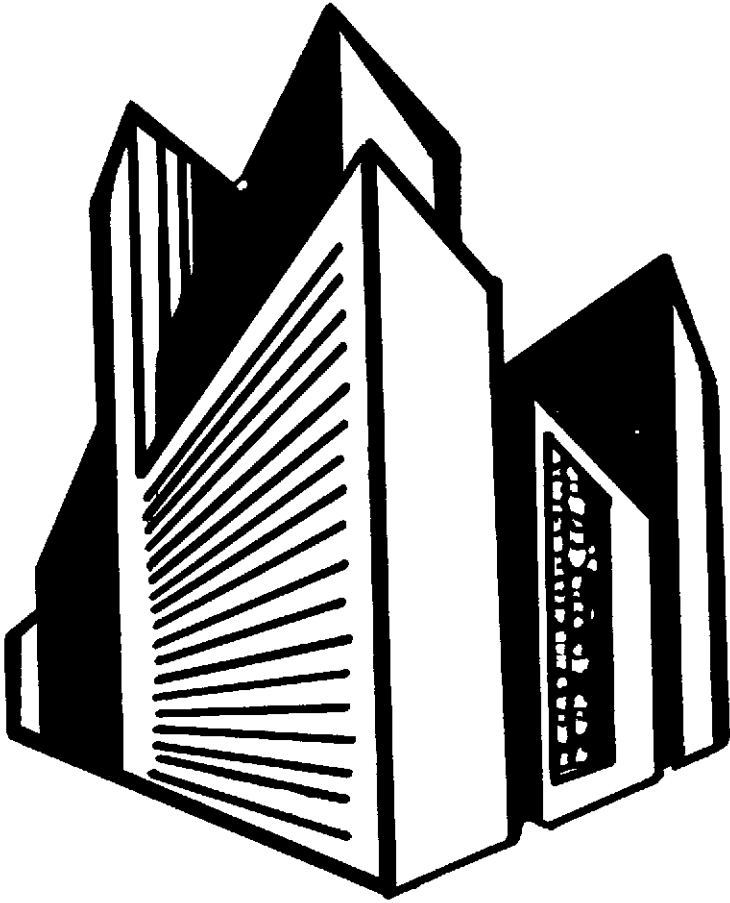
When the police and emergency vehicles arrive, John sighs with relief. Quickly and efficiently, the police gather information and volunteer to take him to the hospital while the emergency crew tends to the most urgent needs of his family. John begins to feel more confident and leans his head against the police car window while being taken to his family.

## **CHAPTER TWO**

### **DOCTORS AND HOSPITALS**

- 1. The Emergency Room**
- 2. The Patient's Bill of Rights**
- 3. Consent Forms**
- 4. Choosing a Doctor**





## CHAPTER TWO

### DOCTORS AND HOSPITALS

In some ways, the worst is over. The initial shock of impact is wearing off. John, Olivia and the kids are alive and being taken care of. Time to relax and let things run their course, right? Wrong! Time for John to keep his wits about him and meet his first adversary: the hospital.

One item in a continuous list of problems for John and his family is the cold bureaucracy of “hospital policy.” Actually, the policy of greatest interest to the hospital is that which spells out John’s insurance coverage.

#### **The Emergency Room**

His family, its condition stabilized by the paramedics at the scene of the accident, has been waiting for his arrival in the emergency room. The admitting clerk will not register his wife and children until she can check the family’s hospital policy.

Fortunately, **John habitually carries his auto and medical insurance cards.** If he didn’t have these on his person, or if he had no coverage at all, John might be required to plunk down a substantial cash deposit. As it is, there is still a long wait while innumerable forms are completed and information taken, mostly pertaining to payment to the hospital. **Not until these papers are filled out does the family begin to receive medical attention.**

While his family is being attended to in the emergency room, and after he has had a cursory examination by the emergency room staff, John calls his own family doctor, tells him about the accident, and requests that he come to the hospital to oversee the care of Olivia, the children and himself. Although John’s doctor is a general practitioner rather than a specialist, he knows the family’s medical history and has a personal interest in all its members.

In addition, the stress of the accident and the intimidating atmo-

sphere of the hospital will be very much relieved by the presence of a familiar and trusted person. In view of the cold and impersonal treatment they have thus far received from the admitting personnel, John knows the importance of having an interested and caring physician in attendance.

\*\*\*\*\*

It is at this juncture that John takes a very important step toward insuring himself against a financial beating at settlement time. He takes notes on the physical conditions and complaints of Olivia, the children, and himself. **From the time of the initial examinations to the day the case goes to court, John keeps a daily record of every adverse effect of the accident.**

In this diary, John notes the day and time of every pain or problem experienced by any member of his family, including:

- doctor's visits
- medication taken
- any adverse reactions to medication
- activities cancelled or made impossible due to incapacity
- the amount of time lost from work or school.

This document will prove to be very helpful. It will back up his claim against the insurance companies with whom he is soon to do battle. He will, eventually, give a copy of these notes to his physician, to act both as refresher and backup material for the doctor's reports, which will be the basis for the amount of the final settlement.

Now comes the first step in the uphill climb toward a fair, equitable settlement: getting the right treatment and the right doctor.

\*\*\*\*\*

It is a sad fact of life in the United States that health care has become a business rather than a service. Instead of complaining, however, let's accept it and work with it.

If you have no insurance, chances are you will be taken care of at a government-sponsored hospital. More often than not, and for obvious reasons, no-frills service is the rule there. These hospitals also operate frequently as teaching hospitals, so that care is often tendered by interns supervised by fully-trained physicians, rather than directly by the physicians themselves.

Consequently, most people prefer to be treated at a private hospital,

where the care is exorbitantly expensive. For these reasons, it is almost unthinkable for an individual to lack adequate medical insurance. Without it, an emergency patient may be turned away from a private hospital, as has happened in some notable recent cases.

On the other hand, **once admitted to a hospital, the facility has no legal right to abandon and eject a patient before he is ready for discharge**, regardless of the amount of his bill. This is not always made clear by hospital personnel. It is not unusual for a patient who must be hospitalized for a protracted length of time to be harassed periodically by the fiscal department.

### **Patient's Bill of Rights**

Not too long ago, the American Hospital Association formulated the *Patient's Bill of Rights*, a document with which every patient should be familiar. According to it, you have the right to:

1. Considerate and **respectful care**.
2. Obtain from your physician **complete, current information** concerning diagnosis, treatment, and prognosis in terms you can understand. When it is not medically advisable to give such information to you, it should be made available to an appropriate person on your behalf.
3. Know, by name, **the physician responsible** for coordinating your care.
4. Receive from your physician **information necessary to give informed consent** prior to the start of any procedure and/or treatment. Except in emergencies, such information for informed consent should include but not necessarily be limited to:
  - specific procedure and/or treatment
  - medically significant risks involved
  - probable duration of incapacitation
5. Know of any **medically significant alternatives** for care or treatment.
6. Know the name of the **person responsible for procedures** and/or treatment.
7. **Refuse treatment** to the extent permitted by law.
8. Be informed of the **medical consequences** of your action.
9. Receive every consideration of **privacy** concerning your own medical care program. Case discussion, consultation, examination and treatment are confidential and should be

- conducted discreetly. Those not directly involved in your care must have your permission to be present.
10. Expect that all communications and records pertaining to your care be treated as **confidential**.
  11. Expect that, within its capacity, a hospital must make **reasonable response** to the request of a patient for services. The hospital must provide evaluation, service, and/or referral as indicated by the urgency of the case.
  12. Receive complete information and clear explanation concerning the **need for and alternatives to a transfer** of facility if medically permissible and advisable.
  13. Obtain information as to any **relationship of your hospital to health care and educational institutions** insofar as your care is concerned.
  14. Obtain information as to the **existence of any professional relationships among individuals**, by name, who are treating you.
  15. Be advised if the hospital proposes to engage in or perform **human experimentation** affecting your care or treatment.
  16. **Refuse to participate** in such research projects.
  17. Expect reasonable **continuity** of care.
  18. Know in advance what **appointment times and physicians** are available and where.
  19. Expect the hospital will provide a mechanism whereby you are informed by your physician or a delegate of the physician of your **continuing health care requirements** following discharge.
  20. Examine and receive an **explanation of the bill** regardless of source of payment.
  21. Know what **hospital rules and regulations** apply to your conduct as a patient.

### Consent Forms

John, aware of these rights, has completed all the forms pertaining to his insurance coverage. He must now turn his attention to the consent form he has been asked to sign. As a cautious individual, John reads this paper carefully, and notes several things which are not acceptable to him. **He has the right to question and, ultimately, reject them.** The one that John must fill out follows on the next page.

## AUTHORIZATION FOR TREATMENT

I, the undersigned, \_\_\_\_\_, a patient in \_\_\_\_\_ Hospital, hereby voluntarily and knowingly agree and do give my express consent to:

A. The performance of such procedures and taking such x-rays and the administration of whatever drugs, injections, or blood transfusions as may be considered necessary or desirable in the diagnosis, treatment, or rehabilitation of me by the physician in attendance.

B. The administration of any anesthetics and performance of any operations which the surgeon in attendance deems advisable, and I authorize the hospital or its agents to make proper disposition of any material which it has been necessary to amputate or remove.

C. The administration of any form of radiation, such as radium, radon, x-rays, or diathermy which the physician in attendance may deem necessary.

D. The taking of any photographs of my person and their use, either in the study or reporting of my case.

E. For maternity cases, the care and treatment as indicated above of my newborn infant(s).

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature of Patient  
(parent or guardian, if minor)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

John is especially careful to answer questions concerning medical history. He makes sure he covers himself in any contingency. For example, a question as innocent-sounding as "Do you have any allergies?" can be a future trap. If he gives a simple "no," or pinpoints those allergies of which he is aware, the hospital is off the hook in the event that an allergic reaction to some medication does occur. In these days of rapid medical advances, nobody has been subjected to every new medicine that appears on the scene. To sign a paper which allows any medical facility to treat you with something you have never experienced is pure folly.

**The only correct answer to the question of allergies is to list those you are certain of and to add that you don't know if you have others. Doing this prevents the hospital from disavowing responsibility in the event that you do develop allergic symptoms from any medication which might be administered while in their care.**

In John's case, he notes that Olivia has an allergy to penicillin, and adds "don't know if other allergies exist" on her form. Since neither he nor the children ever displayed any reaction to medication, he simply writes "don't know" in the appropriate place on the questionnaires.

After examinations and X-Rays, John and Mikey are pronounced unhurt, except for a few contusions and abrasions, but Olivia has suffered a broken arm and a concussion. Wendy is being held for observation of possible internal injuries.

### **Choosing a Doctor**

Once his wife and daughter have been settled into their hospital rooms, John begins to make inquiries as to medical care. He knows that **the proper physician for the care of accident victims is a trauma specialist**, not a general practitioner, internist or anyone else. It may well be that one or more specialists will be called in later, but the primary doctor on an accident case should always be one who has been trained to handle accident-related injuries. The hospital probably has called a trauma specialist by now. He or she arranged for the hospital admission, although another specialist may well be chosen after doing some homework on whose services to use. The correct selection of a doctor will become important later in protecting the family's legal rights.

It is, of course, best to select a doctor by personal referral. Short of this, a call to the local medical association will produce several names from which to choose. John places such a call, then telephones one of the recommended doctors who is connected with the hospital in which Olivia and Wendy are patients.

After the physician has completed his examinations, John makes sure to ask the following questions:

1. Exactly what injuries were sustained (explained in both medical and lay terminology) by each of the victims?
2. What are the effects of these injuries?
3. How long are they likely to last?
4. Will the injuries cause any permanent problems?
5. What is (are) the recommended treatment(s)?
6. Is further testing necessary?
7. Are other specialists needed in consultation?

Needless to say, medical communication must go both ways. That is, a doctor cannot provide a complete diagnosis unless his patient gives him a total picture of his subjective symptoms and manifestations. **Every ache, pain or discomfort should be mentioned, whether or not it seems to relate to the accident.** In order to omit nothing, the patient would do well to consider every part of his body, literally head to toe, with regard to even the slightest abnormal sensation.

The points to cover, whether on first examination or subsequent ones, are as follows:

1. The quality of the pain. Is it a sharp pain, a throbbing sensation, a burning feeling, or some other kind of discomfort?
2. Intensity of the symptom. Is it mild, moderate, or unbearable?
3. Duration of the experience. Does it come and go, and if so, how long are the periods between bouts? If it is a continuous pain, when did it start?
4. Location of the pain. This should be described as exactly as possible. For example, a headache should be pinpointed as to back of head, forehead, temples, or elsewhere, rather than simply calling it a "headache."
5. Radiation of the pain. One should describe the exact parameters of the sensation, where it seems to emanate from and how far it spreads around the focal point.
6. Cause of the symptoms. What brings them on, when do they occur, how do various things affect their intensity? Again using the headache as an example, a patient should tell his doctor that bending his head forward, for instance, intensifies the pain, while lying flat on his back relieves it.



**Keep in mind the fact that your physician's diagnosis and records may be the most important part of your legal case.** Overlooking any area, or allowing him to overlook any area, can prove extremely detrimental to your chances of a fair settlement.

You should be aware that in terms of auto accident claims, **there are two kinds of doctors: liberals and conservatives.** The liberal doctor is the type who will accept a subjective description of your pain as the truth. The conservative physician, on the other hand, believes little that cannot be proven by an objective finding or test. For example, something as simple as a headache must be taken on faith. There are no tests to determine whether or not a patient is actually feeling pain, in the head or anywhere else, and the liberal doctor will recognize this. The conservative doctor will say "there is no objective evidence of a headache."

Generally speaking, **the conservative doctor will be on the side of the insurance company.** That is, you might still be experiencing pain a year after an accident, despite the fact that the tests may show no continuing reasons for your discomfort. The conservative physician will produce X-Rays and other tests to demonstrate that there is no visible reason for continued complaints. This is the type of doctor on whom insurance companies rely to reduce the amount of settlement paid to an accident victim. The liberal doctor, on the other hand, will take your word for the fact that you are still having pain and write a medical report that is favorable to your legal rights.

Under the circumstances, it is incumbent upon you to make certain that your doctor is aware of any and all complaints you may have. Just as important, you must **determine the physician's outlook of a patient's subjective analysis of his own condition.**

You are perfectly within your rights to discuss this with him, and if it appears to you that he is too conservative to back your claim, if he seems to be skeptical or scoffing, there is no reason why you cannot dismiss him and engage a more compatible practitioner. In all likelihood, the physician will be just as relieved as you to be off the case. No one likes needless confrontation, and as a professional in charge of your physical health, the competent physician will be just as happy to have a former patient taken care of by someone who will give him peace of mind—an important ingredient of physical health.

Now, with everyone taken care of and a competent, sympathetic physician in charge, John—and you—have recovered sufficiently to face the next hurdle, the insurance company.

## **CHAPTER THREE**

### **INSURANCE**

- 1. Shopping for Insurance**
- 2. Insurance Terms**
- 3. Reporting the Accident**
- 4. Dealing with the Adjuster**



## CHAPTER THREE

### INSURANCE

Dealing with the insurance company can be the most difficult stage in arriving at a satisfactory settlement after an accident. Fortunately, by that time, the worst of the initial physical shock is over.

John, treated for shock and tension, can rest assured that his family is in the best possible care. It's now time to deal with his automobile insurance company.

**It would be naive to assume that insurance carriers, regardless of their reputation, have anyone's interests at heart other than their own.** They will try to settle for as little as possible and delay as long as possible. The longer they can delay settlement, the more interest they accrue on their funds. This extra sum can offset their legal costs in the event of a court trial.

#### **Shopping for Insurance**

John is aware of this. He shopped for his insurance carrier as carefully as he had shopped for the family car. He was conscious of the best rates, the best coverage, and the best track record for prompt and fair service. **These qualities are not always found in the largest or best-known carriers.**

Once he found an insurance company he liked (perhaps with the help of an insurance broker), John studied several possibilities. **He did not settle for the suggestions of the insurance company.** Instead, he studied his options carefully and **asked questions.**

The language of policy-writing is, in most cases, incomprehensible to the average layman. That is why asking questions is so important. Do not settle for ambiguous answers, either. Occasionally, you will run across a policy which is easy to understand, but generally speaking, insurance companies couch their written material in ambiguous, confusing language, almost guaranteeing that the buyer will not have the knowledge or patience to wade through it.

In a way, however, this can work in the buyer's favor. That is, if an insurance case comes to trial, and if the language is ambiguous, the policy will usually be interpreted in favor of the insured rather than the insurance company. Nevertheless, it is important to understand what you are buying before making any final decisions.

### **Insurance Terms**

Following are the areas of insurance coverage that John is familiar with. You should be, too.

#### **1. Bodily Injury**

Bodily injury coverage refers to payment made to anyone who has been hurt by the negligent operation of your vehicle, whether or not you are the driver who caused the injury. In other words, if you or anyone else is driving your car with your knowledge and permission, the bodily injury clause of your insurance policy would cover the injured party's losses up to the amount of your coverage. Naturally, if your car has been stolen through no fault of your own and is then involved in an accident, you cannot be held accountable.

The amount of bodily injury coverage is generally denoted by two figures, written in thousands, such as 10/20, 50/100, 100/300, and so forth. **The first figure refers to the maximum payment your insurance company will make to any one person injured. The second number denotes the maximum amount the company will pay for all injured persons together.** In other words, under 10/20 coverage, if several people were hurt, the company would pay up to a maximum of \$10,000 for one person's losses, but no more than \$20,000 for everyone's losses, no matter how many people were hurt. So, if five people were injured, the most the insurance company would pay is \$20,000, even though the losses were higher than that amount.

In John's case, the driver of the Camaro carried 10/20 bodily injury coverage. If Olivia's injuries turn out to be extensive, she is entitled to \$10,000 in damages. If John and the two children also require long-term medical care, they would receive no more than \$20,000 among the three of them for their losses.

In these days of astronomical medical costs, it is obvious that 10/20 is hardly adequate in the event of a serious mishap. This is usually the minimum amount allowed by most states.

However, if your total assets are in the upper ranges, you should be aware that a lawsuit can literally wipe you out financially in the event of a costly injury to an accident victim. **Those who stand to lose the most are those who need to consider greater coverage.** A so-called “umbrella”, or excess coverage policy, which usually carries a deductible of 100/300, can be written to cover any feasible amount, into the millions. Naturally, premiums on this type of insurance are high, but if your income and assets are in the upper brackets, this type of coverage is mandatory if you wish to protect yourself and your family.

## 2. Property Damage

Property damage coverage refers to **the payment available from your insurance company to the other party for damage to their automobile and for loss of its use while being repaired when you are at fault in an accident.** Again, most people are underinsured in this area, since the average amount of property damage insurance is only \$5,000. At one time, a new car could be purchased for this amount, but this is no longer true. If you are unfortunate enough to total a high ticket model, like a BMW or a Mercedes, your life savings could easily be obliterated.

## 3. Collision

**Collision insurance refers to the damage inflicted to your own vehicle.** It is also the coverage which causes the most trouble and frustration when it comes to dealing with the insurance company. The company will have an adjuster get estimates of repairs to your car while you, as the owner, will be getting estimates on your own. Many times, the company's estimates will be lower than those you received, and the dispute is under way. Extreme care must be taken to examine the items on the estimate provided by the adjuster, to make sure everything is taken into consideration. **It is important to make an item-by-item comparison between the list of repairs needed that you have obtained from your own sources and those repairs approved by the adjuster.** Check also the accident report filed by the police. Make sure all damage is included. It is wise to remember that, as soon as you file a claim, the insurance company becomes an adversary rather than a friend.

John is soon reminded of this fact. The insurance adjuster estimates damages of \$1500 to his brand new station wagon.

John has two estimates: one for \$2100 and one for \$2600. He is certainly in for an argument.

Nevertheless, John is in the driver's seat, so to speak, if he sticks to his guns with respect to collision payments. This is one area in which his rights are clear and enforceable. The reason is simply that no insurance company wants to litigate this type of claim, since they usually lose in a court battle. Not only is the company liable, but in many states, it must add legal costs to its expenses, both its own and yours. In other words, if such a case comes to court and you win, the insurance company will end up having to pay your legal and court costs as well as its own in many states. For this reason, you are in an excellent position when it comes to having your car repaired after an accident.

Being aware of your advantage will allow you to hold your ground and not be intimidated by even the toughest adjuster.

#### 4. **Comprehensive**

Comprehensive coverage denotes the **liability on the part of the insurance company** to pay for repairs to your vehicle when it has been damaged by fire, flood, theft, vandalism, or causes other than collision.

#### 5. **No Fault**

No fault coverage, which is the latest entry into the automobile insurance sweepstakes, has been found to be a mixed blessing. Although it **provides coverage for medical expenses and lost earnings for the insured whether or not he is at fault in an accident**, the coverage is far from adequate. Most policies provide maximum coverage of \$10,000; however, additional coverage can be purchased.

In Florida, for example, no fault coverage will pay for only 80% of your medical bills and 60% of lost earnings, which may sound ample but which, in actuality, can be devastating to your financial status. If you make \$15,000 a year, for instance, imagine what living with \$9,000 a year would be like.

Because a federal proposal to make no-fault insurance mandatory has been defeated, each state has different regulations and payment schedules. There are no hard and fast rules concerning the amount of compensation you can expect.

**In effect, no-fault insurance simply provides the insured with a certain amount of medical and disability coverage which is tacked on to his or her regular automobile policy. It would, presumably, provide a simple method to pay medical bills resulting from an auto accident and provide adequate income for as long as the injured party is unable to work. In practice, however, all it has done is raise premiums and provide higher profits to the insurance companies by avoiding otherwise costly litigation.**

Since no fault does not pick up the entire tab, John finds it necessary to sue the at-fault driver anyway to get full compensation. At this stage, John is aware that he needs an attorney. He has acted in good faith and he can do no more on his own at this point.

## 6. Uninsured Motorist

Uninsured motorist coverage may be the most important kind of insurance coverage a car owner can purchase. This type of policy **covers the insured against the possibility of an accident caused by a driver who has no insurance.**

Driving without insurance is against the law in many states. In Florida, for example, proof of insurance coverage is required before license plates and tags are issued for any car. However, it is quite possible to buy a policy which covers a driver for a minimum amount for six months, after which time he can allow it to lapse.

**If you happen to be injured by someone who does not have insurance, your own insurance company will step into the shoes of the uninsured driver and pay what he owes up to the amount of the policy limits under uninsured motorist coverage.** It is not particularly expensive to increase this coverage to \$100,000 or more, and should be done.

## 7. Car Rental

This inexpensive rider on your policy will allow you to rent a car during the time your car is unavailable due to repairs. As a rule, this pays up to \$14.00 per day for 30 days. Although the payment is minimal, most insurance companies can inform you as to where a rental is available at this price.

\*\*\*\*\*



Date

XYZ Insurance Company  
P.O. Box 660100  
Miami, FL 33333

Re: Insured: John Victim and family

Date of accident: July 10, 1984

Place of accident: Intersection of Ivan Tors  
Boulevard and North Miami Boulevard, North  
Miami, Florida.

Policy No.: 610K 32505

Vehicle: 1984 Chevrolet station wagon

Gentlemen:

This is to advise you that an accident has  
occurred. Please take the necessary  
steps under my insurance policy to provide  
me with the benefits due.

Very truly yours,

John Victim

cc: Insurance agent

Sample accident report letter.

## Reporting the Accident

After the accident, John should telephone immediately his own insurance agent and his insurance company's claim department. A follow-up letter confirming the phone call is not necessary, but could prove quite helpful if a dispute later develops over whether a timely accident report was made.

If John's insurance company has been prejudiced by reason of a late accident report so that it cannot make a timely investigation, the company might declare void John's insurance coverage for the accident. This could be a financial disaster for John and especially frustrating because it can be avoided by reporting the accident immediately.

A form letter that may be used for reporting an accident and perhaps avoiding this situation is illustrated on page 24.

John's insurance company will then assign one or more adjusters to gather information and make payments under the policy. Usually these adjusters are not attorneys and their knowledge of the law can be surprisingly limited. Legal advice from them should never be relied on without checking with your attorney.

If the damaged car is drivable, an appointment is made to bring it to a drive-in claim center where the adjuster will estimate its cost of repair. If the car is not drivable, the adjuster will visit the location of the car to make the appraisal.

Under the **no-fault benefits portion** of the policy, information is requested. A sample application form to the insurance company follows on the next page. After that you will find a wage and salary form like the one which is sent to the accident victim's employer. The third form goes to the victim's attending physician, and concerns medical coverage. Finally, additional information may be requested regarding the uninsured motorist benefits portion of the policy. That is the fourth sample form you will find in this series.

# APPLICATION FOR "NO FAULT" BENEFITS

Name of  
Insurance Company

DATE                      OUR POLICYHOLDER                      DATE OF ACCIDENT                      FILE NUMBER

TO ENABLE US TO DETERMINE IF YOU ARE ENTITLED TO BENEFITS UNDER THE FLORIDA PERSONAL INJURY PROTECTION LAW, PLEASE COMPLETE THIS FORM AND RETURN IT PROMPTLY.

TO: \_\_\_\_\_  
CLAIM DEPARTMENT

YOUR NAME                      PHONE NO.                      Home                      Business

YOUR ADDRESS                      DATE OF BIRTH                      Social Security No.  
(No, Street, City or Town, State and Zip Code)

PERMANENT ADDRESS, IF DIFFERENT                      HOW LONG HAVE YOU LIVED IN FLORIDA?

DATE AND TIME OF ACCIDENT                      A.M.                      PLACE OF ACCIDENT (Street, City or Town and State)  
P.M.

Any person who knowingly and with intent to injure, defraud, or deceive any insurance company files a statement of claim containing any false, incomplete or misleading information is guilty of a felony of third degree.

DESCRIBE MOTOR VEHICLE YOU OWN                      DESCRIBE MOTOR VEHICLE OWNED BY ANY MEMBER OF YOUR FAMILY

AS A RESULT OF THIS ACCIDENT, WERE YOU INJURED?                      YES  NO                       IF YOUR ANSWER IS YES, COMPLETE THE REST OF THIS FORM. IF NO, SIGN HERE AND RETURN THIS FORM TO US.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

DESCRIBE YOUR INJURY

WERE YOU TREATED BY A DOCTOR'S NAME AND ADDRESS  
DOCTOR? YES  NO

IF YOU WERE TREATED IN A HOSPITAL, WERE YOU AN IN-PATIENT? YES  NO

AMOUNT OF MEDICAL BILLS TO DATE                      WILL YOU HAVE MORE MEDICAL EXPENSE? YES  NO                       AT THE TIME OF YOUR ACCIDENT, WERE YOU IN THE COURSE OF YOUR EMPLOYMENT? YES  NO

DID YOU LOSE WAGES OR SALARY AS A RESULT OF YOUR INJURY? YES  NO  \$                      IF YES, AMOUNT LOST TO DATE                      WHAT IS YOUR AVERAGE WEEKLY WAGE OR SALARY? \$

IF YOU LOST WAGES: Date disability from work began:                      Date you returned to work:

HAVE YOU RECEIVED, OR ARE YOU ELIGIBLE FOR, PAYMENTS UNDER ANY WORKMEN'S COMPENSATION OR UNEMPLOYMENT LAW? YES  NO                       IF YES, AMOUNT PER WEEK PER MONTH \$                                           

LIST NAMES AND ADDRESSES OF YOUR PRESENT EMPLOYER(S) AND GIVE YOUR OCCUPATION AND DATES OF EMPLOYMENT FOR EACH:

EMPLOYER AND ADDRESS                      YOUR OCCUPATION                      FROM                      TO

EMPLOYER AND ADDRESS                      YOUR OCCUPATION                      FROM                      TO

EMPLOYER AND ADDRESS                      YOUR OCCUPATION                      FROM                      TO

AS A RESULT OF YOUR INJURY, HAVE YOU HAD ANY OTHER EXPENSES? YES  NO  IF YES, EXPLAIN ON REVERSE SIDE  
SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

## WAGE AND SALARY VERIFICATION

**NAME OF  
INSURANCE  
COMPANY:**

<b>DATE</b>	<b>OUR POLICYHOLDER</b>	<b>DATE OF ACCIDENT</b>	<b>FILE NUMBER</b>
-------------	-------------------------	-------------------------	--------------------

\_\_\_\_\_  
EMPLOYEE'S NAME AND ADDRESS

\_\_\_\_\_  
SOCIAL SECURITY NO.

**Gentlemen:**

The above named person has applied for benefits under the "No Fault" Insurance as a result of injuries in an automobile accident on the date indicated. We understand this person is your employee or former employee. To determine benefits that may be due the applicant, this law requires you to provide us with the answers to the following seven questions, and to return this form promptly.

Thank-you for your cooperation.

CLAIM DEPARTMENT

- |  |                                |                |
|--|--------------------------------|----------------|
| 1. Dates of Employment:  | From: _____                    | Through: _____ |
| 2. Dates Absent Following Accident:  | From: _____                    | Through: _____ |
| 3. Was Employee Paid During This Absence? Yes <input type="checkbox"/> No <input type="checkbox"/>   | If "Yes", Amount Paid \$ _____ |                |
| 4. Is Employee Entitled to Benefits Under a Wage or Salary Continuation Plan? Yes <input type="checkbox"/> No <input type="checkbox"/>           |                                |                |
| 5. Name of Your Workmen's Compensation Insurer: _____  |                                |                |
| 6. Has or Will a Claim Be Filed Under Any Workmen's Compensation Law for This Accident? Yes <input type="checkbox"/> No <input type="checkbox"/> |                                |                |
| 7. Schedule of Weekly Earnings — For 13 Weeks Prior to Date of Accident  |                                |                |

NO.	WEEK		NO. OF DAYS WORKED	AMOUNT EARNED INCLUDING OVERTIME OR EXTRA WORK	GRATUITIES				GROSS EARNINGS
	FROM DATE	TO DATE			MEALS	BOARD	TIPS	ALL OTHER	
1.									
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									

Any person who knowingly and with intent to injure, defraud, or deceive any insurance company, files a statement containing any false, incomplete or misleading information is guilty of a felony of third degree.

Pursuant to Florida Statute 627.736(6) "Under penalty of perjury I declare that I have read the foregoing and the information provided above is true to the best of my knowledge and belief."

EMPLOYER \_\_\_\_\_ DATE \_\_\_\_\_ SIGNED \_\_\_\_\_ TITLE \_\_\_\_\_

## ATTENDING PHYSICIANS REPORT

DATE	OUR POLICYHOLDER	DATE OF ACCIDENT	FILE NUMBER
------	------------------	------------------	-------------

**DETERMINATION OF BENEFITS DUE UNDER "NO FAULT" AUTO INSURANCE LAW REQUIRES THE ATTENDING PHYSICIAN TO COMPLETE THIS REPORT AND RETURN IT DIRECTLY.**

*Name and Address of Insurance Company Goes Here*

1. Patient's Name and Address

2. Age 3. Sex 4. Occupation (if known)

5. History of Occurrence as Described by Patient

6. Diagnosis and Concurrent or Contributing Conditions

7. When did Symptoms First Appear? Date:

8. When did Patient First Consult You for This Condition?

9. Has Patient Ever Had Similar or Same Condition?

Yes  No

10. Is Condition Solely a Result of This Accident?

Yes  No  If "No" Explain

11. Is Condition Due to Injury or Sickness Arising Out of Patient's Employment?

Yes  No

12. Will Injury Result in Permanent Disfigurement or Permanent Disability?

Yes  No  If "Yes" Describe

13. Patient Was Disabled (Unable to Work)  
From: Through:

14. If still disabled, date patient should be able to return to work:

15. Report of Services

DATE OF SERVICE	PLACE OF SERVICE	DESCRIPTION OF SURGICAL OR MEDICAL SERVICES RENDERED	CHARGES
			\$
			\$
			\$
<b>TOTAL CHARGE TO DATE</b>			<b>\$</b>

16. Is Patient Still Under Your Care for This Condition?

Estimated Future Charges

\$

DATE	PHYSICIAN'S NAME (Print)	PHYSICIAN'S SIGNATURE	IRS/Tin ID NO.
------	--------------------------	-----------------------	----------------

NO.	STREET	CITY OR TOWN	STATE	ZIP CODE
-----	--------	--------------	-------	----------

## REPORT AND PROOF OF CLAIM UNDER FAMILY PROTECTION AGAINST UNINSURED MOTORISTS

**(TO BE COMPLETED BY EACH BENEFICIARY CLAIMING BENEFITS)**

NAME OF COMPANY \_\_\_\_\_

Beneficiary Name of Injured: \_\_\_\_\_ Age \_\_\_\_\_  
 Address \_\_\_\_\_ Marital Status \_\_\_\_\_  
 Indicate if you were: Operator of car  Occupant of car  Pedestrian   
 Nature and extent of bodily injuries. \_\_\_\_\_

Are you entitled to Workmen's compensation  Any other polices   
 receive benefits under: \_\_\_\_\_

Give particulars \_\_\_\_\_

Person Making Claim NAME, if other than injured \_\_\_\_\_ Relationship to Injured \_\_\_\_\_  
 Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_

Employer of Injured Beneficiary Name \_\_\_\_\_ Address \_\_\_\_\_  
 Nature of regular work \_\_\_\_\_  
 Were you in the course of your employment at time of accident? Yes  No   
 Regular place of employment \_\_\_\_\_  
 Salary or wage \$ \_\_\_\_\_ Was wage paid during disability? Yes  No   
 Date returned to work \_\_\_\_\_  
 Total disability: From \_\_\_\_\_ To \_\_\_\_\_  
 Partial disability: From \_\_\_\_\_ To \_\_\_\_\_  
 Did any other accident, injury or physical condition contribute to such disability? Yes  No   
 Give particulars \_\_\_\_\_

Medical Treatment and Expenses (Attach All Bills)

**HOSPITAL**  
 Name \_\_\_\_\_ Confined from \_\_\_\_\_ Amt. of Bill  
 Address \_\_\_\_\_ To \_\_\_\_\_ \$ \_\_\_\_\_

**DOCTORS**  
 Name \_\_\_\_\_ No. of Treatments \_\_\_\_\_  
 Address \_\_\_\_\_  
 Name \_\_\_\_\_ No. of Treatments \_\_\_\_\_  
 Address \_\_\_\_\_

**NURSES**  
 Name \_\_\_\_\_ Attended from \_\_\_\_\_  
 Address \_\_\_\_\_ To \_\_\_\_\_  
 Name \_\_\_\_\_ Attended from \_\_\_\_\_  
 Address \_\_\_\_\_ To \_\_\_\_\_

ITEMIZED MISCELLANEOUS CHARGES \_\_\_\_\_  
 TOTAL EXPENSES \_\_\_\_\_

Policyholder Full name of policyholder \_\_\_\_\_ Policy number \_\_\_\_\_  
 Address: Street, City, and State \_\_\_\_\_ Telephone \_\_\_\_\_

Car in which injured was riding Name of Owner \_\_\_\_\_ Address \_\_\_\_\_  
 Make of Car \_\_\_\_\_ Year \_\_\_\_\_ Body Style \_\_\_\_\_  
 Motor Number \_\_\_\_\_ Serial Number \_\_\_\_\_ License Plate No. \_\_\_\_\_  
 Name of Driver of Car \_\_\_\_\_ Address \_\_\_\_\_ Telephone \_\_\_\_\_

**HELP FOR THE AUTO ACCIDENT VICTIM**

<b>The accident</b>	Date of accident 19 _____	Time M _____	Place or location _____	Accident reported to police at Station Date reported to police Time _____ 19 _____ M
---------------------	------------------------------	-----------------	----------------------------	--

<b>Owner of Other Car or Vehicle Involved and Evidence It Was Uninsured</b>	Name of owner of car (1) Make of Car Year License Plate No. State	Address	Telephone
	Name of owner of car (2)	Address	Telephone
	Make of Car Year License Plate No. State	Name of Insurance Co. (If not insured, show "none")	
	What evidence was obtained that car or cars were uninsured?		
	_____ _____ _____		
	(Attach any evidence you have)		

<b>List people in car in which you were riding</b>	Name	Address	If injured check correct block
	1.		Yes <input type="checkbox"/> No <input type="checkbox"/>
	2.		Yes <input type="checkbox"/> No <input type="checkbox"/>
	3.		Yes <input type="checkbox"/> No <input type="checkbox"/>
	4.		Yes <input type="checkbox"/> No <input type="checkbox"/>

<b>Witnesses</b>	Name	Address	Home Telephone	Business Telephone
------------------	------	---------	----------------	--------------------

**Notice of Non-Waiver** It is expressly understood and agreed that the furnishing of this blank by the company or the preparing of proofs by any adjuster or any agent of this company, or the retention of proofs by the company after their submission by the insured, is not a waiver of any rights of this company.

<b>SIGN HERE</b>	Signature of person claiming benefits	Date
------------------	---------------------------------------	------

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

In those situations where injuries have been reported and claims made for medical or disability benefits, your insurance company will usually have a doctor of its choice examine you to ascertain the nature and extent of your injuries. Don't be surprised when the doctor says:

1. you will be O.K.
2. you don't need any more treatment.
3. you should return to work.

This approach is typical of the conservative doctors discussed in the previous chapter. Keep in mind that this doctor may be making a major portion of his living by examining people for insurance companies. By cutting off your medical care benefits and getting you back to work, the insurance company can save itself a bundle of money.

In addition to investigating the accident and providing forms to be filled out, the adjuster may also take your statement to obtain additional information. This can be done in writing or simply recorded with your permission.

It is important to consult with a lawyer before giving a statement. When answering questions, the following guidelines are helpful:

1. **Never answer a question that you don't understand.** Simply indicate that you don't understand the question.
2. **Don't guess.** If you don't know something, simply say you don't know. Nobody has a perfect memory.
3. **Keep your answer short.** Just answer the question and say no more.
4. **Within these guidelines, be totally honest.**

John follows this advice. He answers questions honestly. He doesn't elaborate, but he states the facts. This not only sets the record straight for the future, it establishes John's good faith and credibility.



## **CHAPTER FOUR**

### **SELECTING A LAWYER**

- 1. How to Choose a Lawyer**
- 2. Legal Fees**
- 3. Reaching an Agreement**

JOHN VICTIM

LAW SUIT

## CHAPTER FOUR

### SELECTING A LAWYER

For John and Olivia, as for anyone who has suffered a major car accident, selecting a lawyer is as important as selecting the right physician. In some ways, the health of John's family depends on this lawyer. If a just settlement can be reached, the amount agreed upon by both parties will cover all expenses necessary for the recovery of his wife and children. It will compensate for time lost from work; it will include expenses for tutoring or therapy required to bring his children back into the mainstream, and it will provide money for their pain and suffering, disability, mental anguish, and loss of enjoyment of life along with other elements discussed in the following chapters.

John, a careful driver, has never been involved in an accident. As a matter of fact, he has never found it necessary to retain a lawyer. What does he do? Well, to begin with, **he does not assume he can organize his case and represent himself in court.** It would be like performing surgery on himself. He lacks the training and the objective distance necessary.

Lawyers, like doctors, have become specialized. The automobile alone has led, literally, to thousands of laws and regulations. John knows he has to find a lawyer. But how?

John needs to find a lawyer who can do two things:

- research the case and put it together
- represent him in court.

There are many lawyers who are research experts but who seldom, if ever, appear in court to press their clients' cases. Rather, they prepare the case and then, if it becomes necessary to go to trial, a second lawyer is engaged to follow the case to its conclusion.

#### **How to Choose a Lawyer**

Asking friends and family members for someone who represented them in the past will produce a few names. Calling the local Bar Association is another way. If neither produces results, the Associa-

tion of Trial Lawyers of America in Washington, D.C., will send a copy of its directory upon written request. Once these steps have been taken, these questions should be asked:

1. Are any of these attorneys specialists in personal injury and wrongful death?
2. What is the lawyer's track record in court in similar cases?

Usually, attorneys who handle cases in court can get a better settlement from an insurance company since they know the procedures of courtroom battle. Many attorneys do not go to court; sometimes they acquire a reputation with insurance companies for settling a case for whatever is offered.

Once these questions are answered to John's satisfaction, he is ready to meet his lawyer. Unlike the insurance adjuster, John's attorney has his best interest at heart. Why? There are two reasons:

1. The attorney is bound by a strict code of ethics (breaking it can get him disbarred).
2. The attorney's fee depends upon the amount of settlement or recovery.

### **Legal Fees**

John's initial interview does not cost him anything. Since most personal injury cases are handled on a contingency basis, John's lawyer is glad to discuss the details of the case without charge.

In fact, **in most cases there are no legal fees at all when dealing with a personal injury or wrongful death case until and unless a settlement or recovery is made.** In other words, a lawyer who works on contingency receives nothing if no recovery is made. However, if the case is completed favorably, the attorney receives a percentage of the amount recovered. This percentage ranges from 25% to 50%, depending on how far the case must be taken. That is, if it is settled out of court, the percentage is on the low end, becoming higher if a trial becomes necessary, and higher still if it goes to appeal. Some states regulate this percentage; in others it is open to negotiation. If it appears that a substantial settlement is possible, in the six-figure bracket, for example, a client is in a better position to request, and get, a lower fee schedule.

### **Reaching an Agreement**

John presents all his documents on the first interview, giving a complete explanation of the accident and answering all the lawyer's questions truthfully. Now he asks some questions himself. John wants to know, for example, how much his case is worth. Naturally, he doesn't expect an exact figure, but the lawyer's past experience should

enable him to provide a range John can expect, based on similar cases he has handled in the past.

The same holds true for the lawyer's educated guess on John's chances of winning in the first place. An **experienced trial lawyer** should be able to evaluate his chances based on the information he presents at the first meeting. Once he has assured John that he is confident of winning the case and that it is worth X amount of dollars, John proceeds to negotiate the fees. Since the attorney's estimate of the probable recovery is on the moderate side, John knows that his chances of a reduction are small, but he figures it can't do any harm to try. If the lawyer had mentioned a substantial sum, John would have been in an excellent bargaining position for a lowering of fees, for obvious reasons. **Negotiation, carried forth in honest good faith, is professionally acceptable.**

After they arrive at a mutually agreeable arrangement, John and his lawyer sign a written agreement. A sample agreement follows on the next page.

Most personal injury lawyers have a standard form which spells out their fee schedule. Many always insist on a signed contract of this kind when they take a case. This does not mean, however, that John is bound in blood to this particular attorney. In many states, a client is free to discharge his lawyer at any stage in the proceedings and retain someone else. If this becomes the case, the two lawyers will work out with each other how to share the fees earned under the contingent fee contract, depending on how much work was done by each. The client does not have to pay more than one fee.

John also signs a medical authorization which allows his lawyer to get medical reports and records. The authorization states:

### **AUTHORIZATION FOR MEDICAL INFORMATION**

THIS WILL AUTHORIZE my attorney, CHARLES R. LIPCON, to have access to, and be furnished with any and all medical, hospital, X-rays, and other records relating to the undersigned.

\_\_\_\_\_  
CLIENT

## ATTORNEY/CLIENT AGREEMENT

### AUTHORITY TO REPRESENT

I, the undersigned client, retain and employ \_\_\_\_\_ as my attorney, to represent me in my claim for damages against \_\_\_\_\_, or any other person, firm, corporation or entity liable, resulting from an accident which occurred on the \_\_\_\_\_ day of \_\_\_\_\_ 198\_\_\_\_, at \_\_\_\_\_

As compensation for the legal services, I hereby agree to pay for the reasonable cost of investigation and the filing of suit and court costs, and to pay my attorney from the proceeds of any recovery the following fee:

40% if settled without suit or arbitration

45% if suit or arbitration is filed

50% if an appeal is taken from the lower court or arbitration by either side.

It is agreed and understood that this employment is upon a contingent fee basis, and if no recovery is made, I will not be indebted to my attorney in any sum whatsoever as attorney's fees.

I have been made no promises or guarantees regarding the outcome of my claim.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 198\_\_\_\_, at Miami, Florida.

\_\_\_\_\_  
CLIENT

I HEREBY ACCEPT the above employment on the terms stated herein.

\_\_\_\_\_  
ATTORNEY

The next step is to let the lawyer do his job. John knows he has the right to be kept updated on the progress of his litigation and to go over his file any time he feels a need to do so, but he understands that it is not to anyone's advantage to take his lawyer's time in nonproductive ways. At last, John can relax — for a while, anyway.

## **CHAPTER FIVE**

### **WHAT THE LAWYER DOES**

- 1. Investigation**
- 2. Contacting the Parties**
- 3. The Statement**



## CHAPTER FIVE

### WHAT THE LAWYER DOES

John's back home. He will return to work in two days, but Olivia will be out for two more weeks. Mikey is back in school, but he is visited by frequent nightmares. His teacher says he is disruptive and hyperactive. Wendy is still being treated as an outpatient, though her spirits are good.

What is John's lawyer doing while all this is going on? So much depends on him at this point!

The attorney has all the accident and medical reports that John brought him. In addition, he has information given to him by John at the time of the interview. This includes **all symptoms developed from the time of the accident**, no matter how minor. Olivia, for instance, was so worried about her broken arm she did not immediately report a shooting pain down the side of her leg. She has done so since and it is duly recorded. If some problem should develop later on with her back or with nerve damage, she will have grounds for a claim. The lawyer provides John with initial information which is later reinforced by letter. An example of this letter appears at the end of this chapter.

#### The Investigation

John's lawyer may hire an investigator to double check all the events connected with the accident. He will definitely research the reputation of the physician in charge of the case and of all the consultants and specialists called in. John and his family are entitled to being believed when they report symptoms. It is important that the physicians being retained be sympathetic to the patients.

Next, he will proceed to:

1. make a claim against the driver of the Camaro (the **tortfeasor**)
2. make a claim against the Camaro driver's **insurance carrier**

3. **communicate with the insurance carrier**
4. **request medical reports and hospital records**

These inquiries will help the attorney determine whether the Camaro driver's insurance coverage will be adequate to cover the injuries suffered by John's family. Sample letters for these claims can be found at the end of this chapter.

### **Contacting the Parties**

The lawyer's first contacts with the insurance company covering the Camaro serves to notify them of who is providing legal council and to establish how much coverage they have under the policy. However, the lawyer does not stop there. In this case, he investigates deeper to find out the Camaro driver's occupation, his income bracket and any assets he may have.

The Camaro driver turns out to be a master plumber with his own business. This means that John's family can look to recover money in excess of the insurance coverage. The Camaro owner has a substantial income, a home, business property, and business-related equipment, including two vans and a pick-up truck.

Now the attorney contacts John's insurance company. Although they have the police report of the accident, they have not received a statement from John. John very wisely **did not give them a statement until he retained an attorney. Under the stress of the accident, John might have said something to the adjuster that could be used against him later. For that reason, it is only now that John, in the presence of his lawyer and following his counsel,** provides the insurance company with a statement. A typical statement covers the same type of information requested in the application for no fault benefits (page 26) and uninsured motorist report (page 29).

So far, then, the lawyer has:

1. contacted all the concerned parties
  - a. doctors
  - b. hospital
  - c. insurance companies
  - d. at-fault driver.
2. helped John with his statement to the insurance company.
3. reviewed the medical reports and records, sometimes with a medical specialist. He may request further examinations and tests by the treating physician.
4. obtained the help of experts such as an accident reconstruction specialist or vocational rehabilitation counselor.

5. researched the latest law.
6. completed the investigation including photographs, witness statements and model preparation where necessary.

### **The Settlement Brochure**

At this point, the lawyer **prepares a settlement brochure** and presents it to the insurance company, along with a written demand for settlement. Ideally, the insurance company and the lawyer can come to terms without a trial. In that situation, affidavits and releases are signed by both parties, the injured party receives a check, and everything is over.

Not so in John's case. The insurance company does not want to pay for Olivia's neurological tests. It does not want to pay for Mikey's tutor. It wants John to pay for these expenses, which will amount to close to \$5,000. The company does not want to deal with the fact that further treatment may be necessary.

John must go to court.

## **CLIENT LETTER**

**Charles R. Lipcon**

**Attorney at Law**

**Miami, Florida**

**(305) 373-3016**

**Re:**

**Dear:**

Thank you for referring the above case to my office. I would appreciate your cooperation in the following areas:

1. Do not discuss this matter with anyone other than my secretary or my investigator, who will identify themselves as such.
2. If anyone else visits you to discuss your accident, please refer this person to me.
3. Please forward to me all doctor bills and hospital bills as you receive them and any other bills related to your accident.
4. Please keep an accurate record of all your accident-related expenses.
5. As soon as the doctor releases you, please notify me.
6. It is very important that you immediately provide me with the names and addresses of all doctors, hospitals, clinics, etc., that you see so we can have your records up-to-date. Failure to do this may seriously jeopardize your claim.
7. It is very important that you immediately provide me with information on all automobile and health insurance policies providing coverage to you or to anyone with whom you live. Failure to do this may seriously jeopardize your claim for benefits under these policies.

Thank you for your cooperation in this matter. If you have any questions, please feel free to contact me.

Very truly yours,

**Charles R. Lipcon**  
*Attorney at Law*

## DEFENDANT CLAIM LETTER

Re:

Dear:

Please be advised that I represent \_\_\_\_\_ for injuries  
and damages sustained in an accident involving \_\_\_\_\_  
on \_\_\_\_\_ at \_\_\_\_\_

---

If your automobile was covered by liability insurance at the time of the accident, please forward this notice on to your insurance carrier. If you were not covered at the time of the accident, please call this office immediately upon receipt of this letter.

CHARLES R. LIPCON  
*Attorney at Law*

---

MIAMI, FLORIDA  
Phone: (305) 373-3016

## INSURANCE CARRIER CLAIM LETTER

RE: Insured:  
Claimant:

Policy No:  
Claim No:  
D/A :

Gentlemen:

Please be advised that this office represents \_\_\_\_\_  
for damages and injuries sustained in an accident involving your insured on or  
about \_\_\_\_\_ at or near \_\_\_\_\_

All correspondence regarding this claim should be made through this office  
exclusively.

Please be governed accordingly.

CHARLES R. LIPCON  
*Attorney at Law*

---

MIAMI, FLORIDA  
Phone: (305) 373-3016

## LETTER TO OWN CARRIER

Re: Insured:  
Claimant:

D/A :  
Policy No.:

Gentlemen:

Please be advised that the undersigned represents \_\_\_\_\_  
for injuries sustained in an automobile accident, which occurred on  
\_\_\_\_\_ at \_\_\_\_\_

Kindly forward your application for No-Fault Benefits to the undersigned at  
your earliest convenience.

CHARLES R. LIPCON  
*Attorney at Law*

---

MIAMI, FLORIDA  
Phone: (305) 373-3016

## HOSPITAL RECORDS REQUEST

Re:

Gentlemen:

*This office has been retained by the above captioned party, to represent him in a claim for injuries sustained as a result of an accident that occurred on*

---

Enclosed herewith please find a Medical Authorization, executed by our client. Kindly forward copies of your records and bill at your earliest possible convenience.

*You should bill the proper insurance carrier directly for payment.*

CHARLES R. LIPCON  
*Attorney at Law*

---

MIAMI, FLORIDA  
Phone: (305) 373-3016



## REQUEST FOR MEDICAL REPORTS

Re:

Dear Dr. \_\_\_\_\_ :

Please be advised that this office represents the above captioned party, whom you have treated and/or are treating for injuries sustained as a result of an accident which occurred on \_\_\_\_\_ .

Enclosed is a medical authorization executed by my client. Please forward a narrative report of your treatment to date, together with your total charges for said treatment, anticipated permanent partial disability or permanent total disability, or temporary total disability, probable duration of further treatment and probable costs of further treatment.

Please consider all prior authorizations submitted to your office cancelled upon receipt of this letter.

You should submit your bills and reports regarding treatment directly to the appropriate insurance carrier with copies to this office.

Thank you for your cooperation in this matter.

Very truly yours,

CHARLES R. LIPCON  
*Attorney at Law*  
MIAMI, FLORIDA  
(305) 373-3016

CRL/asm  
Enclosures

## **CHAPTER SIX**

### **PREPARING THE LAWSUIT**

- 1. The Complaint**
- 2. Medical Examination**
- 3. Discovery and the Deposition**
- 4. The Trial**

## CHAPTER SIX

### PREPARING THE LAWSUIT

By now, John is fit to be tied. He is angry at the Camaro driver. He is furious with the insurance company. He wants his pound of flesh.

Were he to represent himself, he would be destroyed. John is out for blood, and his anger and frustration would be evident in court. Not only would his presentation be weak; his judgment would be clouded. His decisions would not be clear, logical or objective. But John's lawyer's are.

#### **The Complaint**

The first court appearance is in traffic court. Since this is routine and John has not been subpoenaed, his lawyer may appear on his behalf or send a court reporter to record what is said. Afterwards, the attorney files a Complaint, also known as a Petition. This document **outlines the events of the accident, names the persons at fault and lists the injuries suffered and losses incurred by John and his family.** A sample complaint form follows on the next page.

The Camaro driver, now called the **Defendant**, has also retained a lawyer. Usually, the lawyer is provided by his insurance company. Their option is either to deny or admit to the statements made in the complaint in their answer to the complaint. Whatever they deny are the issues to be proven in court. A sample answer to a complaint follows the sample complaint form.

**IN THE CIRCUIT COURT OF THE 11th  
JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA**

**GENERAL JURISDICTION DIVISION  
CASE NO. DIVISION**

**COMPLAINT, DEMAND FOR JURY TRIAL  
WITH INTERROGATORIES, REQUEST FOR PRODUCTION AND  
REQUEST FOR ADMISSIONS ATTACHED.**

**JOHN VICTIM AND  
OLIVIA VICTIM, HIS WIFE,  
Plaintiffs,**

**vs.**

**CARL CARELESS  
Defendant.**

---

The Plaintiffs sue the Defendant and allege:

1. This is an action for damages in excess of \$5,000.00.
2. At all times material hereto, the Plaintiffs were over the age of eighteen and duly married to each other.
3. On or about July 10, 1984, the Defendant, Carl Careless, operated a motor vehicle with the consent of its owner, at or near the intersection of Ivan Tors Boulevard and North Miami Boulevard, North Miami, Florida.
5. That on or about the aforementioned time and place, the Defendant, Carl Careless, did so negligently operate and maintain the motor vehicle that he caused it to collide with Plaintiffs' vehicle.
6. That as direct and proximate result of Defendants' negligence the Plaintiff suffered injuries and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expenses of hospitalization, medical and nursing care and treatment; loss of earnings; loss of ability to earn money and aggravation of previous existing medical conditions. The losses are either permanent or continuing and the Plaintiff, John Victim, will suffer the losses in the future.
7. As a direct and proximate result of Defendant's negligence, Plaintiffs' motor vehicle was damaged and he lost the value of his interest in it and the value of its use.

8. At all times material hereto, this case does not fall under the Florida No-Fault Law, or in the alternative is not barred by the Florida No-Fault Law as Plaintiff meets one or more of the tort thresholds under the Act.

**COUNT II**

The Plaintiff, Olivia Victim, realleges and reavers paragraphs 1 through 8, and further alleges:

9. That as a direct and proximate result of Defendants' negligence, the Plaintiff, Olivia Victim, has in the past and will in the future suffer loss of services, companionship, love and affection, support and consortium.

WHEREFORE, the Plaintiffs demand judgment against the Defendants and demand trial by jury.

**LAW OFFICES OF CHARLES R. LIPCON**  
***Attorney for Plaintiff***  
Miami, Florida  
Telephone: (305) 373-3016

**IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT, IN AND FOR  
DADE COUNTY, FLORIDA**

**CASE NO:**

**ANSWER TO COMPLAINT**

**JOHN VICTIM AND OLIVIA VICTIM, his wife,**

**Plaintiffs,**

**vs.**

**CARL CARELESS,**

**Defendant.**

---

COMES NOW the Defendant, Carl Careless, and files this, his Answer to the Complaint filed herein by the Plaintiffs and would state as follows:

1. Defendant demands trial by jury of all issues triable as of right by jury.

2. The Defendant denies each and every allegation not specifically admitted herein.

3. The Defendant denies each and every allegation of negligence, causation and fact, proximate cause, injuries and damages and demands strict proof thereof.

4. At all times material hereto, the Plaintiff, John Victim, conducted himself in a careless and negligent manner, said negligence is a contributing and/or the sole legal proximate cause of the injuries and damages complained, and Plaintiffs are, therefore, barred from recovery against these Defendants, or in the alternative, their damages for recovery should be reduced by the Doctrine of Comparative Negligence.

5. At all times material hereto, the within—alleged accident occurred above and beyond the foresight of a reasonably prudent person and was caused by actions and/or omissions of third persons and conditions

beyond the control of the Defendants herein; therefore, the Plaintiffs are barred from recovery against these Defendants on the grounds of unavoidable accident.

6. Plaintiffs have failed to meet requirements of the Florida Reparations Reform Act, and their complaint should, therefore, be dismissed.

7. Plaintiff's recovery, if at all, should be reduced by PIP benefits and/or hospital benefits or any other collateral source benefits.

WE HEREBY CERTIFY that a true and correct copy of the foregoing Answer to Complaint was furnished by mail this 19th day of September, 1984 to: CHARLES R. LIPCON, ESQ., Attorney for Plaintiff, Miami, Florida 33131.

---

ATTORNEY FOR DEFENDANT  
CARL CARELESS

## **Medical Examination**

As part of the court proceedings, John and his family have been examined by a physician selected by the defendant. Because this is a standard and reasonable request, the judge will usually require the family to submit to the examination. However, they are careful to **report all discomfort, all pain, all medication and all side effects to this physician.** In fact, before going to see the physician, each member of the family makes a careful examination of him or herself, from head to toe, noting all changes and discomfort experienced in the past thirty days. The children, naturally, need help from John and Olivia.

John, advised by his attorney, quickly becomes familiar with the following terms:

### **Discovery**

This is the process during which both parties exchange questions, requests for production of documents and take depositions under oath.

### **Request for Production of Documents**

This allows each party to request from the other documents to be produced or be made available for copying and inspection. If John claims he lost time from work, then he may have to provide copies of his tax returns to the defendant.

### **Deposition**

A deposition is an interview by an attorney in which the person is sworn, under oath, and all testimony is recorded by a court reporter.

In John's case, the attorney for the Camaro driver requests a deposition from John to establish his point of view about the accident and its effects. John's attorney counsels him to make clear and forceful statements of the damages inflicted. If John succeeds in convincing the attorney, then the defendant's attorney might recommend that the case be settled out of court for a higher amount than the insurance company previously considered.

Before making his deposition, John, Olivia (who is once again ambulatory), and their attorney confer. John is given some questions likely to be asked, and the attorney reviews the accident reports with John to refresh his memory. Sometimes, the lawyer will accompany his client to the scene of the accident in order to bring the scene clearly back to mind.

The lawyer's most important advice at this time is:

- 1. Do not answer any questions you do not understand.**
- 2. Answer only the question asked. Do not elaborate.**



**3. Don't guess.**

**4. Do not be afraid to admit you don't know or don't remember something.**

**After the deposition, the persons being asked the questions have the right to read the transcript; they may also waive this right. It is safe to read everything over carefully, even if it is time-consuming. Keep in mind that all these questions and answers are being taken down by a court reporter, and like all human beings, court reporters are fallible. Sometimes, a single word taken down incorrectly can alter the meaning of a statement.**

At the end of all the proceedings, the insurance company is still not convinced that John's claim is as extensive as he says. They are within their right to do so, but this means that the case must come to trial. A request for a trial is made to the judge at this time. The Court then sets a trial date. Both the request for trial and the order setting a trial date follow a standard format like those on the following page.

Once the trial date is set, the attorney must complete his pretrial preparation.

**IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA**

**GENERAL JURISDICTION DIVISION**

**CASE NO. DIVISION**

**NOTICE OF TRIAL**

**John Victim, et al.,  
Plaintiffs,**

**vs.**

**Carl Careless,  
Defendant.**

---

**TO THE CLERK OF THE ABOVE STYLED COURT:**

Please take notice that the above entitled cause is now at issue and ready for trial. You are hereby requested to place the foregoing cause on the trial calendar for Jury trial, at the next ensuing term of Court. Estimated time required for trial is three day(s).

I HEREBY CERTIFY that a true copy of the foregoing has been mailed, this 14th day of October, 1983, to:

Attorney for defendant Carl Careless.

LAW OFFICE OF CHARLES R. LIPCON

*Attorney for Plaintiff*  
Miami, Florida  
Telephone: (305) 373-3016

BY \_\_\_\_\_

CHARLES R. LIPCON

**IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN  
AND FOR DADE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION**

**CASE NO.**

**ORDER SETTING CAUSE FOR TRIAL  
AND  
ORDER OF PRE-TRIAL INSTRUCTIONS  
(This Order must be strictly complied  
with as it limits the time for discovery and  
mandates other action of counsel).**

**JOHN VICTIM and OLIVIA VICTIM, his wife**

**Plaintiffs,**

**vs.**

**CARL CARELESS,**

**Defendant**

---

**IT IS HEREBY ORDERED THAT:**

THIS CAUSE is set for trial before a jury and the undersigned Judge in a Courtroom assigned for his use in the Dade County Courthouse, Miami, Florida, for the two-week period commencing \_\_\_\_\_. All attorneys are directed to appear before the undersigned Judge, at the Dade County Courthouse, for the Call of the Calendar, at 1:00 P.M. on the Thursday preceding the above date (unless directed to do otherwise by a notice published in the Miami Review). Failure to appear may result in a dismissal of the Plaintiff(s)' claim or the striking of the pleadings of the Defendant(s) and the entry of a Default.

It is further ORDERED AND ADJUDGED as follows:

1. The names and addresses of expert witnesses intended to be called at trial shall be furnished opposing counsel, in writing together with a brief statement of the general nature and areas of testimony, no later than SIXTY (60) days prior to the Monday of the trial week set forth above, with a copy thereof timely filed with the Clerk of this Court.
2. The following shall be done not later than TWENTY (20) days prior to the Monday of the trial week set forth above, except for good cause or by written agreement of counsel:

a. Parties shall furnish opposing counsel with a written list containing the names and addresses of all witnesses intended to be called at trial. A copy thereof shall be timely filed with the Clerk of this Court.

b. All exhibits to be offered in evidence at trial shall be made available to opposing counsel for examination and initialing.

3. The following shall be done at least TEN (10) days prior to the Monday of the trial date set forth above, except for good cause or by written agreement of counsel:

a. All discovery proceedings shall have been completed, and all pre-trial motions heard.

b. Counsel shall meet with a view toward exhausting all efforts to reach a settlement.

4. In the event the trial of this matter is continued, then each time limitation and provision contained above shall apply to the new trial date.

5. Counsel shall immediately notify this Court in the event of settlement and submit a Stipulation for an Order of Dismissal.

6. Proposed instructions to the jury shall be delivered to the Judge prior to jury selection. Each proposed instruction (including standard instructions) shall be typewritten and double or triple spaced on a separate piece of paper and in such form that the Judge can read them to the jury as prepared with the proposed party names inserted wherever applicable. Each requested instruction shall contain a citation of supporting authority. Do not present a list of the numbers of standard forms, but rather present all of the charges, ready to be read to the jury.

7. Proposed verdict forms shall be submitted by the respective parties together with the proposed jury instructions.

8. Failure to comply with any requirement of this Order may result in appropriate sanctions being entered by the Court upon its own motion or same being entered by the Court upon motion of a party.

DONE AND ORDERED at Miami, Dade County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_ November, 198\_\_ .

\_\_\_\_\_  
CIRCUIT JUDGE

It is hereby certified that a true copy of order was mailed to each attorney of record and party appearing without counsel on the above date.

COPIES FURNISHED TO ALL PARTIES  
BY: BAILIFF

## **CHAPTER SEVEN**

### **THE TRIAL**

- 1. Courtroom Personnel**
- 2. Selecting the Jury**
- 3. The Testimony**
- 4. The Rule**



## CHAPTER SEVEN

### THE TRIAL

The court process is intimidating. Although trial by jury is one of the basic rights granted by our Constitution, it can still inspire awe the first time we come face to face with it.

John's lawyer helps him relax by acquainting him with courtroom personnel and procedures. It takes only a few minutes and allows John to prepare mentally for what is to come. After all, when one goes to the hospital for treatment or surgery, the physicians and nurses usually take the time to explain the procedures, tell the patient about possible side effects, and reassure him of the positive results to be achieved by the course of action chosen by the physician. So it should be with a trial. John, therefore, listens carefully to his lawyer when he explains the functions of the people who will be in the courtroom.

#### **Courtroom Personnel**

**The Judge.** The judge is in charge of the courtroom at all times. In a way, his function and responsibilities are similar to those of an umpire at a baseball game. He makes sure that all the players follow the rules. If disputes arise, he decides what the correct answer is. When the lawyer for either side objects to a question, method of questioning or to the evidence presented, the judge rules whether or not the jury should hear the testimony or see the documents to which objections are being raised.

In addition, the judge instructs the jury as to its responsibilities in accepting and evaluating evidence. At the end of the trial, the judge tells the jury what the applicable rules of law are for the case in question. In short, the judge is the ultimate courtroom authority at all times.

**The Bailiff.** The bailiff receives his instructions from the judge. For instance, the bailiff:

- maintains order in the courtroom

- directs the jury where to sit and where to go after adjournment
- assists in any other way that the judge directs.

**The Clerk.** The clerk holds a highly responsible position. This person marks documents into evidence and maintains the records of the trial. Some of these records include such vital pieces of information as:

- the names and addresses of the jurors
- the court reporter's name
- the name of each witness who testifies.

The clerk also lists all the exhibits presented and used during the trial.

**The Court Reporter.** The court reporter's function is equally important. Every word spoken during the trial is recorded by this official of the Court. Obviously, this becomes crucial, especially if testimony is later contested. When necessary, the court reporter transcribes the notes to provide an accurate, readable record.

### Selecting the Jury

Once John and his family are familiar with courtroom personnel, they are briefly introduced to the process of jury selection. Selecting the jury is the first step in a trial. This is known as **voir-dire**. At this time, each prospective juror is questioned by the plaintiff's attorney. The plaintiff, you remember, is the person who is suing. The questions asked determine whether or not a juror will be biased either for or against anyone in the proceedings.

### The Rule

At some point during the trial, the lawyer tells John and Olivia, the rule is invoked. This means that no witness testifying in the case is allowed to watch other witnesses. Only the plaintiff and the defendant are entitled to listen to other witnesses testify.

### The Testimony

Once the jurors are selected and take their oaths, they are instructed by the judge how to carry out their duties. Immediately after, the testimony begins. Because the burden of proof is on the plaintiff, he has the right to speak first and last. All of the witnesses in support of the plaintiff's version of the case testify at this time. All documents supporting the plaintiff's version are submitted as evidence. During this period of the trial, the defendant can only participate to the extent of making objections and cross-examining those witnesses called by the plaintiff.



When the plaintiff finishes his presentation, the defendant usually will move for a **Directed Verdict**. This means that the defendant requests the judge to rule that, even taking all the evidence that the plaintiff has presented as true, there is still not enough evidence for the plaintiff to win.

If at this point the judge agrees with the defendant, he directs a verdict in favor of the defendant and the trial is over. **However, it is unusual for a Directed Verdict to be granted during a trial.**

Next, the defendant's lawyer will call all of the witnesses available to testify for their side of the case. All documents and other items which are considered to be in their favor are placed into evidence. The plaintiff or his attorney can only object to what the defendant is doing and cross-examine witnesses called by the defendant. This is the defendant's turn, in our system of justice, to present his evidence.

At the end of the defendant's case, the plaintiff can move for a Directed Verdict on the basis that there are no real disputes. It is also unusual for a judge to grant this motion.

At this point, the plaintiff can present:

1. **witnesses in rebuttal to the defendant's**
2. **additional documents in rebuttal.**

Once these steps are taken, the presentation of evidence is over.

Next, the judge will hold what is called a **charge conference**, during which he or she meets with the lawyers for both sides. Here, each side presents the rules of law it feels apply to the case. The judge decides what law applies to the facts of the case and informs the lawyers of this decision.

At last, the attorneys make the closing arguments. Once again, the plaintiff goes first and presents his side of the case, reminding the jury of those points that are in his favor. The defendant follows and does the same with his side of the argument. Finally, the plaintiff has the last word and is allowed time to make a rebuttal.

Now the judge reads the rules of law regarding this case to the jury and instructs its members on the procedures to follow in arriving at a verdict. A jury instruction for the auto accident being discussed in *Help For The Auto Accident Victim* would follow the standard format shown on the following pages.

## JURY INSTRUCTIONS

### THE COURT'S CHARGE

[2.1] Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to weigh and consider the evidence, to decide the disputed issues of fact, and to apply the law to the facts as you find them from the evidence.

[2.2] In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

[3.5c, Conventional charge on claim] The issues for your determination on the claim of plaintiff, John Victim, against defendant, Carl Careless, is whether defendant was negligent in the operation of the car; and, if so, [3.6] whether such negligence was a legal cause of loss, injury, or damage sustained by plaintiff.

[3.7] If the greater weight of the evidence does not support the claim of plaintiff, then your verdict should be for defendant.

[3.8] If, however, the greater weight of the evidence does support the claim of plaintiff, then you shall consider the defense raised by the defendant.

On the defense, the issues for your determination are whether plaintiff was himself negligent and, if so, whether such negligence was a contributing legal cause of the damage complained of.

If the greater weight of the evidence does not support the defense and the greater weight of the evidence does support the claim of plaintiff, then your verdict should be for plaintiff in the total amount of his damages.

However, if the greater weight of the evidence shows that both plaintiff and defendant were negligent and that the negligence of each contributed as a legal cause of damage sustained by plaintiff, you should determine what percentage of the total negligence of *both parties* is chargeable to each.

[3.9] "Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in this case.

[4.1] Negligence is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may consist either in doing something that a reasonably careful person would not do under like circumstances or in failing

to do something that a reasonably careful person would do under like circumstances.

[5.1 a] Negligence is a legal cause of loss, injury, or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such damage, so that it can reasonably be said that, but for the negligence, the damage would not have occurred.

[5.1 b] In order to be regarded as a legal cause of loss, injury, or damage, negligence need not be the only cause. Negligence may be a legal cause of damage even though it operates in combination with the act of another if such other cause occurs at the same time as the negligence and if the negligence contributes substantially to producing such damage.

[6.1 c] If your verdict is for defendant, you will not consider the matter of damages. But, if your verdict is for plaintiff, you should determine and write on the verdict form, in dollars, the total amount of damages which the greater weight of the evidence shows he sustained as a result of the incident complained of, including any such damage as he is reasonably certain to experience in the future. You shall consider the following elements:

[6.2a] Any bodily injury sustained by plaintiff, and any resulting pain and suffering, disability, disfigurement, mental anguish and loss of capacity for the enjoyment of life experienced in the past or to be experienced in the future. There is no exact standard for measuring of such damage. The amount should be fair and just in the light of the evidence.

[6.2c] The reasonable value or expense of medical care and treatment necessarily or reasonably obtained by plaintiff in the past or to be so obtained in the future.

[6.2d] Any earnings lost in the past and any loss of ability to earn money in the future.

[6.9a] If the greater weight of the evidence shows that plaintiff has been permanently injured, you may consider his life expectancy. The mortality tables received in evidence may be considered in determining how long plaintiff may be expected to live. Such tables are not binding on you but may be considered together with other evidence in the case bearing on plaintiff's health, age and physical condition, before and after the injury, in determining the probable length of his life.

[6.10] Any amounts which you allow in damages for future medical expenses or loss of ability to earn money in the future should be reduced to their present money value and only the present money value of such amounts should be included in your verdict.

[6.1 c, resumed] In determining the total amount of damages, you should not make any reduction because of the negligence, if any, of plaintiff. The court will enter a judgment based on your verdict and, if you find that plaintiff was negligent in any degree, the court in entering judgment will reduce the total amount of damages by the percentage of negligence which you find is chargeable to plaintiff.

[7.1] Your verdict must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdict, you are

not to be swayed from the performance of your duty by prejudice, sympathy or any other sentiment for or against any party.

[7.2] When you retire to the jury room, you should select one of your number to act as foreman or forewoman to preside over your deliberations and sign your verdict. Your verdict must be unanimous, that is, your verdict must be agreed to by each of you.

You will be given one form of verdict, which I shall now read to you:

*(explain verdict form)*

When you have agreed on your verdict, the foreman or forewoman, acting for the jury, should date and sign the verdict form. You may now retire to consider your verdict.

After receiving these instructions, the jury is given a verdict form. It can be a simple form, in which the jury finds either for the plaintiff or the defendant, or it can be a series of questions. The verdict form used in a typical automobile accident case appears on the following page.

John is now prepared to go to court. Although he will probably be a little nervous—after all, his future is in the hands of his lawyer and some total strangers—he is sufficiently familiar with courtroom personnel and procedures to understand what is happening around him. In this instance, a little information is not a dangerous thing.

# VERDICT FORM

We, the jury, return the following verdict:

1. Was there negligence on the part of defendant, which was a legal cause of damage to plaintiff?

YES \_\_\_\_\_

NO \_\_\_\_\_

If your answer to question 1 is NO, your verdict is for defendants, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is YES, please answer question 2.

2. Was there negligence on the part of plaintiff which was a legal cause of his damage?

YES \_\_\_\_\_

NO \_\_\_\_\_

If your answer to question 2 is YES, please answer question 3. If your answer to question 2 is NO, skip question 3 and answer question 4.

3. State the percentage of any negligence, which was a legal cause of damage to plaintiff, that you charge to:

Defendant \_\_\_\_\_ %

Plaintiff \_\_\_\_\_ %

Total must be 100%

Please answer question 4.

4. What is the total amount (100%) of any damages sustained by plaintiff and caused by the incident in question?

Total damages of plaintiff \$ \_\_\_\_\_

In determining the total amount of damages, do not make any reduction because of the negligence, if any, of plaintiff. If you have found plaintiff negligent in any degree, the court in entering judgment will reduce plaintiff's total amount of damages (100%) by the percentage of negligence which you found is chargeable to plaintiff.

SO SAY WE ALL this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
FOREMAN OR FOREWOMAN

## **CHAPTER EIGHT**

### **GETTING PAID**

- 1. The Judgment**
- 2. How to Collect**





## CHAPTER EIGHT

### GETTING PAID

John is reassured. His lawyer knows what he's doing and John knows it, too. He is confident that a fair judgment will be the result of his trial. However, how can he be sure that the defendant will pay him? The lawyer explains the procedures that lead to getting paid — at last.

#### The Judgment

Based on the verdict, a Judgment is entered at the conclusion of the trial. If the defendant has won, the Judgment reads as follows:

### FINAL JUDGMENT FOR DEFENDANT JURY ACTION FOR DAMAGES

#### Final Judgment

Pursuant to the verdict rendered in this action

IT IS ADJUDGED that plaintiff, \_\_\_\_\_, take nothing by this action and that defendant, \_\_\_\_\_, go hence without day and recover his costs from plaintiff in the sum of \$ \_\_\_\_\_ for which let execution issue.

ORDERED at \_\_\_\_\_, Florida on \_\_\_\_\_,  
19\_\_\_\_.

\_\_\_\_\_  
JUDGE

If the plaintiff wins, the Judgment reads like this:

**FINAL JUDGMENT FOR PLAINTIFF  
ACTION FOR DAMAGES**

**Final Judgment**

Pursuant to the verdict rendered in this action

IT IS ADJUDGED that plaintiff, \_\_\_\_\_, recover  
from defendant, \_\_\_\_\_, the sum of \$ \_\_\_\_\_  
with his costs in the sum of \$ \_\_\_\_\_, for which let execution issue.

ORDERED in \_\_\_\_\_, Florida on \_\_\_\_\_,  
19 \_\_\_\_\_.

\_\_\_\_\_  
JUDGE

**In either case, the losing party must pay the reasonable and necessary costs of the other party.** The costs included are those for:

1. filing the law suit
2. taking depositions
3. subpoenaing witnesses for depositions and for trial
4. preparing exhibits
5. travel for witnesses
6. other expenses related to the trial of the action.

At a separate hearing, a judge determines which costs are allowed and then a judgment is entered accordingly. After this judgment is entered, the losing party has a set number of days in which to file an appeal. **If the plaintiff has won a judgment against the defendant, and the defendant appeals, he can only prevent the judgment from being collected by filing a bond.** This amount is usually set by the judge to prevent the collection of the judgment. If an appeal is not taken or if the bond is not put up, then the judgment can be collected.

In most cases, the insurance company will pay the judgment. In turn, the plaintiff or his attorney will sign a Satisfaction of Judgment as shown on the following page.

All this is clear to John. However, he is still worried. What if the defendant simply does not pay? His lawyer tells him that there are steps to collect the Judgment.

### **How to Collect**

The first thing to do when the defendant does not pay is to take a Garnishment Action. The plaintiff (John) sues a third party that owes money to the defendant (the Camaro driver). For example, the Camaro driver may have a bank account. If so, John's lawyer can file a garnishment against the bank account and the bank will be required to pay the amount requested. John may also garnish the wages of the defendant at his place of employment. Many statutes limit the amount of money that can be garnished from an employer, but the process of garnishment still remains the same.

In addition to the garnishment, the plaintiff can execute. That is, the plaintiff can locate the defendant's assets by having the defendant render a deposition. The Sheriff is then ordered to pick up those assets mentioned in the sworn deposition and sell them.

**Yet another method of collection is to record the judgment where the defendant has property.** Let's say that the Camaro driver owns a two-acre lot in the downtown district. If he puts it up for sale, the prospective buyer will have to check court records in order to make sure that there is a clear title to the property. Of course, the title will not be clear, and the Camaro driver will not be able to sell his lot without clearing the lien.

John breathes a little easier now. He knows that the Camaro driver owns property and that very probably a judgment will be made in his favor. However, what would have happened if the Camaro driver had had inadequate or no insurance coverage and little or no assets? Collection would have been very difficult. This is why it is important to have uninsured motorist's coverage.

In order to avoid payment, the Camaro driver could make gifts of property and money to his children. There are other steps to hide assets, some of which are difficult to trace. The results of bad-faith moves like these lead to more litigation and are extremely time consuming. At times, a judgment is worth little more than the paper it is written upon.

Since the attorney determined through investigation the assets belonging to the Camaro driver, however, it would not be that easy to

**SATISFACTION OF JUDGMENT**

**SATISFACTION OF FINAL JUDGMENT**

THIS SATISFACTION of Final Judgment, executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, by Charles R. Lipcon, Attorney of record for Plaintiff, in the above-entitled cause.

**WITNESSETH**

That the Final Judgment entered herein on \_\_\_\_\_ in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, against Defendant in the amount of \$ \_\_\_\_\_ together with interest, has been paid and satisfied in full and the Clerk of said Court is hereby directed to file this instrument as evidence of full payment and satisfaction of said Final Judgment.

IN WITNESS WHEREOF, Charles R. Lipcon, Attorney of record for Plaintiff, has set his hand and seal at Miami, Dade County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Charles R. Lipcon

STATE OF FLORIDA    } SS  
                              }  
COUNTY OF DADE    }

Charles R. Lipcon being duly sworn, deposes and says that he is Attorney of record for Plaintiff; that he has executed the foregoing Satisfaction of Final Judgment on behalf of the Plaintiff; and that he acknowledges that he executed the same freely and voluntarily for the uses and purposes therein expressed.

\_\_\_\_\_  
Charles R. Lipcon

Sworn to and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_\_.

NOTARY PUBLIC, STATE OF  
FLORIDA AT LARGE

\_\_\_\_\_

hide their existence. In the end, John knows that his chances are strong: he will win the case and he will collect.

Part of the reason for this success was his level-headedness at the scene of the accident; part was the knowledge and experience of the lawyer John chose. Together, they will be able to present clear evidence of the Camaro driver's fault and degree of responsibility in paying for the expenses of John, Olivia, and their children.

## CONCLUSION

The purpose of this book has been to inform the reader of what action an attorney will take on behalf of an auto accident victim. With this knowledge the victim will be in a better position to help himself. Although our fictional victims, John and his family, were involved in an auto accident, the information and principles included in this book apply equally well to the victims of other accidents such as:

- failure of a product
- airplane crash
- boating accident
- slip and fall accident
- any other type of injury due to accident.

For the attorney to be at his best, **the client must consider himself the attorney's ally and team member.** It is extremely important to cooperate fully with the attorney and to provide him with all relevant information. By the same token, once this communication is conveyed, the lawyer should be given leeway to do his work. A surgeon cannot operate if he has to explain each step of the procedure to his patient while the surgery is going on. By the same token, the lawyer cannot realistically be expected to report his actions every day to his client.

I hope that this book will fill the information gap between an attorney and those clients who have been accident victims. If the client is more knowledgeable about the proceedings, he will be in a position to ask informed questions.

As statistics show, most of us will be the victims of an auto accident. If you already are or have been one, best wishes on your recovery from the physical, emotional, and legal points of view. In any case, after reading this book you should now be better prepared to deal with what lies ahead. If so, my intent has been fulfilled.

**Good luck and safe driving.**



**“It is impossible to escape at least one auto accident — even if it’s just a fender-bender — during a lifetime.”** —Charles Lipcon, Attorney

CHARLES R. LIPCON is one of the nation’s leading trial attorneys specializing in personal injury and wrongful death claims. Mr. Lipcon has handled a number of large cases throughout the United States including suits filed by the passengers of a major cruise ship line; suits filed by the families of victim’s involved in the Ocean Ranger oil rig collapse; and numerous cases resulting in \$1 million plus awards or settlements. A record judgment totalling \$25.8 million, awarded to a client of Mr. Lipcon by a Houston, Texas federal judge, represents the largest judgment of its type ever awarded. Mr. Lipcon practices law and makes his home in Miami, Florida.



**HELP FOR THE AUTO ACCIDENT VICTIM** is specially designed to increase your awareness and help you be better prepared in case of an auto accident.

**Discover how to:**

- record the appropriate facts at the scene of an accident
- fill out forms with the proper responses
- survive doctors, lawyers, hospitals and insurance companies
- choose the best insurance coverage
- select a lawyer
- conduct yourself during a trial
- ensure that you get paid.

ISBN 0-932557-00-7

**You can help protect your legal rights and assist your lawyer by following the simple procedures outlined in this book.**