Holding Wrongdoers ACCOUNTABLE

Avoiding Mistakes that Can Ruin Your Texas Accident Claim

Brooks Schuelke ▪ Mark Perlmutter

Holding Wrongdoers ACCOUNTABLE

■ Avoiding Mistakes that Can Ruin Your Texas Accident Claim

Perlmutter & Schuelke, LLP
1717 W. 6th Street
Suite 375
Austin, Texas 78703-4868

Telephone: 512-476-4944
Fax: 512-476-6218
www.civtrial.com

Printed in the United States of America.

ISBN: 978-1-59571-489-3

Designed and published by

Word Association Publishers
205 Fifth Avenue
Tarentum, Pennsylvania 15084

www.wordassociation.com
1.800.827.7903

Table of Contents

Introduction

You have entered a minefield and you need a map to get out.

We are tired of seeing and hearing about insurance companies and lawyers taking advantage of injured persons. People who are injured by others, or who lose a loved one who is injured by someone else, are physically and emotionally vulnerable. They also often face financial pressures, being unable to work or concerned about paying medical expenses. They should be able to focus on healing and recovering. Instead, an injured or bereaved person faces a bewildering process of claims, insurance companies, and lawsuits—where vultures lurk around every turn.

A decade ago, insurance adjusters and lawyers were often able to work together to come up with fair values to resolve claims. That's history. Today, the insurance companies have made strategic decisions to try to maximize their profits by minimizing what they pay injury victims. Insurance adjusters are well trained, and they know their job is to pay an injured person as little as possible. They'll use any advantage they can get—even misusing innocent mistakes—to minimize their payouts.

Accident victims are sometimes shocked by how far insurance companies will go. For example, a couple of years ago, a couple made a claim against Progressive Insurance, their own insurance company. To minimize what it had to pay, Progressive hired a private investigator "couple" to join the victims' church and talk their way into the victims' private support sessions. That way, the investigators would have access to the victims' most confidential

thoughts and information. While this situation was extreme, it does show the mindset of many insurance adjusters.

At the same time, injury victims are seeing increasing threats from unethical lawyers and medical providers. The last few years have seen a rise of undercover stories and lawsuits about lawyers, sometimes working through chiropractors, illegally soliciting personal injury clients. The problem is so big that the Texas Trial Lawyers' Association, the state's largest organization of plaintiffs' lawyers (of which we are active members), has spent a lot of time and money lobbying the governor and the legislature, trying to toughen these laws.

We have also seen a rise in lawyers (often those who advertise on TV or in the Yellow Pages) who want to run a volume practice. They may try to represent as many clients as possible, and settle claims as early as possible even when it isn't in the client's best interest. If it becomes obvious that they cannot easily settle the claims, these lawyers will often fire the clients.

Unfortunately, the problem extends to some in the medical community. For example, in 2004, a large insurance company pursued a fraud lawsuit against one of Texas's largest chiropractic chains. The suit alleged that the chiropractors conspired with doctors and others to churn up medical expenses for injury victims, which were eventually paid by the insurance company.

So what's a person to do? How is a person supposed to focus on healing and getting back on his or her feet while battling insurance adjusters and worrying about avoiding problem lawyers and medical providers? We think the best way for personal injury victims to protect themselves from becoming victims for a second time is to arm themselves with information. And that's why we wrote this book.

This book isn't designed to be a legal book for lawyers. Instead, the book is a consumer guide with easy-to-read information. We have done our best to avoid "legalese" and to provide information that will help injured persons navigate the treacherous waters they now face.

The information in this book works best in conjunction with advice from a good personal injury lawyer. When you are pursuing your claim, the insurance company is going to fight tooth and nail against you. They may argue that the accident wasn't their insured's fault, that you can't be hurt in a low-impact collision or a "minor" fall, that you haven't lost the income you have, or that you're exaggerating your injuries. A good personal injury lawyer can deal with most of these claims. A good personal injury lawyer knows the keys to proving the true cause of the accident. A good personal injury lawyer knows the science of establishing that the injuries you sustain are unrelated to the physical damage of a car. A good personal injury lawyer knows proven tactics to rebut claims that you're exaggerating your injuries. A good personal injury lawyer knows how to discredit the doctor that the insurance company will hire to say you're not hurt. In most cases, a good personal injury lawyer is critical to your success. But all of that is for another book.

Most of the information in this book is about you; it's an effort to help you avoid making innocent mistakes that could destroy your claim.

This book is not legal advice. It is only general information. Each case is different. We can only agree to be your lawyers and provide you legal advice after we have met with you and we have a written agreement indicating that we have agreed to represent you and you have agreed to hire us.

Holding Wrongdoers ACCOUNTABLE

■ Avoiding Mistakes that Can Ruin Your Texas Accident Claim

Brooks Schuelke ■ Mark Perlmutter

WORD ASSOCIATION PUBLISHERS
www.wordassociation.com
1.800.827.7903

1. The Top 10 Myths about Personal Injury Claims

1. You will know how badly you are hurt immediately after your accident.

2. The insurance adjuster will be on your side.

3. The insurance adjuster will provide a reasonable settlement offer in an attempt to resolve your claim.

4. You have to give the insurance adjuster a medical release allowing the company to obtain all of your medical records.

5. You have to give the insurance adjuster a recorded statement.

6. You need a lawyer in all personal injury claims.

7. All lawyers are equal.

8. You should compare your case to your neighbor's, friend's or brother's case.

9. You have won the lottery by being involved in an accident.

10. You're "automatically" entitled to a recovery of a multiple of your doctor bills and lost wages.

2. Basics of Texas Personal Injury & Wrongful Death Claims

Before you read this chapter, be aware that it's the most technical chapter in the book. If you don't want to read it, you can skip it. This information is not critical to avoiding many of the mistakes outlined in the book. But, if you're one of those people who wants to know details about your claim, this chapter is for you.

When you are injured by the negligence or carelessness of others, you may have a personal injury claim. These claims may arise from any number of situations. A personal injury claim may be based on injuries caused by a car, motorcycle or trucking wreck, a doctor's negligence, an on-the-job injury, a defective product or drug, or dangerous premises. While there are some general principles, many of these types of cases have their own special rules.

General Negligence Claims

The most common type of Texas personal injury claim is a negligence claim. Almost all personal injury claims, including all car, motorcycle and trucking wreck cases, have some component of negligence. To win, an injured person must prove four things: (1) the defendant owed the plaintiff a duty of care; (2) the defendant failed to meet the standard of care; (3) the defendant's failure caused injuries, which were foreseeable; and (4) the amount of damages.

Duty and Breach

Defendants often admit that they have a duty not to injure others. As a result, the first hurdle most injured parties face is proving that the defendant was negligent—that is, the defendant failed to meet the standard of care. To do this, the injured person must prove that the defendant failed to take some action that a reasonable person would have taken or that the defendant took some action that a reasonable person would not have taken.

For example, in a car wreck case, an injured person must prove that the defendant violated one of the rules of the road, such as running a red light, following too closely, or speeding. Similarly, in a case involving a defective product, an injured person may prove the manufacturer failed to do testing or failed to include safety devices that would have been included by an ordinarily prudent manufacturer.

Causation

An injured person must then prove the injuries were the result of the defendant's conduct, that but for the defendant's conduct, the injuries would not have occurred. If, for example, another event caused some or all of the injury, or if some of the injuries preexisted the defendant's conduct, it will be hard to win.

The injured party must also prove that a reasonable person would have foreseen that the defendant's conduct might have caused the plaintiff's injury, or some similar injury. In Texas law, the test is usually whether the damages are too remote from the original event. For example, in one significant case, a defective product caused a fire at a job site. After the fire department put out the fire, an employee came back to the job and slipped on the foam sprayed by firefighters. The Texas court decided that the damages were too

remote. While a person might have foreseen that a person could have been injured in the fire itself, the court held that a person would not have expected for the employee to make it through the fire, but then slip on foam that was left behind by firefighters.

Damages

Injured parties must prove what damages they sustained as a result of the defendant's conduct. Personal injury damages are examined in more detail in another chapter of this book.

Comparative Fault

A defense often asserted by defendants is comparative fault, or that the incident was also caused by the injured person's conduct. For example, two parties to a car wreck may disagree on who caused the wreck. In cases where the defendant claims the injured person caused part of the damage, Texas law requires the jury to give each party a percentage of responsibility. The injured party's award is then reduced by the percentage of his fault.

For example, if a jury awards an injured party $100,000, but determines that both the injured party and the defendant were 50% responsible, the injured party only recovers $50,000. However, if the jury determines that the injured party is more than 50% responsible, the injured party is not allowed to recover any damages.

Texas Medical Malpractice Claims

Most Texas medical malpractice claims are governed by general negligence principles, but the claims also have their own set of rules and problems. In a medical negligence claim, the injured party must prove that the doctor or hospital failed to use the

degree of care that an ordinarily prudent doctor or hospital would have used under similar circumstances. To prove this, the injured party must produce testimony from another physician establishing the standard of care and describing how the defendant doctor's conduct fell below the standard.

Once it is proved that the doctor was negligent, the injured parties must prove that they would have been better without the negligence. For example, if a patient in the early stages of breast cancer visits a doctor who fails to diagnose the disease, then the patient would be harmed if she could have received effective treatment. On the other hand, if a patient with fully developed breast cancer visits a doctor who fails to diagnose the disease, then the patient may not be harmed because the doctor could not have done anything about the disease at that late date.

Medical malpractice cases are very expensive to pursue because attorneys must hire doctors to testify that a given doctor was negligent and that the negligence caused harm. At our firm, while we typically front these expenses, we are reimbursed by our clients out of settlement proceeds. Therefore, it is important to make sure that the injuries are serious enough to warrant a recovery over and above these expenses.

Texas On-the-Job Injury Claims

Texas on-the-job injuries are governed by the Texas worker's compensation statute. If an employer maintains qualified worker's compensation insurance, an injured employee is allowed to pursue a worker's compensation claim, but is not allowed to sue the employer unless the employer's gross negligence causes the worker's death. The employee is, however, entitled to sue third parties who have negligently caused the on-the-job injury. For example, an employee may be injured in a scaffolding collapse. The victim may think that the scaffolding company is at fault for the

way the scaffolding was set up, but also think that his employer is at fault for not providing a proper safety harness. If the employer has workers' compensation insurance, the employee may sue the scaffolding company, but he may not sue his employer.

If an employer does not maintain worker's compensation insurance, then an employee may sue the employer, and the employer forfeits his comparative responsibility defense. As a result, if an employee can prove that his employer's negligence caused any part of the incident, even one percent, then the employer is liable for the full amount of damages sustained by the employee.

Texas Defective Product Claims

The primary causes of action pursued by persons injured by defective products are negligence, breach of warranty claims, and strict liability claims.

Defective Product Claims: Negligence

The negligence claims are based on the principles described above. Negligence claims may only be brought against the company that engaged in the negligent conduct. For example, if the manufacturer made an error in assembling the product, then a recovery may not be obtained from the suppliers or company that sold the injured person the product.

Defective Product Claims: Strict Liability

An injured person may also pursue strict liability claims against a product manufacturer, seller, and any distributors that sold the particular product if the person can prove there was a manufacturing defect, design defect, or a marketing defect in the product.

A manufacturing defect occurs when the product does not work as it was designed to work. For example, a person may have a claim against a car manufacturer if the brakes or seat belts fail to work properly. In these cases, the injured person must prove the defect makes the product more dangerous than an ordinary person would expect the product to be. To prevail against any particular defendant, the injured person must show the defect existed when it left the hands of the defendant.

A design defect occurs when the product was made correctly according to its design, but the design itself is unreasonably dangerous. For example, cars designed with gas tanks in the rear may explode in a common rear-end collision. For an injured person to prevail on a design defect case, the person must prove that a safer alternative design would have prevented or significantly reduced the chance of injury and was economically and technologically feasible at the time the product was manufactured.

A marketing defect occurs when a manufacturer or seller fails to give adequate warning of the product's known dangers or when the manufacturer fails to give adequate instructions to avoid dangerous uses of the product.

Defective Product Claims: Breach of Warranty

When a product is sold, there may be implied warranties and express warranties related to the sale. Generally, when a product is sold, a seller gives an implied warranty that the product is fit for its ordinary use. Additionally, if a buyer tells the seller why he needs a product and the buyer relies on the seller to pick a suitable product for the buyer's need, then the seller is giving an implied warranty that the product is fit for that purpose. Each of these

implied warranties may be subject to modification or disclaimer in the contract.

A seller or manufacturer may also give an express warranty by making representations about the quality or benefits of a product.

If a person is injured because a product did not live up to these warranties, that person may have a claim for injuries caused by those shortcomings.

3. What Is Your Personal Injury or Wrongful Death Claim Worth?

Understandably, one of the most popular questions we receive from clients is, "What is my claim worth?" Unfortunately, there is no formula that can be used early in a case to determine what a case is worth. And because there are a number of factors that need to be considered when valuing a case, we likely will not be able to give you an answer on ranges of value until the case is developed.

The first thing to consider is whether the other side is clearly at fault. If the defendant was clearly wrong (the defendant ran a red light and ten witnesses were there to vouch for you) then the case will be worth more than a case with questionable liability (there is a swearing match between you and the defendant over who ran the red light and there are no witnesses to help answer the question).

The second major factor is damages. In Texas, personal injury victims may generally seek to recover the following damages, if applicable:

- Medical expenses (past and future);
- Lost wages or loss of earning capacity (past and future);
- Pain and mental anguish (past and future);
- Physical impairment (past and future); and
- Disfigurement (past and future).

Obviously, the more damages you have in each of these categories, the more the claim is worth.

There are other factors to consider when valuing a case. Did you have pre-existing injuries? Were you involved in any other incidents that the insurance adjuster and lawyer can claim caused the injuries? What is the reputation of your doctors and how willing are they to cooperate in the case? How much insurance is available? How credible are all the parties? Did you make any of the mistakes outlined in this book?

Many times, the answers to these questions are not known until we have had a substantial time to investigate the case. So, while we would like to be able to give a value for claims early, please know that any attorney giving you an early value of a case is doing you a disservice.

Having said all that, knowing the value of your case is one of the most important reasons to hire a lawyer. Not having taken cases to trial, non-lawyers simply don't know the value of their claims, and without that experience it is difficult, if not impossible, for them to know if a settlement offer is fair. At the end of the day, experienced personal injury lawyers will be able to evaluate the facts of your case and determine a range of likely outcomes, allowing you to know whether any settlement offer is reasonable.

4. Mistake Number 1

Hiring a Lawyer When You Don't Need One

What is our first "secret" about personal injury claims? You may not need a lawyer for a small personal injury case.

We know that obtaining a fair recovery is of utmost importance to our clients. In many small cases, a victim may end up with as much or more money by not hiring an attorney. Why is that? While studies show that victims who are represented by attorneys receive higher settlements (with one insurance-industry-funded study finding that those hiring attorneys received on average three and a half times more money in settlements than those not hiring attorneys), in small cases that increased amount is not enough to offset the expenses and attorneys' fees that a victim would incur by hiring a lawyer.

What is a "small" case? While these cases vary greatly, generally, you may not need an attorney for a claim that involves little, if any, property damage, very minor injuries, and medical bills less than one or two thousand dollars. In many of those situations, you may be able to do better by resolving your case on your own. But be warned, many people injured in accidents believe that they have not been injured or that they have healed, and their injuries turn out to be much more severe than originally thought. Those situations may include back or neck pain that lingers on or even undiagnosed closed-head injuries.

Insurance adjusters take advantage of these situations. They call injury victims immediately after a wreck and offer to settle the claim for some small amount. The insurance adjusters hope that the injured persons will settle their claim before they know the true extent of their injuries.

As a result, we recommend that all those injured in accidents seek at least some minimal advice from a lawyer. Take advantage of an attorney's offer for a free consultation to make sure your type of case is not one of those "small" cases, but in fact one where you can make a serious mistake by trying to resolve it yourself.

5. Mistake Number 2

Hiring the Wrong Lawyer

In any case, the lawyer you hire will obviously have a huge impact, and hiring the right lawyer is even more important in personal injury cases. Unlike a business case, where the opposing party may or may not know your lawyer, insurance companies keep databases on personal injury lawyers. The insurance companies know which lawyers are not up to date on the law, which lawyers settle cases too cheaply, or which lawyers are unwilling to file suit and proceed with litigation. All of that history affects the value of your case, and you probably don't even know it.

So what are you supposed to do? There are a few guidelines that we think will help you make sure that you hire the right attorney for your case.

1. Make sure your attorney regularly practices personal injury law.

This is important for two reasons. First, as mentioned above, insurance companies know the attorneys in Texas who regularly practice personal injury law. By hiring a lawyer that the insurance companies do not respect, you are compromising the value of your claim.

Additionally, personal injury law is very specialized. There are many hot issues where the law is changing on a monthly basis. It

is unlikely that a lawyer who doesn't practice personal injury law on a daily basis can keep up with all of these changes.

One of the best ways to know if your potential lawyer regularly practices personal injury law and stays up to date on the law is to ask if he or she is a member of the Texas Trial Lawyers' Association. The Texas Trial Lawyers' Association is the largest group of personal injury lawyers in the state. There are two important things about the association. First, it is one of the only groups that actively participates in the legislative process to protect accident victims' rights. Second, it leads the way, through continuing education and an active list serve, in keeping its members up to date on changes in the law. As active members of the association, we are proud to have helped educate lawyers around the state on various personal injury matters.

2. Make sure your attorney regularly represents accident victims.

In many cases, particularly when the injuries are severe, lawyers who traditionally represent insurance companies or big businesses believe they can adequately represent accident victims. In many cases, this is a huge mistake. While these lawyers may be better than those with no personal injury experience, many still do not know how to properly pursue a case on behalf of an accident victim.

We can talk about this from our own experience. Over the years, we have had cases where clients came to us and asked us to take over cases or help with cases in which they had previously been represented by lawyers who normally represent insurance companies or big businesses. Invariably, we have had to come in and try to clean up some of the messes created by the other lawyers.

3. Find out who in the office will be working on the case.

In many situations, accident victims hire an attorney, and that's the last time they see or speak to the attorney. We're not like that. While we do have paralegals on staff, who help with our cases, the attorneys are actively involved, and we will work with you throughout the case. We return our own calls and answer our e-mails, all in a timely manner.

4. Ask the attorney how he or she will keep you informed about the case.

The number one complaint about lawyers is lack of communication. Yet, communication between you and your attorney is vital not only to your peace of mind, but also to your case. In our office, we typically ask clients what method of communication they prefer, and then we try to tailor our services to meet those needs.

5. Beware of attorneys (and medical providers) who actively solicit you.

In general, if a lawyer or chiropractor or other medical provider is actively contacting you before a case, you might want to consider other options.

6. Make sure you get along with your attorney.

For your case to be successful, you will have to work closely with your attorneys and their staff. The lawsuit business can be an unpleasant one, but you want the process to be as painless as possible—so make sure you like the attorney you eventually hire.

6. Mistake Number 3

Settling the Claim Too Early

Brooks recently had a case with a client who had longstanding shoulder problems. The client thought the problems were minor, and she thought she was just going to have to live with them. The client wanted to settle the case and be done with it. But Brooks had doubts. Something was wrong with the shoulder, and he wasn't comfortable resolving the case at that time. At Brooks's urging, the client sought a second opinion from an orthopedist, and sure enough, she needed an additional surgery.

We often tell clients that the biggest mistake they can make in their personal injury claim is to settle the case too soon. As we mentioned in "Mistake Number 1," many clients think they either have minor injuries or think they are healed, when they are not. The most common forms of these problems are the nagging injuries that turn out to be more serious than thought, or the undiagnosed head injuries.

You only have one shot at making your claim. If you settle the case too soon, and it does turn out that your injuries are worse than originally thought, you're out of luck.

Insurance adjusters know that. One more frequently used tactic is the "swoop and settle." Insurance adjusters frequently go to accident victims' homes immediately following accidents. There, the adjusters persuade the accident victims to settle their claims

before the victims have an opportunity to know the true extent of their injuries.

One example of the "swoop and settle" is the way Progressive Insurance Company is handling many claims. When the victims take their cars in to have them appraised by Progressive (usually within a few days of the wreck), the adjusters also ask for a personal injury release. The agreement provides that Progressive will pay up to $5,000 of medical expenses incurred up to the date of the agreement, up to $3,000 for medical expenses incurred within 90 days following the collision, and $1,000 to the victim. And some people are signing it.

Don't make this mistake. While most people are anxious to settle claims and have the process resolved, you also want to know that the insurance adjuster is not taking advantage of you. There is just no way to know, within a few days of the wreck, whether an offer like that is fair. It might be okay for some, but for most people, if they have even minor injuries, this settlement is woefully inadequate.

Make sure that you aren't a victim of these tactics and that you don't settle your claim until you are confident that you know the full extent of your injuries and the full course of treatment that you will require.

7. Mistake Number 4

Failing to Contact the Police or Gather Information at the Scene

You're in a wreck after another driver ran a red light. The driver comes over and apologizes, tells you it was his fault, and asks if you're okay. You're shocked by the whole situation so you say, "Yes." You and the other driver decide to exchange insurance information, and you don't call the police.

As the days progress, you determine that you are, in fact, hurt. You make a claim, and you expect it will be easy to resolve because the other driver admitted fault. But something happens. Once the claim is filed, the other driver isn't so sure he had the red light. In fact, he thinks you did. Now, it's almost impossible to resolve the claim.

This situation plays itself out daily. Thus, it's important to call the police and have them prepare an accident report. While the police occasionally make errors in their reports, the findings in the report, including any statements made by the other driver, are often critical in allowing accident victims to resolve their claims.

But don't just rely on the police. If you are able, document the scene yourself. What do we mean? If it's a car wreck, take a couple of quick pictures before the car is moved (most cell phones today have cameras that are capable of this). Document the location of the cars and any debris in the road. If it's not a car wreck, get other relevant photos of the scene. Additionally, if a witness saw what happened, get the witness's contact information. (You can't

imagine how many clients tell us there was a witness who told our client that he gave his name to the officer, but whose name doesn't show up in the police report, meaning the witness is probably lost forever.) Many phones today have recording devices. You might even be able to get the witnesses to give you their names and numbers and a quick statement about what happened.

Taking these steps may have a significant effect on your claim.

8. Mistake Number 5

Providing Too Much Information to the Adjuster

Almost immediately after an accident, you're going to receive a phone call, and the adjuster or investigator will pleasantly ask for a "recorded statement." Be cautious. **The insurance adjuster's goal is to have you make a statement that is going to hurt your case.**

The adjuster is going to ask you to identify all your injuries. As mentioned earlier, many people don't realize the full extent of their injuries until well after the wreck. Additionally, right after the wreck, you may be on pain medications that are masking some pain or injuries. Because of these factors, most people giving recorded statements fail to give a complete list of injuries. And when the claim is made, the insurance adjuster will try to use the fact that you are claiming injuries you didn't originally identify in the recorded statement to argue that you are exaggerating your claims.

Similarly, the insurance adjuster may ask you to sign a medical release allowing the company to obtain your medical records. They will use that to try and find any small mention of any problem in your records before the accident so that they can argue that you weren't hurt in the accident, but that you had a pre-existing condition.

So what do you do? Be polite, but tell the adjuster that you are not comfortable providing a statement or providing them access to your private records. Also, ask the adjuster to provide his or her

contact information and claim number and give that information to your lawyer. If you have already hired a lawyer, ask the adjuster to address all future communication to your lawyer.

9. Mistake Number 6

Not Being Honest with Your Attorney

Keeping secrets from your lawyer is dangerous. Being in a lawsuit is like running for president: if you have skeletons in your closet, the insurance adjuster or insurance lawyer will find them. Once the claim is filed, the insurance adjusters and lawyers will do their best to obtain all of your past medical records; they will hunt down your criminal record; they will get records of your previous accidents; and they might even have an investigator follow you around. They will find your skeletons.

Someone once said there are no problems with lawsuits, only issues. If you are honest with your lawyers, we can deal with those issues. But if you are not honest, and you try to hide secrets, those issues become problems.

For example, a client might have been involved in a prior accident ten years before the accident in question. Not thinking that it was important, the client might not tell the lawyer about it and might not tell the other side about it when asked. The client was partially right that it wasn't very important, but it became important when it was hidden. Because it was so old, if he or she had told the lawyer about it, the lawyer would have been able to deal with it. But by hiding it and not being truthful about it when asked, the client is made to look like a liar. This type of mistake, which can be easily avoided, can destroy the value of a claim.

10. Mistake Number 7

Not Documenting Your Injuries and Losses

Everyone knows the expression, "a picture is worth a thousand words." The same holds true with lawsuits. All things being equal, clients who document their injuries end up with better results.

Start off by documenting with photos. If you have any fractures, bruising, or any other visible injuries, take photos of them. Similarly, photograph any limitations you have. If you are confined to a wheelchair or have to use a cane, photograph that. The insurance adjuster and lawyer may have one hundred files on their desks, and those photos help your claim stand out from every other claim. Those photos also become even more valuable if we go to trial.

Similarly, ask your attorney about documenting the case with a diary. Jot down daily notes about the pain and discomfort you feel, work activities you can and cannot do, limitations on your personal activities (sports, hobbies, household chores, etc.) and how the injuries affect your relationship with others. It could be months or years before your case reaches conclusion, and your notes will be a much better reflection of what happened than what you try to remember much later. But a word of caution: address the diary to your lawyer to preserve the attorney-client relationship. Otherwise, the other side may be entitled to read your diary.

Also, if you are married, have your spouse keep a similar diary. People have a tendency to downplay their own pain, but spouses or significant others see the true pain. For example, Brooks had knee surgery several years ago. If you ask him about it, he doesn't remember it being that bad. If you ask his wife, she remembers a lot of pain and a lot of Brooks's complaints.

11. Mistake Number 8

Not Seeking Timely Medical Treatment

There are many injured people who don't like to go to the doctor. Some are scared of doctors. Some don't want to sit around in the emergency room for an hour (or more). Some don't want to miss work or otherwise be inconvenienced. Such excuses will kill your claim.

In the real world, people are revered for toughing it out. But that's not the case in the personal injury world. Jurors are already suspicious of people making claims. If you don't seek treatment until a week or two after an accident, it will be difficult, if not impossible, to prevail. The jury will ask, "How hurt could they be if they didn't even go to the doctor?"

If you think you are hurt, go to the emergency room or follow up with your family doctor as soon as possible. Not only is it critical for your claim, but it is also good for your health. Your medical professionals will have experience with treating people in accidents, and the sooner they can start helping you, the better your recovery will be.

12. Mistake Number 9

Trying to Seek Too Much Treatment

The corollary to mistake number 8 is that you shouldn't seek too much treatment. Some injured victims (and even some medical professionals) think they can game the system by seeking a lot of medical treatment.

Such tactics almost always end up hurting the injury victim. Insurance adjusters, lawyers, and juries are often able to determine when a patient is "over-treating." The result is that the injured person loses all credibility. This decreases the settlement value and jury award of a case. And to make matters worse, injury victims now have more medical bills to re-pay out of their lower settlement or jury award.

13. Mistake Number 10

Not Being Honest with Your Doctor

Many personal injury cases are ruined because patients don't tell their doctors everything. This usually happens in two ways. The patient may not want to be a complainer so he or she will tell the doctor that the injuries are not that bad or will try to downplay the significance of their accident. You can imagine how insurance adjusters and attorneys are able to use such statements to minimize your claims.

Alternatively, many patients may not tell their doctors about prior injuries or accidents. The patient may do this to hide the facts or may do it inadvertently by thinking that the injuries or accidents were not relevant. Again, this is another thing that will hurt your credibility and your claim. But it will also hurt your credibility with your doctor. At trial, a key part of your case is often your doctor's testimony that the incident caused your injuries. You can imagine what the doctor and the jury will think when the other side can follow that up with, "Well Doctor, did Mr. Smith tell you that he was involved in a car wreck three years before this accident?"

"No."

"Did Mr. Smith tell you he slipped and fell while on the job two years before this accident?"

"No."

"Did Mr. Smith tell you that he also experienced low back pain as a result of those incidents?"

"No."

Just remember: the other side will find out about your prior injuries and accidents. You need to disclose all of these events, even if you think they're irrelevant, to your physicians.

14. Mistake Number 11

Not Telling Your Doctor Everything about Your Injuries

One of the most important parts of your case will be your medical records. Insurance companies have been very successful at selling their "tort reform" snake oil to potential jurors, and your jurors will start off doubting your claims. If you go to trial and try to tell the jury that you have injuries that are not documented in your records, you will have a difficult time.

Most personal injury victims are not whiners. In fact, people often understate their injuries and pain. They may not tell their physicians about all areas of the body that have pain or they may not tell their doctors about the degree of pain. This not only makes it difficult for your physician to provide accurate care, but it will ruin your case.

You do not need to whine to your doctor, but you do need to make sure that you tell your medical providers about the full extent of your injuries and your pain.

One problem that occurs in serious, multiple injury cases is the tendency to focus on the most serious injury to the exclusion of lesser but nevertheless significant injuries. For example, if someone suffers a compound leg fracture with excruciating pain and also has some significant, but less severe neck pain, the person might fail to mention the neck pain until it becomes paramount—when the leg begins to heal. This omission from immediate post-

treatment records will enable the insurance adjuster to claim the neck problems were unrelated.

Similarly, if your injuries are limiting your activities, make sure you tell your physician about those limitations so that the limitations are documented in your medical records.

When Brooks had kids, one thing his pediatrician asked him to do was make a list of questions before appointments, so that nothing was forgotten. You can do the same thing. Before appointments, make a list of complaints and limitations. Then you can review those shortly before your appointment or refer to them when asked. These tactics will help make sure that your medical records accurately state your condition.

15. Mistake Number 12

Not Following Your Doctor's Advice

Failure to follow your doctor's advice can be fatal to your case. If your doctor tells you to take medication, take the medication. If your doctor tells you to attend physical therapy, attend physical therapy. If your doctor asks you to follow up, follow up.

We know injured victims often think they have good excuses for not following their doctor's advice, but you need to do everything you can to do the things your doctor asks you to do.

The easiest argument an insurance adjuster can make is, "How can the plaintiff be hurt; he didn't take his medications like his doctor told him?" or, "The plaintiff can't be hurt; the doctor told him to follow up if necessary, and he never followed up." Follow your doctor's advice so that you are not victimized by these arguments.

16. Mistake Number 13

Discussing Your Lawsuit with Your Doctor

It is not necessary to discuss your claim or lawsuit with your doctor. Your doctor needs to be focused on your injuries and providing the medical care necessary to help you recover.

Additionally, it might also harm your case. Many doctors don't want to be involved in lawsuits, and they will not provide treatment if they know you might be pursuing litigation. And even many of those who agree to continue providing care have biases against lawsuits and may subconsciously change the way they provide you care because they know you're making a claim.

Once you make a claim, your communication with the doctor is no longer privileged. The insurance company will be able to learn everything you tell the doctor. For example, we recently had a car wreck case where the client talked to another lawyer before retaining us. When we received the patient's medical records, you can imagine our surprise when reading in the records, "Patient states he spoke with a lawyer and that he was told to get an MRI." Luckily the doctor in that case agreed that the MRI was necessary, but the insurance company tried to argue that the lawyer was just running up the costs. Thus, it is better to avoid comments about lawyers and claims so you don't give the insurance company a free shot at you.

17. Mistake Number 14

Missing Appointments and Having Gaps in Your Medical Treatment

Insurance adjusters and insurance lawyers will scour your medical records for something that will allow them to argue that you're not hurt. Two of the most common things they find are missed appointments and gaps in treatment.

Every time you miss a doctor's appointment, the doctor's office puts a huge note in your file noting that you did not show up. And if the jury thinks you're not in enough pain or not impaired enough to show up for your appointments, it's unlikely they will be very generous when making an award for damages.

Now, a lot of patients think they have a good excuse for not showing up. But those excuses don't make it into the record. If there is any way you can make your appointment, make it. If you just can't make it, call your doctor and let them know that you will not be able to attend the appointment and reschedule.

The other big item in medical records that can harm your case is a gap in your treatment. Gaps occur in many forms: waiting to see a doctor until three or four weeks after an accident, waiting a long time before going to the physical therapy your doctor ordered, or just not getting treatment for significant periods of time. It is hard to convince a jury that you're hurt when you have gaps in your treatment. They will always have the same question, "If the plaintiff was so hurt, why didn't he go to the doctor for six months?"

18. Mistake Number 15

Judging Your Recovery by "a Friend's Case"

Far too frequently, we have a client who comes and says, "I had a friend [or neighbor, brother-in-law, etc.] who was hurt in an accident, and he settled for X dollars."

It is almost impossible to predict a reasonable settlement of your case based on one other isolated case. Every case is different, and there are literally hundreds of factors that go into the valuation of the case. Some of those include the liability facts (Is it clear liability? Does the other side have a history of problems, and if so, can your lawyer figure out a way to make sure the jury hears about those problems? Are there extenuating circumstances, such as a driver being drunk or the employer repeatedly violating OSHA requirements?), the damage facts (How hurt were you? What were your lost earnings in the past? Did you have any special hobbies affected?), whether your doctors have a good reputation and are willing to cooperate, whether you had prior injuries or other incidents that the insurance company might claim are the cause of your injury, and your credibility.

The way we value cases is by what we think a jury would award in this case. A good personal injury lawyer can't give a precise number, but we can come up with a likely range of awards. But that range isn't just based on one other case; it factors in a history of cases and all of the particulars of your case.

19. Mistake Number 16

Social Media Problems

More and more people are involved with social media: MySpace, Facebook, Twitter, Flickr, etc. While these are all great communication tools, they are also ways to destroy your case quickly.

Imagine what a Facebook post or photo of a person skiing or running can do to a claim that the person is hurt. Or imagine what posts or photos of a person at a drunken party or a bar can do to the person's credibility. You have to be smart about what you put in the public domain.

Social media was recently a factor in one of our cases. We sued a bar and a security company for the conduct of one of the "security guards." It was our theory that the bar knowingly allowed the security guard to work at the bar even though he was a rogue security guard who liked to abuse his power. These claims were greatly enhanced by the security guard's MySpace page, which included photos of military helicopters, claims that he wanted to be in the military, his security guard "rank," and other items that all painted the picture that the security guard was a military/cop wannabe.

So be cautious what you post online, and realize that it will likely affect your claim.

20. What a Personal Injury Lawyer Can Do For You

So far, most of this book has focused on mistakes you might make that could hurt your claim. But all of that is irrelevant if you don't hire a good lawyer. What does a good lawyer do for you? Here is a small sampling of the things that a good personal injury lawyer can do for you.

1. **Investigate the case.** A good lawyer will take some time to meet with you and make sure to understand the facts of your accident. The lawyer will then investigate the facts. The lawyer will call witnesses to find out what they have to say and hire appropriate experts, when necessary, to document the claim.

2. **Gather your medical records.** A complicated part of the case is gathering your medical records and expenses. While you may think you know everyone who provided medical care, you don't. For example, in a simple hospital visit, you may have bills and records from the hospital, from the association that employs the doctors you saw in the hospital, from any radiology companies that took x-rays or MRIs, from any companies that did any blood tests, and from pharmacies. If you don't hire a lawyer who knows how to look for all of these, you are likely not maximizing the value of your claim.

3. **Evaluate your insurance options.** In a car wreck, for example, a good lawyer will help you analyze your policy and determine what coverage you might have that might help you during your claim. Hiring a lawyer without personal injury experience and

knowledge of these issues might make your claim unnecessarily difficult.

4. **Help you avoid mistakes.** A good lawyer knows the ins and outs of personal injury claims, and the lawyer should help you minimize mistakes that can adversely affect your claim. For example, a good lawyer will help you prepare for any communication with the insurance company or advise you on the reputations of doctors as to skill, bedside manner and, importantly for your case, willingness to cooperate with your lawyers. Your case can be crippled by a doctor who won't provide bills and records or who doesn't really understand what your injury means to you.

5. **Deal with your insurance company.** A good lawyer will adequately communicate with your insurance company to make sure that the adjuster sets adequate reserves (an early estimate of what the adjuster believes the case is worth), which ultimately affects how difficult it is to resolve your case. A good lawyer will also negotiate with the adjuster to determine if your claim can be settled.

6. **File and prosecute the lawsuit.** It is critical to your claim that the insurance company knows that your lawyer knows the area of personal injury law and is willing to litigate your claim. A good lawyer will guide you through that process, which is outlined in another chapter, as effectively as possible. That includes helping you with written discovery, preparing you for your deposition, preparing your doctors for their depositions and your trial (if necessary), and preparing your witnesses for their testimony. And then, of course, trying the case.

7. **Negotiate any liens.** One of the more confusing parts of personal injury litigation is resolution of any health care liens after the case is finished. This area literally changes on a monthly basis.

A good lawyer will stay up to date on the law and negotiate with your insurance company, Medicare, Medicaid, or any other groups asserting an interest against your recovery, in an effort to maximize your recovery.

21. Phases of a Personal Injury Claim

This chapter is a general outline of the stages of a personal injury claim. While it is typical, the actual stages may be different in your case. For example, when the case involves a very serious injury or death or complicated liability facts or when the case involves particular adjusters, we may be much more aggressive about filing suit and litigating the case.

TREATMENT PHASE: From the date of the injury until you have a clear prognosis from your doctor.

It may seem that your attorney does not do a lot during this phase of the case because the attorney does not want to settle the case until you know the likely outcome of your treatment and your need for future care. However, during this phase your attorney will correspond with your insurance company and investigate the accident, including interviewing witnesses, if applicable. Depending on the case, the attorneys may also hire experts to look at the liability of the case. For example, they may hire experts to investigate any defective product or look at the job site or scene of the accident.

Your job during this stage is to get better. Follow your doctor's advice on treatment, and do your best to improve.

Your attorney also asks that you document your injuries during this phase. Take photos of injuries, and keep a diary addressed to your attorney describing your pain, limitations, missed work, etc.

EVALUATION PHASE: Typically 30-60 days following the end of the treatment phase.

During this phase, your attorney will gather all your medical records and bills and review your diary. Your attorney will then take that information, evaluate the case, and prepare a settlement package to send to the adjuster.

NEGOTIATION PHASE: Typically for 30 days following the sending of the settlement package.

During this phase, you and your attorney will negotiate with the insurance company and determine whether you can resolve the case without the need for litigation.

LITIGATION PHASE: Commencement of Suit

To start the litigation, your attorney will prepare a petition for filing with the court, and have it filed. The petition is then sent to a process server who serves the petition on the defendant.

Answer

Once the other side is served with process, they have approximately twenty days to file an answer with the court. In state court suits, this is generally a one or two paragraph standard form that tells you nothing about the defendant's claims.

Written Discovery

After the answer is filed, the parties will exchange written

discovery. Your attorney may send the other side requests for disclosure (which ask the other side to state basic information relating to the case), interrogatories (which ask the other side questions about the case), requests for production (which ask the other side for documents), and requests for admissions (which ask the other side to admit basic facts of the case).

Similarly, the other side will send you some or all of these items, and you need to help your attorney prepare responses.

As part of the written discovery, the other side may be entitled to have their own doctor examine you. If that is the case, the attorney will help you prepare for that exam, and, if allowed by the court, have someone attend the exam with you.

Depositions

After basic written discovery is sent, the parties will start depositions. During depositions, the witnesses are placed under oath just as if they were testifying at the courthouse, and the attorneys are allowed to ask the witnesses questions. The depositions will usually have a court reporter, who will take down all the questions and answers in a book. Many of the depositions may also be videotaped. Whether simply transcribed by the court reporter or videotaped, the testimony from the depositions may be provided to the jury at trial.

Mediation

Almost all cases are required to go through mediation before proceeding to trial. At the mediation, all the parties and their representatives will sit down with a mediator, a neutral party who tries to help the parties resolve the case. Mediators have different styles, but generally, the parties and their attorneys start the mediation in one room with the mediator. The mediator gives a

speech about mediation, and then each side has a few minutes to give their side of the case. The mediator then takes the parties to separate rooms, and the mediator engages in shuttle diplomacy, going back and forth between rooms trying to settle the case.
The process is confidential. Mediators will not tell the other side what you tell them unless you authorize disclosure. Additionally, the mediator cannot be required to testify at trial or any other hearing (with limited exceptions) about what was said or what happened during the mediation.

Trial

If the case has not settled, the case will go to trial. Depending on how complicated the case is, the trial could last from a few days to a few weeks.

Appeal

Once the trial is completed and a judgment is entered, the parties may choose to appeal some of the rulings made by the judge. There are numerous stages to an appeal, and an appeal can drag a case out for a period of months to years.

22. What the Jury Never Hears about Your Claim

Clients are often dismayed to learn that the jury will never hear many of the things that the client thinks are important. For example, the jury never knows that the defendant is covered by insurance, or that the insurance company is paying for the defendant's attorney, and that the insurance company will pay any judgment rendered against the defendant.

In most cases, the jury never knows about the defendant's background. For example, if the defendant has a history of accidents, it is possible that the jury may not hear about that history. In fact, this is one of those areas where it pays off to make sure you have an experienced personal injury attorney. An experienced attorney should know the best ways to try to make the defendant's history of accidents admissible.

The jury may not know about the results of an investigation finding the defendant caused the accident. A good personal injury lawyer will give you the best chance of having that evidence shown to the jury.

In most cases, the jury will also not hear about the attorneys' fees you incurred in the case or about the expense of trial.

23. Subrogation

Dealing with Those Who Want to Take Part of Your Recovery

One of the most complicated and frustrating problems facing personal injury attorneys and our clients is subrogation. This is particularly true for those of us who practice in Texas, where courts have established more stringent rules for plaintiffs. It's not uncommon for personal injury attorneys to spend more time trying to resolve the subrogation interest than resolving the underlying case.

What is subrogation?

Generally, when an insurance company or other entity pays medical expenses on behalf of an injured person, the company or entity has a claim to be reimbursed for the payments they made if the injured party makes a recovery against a defendant. This interest may arise in almost any type of personal injury claim. We have fought substantial subrogation battles in car wreck claims, in on-the-job injury claims, and in medical malpractice claims. Some of these battles are resolved quickly, and some have raged on for years.

A subrogation claim can take many forms. Some subrogation interests are statutory. On the federal government level, a statute requires a personal injury plaintiff to reimburse Medicare for payments it makes as a result of the defendant's negligence. Also on the federal level, a personal injury plaintiff is required to

compensate the Veteran's Administration for any care it provides that was the result of a third party's conduct.

On the state level, there are several programs that have statutory subrogation interests. The most notable state level claims are payments made by Medicaid and those made pursuant to a Texas worker's compensation policy.

A subrogation claim may also arise from an injured person's own insurance policy. For example, if personal injury claimants have health insurance or Medical Payments coverage on their automobile policies, those policies likely contain a contractual subrogation provision. Contractual subrogation provisions are the most prevalent since health insurance is involved in most accident claims. Health insurance claims have their own set of complicated rules that depend on whether the insurance is offered as part of an employee benefit plan and whether the offered insurance is actually insurance or is merely a self-funded plan.

How do you get around the claims?

Each type of subrogation claim has its own set of rules regulating if, and when, a personal injury claimant may be able to avoid or reduce paying back the subrogation interest. Fortunately, most of the rules center on two main theories or arguments: the "common fund doctrine" and the "made whole doctrine."

The common fund doctrine is based on the idea that each party must share in the costs incurred in seeking the recovery rather than the personal injury claimant shouldering the entire load of attorneys' fees and expenses. Under the doctrine, the subrogation interest is reduced by some amount so that the paying party is paying a share of the attorneys' fees and expenses incurred in the collection of the suit. The amount of the reduction depends on the type of subrogation interest. For example, in contractual

health insurance cases, we argue that health insurance companies should pay a pro-rata share of the expenses. If the medical expenses are fifty percent of the total recovery, then the insurance company should pay fifty percent of the fees and expenses incurred in seeking the recovery. In Medicare cases, Medicare has a strict formula used to determine its share of fees and expenses.

The made whole doctrine is based on the idea that the subrogation interest should not be reimbursed at all until the personal injury claimant is made whole by the settlement or verdict. The made whole doctrine may not be applied to as many cases as the common fund doctrine. It is largely only applicable when the defendant's policy limits are not high enough to fully compensate the claimant.

Another major point of contention in car wreck and auto accident cases is whether subrogation interests attach to uninsured/underinsured motorist coverage. Most insurance companies are now writing their subrogation agreements more broadly in an effort to reach those policies. However, the Texas case law and the policy arguments behind the existence of UM/UIM insurance suggest that those policies should be protected.

24. Protect Yourself with Proper Insurance

Who would have believed it? Trial lawyers advising you to purchase insurance? We can hear you asking, "Haven't you spent the entire book talking about the problems with insurance adjusters?"

You're right. We have. But we also recognize that when you're in an accident, proper insurance can often be a critical factor in helping you get back on your feet. As a result, we want to make sure you purchase a few types of insurance coverage that can really protect you in an accident.

Automobile Insurance: Uninsured Motorist Coverage and PIP

Many of us buy automobile liability insurance because we have to—state law requires that we carry minimum coverage of $25,000 to pay for any damage that we might cause others. But what about our own losses? Will that other driver's $25,000 minimum policy be enough to protect us? Probably not. Because of this, we urge our clients to purchase uninsured/underinsured coverage to protect them.

Uninsured/underinsured coverage allows you to file a claim for your injuries if you're in a wreck when the other driver doesn't have any insurance or doesn't have enough insurance to compensate you for your injuries. Today, an estimated 20% of Texas drivers

don't carry liability insurance at all. Those who do carry it often have only the minimum policy limits of $25,000.

Unfortunately, with the high cost of health care, your medical expenses could easily exceed $25,000. For example, one common injury that results from a rear-end collision is a herniated disc. We recently had a client with such an injury, and his medical expenses totaled just under $160,000.

In such a situation, if you haven't purchased a significant amount of Uninsured Motorist/Underinsured Motorist Coverage (UM/UIM) policy, there will not be enough insurance proceeds to compensate you for your losses.

Our client with the herniated disc thought he was doing well to purchase $50,000 of UM/UIM coverage. But he quickly realized that amount was inadequate, and he has since increased his coverage.

UM/UIM coverage is generally cheap, and you need to purchase it to protect yourself.

We also recommend the purchase of Personal Injury Protection coverage ("PIP"), an inexpensive policy that pays for the medical expenses and lost wages that you incur as a result of an auto accident. One important feature of PIP is that there is no subrogation. Most insurance policies, including most health insurance policies, have a subrogation clause that requires you to reimburse the insurance company for any benefits they have paid on your behalf if you recover compensation for those injuries from a third party (for example, settling your car wreck claim with the other driver involved). However, because PIP does not have a subrogation clause, you can submit the same medical charges to both a defendant driver and to your PIP carrier. The PIP carrier will not ask for reimbursement from any recovery you make in settling or

winning a lawsuit. (Your automobile policy also offers MedPay as an option to PIP. MedPay is similar to PIP, but it does have subrogation provisions that will require you to pay the carrier back with any third party compensation you might receive).

The second PIP feature is that it allows stacked coverage. This means that in most cases you can submit medical bills to your PIP carrier even if they have already been paid for by your health insurance policy.

You may wonder then why you need PIP if you have health insurance or why you would need PIP if you plan to recover from the other driver involved in any accident. Unfortunately, health insurance—even good health insurance—doesn't pay 100% of your bills. PIP helps bridge that gap. PIP also covers any lost wages you suffer by reimbursing you for those. Lastly, anyone who has ever been a party to a personal injury lawsuit will tell you that many expenses, such as attorneys' fees, are not reimbursed. PIP can be an effective way to help offset these expenses.

In short, PIP is a smart bet and insurance money well spent.

Life Insurance and Disability Insurance

If you have a family that depends on your financial support, you need life insurance. If you are killed in an auto accident with another individual, it is almost guaranteed that the other driver will not have enough insurance to make up for your loss of earnings for the rest of your life. A term life insurance policy might be a way to make sure that your family is protected even in the worst circumstances.

Similarly, disability insurance can be crucial to the protection of yourself and your family. There are many forms of disability coverage, but the general premise is that the policy will provide a

portion of your monthly income while you are disabled. Disability insurance is the most expensive of the options discussed here, but it can be invaluable. Over the years we have had the opportunity to represent a number of clients who had to make claims on their disability policies as a result of their injuries, and most of them would not have been able to survive financially without their disability insurance.

25. Tips for Handling a Property Damage Claim

Two questions guide your actions when your vehicle is damaged in a car wreck: (1) will your vehicle be repaired or totaled; and (2) did the party who hit you have insurance?

A car is "totaled" when the cost of repair exceeds (or is close to) the market value for the car. If the car is not totaled, then the insurance company will pay to have the car repaired. When the vehicle will be repaired, obtain estimates from at least one reputable body shop. (You are not obligated to use the insurance company's recommendation.) Once you find a shop, arrange repairs. Body shops routinely work with insurance companies, and they usually reach an agreement on the scope and costs of repair.

If the other driver has insurance, the insurance company is obligated to provide a rental car for a reasonable period. As long as everyone stays reasonable about the type of vehicle rented, stays in communication about the status of repairs, and the shop is repairing your vehicle in a timely manner, there likely won't be any disputes.

If the other party does not have insurance, your insurance company is not required to provide a rental unless you have purchased rental insurance or if you have uninsured motorist coverage. Before renting a vehicle, talk to your adjuster so that you know whether your policy will cover a rental vehicle.

If the car is totaled, the insurance companies "buy" the vehicle from you by paying the value of the vehicle, plus tax, title and license. To negotiate, you must know the value of your vehicle. Use dealer websites, eBay or autotrader.com to learn what vehicles similar to yours now cost. Armed with the research, you will likely get a reasonable settlement.

If your car is totaled, insurance companies are not required to provide a rental. However, many will provide a rental until they write you a check. Communicate with them on whether they will provide a car, and for how long, so you do not get stuck with a large bill.

Be careful when signing a release. Do not sign a property damage release until you are satisfied, and do not sign a personal injury release as part of the property damage claim. **As we have warned in other parts of this book, some insurance companies are now trying to convince people injured in wrecks to sign personal injury releases at the same time the property damage claim is resolved. You need not (and probably should not) resolve these at the same time.**

If the other party's insurance is not cooperating, you may make a claim on your policy and let the companies sort it out.

And, finally, if a dispute arises, contact an attorney.

26. Handling the Stress of Injury or Loss

While the concrete costs of injury or loss are often substantial, such as medical care and lost income, our clients invariably tell us that by far the biggest damage they suffer is the stress on their mental health. The emotional consequences—anxiety, tension, sadness, frustration, anger, depression, and despair—are all a part of being injured or losing a loved one. Clients often tell us how hard it is not only on them, but also on care takers, family members, other loved ones, and friends. And while these feelings and difficulties are normal, that doesn't mean you can't do anything about them. The first thing to remember is that what you're feeling, either as an injured person, a survivor, or as a caretaker or loved one, *is* normal. When the body gets injured or we lose someone close to us, these feelings are ways the body tells us that we have a new and sometimes urgent set of needs that we didn't have before. Anxiety tells us that the future is uncertain and we need to make new plans for it. Tension tells us that we're having feelings that are perhaps too difficult to face and so we've bound them up with tightness in our necks or backs or stomachs. Anger or frustration tell us that we have wants—such as to be able to do the things we used to be able to do with another person—that because of our situation, we may not be able to satisfy. Depression results from our not being able to find a safe outlet for our anger and frustration. Despair is giving up hope because we can't see a future we want.

With the death of a loved one, and sometimes, with particularly serious or permanent injuries, there's a grieving process that we

face that represents a death of the life we knew and ultimately, the acceptance of the life we now have. At first, it may be difficult even to believe that things have changed. We long for the life we had and have a hard time believing it's so dramatically changed. Once we've begun to appreciate the reality of our new circumstances, we're tempted to bargain somehow for what we had; we'll give anything for some miracle treatment, for another chance, somehow to "do over" the death or injury-causing event. As this process continues, it's normal to be angry at the changed situation—at the person who caused it, at those around us who can't fix it, even at ourselves or our deceased loved ones—despite the fact that neither may have been able to prevent what's happened. This anger is related to our realization that we can't have life back the way we want it, and the recognition of how much we've lost, and that we'll never have it again; the frustration gives way to sadness. If we're lucky and have help from family or professionals, we're able to prevent the sadness from turning into despair when we see an acceptable future—not the one we would have wanted, but one that we can learn to live with.

As we can see from understanding the feelings of loss, it's no surprise that care givers and loved ones are often the targets of anger or frustration. While it may be difficult, loved ones may be able to avoid taking personally the injured or bereaved person's anger and frustration if they can recognize that such feelings are normal and really aren't the fault of the care givers themselves or the person being cared for.

Finally, the most important thing to keep in mind is that this is a new and challenging reality that would stress any relationship. Sometimes, if someone is feeling stuck in depression or despair, professional help is advisable. Regardless, if both the bereaved or injured person and the care giver can communicate that they're on the same team; can cut each other a little slack; and can be sure that each is constantly reassured by the other that irrespective of

what has happened or will happen, each *matters* to the other, they may find comfort and support through even the most devastating circumstances. ■

Perlmutter & Schuelke, LLP
1717 W. 6th Street | Suite 375 | Austin, Texas 78703-4868
Telephone: 512-476-4944 | Fax: 512-476-6218
www.civtrial.com

Holding Wrongdoers ACCOUNTABLE

Avoiding Mistakes that Can Ruin Your Texas Accident Claim

When you have been injured or have suffered a loss, you have entered a minefield. You need guidance to get across this unfamiliar territory without being hurt again. You are physically, emotionally, and financially vulnerable, and you need to focus your energy on recovery.

This important book derails the top ten myths about personal injury claims, details the sixteen mistakes that could ruin a Texas injury claim, and describes what a personal injury attorney can do for those who have suffered injury or loss, providing crucial guidance for those who seek justice in personal injury claims in Texas.

Austin attorneys Brooks Schuelke and Mark Perlmutter draw on their years of litigation experience to show readers how to handle the stress of injury or loss due to an auto accident. They are the founding partners of Perlmutter and Schuelke, LLP.

Perlmutter & Schuelke, LLP
1717 W. 6th Street | Suite 375 | Austin, Texas 78703-4868
Telephone: 512-476-4944 | Fax: 512-476-6218
www.civtrial.com

WA
WORD ASSOCIATION PUBLISHERS
www.wordassociation.com
1.800.827.7903

$16.95