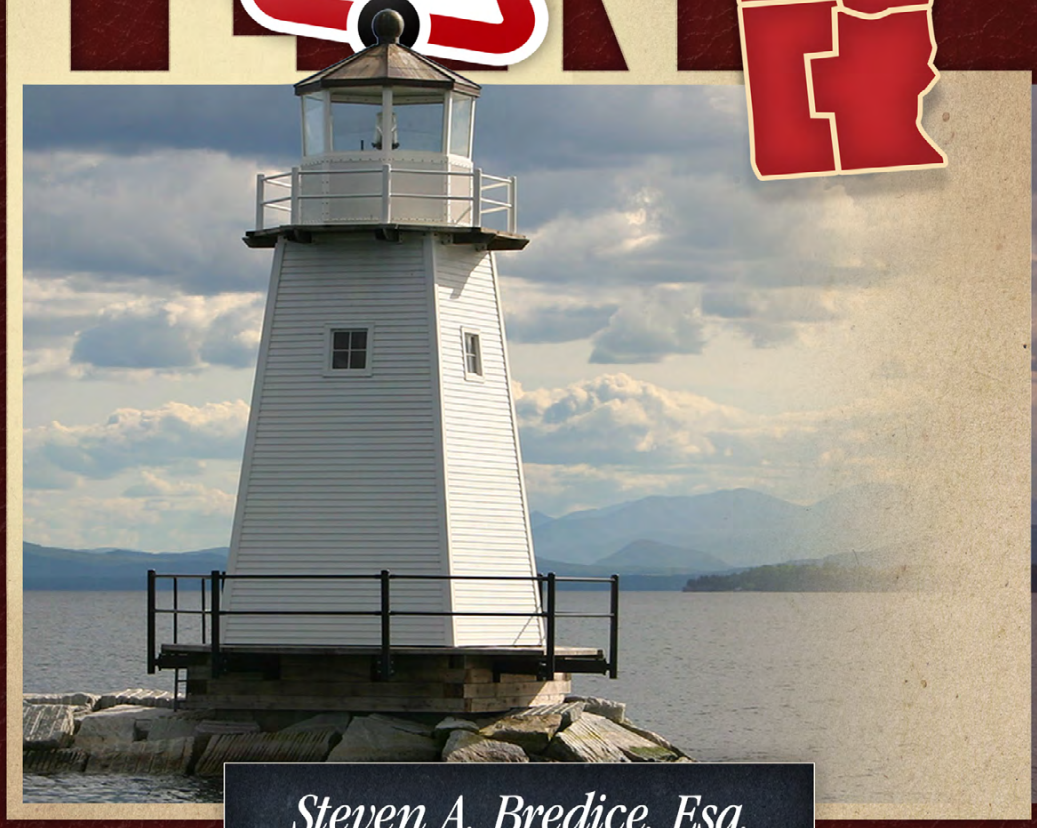
YOUR VERMONT PERSONAL INJURY CASE:

A POST-ACCIDENT SURVIVAL PLAN



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"A voice said, Look me in the stars
And tell me truly, men of earth,
If all the soul-and-body scars
Were not too much to pay for birth."

– Robert Frost

TABLE OF CONTENTS

INTRODUCTION

The purpose of this book is to help you help yourself.

As a trial lawyer with more than 20 years of experience handling personal injury cases in Vermont, I understand what injured people and their families go through after a serious accident caused by someone else's negligence. I also know that one of the most difficult aspects of your experience is an understandable lack of knowledge about the process—after all, you've probably never been in this position before.

You're also concerned about how to protect your legal interests, making sure your medical bills are paid, being compensated for lost time at work, getting the future medical care you may need, providing for your family and being made whole for the many other harms and losses that come with the new territory in which you find yourself.

I also know that with a little bit of self-education will come empowerment—empowerment to deal with your situation either by representing yourself or by becoming a knowledgeable consumer of legal services and, most important, how to tell the difference between a case that you can handle yourself and a case that you would be crazy not to entrust to a competent lawyer specializing in representing injured people in the prosecution of personal injury actions.

The purpose of this book is NOT to convince you that you need a lawyer even if you really don't. In fact, contrary to what many people believe, skilled and experienced trial lawyers are not interested in taking each and every personal injury case that they can get their hands on. The opposite is true: A successful trial lawyer needs to *limit* their caseload, winnowing out the cases that do not involve high stakes or difficult questions or reluctant insurance companies, because *those* are the cases where both the lawyer and the client benefit from the relationship.

Speaking personally, my firm routinely declines to represent people unless we feel strongly that we can enhance the value of their case through our professional services. If your recovery would be swallowed up by our fee, we will refuse to take your case and strongly encourage you to represent yourself. So this book hopes to provide you with the knowledge you'll need to do so if yours is a simple case that does not involve a major injury.

Either way, you win. If this book helps you make your decision wisely, and to successfully follow your chosen course of action, it will have been well worth my time as an officer of the court and a servant of our civil justice system.

A PRIVATE WORD

I have tried dozens of personal injury cases to verdict before judges and juries all over this state, representing both Plaintiffs and Defendants. I used to work exclusively for insurance companies, until I got tired of using my skills to send injured people home from court with a disappointing result. I now limit my practice exclusively to helping injured people obtain the recoveries they deserve, and I sleep much better at night.

After all, I didn't go to law school to protect big money. I like being Robin Hood much better, although I don't actually "steal" from the rich. I just try to force them to do the right thing, even when they don't want to.

So I know you don't want to get rich quick, or to scam the system.

You just want something called justice. Something called accountability. Something called fairness.

DISCLAIMER

This book is not intended or provided as legal advice. You are unique and your case has its own specific facts. Only by meeting with me in my office or during telephone consultations do I dispense legal advice. What I do want to give you is a general perspective on some issues and decisions you may be facing and some tools you can use to handle them.

However, no work of this sort can touch on any of the topics considered within these pages in more than a general way. The effort here is to provide you with some guidance in making decisions about whether, and when, to seek a lawyer and, in straightforward cases, some input on the issues you are likely to encounter.

May this book be useful to you and, more important, may you have a full and speedy recovery—and find the justice you deserve.

–*Steven A. Bredice, Esq.,* WILLISTON, VERMONT, SEPTEMBER, 2015

"I have been one acquainted with the night."

– Robert Frost

CHAPTER 1

You've been injured. Now what?

First, my condolences. You didn't ask to be hurt, and you did nothing to bring about your injury. You were the victim of the carelessness of another person or organization that broke some rule of conduct, whether by failing to obey the rules of the road, deviating from a standard of care applicable to a professional such as a physician, failing to provide safe premises or otherwise acting or failing to act in a way that unreasonably results in physical harm to another.

Right now, you're feeling pain, both physically and mentally, you are worried about your health and your finances, about taking care of your family, about how to pay your medical bills, about how to pay for future treatment and other medical needs, about whether you will ever again be the person you once were. On top of this, you are facing an array of unfamiliar issues and problems you never imagined before you were hurt. Before everything changed.

Your family is also in pain: Someone important in their life is hurt and they and others around them are hurting right along with you, even while they are trying to be brave and strong.

Meanwhile, the person who hurt you is going through a process of their own. They are most likely in denial, with the assistance of their friends and family as well as their insurance company. After all, no one wants to believe they are the cause of someone else's suffering and with even a little bit of help they will rationalize their behavior and, incredibly, project blame onto *you*. They're thinking things like, "Maybe they're right and it wasn't really my fault." Or, if they accept responsibility for causing your injury, "The person I hit probably isn't really hurt." Or, if they do believe you're hurt, "They're probably exaggerating their injury or asking for too much money." "But delays work for me," they might also be thinking. "And thank goodness I have insurance and the free, experienced defense lawyer they assigned to my case, who is already working with me."

THE NOT-SO-GOOD HANDS PEOPLE

As for that insurance company, let's pause for a moment to consider their perspective. First of all, they are a corporation, and usually a big one. This can result in a culture of group action or "mob psychology" and, correspondingly, a lack of individual responsibility. If company policy is to cram down the recoveries of truly injured people, and the decisions are made by a hierarchy of participants, no one person has to actually live with their actions. In fact, the participants in this process may become part of a self-reinforcing dynamic that rewards them for putting the company's interests over and above the dictates of their conscience, and absolves them of any personal sympathy or remorse.

To them it is a job, a job with quotas and targets and milestones. And you are a faceless aggregation of data on a computer screen. It is a relationship devoid of any real humanity.

This is not to say that all insurance companies are bad or that everyone in the industry is a horrible person. In fact there are many

decent insurers who play fair and understand that they cannot keep every dollar's worth of premiums and pay nothing to anyone who gets hurt. There are also many compassionate and decent people working in the industry who view their role as one of obtaining supporting documentation for a reasonable settlement, albeit while aiming for an ultimate result that is as low as possible.

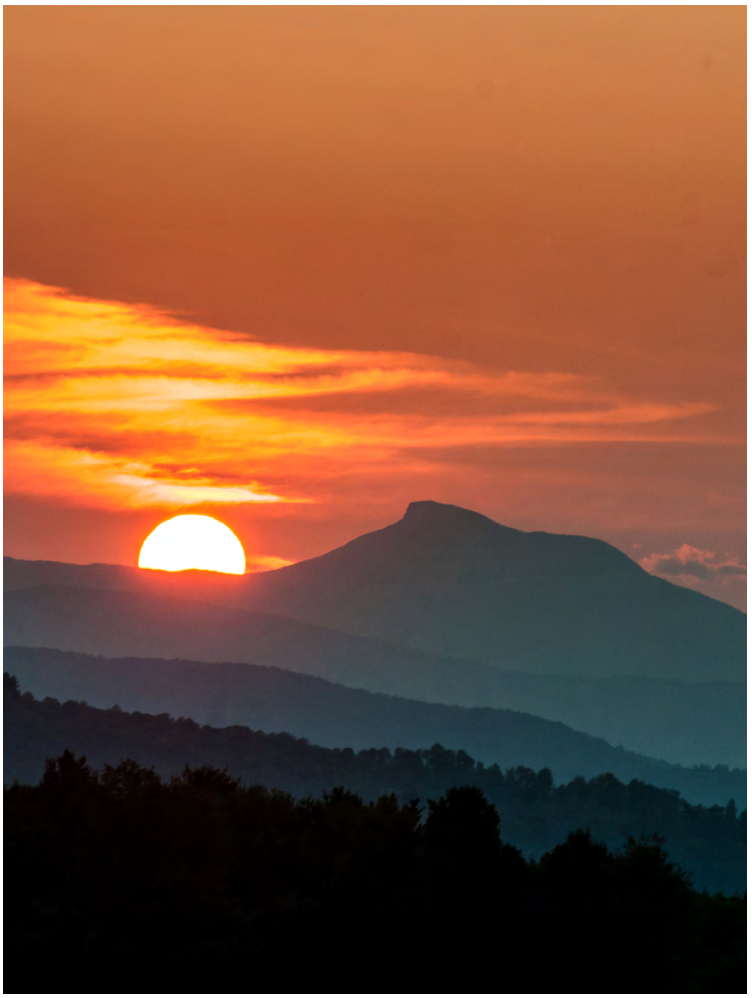
However, the motivational framework in some claims departments at certain insurance companies is a simple one: Premiums = good, payouts = bad. And this does lead some of the more jaded ones to see the typical claimant as either a faker (someone who isn't really hurt), or if they are hurt, as a whiner (someone who is exaggerating their symptoms).

And, the insurance company is highly experienced at dealing with people just like you through a system that many times operates to make it as hard as possible to obtain a recovery and to delay payment for as long as possible.

They are also enjoying the benefit of a playing field that is tilted sharply in their favor, whether by virtue of their superior knowledge and resources, or because it is a war of attrition and the longer your recovery is delayed, the more desperate you will become and the more likely you will be to accept less than your claim is worth.

The tactics many of these companies use to "adjust" your claim include using the contents of accident reports to create ambiguity about liability, the taking of recorded statements that will ultimately be used against you if at all possible, pressuring you to sign paperwork that will let them get all of your medical records, conducting independent fact investigations behind your back, conducting invasive social media research, requiring you to attend examinations by "independent" doctors who are on the insurance company's vendor list, and putting you under secret surveillance—among other things.

Which is why you are probably asking yourself, "What Now?"



"The gods of the valley are not the gods of the hills, and you shall understand it."

– Ethan Allen

CHAPTER 2

About Vermont and how our judges and juries think.

Before going any further, let's reflect on this unique place in which we live and work because that is key to understanding the ultimate decision makers in the process, the judges and juries who will rule on your case if it is not settled.

Since the settlement value of your case will depend on predictions about how it will ultimately come across in court, it is critical to have some sense of whether the average mindset in the community is favorable or unfavorable toward injured people who are suing. Put another way, predicted trial values are strongly influenced by whether a given jurisdiction is considered "liberal" or "conservative."

In the case of our state, Vermont, the answer would generally be "conservative". Political persuasions aside, the people of this state are viewed by legal and insurance professionals as fiscally prudent,

concerned with fairness, hard-working, skeptical, and not inclined to give anyone a "free ride."

The reasons for this are not hard to fathom. Vermont's people have been shaped by its history, and its history has in turn been shaped by its geography. We are a rugged, isolated state with a beautiful but hardscrabble landscape, harsh weather, geographical barriers to travel and limited cultural and social resources.

Don't get me wrong, we all love this place and these characteristics are sources of pride for most of us. We are all here for a reason and most of us would never want, or be able, to live anywhere else for reasons perhaps only we can quite understand.

"I'M FROM VERMONT, I DO WHAT I WANT."

Our traditional heroes are cantankerous, rugged, independent, plain-speaking figures like Ethan Allen and Chester A. Arthur[1] and Robert Frost and George Aiken. We shovel snow and stack wood and tap the maples around our homes and don't mind seeing

our breath on a cold winter's morning, even if we might complain about it a little come the end of March. We are seen by the rest of America as a fiercely independent people who have blazed trails of leadership on political, social and cultural fronts.

Vermonters are concerned about basic fairness. We aren't afraid of a fight where principle is at stake. We care about and value each other's dignity and recognize their intrinsic human worth. We will take a stand for what's right or fair, even against big opposition. We fight for the little guy, if we think he deserves it. On the other hand, we can be skeptical, individualistic and financially conservative. The possibility of an open-ended recovery on the one hand and

1. As a 24-year-old lawyer, Arthur took on the case of Lizzie Jennings, who was kicked off a streetcar in 1854 because of the color of her skin. The jury awarded a $225 verdict and the very next day, the Third Avenue Railway Co. desegregated its streetcars.

risk, expense and delay on the other typically mean trial is less desirable than settlement for insurer *and* victim alike. However, in this particular jurisdiction, one does well as a claimant to recall Vermonters' skeptical, fiscally conservative and ruggedly individualistic tendencies when estimating the settlement value of a case.

"The best way out is always through."

– Robert Frost

CHAPTER 3

The initial stages of your case.

First things first. If you've been injured, obtaining proper medical care and following your doctor's orders is paramount. Depending on the severity of your injury, you may be hospitalized or even rendered completely incapacitated for some time, or, perhaps, permanently. In any event, your first priority after an accident has to be taking care of your injuries and struggling to return yourself to good health.

Once your injuries have been diagnosed and a course of treatment has been established, **and no later**, your thoughts can turn to the legal aspects of your situation. Step one should be documenting the facts.

DOCUMENT, DOCUMENT, DOCUMENT

If you have cuts, scrapes, bruises, swelling or any other physical manifestation of injury, it is critical that you take good, clear color photographs. The photos should document all phases of your injury, from the most acute stage through the various phases of healing. These should include not only close-up shots of the injured areas of your body, but full-body shots to prove that the injured body part is actually yours! If you have bloody or torn clothes, keep them. If your case involves an automobile accident, get or obtain photographs of the damage to your vehicle to demonstrate the severity of the impact.

In addition to pictures, consider whether your injuries and their effect on your life should be documented by video recording. If you are using a cane or crutches or a wheelchair in order to get around, this element of your daily struggle should be preserved. In cases involving catastrophic injury, a "day-in-the-life" video should be considered. These videos document the reality of everyday life for someone who is incapacitated, from morning until night,

depicting the care required for, and the struggle endured by, the injured person.

CHRONICLE YOUR EXPERIENCE

You should also consider keeping a journal to document your treatment, recovery, pain, suffering and impairment. Chronicle each visit to every provider, whether it be a family doctor, a physical therapist, a specialist, a diagnostic test, etc. If keeping a journal is too difficult, at least keep track of these visits on a calendar. Jot down a brief note about each day's pain and suffering as well.

FIGHT BACK

Insurance adjusters and defense lawyers are fond of minimizing inconvenience, pain and suffering.

Keep the playing field level by positioning yourself to counter their tactics by being able to demonstrate the effect of your accident on your life.

"Pain is a memory," they will tell a jury.

If this is true, it is all the more important to preserve those memories and then to reanimate them at trial. Since years could pass between your injury and a trial, careful and thorough documentation is essential so that your experience can be made real to the people who will be determining the value of your compensation.

NAIL DOWN THE LIABILITY PIECE

You should also be concerned with documenting liability as well as your damages. If your case involves a slip-and-fall, keep whatever footwear you had on at the time because you will surely be accused of causing your own injury by being careless about your own safety. If there are witnesses to the incident, get their names, telephone numbers and email addresses.

If you are injured on premises covered by a video surveillance system, demand that the tape be preserved and copied immediately,

since most systems "loop" their tape, meaning they record over it every few days unless an incident is flagged. Obviously, only if the videotape is harmful to you will a defendant be motivated to save it. Otherwise it will almost always be left in the system, recorded over and permanently lost.

Whatever the mechanism or the context of your injury might be, figure out what you will need to prove your case and go about gathering that information as soon as you can. If you can obtain the particular piece of equipment or machinery that caused your injury, do so. Take photographs of what can be photographed, videotape what can be videotaped, record any information that can be recorded, get photocopies of documents that could prove relevant, keep your footwear in a slip-and-fall case, and take any other possible steps needed to be able to prove the facts of your accident at a later date.

In many cases, evidence will disappear or become altered. Witnesses' memories will fade over time. Sometimes witnesses can be "turned"

by the other side, so if they are in a position to help you in the early stages of your case, document their testimony at that time just in case they come unmoored from their original recollections. The time to take these measures is early. When your case reaches the point where it is being contested, it is usually too late.

And be forewarned: No matter how friendly and understanding the other side may seem in the early phases, every case will eventually become contested when the time comes for the Defendant or its insurer to pay up.

REPORTING

With any injury comes…paperwork.

In many instances, you will be asked to file a report on your injury. If you are hurt on the job you need to tell your employer, who will file a "First Report of Injury" with the Vermont Department of Labor, which will initiate your Workers Compensation case.

If you are injured by slipping on a grape in a store or on an icy walkway that should have been cared for, you may be asked to file an "Incident Report."

Cooperating with these requests is usually a good idea. In many instances, an incident report is the only documentation of your accident and injury, which removes at least the issue of whether or not you are fabricating your claim. However, many pitfalls await.

If you have had an accident on someone else's premises and feel that you have been injured, make sure that when you fill out their incident report that you accurately state the circumstances of the injury. If you have obtained contact information for the witnesses to your fall, include that information in the report. Make sure that you fill out the form personally, as in many cases, the premises owner will have someone take your information and write it down in their own words, often subtly slanting the facts against you and in their favor.

But first and foremost, make sure that you describe all of the areas of your body that are hurting. In many cases, an accident victim might have pain in several areas but only note the body part that hurts the worst. Commonly, while a person might initially feel pain in one area of their body, when that pain subsides they will become aware that that pain was actually masking pain coming from another body part—which may be the most problematic wound as your recovery progresses.

If you feel severe pain in your knee but only mild pain in your neck, it is important that you note both areas. If you only mention your neck and then, when your neck pain and headaches subside, you discover that you are limping and your knee is swollen, the other side will accuse you of attempting to get compensation for an unrelated injury by tacking it on to your legal case.

Also, remember that the incident report form is your only chance to make a first impression on the insurer, the defendant and their lawyers. Write clearly and legibly, use good grammar and

punctuation and avoid the temptation to use of off-color language or inflammatory remarks, even if you're angry about the situation—or have injured an awkward part of your anatomy. Imagine your incident report projected onto the wall in front of a jury, and proceed accordingly.

MOTOR VEHICLE CASES

If you have been involved in an accident call the police. Without a police investigation, your accident claim could be difficult to document. In any event make sure to get the other driver's license plate number, personal identifying information and their insurance information, which they are required by law to provide to you within five days of an accident.

Furthermore, under Vermont law, a driver involved in an accident that causes $3,000 or more in combined property damage must file a Report of a Motor Vehicle Crash with the Vermont Department of Motor Vehicles within three days of the accident.

Since this is a public document that will surely be obtained by the other driver's insurer and lawyers, you should follow the same rules stated in the preceding section, making sure to accurately describe the incident in complete detail, and to thoroughly document your injuries as well as those of anyone riding in your vehicle with you.

Serious accidents will also result in a Police Report of Motor Vehicle Accident. These include all of the information about the identities of the drivers and passengers, injuries if any, property damage, a narrative description of the circumstances of the accident and an assignment of fault. Sometimes charges are recommended.

As with the driver's report, the other side's insurer will obtain this document and make its determination of fault on that basis. Importantly, in court, the investigating officer cannot testify

as to their conclusions about fault, and the report is typically inadmissible, although the officer may testify as to its contents without expressing an opinion on liability.

You should know that the police report contains notations made in a numerical code that must be translated from a separate form.

YOUR AUTOMOBILE INSURER

Your insurance company will also ask you to provide a report on the accident, usually by phone.

Since most insurance policies include some form of "medical payments" coverage, which pays for treatment arguably related to the accident for a specific period of time, you will need to make a report to your own carrier. Often, "med pay" coverage only lasts for one year after the accident. Failure to promptly report your injury and to obtain the recommended treatment within the "med pay" time limit often results in the denial of this critical benefit.

If your insurer does provide "med pay" to you, they will have a lien on your recovery, which means you must pay them back out of the money you get from the other driver's carrier. Typically, the amount you will have to pay back is reduced by one-third, an amount equal to the typical contingent attorney's fee agreement, by virtue of the fact that you, or your attorney, had to do the heavy lifting needed to obtain that recovery.

YOUR MEDICAL PROVIDERS

Your doctors will also ask you to fill out forms when you seek treatment for your injuries. These forms help them bill the appropriate party for your treatment, whether it is you own "med pay" carrier, the other driver's insurer, or your personal health insurance plan.

Make sure to fill these forms out carefully and accurately in order to ensure that the treatment you receive is attributed to the accident and therefore that your medical providers send the bills in a timely fashion to the proper recipient.

YOUR HEALTH INSURER

Similarly, if you are fortunate enough to have health insurance, whether privately or through Medicaid or Medicare, you will need to alert your carrier to the fact that you were injured through the fault of someone else. This will enable them to obtain reimbursement for the sums spent on your care if you make a legal recovery from another party, which is a typical provision in most health insurance policies.

As with "med pay" coverage, the typical health insurance policy will require you to repay your carrier out of any money you recover. Again, upon repayment you are usually entitled to a discount of one-third of the amount they paid on your behalf.

However, skilled personal injury practitioners are often able to make better deals on your behalf by negotiating for further discounts, usually based on factors such as the degree of difficulty of a recovery absent settlement, need and Similarly, if you are fortunate enough to have health insurance, whether privately or through Medicaid

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However, skilled personal injury practitioners are often able to make better deals on your behalf by negotiating for further discounts, usually based on factors such as the degree of difficulty of a recovery absent settlement, need and hardship, or in cases where you are not made whole despite the availability of insurance.

Be advised that failure to pay a lien could expose you to legal consequences.

The existence of liens, the variability in the availability of reductions and the consequences of failing to address them properly are good reasons in their own right to retain an experienced personal injury lawyer who knows how to handle these issues.

"A bank is a place where they lend you an umbrella in fair weather and ask you to hand it back when it rains."

– Robert Frost

CHAPTER 4

What NOT to do if you've been in an accident!

Rule number one is don't talk to an insurance company before you talk to a lawyer.

These days more than ever, insurance companies, like all big corporations, are all about the bottom line. That means raking in as much money in premiums, and paying out as little in claims, as possible. They do this by minimizing your injury, rationalizing the wrongdoer's conduct, stonewalling and lowballing.

The first step in this process is often a recorded statement from you. The insurance companies don't take these statements to enhance your claim or justify payment. On the contrary: They do it to find something to hold against you.

Like a Rorshach test, they will view every fact you give them as a reason to reduce their payout. Think about it. Do you really

believe the insurance companies do what they do so that they can give you more instead of less? Does a claims handler ever get up in the morning raring to go to work so they can give out the company's money?

The problem is, you won't know the angles they are going to play until it's too late. That's why you need experienced help in your corner. An experienced personal injury lawyer will know all of the insurance industry's tricks and traps. They can get you up to speed on the process, and the pitfalls, in one quick, easy telephone call or, if you prefer, an office visit.

And the best part? *It's a completely free, no-strings arrangement*! You can have the benefit of the advice of some of Vermont's most experienced trial lawyers before you start dealing with the insurance companies without paying a single penny. Why would you not want to take advantage of this opportunity? Why would you walk into the lion's den without protection when, with one free phone call, you could be forewarned, and forearmed?

Now you're probably wondering what's in it for the lawyer? Basically, they know you'll be back. When you get a taste of what it's like to be injured and have to deal with a big, profit-driven corporation the chances are good you will quickly realize only professional help will get you on a level playing field. Once you reach this realization, your search for a lawyer will be over before it even starts.

Personal injury lawyers make their living by helping people just like you increase the value of their cases. Simply put, they help themselves by helping you. Which is just the opposite of what the insurance company has in mind.

THE RECORDED STATEMENT

Insurance companies aggressively investigate serious accidents and the purpose of these investigations is to find ways to limit the money they have to pay to the victims. The more serious the case, the more serious the investigation—and the earlier it will begin.

One of the first actions an insurance company covering a careless Defendant will take after a major accident is to obtain a recorded statement from the victim. Unfortunately, these recorded statements often become a tool to be used against the victim in subsequent proceedings.

After an accident, injured people are usually eager to tell their story, to explain how the accident happened and to describe their injuries and the related consequences, genuinely believing that it will help their case. This impression is usually reinforced by the demeanor of the insurance company representative, who is trained to come

across as a caring, trustworthy "friend" interested in helping them document their harms and losses.

But this "friend" is actually working on behalf of the defendant who caused the injury, and is being paid to find ways to undermine the victim's claim, starting with the impression that the information is being gathered to assist in a fair evaluation of the case. An average person would of course be perfectly willing to cooperate. After all, they have nothing to hide.

However, typical objectives insurance companies have when taking recorded statements from injured people include:

- Limiting the range of claimed injuries to those known and described at the time—even though it is well-known to doctors, lawyers and the insurance companies themselves that many injuries are not immediately apparent and only show symptoms after a latency period;
- Pinning the victim down to a set of facts, or a manner of

expressing or characterizing them, that can be spun in the defendant's favor; and…

- Obtaining information that will give them a head start in investigating the victim's personal life, such as telephone numbers, addresses, online accounts and even social security numbers.

In sum, honest injured people only stand to lose by giving a recorded statement to the insurance company of the person who hurt them. While unsuspecting people with nothing to hide can be easily persuaded to "tell their side of the story" on tape, the insurance company is really only interested in using the victim's own words against them. To do otherwise would be to violate their duty to their shareholders to keep costs down, and profits up, by helping the defendants they insure to avoid taking full financial responsibility for their negligence.

For this reason, victims need to carefully consider whether to agree to give a recorded statement and, if so, how to approach it. These

decisions are best made with the assistance, guidance and support of an experienced personal injury lawyer whose professional obligations and incentives are aligned with those of the victim—and adverse to those of the careless defendant and their insurer.

Such a counsellor will explain the operation of the Hearsay Rule, which can mean that the victim's own recorded statement is admissible a trial while the one taken from the Defendant may not even be discoverable, let alone admissible! For this reason alone, you should insist on receiving a copy of the Defendant's statement before, or as a condition of, giving one of your own.

The counsellor may also suggest that the recording be allowed but only under certain conditions, including but not limited to the provision of a copy to the victim, or restrictions on the use or scope of the recording. The counsellor will also be able to help the victim honestly and accurately express themselves in ways that will minimize the ability of someone else to spin their words down

the line, plus what information to volunteer, what information to provide only if directly asked and what information should rightfully remain confidential.

A far better practice would be to allow the victim to be interviewed but not recorded. In that case, the rules of evidence would require the claims representative or private investigator to personally testify about what the victim supposedly said, subject to cross-examination and impeachment by the victim's own lawyer—who will be free to point out that the interviewer was working on behalf of the Defendant, if not for the Defendant's insurer. This should satisfy any insurer who is truly interested in documenting, rather than deconstructing, your claim. And it keeps control of the facts where they belong: With the victim, not a careless Defendant's insurance company.

Even better: Don't speak with anyone from an insurance company who wants to take your story. Many times, the claims representative will twist your words, minimize your report of pain, or paraphrase

the conversation in ways that help them and hurt you. It's just the way some of them have been conditioned to think. Don't give them that chance until you have spoken with a lawyer.

SHOULD YOU SIGN A MEDICAL AUTHORIZATION?

Another favorite tactic insurance companies use is to convince accident victims to sign a release, authorizing the insurer to directly obtain their medical records.

As everyone knows, medical records are confidential information. The Hippocratic Oath requires doctors to keep private everything they learn in the course of treating a patient. Medical confidentiality is also federal and state law. So why in the world would an insurance company ask a victim to sign a document requiring their doctors to provide their medical records to strangers?

If you are asked to sign a release, why not ask the insurance company if they will also give you a release to get the Defendant's medical

records? After all, the person who hurt you might have a drug problem, or narcolepsy, or uncontrolled high blood pressure, or a tendency to lapse into diabetic shock behind the wheel, or the need for prescription eyewear.

Listen to their answer and then consider your next move.

After all, fair is fair.

HIDDEN RISKS FOR ACCIDENT VICTIMS

No matter how harmless the request might seem, there are important considerations you should think about: Your records might contain information about previous injuries that are unrelated to the case, which the insurer could use to distort the effects of the accident or require expensive and time-consuming expert testimony to clarify.

Your records may also have sensitive and embarrassing personal information that they could use as leverage to convince

you to accept less-than-fair compensation. Some of the information could be stored for future purposes or even shared with other insurance companies in a centralized database. You will have to answer legitimate questions about whether pre-existing conditions are the true cause of your symptoms. The law does provide a mechanism for both sides to have access to that information. The best thing you can do is collect the relevant medical information yourself and then turn it over to the insurance company—with safeguards to protect your confidentiality and the integrity of your case.

If you do decide to sign a medical release, consider limiting it to certain providers and specific date ranges, and make sure the authorization expires, preferably in as short a time-period as possible but never longer than one year. Also, provide nothing without an agreement that your records be kept confidential and destroyed at the end of the proceedings.

No matter how convincing the insurance company may seem when they ask about your medical records, make no mistake. Their fact-

finding mission begins and ends with the goal of settling your claim on their terms, so if you are involved in an accident do not give up any documents without careful legal consideration and strict conditions about their use. As always, when in doubt, consult an experienced Vermont personal injury lawyer.

"Poetry is about the grief. Politics is about the grievance."

– Robert Frost

CHAPTER 5

Understanding Your Case.

If you have been hurt because of someone else's negligence, you need to know about the economic environment in which personal injury cases exist so you can understand what your case is worth and how to get the compensation you deserve from the person who harmed you.

INSURANCE

To begin with, the source of virtually all recoveries is liability insurance carried by the party at fault for the injury. Liability insurance policies are issued by "carriers" to people and businesses that conduct activities with a reasonable likelihood of posing some sort of danger to others. The most common sort of liability insurance is an automobile policy, but individuals, businesses and professionals also generally secure insurance coverage to protect them against claims arising from other activities, such as liability

for dangerous premises, the negligent actions of their employees or their professional errors and omissions.

On a basic level, a policy of insurance covers the holder up to its stated limits for liability for their own accidental actions during the period in which the policy is in effect. Intentional acts, and, often, punitive damages, are excluded.

Absent insurance, recoveries are nearly impossible to come by given that most individuals, and even many businesses, do not have enough assets to satisfy the damages because of the protections afforded under bankruptcy laws.

COVERAGE FOR CAR ACCIDENTS: SOME KEY DIFFERENCES

Fortunately, insurance is usually available to cover car accident injuries even when you're hurt by someone without insurance, or with inadequate policy limits.

Automobile policies automatically come with minimal coverage for uninsured or under-insured motorists, but you can purchase additional coverage, which is always a good idea. Most auto policies in Vermont also include "medical payments" coverage, which can be tapped to pay medical bills for reasonably relatable treatment, usually limited to one year from the date of the accident.

Making sure *ahead of time* that you have high uninsured/underinsured policy limits is the best thing you can do for yourself because if you are seriously injured, that policy of yours will pay you back for your losses, including medical bills, impairment, pain and suffering, future care and lost earnings after the other driver is tapped out.

TAPPING INTO ALL AVAILABLE MOTOR VEHICLE COVERAGE

In addition to the policy primarily applicable to the other driver and your own UM/UIM coverage, it is possible that other policies may be roped in and "stacked", such as policies covering the other

driver's additional vehicles, in some cases. The rules governing these situations can be complex.

A good personal injury specialist will identify and claim against all potentially applicable insurance policies, and even litigate in order to obtain coverage when it is denied. In many instances, an injury lawyer's understanding of and experience with insurance issues makes it worthwhile to retain them for this reason alone.

Indeed, insurance companies frequently assert dubious positions on coverage, liability and/or damages—especially when someone is claiming full value for their case. In most instances, the process of "adjusting" claims entails low-balling injured people or manufacturing coverage, liability or damages "issues" in order to downwardly leverage your recovery.

This is when people who attempt to handle their injury case without the benefit of counsel often decide to seek legal help, and with good reason. However, mistakes made by people in

the course of dealing at a disadvantage with professional "adjusters" prior to retaining a lawyer may irreparably harm their case, making it an unattractive one for the lawyer, compromising their ability to retain effective representation when they finally realize that they need it.

LIENS AND WHAT THEY MEAN

Another reason to retain counsel, even in cases that settle, is to make sure your legal and contractual obligations with your own health insurer are satisfied. Typically, health insurers and "medical payment" providers are entitled to a "lien" on your recovery. This means that you will have to pay them back for the money they spent on your care and treatment and, if applicable, lost wages.

A knowledgeable injury specialist will not only maximize your recovery and make sure you are not left with financial responsibility for unknown obligations but also negotiate reductions in the amounts of the liens in order to put as much money as possible into your pocket when all is said and done.

THE LEGAL LANDSCAPE

The first issue is whether suit is filed within the Statute of Limitations applicable to the action. Most injury cases in Vermont are subject to a three-year limit, meaning suit must be filed within that time in order to proceed. Death cases must be filed within two years.

Missing the statute of limitations is fatal to a case. Fortunately, in some situations limiting statutes may be "tolled", or put on "pause", such as where the injured person was a minor at the time, the wrongdoer has fraudulently concealed their role in creating harm or the injury was for some good reason not discovered during the limitations period.

Assuming your lawsuit is not time-barred, you would then have the burden of proving that your claim against the person who hurt you meets the "elements" of negligence.

In "garden variety" cases like motor vehicle accidents and premises liability cases, these are:

1. The existence of a duty of care running from the Defendant to the Plaintiff;
2. The breach of that duty;
3. Damages;
4. A causal relationship between the breach of a duty and the damages alleged.

In medical malpractice cases, the Defendant's actions or omissions must represent a deviation from the standard of care as established by experts competent in that area of medicine.

As for "damages", they typically include such elements as medical bills, lost wages, permanent impairment, disfiguration, future medical expenses, future lost earnings, loss of enjoyment of life and pain and suffering. (These are discussed in more detail in the next Chapter…)

Meanwhile, the Defendant can evade responsibility for your injury by asserting and proving any of a number of "defenses", such as:

1. Expiration of the Statute of Limitations;
2. Immunity from suit, such as the "Sovereign Immunity" often enjoyed by the government;
3. The lack of a duty to the Plaintiff;
4. The lack of any breach, assuming the existence of a duty;
5. Some or even complete fault by the Plaintiff for their own injury;
6. Absence of a causal link between the breach of a duty and the harm alleged due to a "pre-existing condition" or a "subsequent intervening event," to name just two reasons;
7. Claiming for unnecessary treatment or treatment that is unreasonably valued;
8. Failure to "mitigate", or to properly minimize, damages by delaying treatment, failing to follow doctors' orders, not replacing lost income when possible, etc.

PSYCHOLOGICAL FACTORS

The legal nuts-and-bolts are not the only factors affecting your odds at trial: While not a formal consideration, the psychology of a trial is an intangible but critical factor.

As human beings, we all approach every situation with a set of preconceived ideas, opinions and expectations which color our perception of people and events. Juries are composed of average citizens and therefore represent a cross-section of such perceptions, which they bring into the courtroom with them. The most common effect of these combined ideas, opinions and beliefs, especially in view of inaccurate and inflammatory media coverage fueled by special-interest propaganda, has resulted in a general bias in favor of Defendants, especially in medical malpractice cases, and a prejudice against Plaintiffs.

While this can vary from jurisdiction to jurisdiction, most practitioners in Vermont believe that the generally held, but

undeserved, skepticism about the motives of people who seek recovery for an injury and the merits of their cases is a factor influencing the typical jury pool in this state. *(Ironically, trial lawyers commonly hear new clients explain to them how they were skeptical of the motivations of injured people and the lawyers who help them until they themselves became injured and had to experience first-hand how the system treats them unless they stand up for their rights…)* In any event, good trial lawyer will be skilled at identifying jurors whose biases and/or prejudices disqualify them from service due to an inability to be fair and impartial. Moreover, experienced trial lawyers are students of human psychology and have the benefit of much research and thinking about the problem and its solutions.

Without going into great detail, suffice it to say that understanding and managing the effects of this toxic and fundamentally unfair victim-blaming phenomenon is a critical skill set for a trial lawyer. As a result, various insights into how and why people form their beliefs and opinions have been applied to the art of trial diplomacy in order to give clients who depend on a

fair trial before an impartial panel of their peers a fighting chance at a fair result.

However, the reality that society has been conditioned to view many Plaintiffs cases through a tinted lens does affects case valuation.

Other intangible but important considerations include the impression made by the parties themselves, demographic factors and, above all else, credibility. The personal credibility, or lack thereof, of the parties and their witnesses is of paramount concern, and is perhaps the single most influential driver of value aside from the hard, provable damages in the case.

"A person will sometimes devote
all his life to the development of
one part of his body—the wishbone."

– Robert Frost

CHAPTER 6

Valuing Your Case.

Every case has a "value." Although you and your particular circumstances are unique, your accident-related injury will have features, characteristics and qualities that make it possible to compare your case to other similar ones that have recently either settled or been tried to verdict in the same jurisdiction.

Like appraising a house or a car, a legal case can be evaluated based on features it has in common with, and distinctions that can be made relative to, other cases that have resolved. While this is certainly an imperfect process, it is a critical process because without some ability to make a predictive analysis of the comparative merits of cases there would be no way to make informed decisions about when to settle and for how much.

With the caveat that inadequate insurance coverage will always put a cap on your recovery no matter how bad your damages might be, cases are worth what a jury would find for you in court, with due consideration for:

1. The risk of either losing your case outright or receiving a recovery that is lower than expected;
2. The increased expenses associated with litigation, such as filing fees, court reporters for depositions, expert witnesses, and litigation expenses, like copying costs, postage, travel, lodging, meals, etc.; and
3. The "time-value" of money, i.e. the fact that a sum certain today can be worth as much in real terms as a larger amount received in the future, since it takes 2-5 years to bring a case through trial and even longer if there is an appeal, and longer still if the appeal is followed by a re-trial.

This analysis is played out against a legal backdrop, discussed in the preceding chapter, in which the various elements, procedures and evidentiary standards applicable in a court trial are taken into account in order to derive a predictive range of outcomes to be discounted by the three factors noted above.

It follows, then, that "value drivers" for Plaintiffs are:

- Personal impression & credibility
- The nature of the injury (graphic "objective" injuries like lacerations and broken bones versus "soft-tissue" injuries…)
- Prompt treatment by competent and credible providers and documentation of the injury
- Initial, consistent, continuing and full disclosure to all providers of all injuries and symptoms regarding all areas of injury
- Medical bills clearly related to the accident
- Pain and suffering, especially when it can be documented

- Lost wages
- Permanent disfigurement
- Permanent impairment
- Loss of enjoyment of life, especially when the Plaintiff can no longer pursue or is limited in pursuing previously enjoyed hobbies, sports, artistic callings or family activities
- Jurisdictional demographic characteristics

Conversely, the "value killers" traditionally relied on by insurance companies and Defense lawyers include:

- Some degree of negligence on the part of the injured person
- Lack of credibility & consistency
- Lack of demonstrably severe and objective injuries
- Lack of initial, consistent, continuing and full disclosure to all providers of all injuries and symptoms regarding all areas of injury
- Preexisting/subsequent injuries

- Failure to mitigate the effects of injuries through delays in treatment, failure to follow doctors' orders or the premature pursuit of activities that can aggravate an accident-related injury
- Failure to mitigate economic damages by not replacing lost income to the extent possible without impairing recovery
- Delay in retaining counsel
- Retention of inexperienced or ineffective counsel

This discussion is not intended to enable you to value your case. Rather, my intention is to arm you with the ability to understand the manner in which the insurance company will be analyzing and valuing your case. Indeed, without the benefit of specific knowledge about the jurisdictional, demographic, and psychological factors that are unfamiliar to most lay people but are the stock-in-trade of the career trial lawyer, it is likely that an unrepresented individual would be at a severe disadvantage relative to the insurance companies, who have teams of local defense lawyers upon which to

rely in their assessments of the specific effects of specific elements in a specific jurisdiction at a specific time.

If the insurance company has a better grip on valuation than you do, guess who loses?

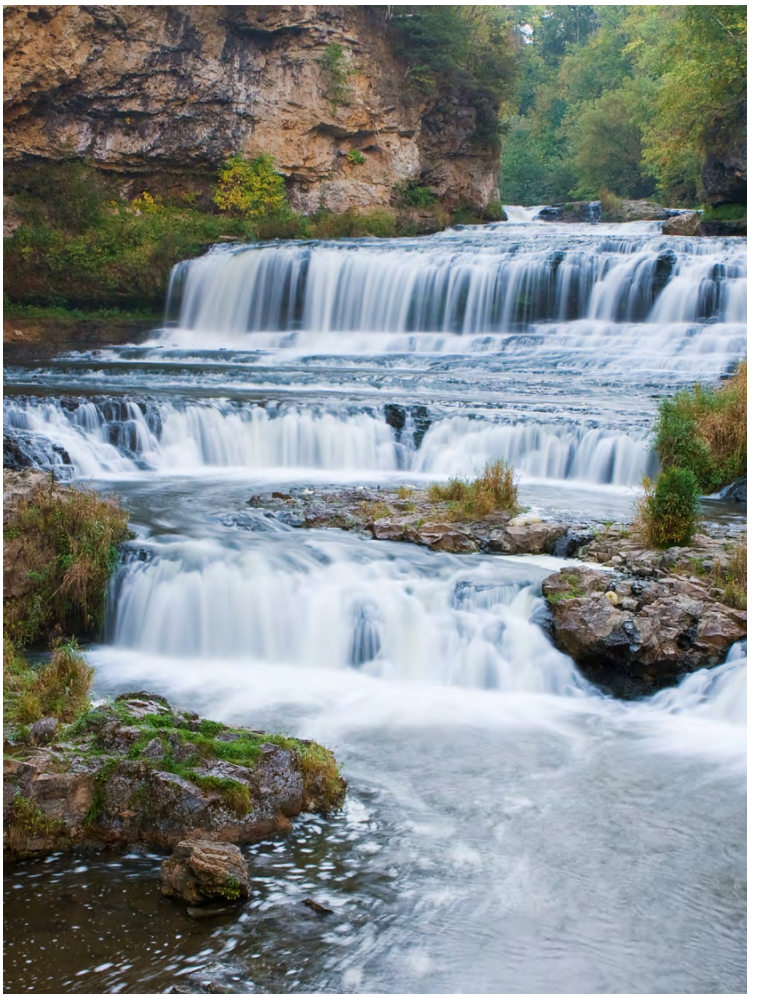
"The uninformed claimant has a vague understanding of his rights and obligations," according to Dan Baldyga, a retired insurance claims representative and author of a useful book for people with small-damage rear-end car crash cases, called "Auto Accident Personal Injury Insurance Claim."

Mr. Baldyga goes on to state:

> "He has little or no concept of the ultimate value of his possible recovery. Because of this he's less able to make appropriate demands. As the claims negotiation process moves toward a close his settlement demands are very often too low or too high. He's ignorant of the accepted principles that justify his demands. When he

attempts to negotiate a settlement with these handicaps he runs a strong chance of being victimized."

In view of this—and the last two items on the "value killer" list (delay in retaining counsel/retention of inexperienced or ineffective counsel)—the questions of whether you need a lawyer and if so, how to choose one, become absolutely paramount.



"I'm not confused. I'm just well mixed."

– Robert Frost

CHAPTER 7

Do You Need A Lawyer? [2]

If you've been injured by someone else's negligence, you are by definition a potential consumer of legal services. My intention here is to help you become an informed consumer of legal services.

HOW IS A PERSONAL INJURY LAWYER PAID?

Personal injury lawyers typically agree to work for their clients without accepting any money up front. Instead, they are willing to be paid in the form of a share of the money recovered on behalf of the injured person at the end of the process. This is called a "contingent fee agreement." The "contingency" is winning the case, either by settlement or through a lawsuit if no amicable agreement can be reached.

This means your lawyer's compensation is tied to performance, not the amount of time spent on working for you. The beauty

2. **IMPORTANT**: If you have a **medical malpractice** or **products liability** case, or one involving **death** or **serious permanent injury** please **STOP READING NOW** and turn to Chapter 8, How To Choose A Personal Injury Lawyer, because there is absolutely no chance that you will competently handle such a case without experienced and effective counsel.

of this result-driven arrangement is that this gives your lawyer a tremendous incentive to maximize your recovery. Your lawyer's fate is tied to yours. If you win, your lawyer wins. If you lose, your lawyer loses. As a result, personal injury lawyers tend to have a lot invested in getting you the highest recovery in the shortest possible time.

This arrangement also enables you to avoid spending or risking your own money or racking up unpaid legal bills on top of all of the other financial stressors injured people suddenly find themselves facing. With your cooperation, your lawyer does all the work and then, literally, puts a check in your hand to compensate you for the harms and losses you have suffered.

Often, personal injury lawyers will even advance all of the expenses in your case, such as fees to obtain records, court filing fees, the cost of court reporters if depositions are needed, the charges required by expert witnesses, travel expenses and so on—with the understanding that this will be reimbursed from the recovery you receive.

Since experienced trial lawyers are highly skilled professionals with doctoral degrees in jurisprudence, they can command several hundred dollars an hour for their time, so this represents an outstanding benefit to you, the injured person. The value of the time and skilled attention being put into your case is very high, and you will receive the benefit of that time and attention because you have become a partner with the lawyer in fighting for a good result.

Simply put, the incentives of yourself and your lawyer will be aligned, and through this alignment you will both benefit.

Another benefit of contingent fee agreements is that it filters out bad cases. Since the lawyer's compensation depends on the value of the case as presented in settlement, at mediation or through litigation, lawyers have a vested interest in being selective about which cases they choose to accept and which cases they reject. This dynamic is only amplified by the fact

that the lawyer is often spending their own money to fund your case as it goes along.

Next time you hear someone talk about "frivolous" lawsuits as if they were the rule rather than the very rare exception, consider whether that concept makes sense in view of what we have just discussed.

WHAT DOES A PERSONAL INJURY LAWYER DO?

A good personal injury lawyer starts by carefully and actively listening to your story. This conversation should actually be an interesting, pleasant and reassuring experience for you because you will quickly realize that you are not alone, your problem has been experienced by other people and you have found a supportive and wise counsellor in a time of confusion and need.

The lawyer's next step will be to investigate your case as necessary and appropriate under your particular circumstances and then provide you with an evaluation and an analysis of your situation and your legal position.

If you decide to hire the lawyer they will then develop a strategy and plan of action to move you toward a maximally desirable outcome as efficiently and quickly as possible. In service of this strategy, your lawyer will counsel you on what to do, and what not to do.

Your lawyer will handle all interactions with third parties including, but not limited to the Defendant, the Defendant's insurance company, opposing counsel and the courts, insulating you from the associated stress and inconvenience.

Your lawyer will also develop evidence supporting and documenting liability in your case as well as your injuries and the effects on your life and the lives of your loved ones. They will obtain supporting documentation and testimony and present that evidence to maximal advantage in settlement discussions, at mediation or in trial. Throughout this process they will protect your interests on levels and in ways that a layperson inexperienced in the realities of contested claims could scarcely imagine.

Of course, your lawyer will also provide office space to conduct activities in furtherance of your case along with the staff and business resources required to serve as a means of interacting professionally and credibly with the world on your behalf.

Not only will you benefit from the peace of mind as your lawyer insulates you from contact with the other side, thereby removing the stress and worry about dealing with the many issues and details an accident brings into your life, they will provide advice, guidance and moral and emotional support.

Most importantly, a good personal injury lawyer will put years of advanced education and highly specialized training and experience to work for you should your case go to trial. This includes knowledge and judgment about: value drivers; defense tactics; maximizing case development and presentation; skill and experience in negotiating; protecting your medical privacy; shaping facts and evidence; defeating or mitigating defense tactics; knowledge of the Rules of Evidence and Civil

Procedure; the ability to file suit, conduct discovery and present your case to a jury; and, perhaps most important, the benefit of years, and sometimes decades, devoted to being a student of trial psychology in the jurisdiction where your case will be filed.

This training, education and experience brings the real threat of force to bear in support of your campaign for recovery, meaning, your lawyer's trial skills will, paradoxically, actually help you avoid having to go to court, as will be discussed in the next Chapter.

SO DO I WANT/NEED A GOOD, EXPERIENCED TRIAL LAWYER?

The short answer is: Obviously, usually.

Except in cases where the issues and damages are clear and finite, and the stakes are relatively small, you will almost always be better off with a lawyer, even considering their fee. If you are rear-ended and have finite injuries with no permanency or deformity and limited related damages that are obvious and easily

documentable, yours might be the kind of case that will settle for essentially a predetermined value, meaning you can do better on your own—if the Defendant's insurance coverage is adequate and the Defendant and their insurer want to cooperate.[3]

However, such a case is the exception, not the rule. Most cases involve ambiguous if not complex fact patterns, unclear liability, injuries that require active documentation, consequences that are not patently obvious at first blush and therefore must be expertly dramatized, uninsured or under-insured motorists, large insurance policies that the carrier wishes to protect for its own business interests, and skeptical, stubborn Defendants and claims adjusters with time and money on their side during a period in your life when you are most vulnerable to financial and psychological pressure.

If you aren't sure which category your case fits into you probably are in the latter category and need a lawyer.

3. Mr. Baldyga's book might prove useful to you in valuing and settling your own case without hiring a lawyer if you have the type of case he covers and an insurance adjuster who is not, in his words, "crusty," "distrustful" or "downright cynical." The purpose of the book you are now reading is to give you useful advice so I want you to know about Mr. Baldyga. However, an examination of the book, which I personally own, and the on-line reviews, will convince you that cases with settlement values in the $10,000 range are its core focus. We generally do not accept such cases because we feel that it is not cost-effective for the client after the deduction of our fee, and our mission is to provide real value to our clients. If you have such a case I do recommend Mr. Baldyga's book: http://www.amazon.com/Accident-Personal-Injury-Insurance-Claim/dp/158820328X.

If you're still in doubt, do a cost-benefit analysis. Refer back to the Value Drivers and Value Killers sections in the preceding materials. Do this in view of the degree of difficulty in maximizing the former and minimizing the latter. Taking that degree of difficulty into account, consider the net result with the recovery you can reasonably expect (not hope…) to gain on your own.

Then consider whether professional legal services can reasonably be expected to increase the value by an amount equal to or greater than the contingent fee, bearing in mind that you would need to do all the work and foot your own expenses along the way. Finally, consider how your case will look if you fail to obtain your desired result and then bring it to a good lawyer with a busy practice who is selective about which cases they accept, and where you would be left if you have inadvertently diminished its value by trying to be your own lawyer.

If you decide the net result, after the legal fee, would be better without a lawyer than you probably do not want one. If you decide the net result, again, after the fee is deducted, would be equal (since the lawyer may advance your expenses…) or better with a lawyer, then you need one.

If that is the case, you will need to know how to choose that lawyer.

"Two roads diverged in a wood and I—
I took the one less traveled by, and that
has made all the difference."

– Robert Frost

CHAPTER 8

How To Choose A Personal Injury Lawyer.

The prospective consumer of legal services in this day and age faces a daunting array of advertising, online solicitations and sincerely held personal opinions from friends and relatives.

You, however, are the one who will ultimately be responsible for the lawyer you choose, the one who will have to personally interact with that lawyer and their staff and the one who will have to live with the result.

The purpose of this Chapter is to help you understand what to look for, and what to look out for.

WHAT TO LOOK OUT FOR: INTERNET MIDDLEMEN

First, look out for internet middlemen.

If you go online to look for a lawyer, you will immediately notice that internet is crowded with and indeed dominated by companies that purport to be able to link you up with a lawyer. These companies are from out of state, and their business model is to take advantage of your unfamiliarity with being a consumer of legal services combined with the typical lawyer's lack of the ability or willingness to effectively and appropriately market their services.

I will not name these companies here but if you have spent even a few moments on the internet looking for a lawyer you know what I'm talking about. The pitch is, fill out this form and we'll give it to a lawyer and they will contact you. Another approach involves "listings" and "ratings" in proprietary on-line directories. Obviously, these big out-of-state companies have gone out and gotten money from lawyers in exchange for using their search engine optimization resources in order to attract you to their website with the understanding that the referrals gained through that process will go to those lawyers.

Thus, the middlemen skim a profit out of your need for a lawyer.

So let's take a look at this business model. On the surface, it doesn't sound like a bad one. In fact it would actually work if the "product" in question was a fungible good, like a pair of shoes or a new garden hose or a widget. It would also work if the product was a finite and circumscribed service, like windshield repair. In such cases, the only major issues are price and convenience.

However, the more skilled, subject-specific and difficult the service is, the more the providers tend to become unique from one another, increasing the importance of individual distinctions in skill level, style, experience, personal style.

When you trust an online middleman to select or list or rate your lawyer, you essentially give your case to the highest bidder they could find for your "lead", not the most qualified practitioner who meets your needs and desires in terms of both skill and "fit." You

give up the ability to survey the local legal market for yourself, to choose who you would like to call and meet with, and to evaluate their ability, their demeanor and—perhaps most important—the way they will interact with the fellow Vermonters who may someday sit on the jury that decides your case.

As for online "ratings," attorneys are bombarded with suggestions that they list themselves on websites where they can be "rated" by "clients." This is a variation on the theme discussed above. Legal marketing consultants then, rather cynically, encourage lawyers to solicit ratings from their happiest clients and "stuff" the review listing with high grades for themselves. A telltale sign of such manipulation is a series of ratings within a compressed timetable, or ratings that glow with diffuse, subjective praise. It is impossible to know whether those ratings are even from real clients, as opposed to staff, friends or relatives of the attorney.

More important, legal services are nearly impossible to "rate."

Each case and each client is different, and the most important services lawyers provide are in many ways difficult to evaluate because they involve so many highly specialized, technical, or intangible elements that are not subject to repeatability under readily comparable circumstances. Ratings are for restaurants, not for the providers of professional services such as lawyers, doctors, therapists and the clergy.

On top of that, you are allowing a big, anonymous company to profit from your injury without doing anything special, let alone personal, to actually help advance you toward a recovery. You are in effect subsidizing the ongoing economy-wide process of consolidating money in the hands of big companies on the backs of people in need by bottlenecking their connection with the professionals who have invested in becoming educated, trained and experienced in helping such people.

I don't know about you, but the Vermonter in me doesn't like that. Not one little bit.

WHAT TO LOOK OUT FOR: FAKE CREDENTIALS

Another relatively new phenomenon in the legal marketplace are the purveyors of fake credentials and half-baked "peer" reviews.

Just like the big companies who have invaded the online marketing space, there are for-profit companies who approach lawyers and offer to designate them as distinguished in some way from their peers, either directly for a fee or indirectly in the form of fee-based benefits (such as "articles" or "profiles" or "awards" in their own magazines and on their own websites).

Run, *screaming into the howling snowstorm if necessary*, from any lawyer who holds themselves out as having been "selected by their peers" as being superior to other lawyers or who has been designated as a "top" this or that by some for-profit company.

What that really means is that lawyer received a letter congratulating them on being identified as being superior based on some vaguely defined standard involving no actual assessment of their credentials

or skills, that they fell for that pitch and that they parted with money, or have agreed to be asked to part with money, for accolades that flow not from accomplishment but from callow appeals to their own egos, insecurity or desperation.

Lawyers get those letters and emails all the time. I know I do.

Some throw them in the circular file. Others succumb to the flattery and trumpet their "designation" to the world either out of personal insecurity or in the hope of making themselves appear as desirable as lawyers who have actually earned special distinctions, recognition or designations the old fashioned way, through a demonstrated track record of excellence and a commitment to enhanced training and experience in furthering the cause of social justice through the highest development of their legal skills.

So when it comes to marketing there are two types of lawyers. On the one hand there are the insecure or lazy ones who want an easy way to portray themselves as being more

accomplished than they really are. Then there are the ones who invest the time and effort involved in personally achieving and then demonstrating the expertise that brings valid recognition from an accredited, preferably non-profit organization that uses actual standards to objectively certify lawyers based on legal skill and experience.

Which kind of lawyer would you want in your corner?

WHAT TO LOOK FOR: GENUINE CREDENTIALS AS A SPECIALIST IN TRIAL LAW

Trial lawyering is considered a "specialized" area of practice, and you definitely want to make sure you are represented by such a specialist.

The law is a vast and complicated field and there are many areas of practice within it, such as real estate, probate, family, criminal, transactional, bankruptcy, intellectual property, corporate, labor, civil rights, etc. Some lawyers pick one area to specialize in, meaning they focus on that particular area of the law and over time acquire deeper familiarity with the specific issues, and nuances, of that area. Other lawyers are "generalists", meaning they are willing to practice in several or many areas of the law, educating themselves as they go along and learning what they need to know as they confront each new client's situation, perhaps for the first time.

Clearly, you do not want a generalist to take your case before a jury. But within the specialty of trial lawyering, some lawyers are better

than others. The problem is so much goes into making a good trial lawyer that it is very hard for regular people to figure out how to tell the best ones from the not-so-great ones.

The same is true as regards specialists in the medical profession. As a response, doctors began to form independent non-profit bodies that evaluate skill and competence through actual monitoring of their work, review of their ethics, demonstrations of skills, testing of their knowledge, proof of requisite levels of actual experience and investigation into their malpractice history.

The American Medical Association reviews this process, and physicians who have met those rigorous criteria are designated as being "Board Certified" in their area of specialization.

By the same token, the American Bar Association has established standards for the Board Certification of lawyers who have specialized in a particular area of the law. One of these specialties is Trial Law.

There are several nationally recognized bodies that certify trial lawyers under the auspices of the ABA. One of these is the National Board of Trial Attorneys. Here are their requirements:

STANDARDS FOR CIVIL & CRIMINAL CERTIFICATION

- rev.9/14

1. Good Standing and Period of Practice

a. The applicant shall furnish evidence of his or her good standing in the state of his or her admission, or if admitted in more than one state, in the state of his or her principal practice.

b. Immediately preceding application, the applicant must have spent five (5) years in the actual practice of Civil and/or Criminal law.

2. Substantial Involvement

a. The applicant must make a satisfactory showing of substantial involvement relevant to the particular

specialty certification the person is seeking, with at least thirty (30) percent of his or her time spent practicing civil trial litigation, and/or thirty (30) percent of his or her time spent practicing criminal trial litigation, during the three (3) years preceding the filing of the application.

b. Within the applicant's career, the applicant must make a satisfactory showing of substantial involvement relevant to the particular specialty certification by personal participation in at least forty-five days of trial (a day of trial is not less than six hours) during which the applicant examined or cross-examined witnesses, delivered an opening statement or closing argument or conducted a voir dire jury examination. During the forty-five or more trial days the applicant must personally have:

    1. served as lead counsel in at least five jury cases;
    2. substantially participated in at least five jury cases which have proceeded to verdict;

3. conducted direct examination of at least twenty-five lay witnesses;
4. conducted cross-examination of at least twenty-five lay witnesses;
5. conducted direct examination of at least fifteen expert witnesses;
6. conducted cross-examination of at least fifteen expert witnesses;
7. presented at least eight opening statements;
8. presented at least four closing arguments;
9. conducted at least five voir dire jury examinations or (in courts which do not permit counsel to conduct voir dire examination) submitted proposed jury questions for the court at least ten times or a combination of examinations and submissions acceptable to the Standards Committee.

The Standards Committee may allow a lesser number of performances in categories (c) through (i) if additional

involvement in other categories clearly constitutes sufficient active trial participation to demonstrate an enhanced level of skill and experience.

c. Within the applicant's career, the applicant shall also have actively participated in one hundred (100) additional contested matters involving the taking of testimony (cases included in your substantial involvement may not be included as part of your contested matters). This may include trials (jury or non-jury); evidentiary hearings or depositions; and motions heard before or after trial. In criminal advocacy, it may include juvenile delinquency hearings. In civil advocacy, it may include arbitration hearings, welfare hearings, and workers compensation matters not tried to a court.

d. Within the applicant's substantial involvement and contested matters, one of the following four conditions must be met three years prior to application:

    1. substantial trial involvement in ten days of trial

with personal participation in the categories listed in Section (B)(2)(a) through (i) or,

2. active personal participation in 24 litigated matters, either directly handled to conclusion as lead counsel or in a supervisory capacity to lead counsel, or
3. participation in 36 performances (evidentiary hearings or depositions which either oral argument was made or testimony was taken, or motions heard before or after trial), or
4. a combination of trial days, participation in litigated matters or performances which demonstrates substantial involvement in the specialty equivalent to one of the three subsections above as approved by the Standards Committee.

3. Educational Experience

a. The applicant must demonstrate substantial participation in continuing legal education and the development of the

law with respect to the specialty, in the three year period immediately preceding application either:

1. By attendance and/or electronic participation in not less than forty-five hours in programs of continuing legal education in the specialty or ethics, approved by the Standards Committee, or
2. By equivalent participation through, but not limited to, the following means, approved by the Standards Committee:
    a. Teaching courses or seminars in trial law or ethics;
    b. Participation as panelist, speaker, or workshop leader, at educational or professional conferences;
    c. Authorship of books, or of articles published in professional journals, on trial law;
    d. By combination of the three subsections above.

4. Peer Review

a. The applicant shall submit with application the names of ten to twelve references, not present partners, associates, or relatives of the applicant. These references shall be substantially involved in the relevant field of trial law, and familiar with the applicant's practice in that field. References satisfactory to the NBTA must be received from at least three judges before whom the applicant has tried a matter in the relevant field, not more than three years before application; and at least three shall be lawyers with whom, or against whom, the applicant has tried a matter in that field within three years of application.

b. NBTA will solicit confidential statements from all persons listed as references and may solicit confidential statements of reference from other persons, familiar with the applicant's practice, not specifically named by the applicant. All reference statements received will be reviewed by the NBTA to assess whether the

applicant has demonstrated an enhanced level of skill and expertise in the practice area, integrity and consideration for the interests of clients.

5. Examination

The applicant must pass a written examination to test his or her proficiency, knowledge, and experience in civil and/or criminal trial law, so that the applicant may justify his or her representation of specialization to the public.

6. Legal Writing Document

The applicant shall submit a copy of a legal writing document, no more than three (3) years before the date of application which he or she has prepared, but not necessarily published. This will be a substantial document in the area for which the applicant seeks certification, containing concise and accurate writing, stating facts (either actual or hypothetical), stating applicable law, analysis of how the law applies to the facts, written in an appropriately argumentative manner and well constructed (i.e. organized, grammatical, demonstrative of good syntax and usage) .

Acceptable documents include, but are not limited to: briefs (trial or appellate), motions for summary judgment, bar journal, law review and legal magazine articles, motions in limine, etc.. The quality of the legal document will be evaluated on those criteria and will determine whether the applicant is qualified for certification.

7. Disclosure of Conduct

a. In order to assist the evaluation of whether the applicant possesses an enhanced level of skill and expertise in trial advocacy and has demonstrated integrity and dedication to the interest of clients, the applicant shall, to the extent known, disclose to the National Board of Trial Advocacy as soon as permitted by law:

    1. The filing of any criminal charges against the applicant together with all details called for by the Disclosure of Conduct Form;
    2. The filing or submission of any allegation of unethical or inappropriate professional

conduct with any court, grievance committee or disciplinary board or body together with all details called for by the Disclosure of Conduct Form.

3. The assertion of any claim of professional negligence or professional liability, whether or not suit has been filed, which is based in any part on alleged acts or omissions of the applicant or member or on the acts or omissions of any other attorney over whom the applicant or member had any responsibility together with all details called for by the Disclosure of Conduct Form.

b. The National Board of Trial Advocacy shall determine, in accordance with its standards and procedures whether the conduct is such that certification should be granted, denied, suspended or revoked, or whether action should be deferred pending receipt of additional information. The NBTA will take into consideration

any findings made by other bodies concerning such conduct, but is not bound by any such findings and will make its own independent assessment concerning how such conduct bears on whether an attorney is qualified to obtain or maintain certification.

c. The failure of an applicant to disclose such conduct is a material misrepresentation and may be cause for rejecting an application or refusing to grant certification, or for suspending or revoking a certificate. The applicant shall have a continuing duty to disclose such matters to the board.

http://www.nbtalawyers.org/standards#StandardsCCCertification.

Clearly, then, the NBTA and other truly independent, non-profit organizations like it, have contributed greatly to solving the problem of evaluating credentials and certifying skill levels for the legal consumer who has no real basis to compare lawyers based only on advertising or word of mouth.

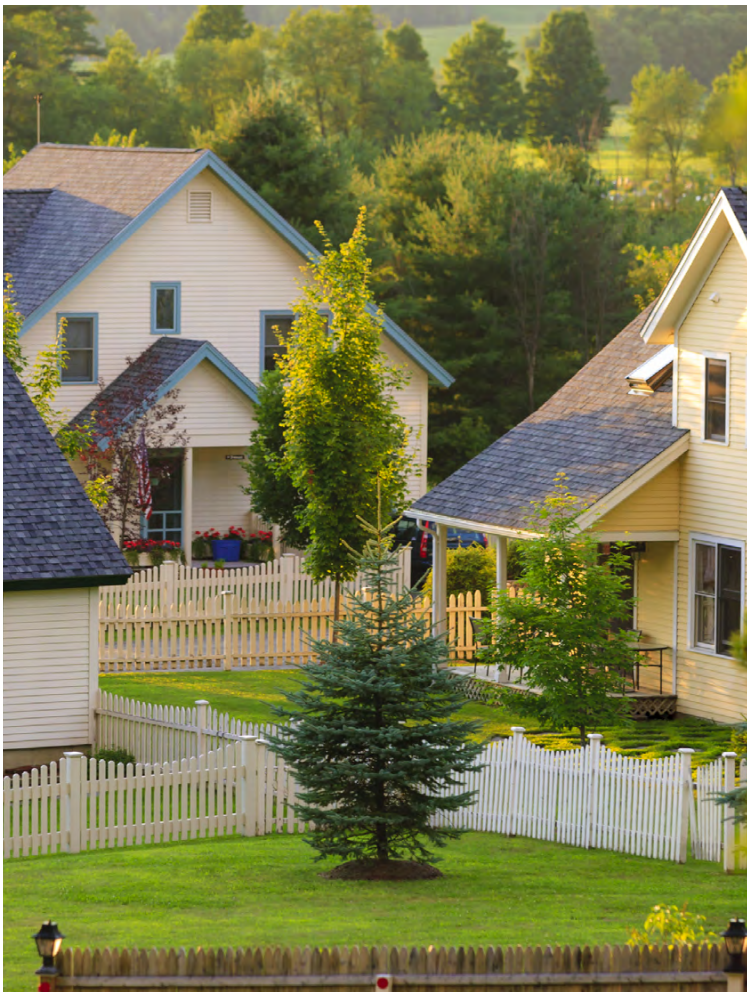
As for the **practical benefit** of all of this experience and skill **to you** as an injured person seeking justice in a landscape dominated by Dinosaur-like insurance companies who make the ground shake around you with their footfalls, consider these words from the NBTA:

> What will motivate your opponent to want to settle with you out of court? If you are represented by an experienced trial lawyer who is making a reasonable request for settlement on your behalf, the opposition knows it would probably be foolish to take the case to trial….
>
> On the other hand, if the opposition knows something you don't know—that your lawyer has virtually no experience in court or has demonstrated a serious lack of skill in court—the opposition is much less likely to meet your settlement demands because they feel confident about their chances of success against your lawyer in court.

For these reasons the most powerful advantage you can have is a lawyer who is known to be a highly-skilled trial lawyer. The odds are much greater that such a lawyer will be able to successfully negotiate an out-of-court settlement for you.

Litigation is often times compared to war. In litigation, as in war, the side with the greatest skill and experience is usually able to avoid conflict because the opposition is not willing to risk the consequences against such a capable opponent.

"*Recognizing Qualified Trial Representation*", National Board of Trial Advocacy.



"Home is the place where, when you have to go there, they have to take you in."

– Robert Frost

CHAPTER 9

Retaining A Lawyer And Becoming A Client.

This Chapter will focus on the process that follows your decision to hire, and your selection of, an attorney, but it also contains a synopsis of the path that a lawsuit takes through the legal system, so it may be of benefit even to those who choose to represent themselves.

RETAINING THE ATTORNEY

Vermont requires that all contingent fee agreements be made in writing and signed by both client and lawyer. The amount of the contingent fee must bear a relationship to the services performed, either in terms of the effort required or the degree of difficulty.

The standard contingent fee agreement calls for the lawyer to receive one-third, or 33⅓ percent, of the gross amount of the recovery, plus any expenses that the firm has advanced or absorbed. The

agreement should also spell out the terms that would operate in the event that the client and attorney part ways for whatever reason before the culmination of the case.

The general provisions of contingent fee agreements and the services they cover relative to personal injury cases tend to be quite similar, if not identical, from firm to firm, so the terms of the agreement are not usually a differentiator between different lawyers. There is one caveat: Some attorneys are moving to a 40 percent contingent fee, especially in medical malpractice cases.

This trend toward increased contingent fees reflects the perception that recoveries are becoming harder and harder to obtain due to economic factors and, in malpractice cases, the difficulty and expense involved, given both the high cost of the specialized experts that are required plus the zealous nature of the defense of these cases.

In Vermont, most plaintiff's lawyers work for the customary one-third fee on non-malpractice cases, with a growing trend toward the 40 percent fee on malpractice cases.

HOW TO BE A CLIENT

There are many ways in which you, as the client, can have an impact on the outcome of your case.

As the provider of professional services in a high-stakes adversarial setting in which emotions often run high and sometimes involve deeply personal issues, the personal injury lawyer has a lot of difficult social, emotional and psychological dynamics to manage and control, to say nothing of the legal challenges involved in their work. The fact that the Defendant will also have legal counsel who is paid to oppose your case at every turn makes your journey toward recovery fraught with obstacles and pitfalls.

Therefore, it is *imperative* that cooperate *fully* with your lawyer in each and *every* respect.

HONESTY IS SUCH A LOVELY WORD

First and foremost, cooperation entails a client being completely open and honest with their lawyer.

Like a clergyman or a psychiatrist or a medical doctor, a client's communications with their lawyer are privileged, meaning they are completely private, confidential and not ever subject to disclosure to anyone except in very rare circumstances, such as if the client were to confess the intention to do imminent violence to another person or, possibly, in the event of a legal malpractice action arising from the handling of their case.

Therefore clients have nothing to gain by keeping secrets, even embarrassing ones, from their lawyer. Such "secrets" can include things like prior injuries to the body part at issue in the case, prior lawsuits where credibility became a problem,

making money "under the table" while claiming lost wages, prior marital difficulties in cases involving claims of lost consortium, past criminal convictions and so forth. But clients *do* have a *lot* to lose if you withhold such information.

This is because such information often does have a way of coming into the hands of the opposition, who will use it to maximum effect at the worst possible time, and usually by surprise.

Surprises are *deadly* events in litigation. They are the legal equivalent of an ambush. As such, a surprise at trial typically leaves the victim's lawyer flat-footed, confused and unable to respond properly, often resulting in the infliction of irreparable damage to your position. This is especially true since the surprise is usually known by the other side in advance.

So, while the opposition's lawyer is gleefully carving you up on the witness stand or bringing in "smoking gun" evidence that eviscerates one of your claims, ruining your credibility in the process, your own

counsellor will be a helpless witness to your destruction instead of a protective guardian who is prepared to shield you from the damage.

Trial lawyers refer to these as "Perry Mason moments." Believe me, you *don't* want to be on the receiving end of a Perry Mason moment.

On the other hand, if your lawyer is aware of the deep dark secret you are harboring they can usually do something about it. Perhaps they can make that information irrelevant, and therefore inadmissible, by making strategic or cost-benefit decisions concerning the type of claims that will be used to define the factual contours of your case.

For example, at our firm, we never make lost-wage claims on behalf of people who don't pay all of their taxes. We do not put people on the witness stand who have a history of dishonesty. We do not ever try to fool a court or a jury into thinking a person is someone whom they are not, or that some thing is what it is not.

As lawyers who stand in front of juries and ask them to award

money to our clients, our integrity is the single most important personal and professional asset that we have. We therefore expect, or rather *demand*, that our clients do not dupe us into besmirching that integrity in the process of trying to help them obtain a legal recovery through our professional services. It's called trust, and mutual respect.

In addition to strategically foregoing otherwise valid claims that are undermined by some fatal inconsistency in order to protect the rest of the case, preventative lawyering can take away the sting of non-fatal issues. Often, the damaging effect of the challenging information can be avoided or lessened through proactive means, such as filing a motion to exclude the evidence before the trial, or by preparing contradictory, mitigating or explanatory evidence and testimony in rebuttal.

If those tools prove unavailable, it is usually best that the judge or jury hear about the damaging information from you first. It is far better to confess such information to the judge or jury than to have

it come out in a way that makes you look dishonest or deceitful to boot. If your claim is damaged that is one thing but if your credibility on even one point comes into question, your entire case can and will be jeopardized.

No human being is perfect, and the world is full of good people with real injuries who also have made poor decisions at one point or another, or who have stumbled into circumstances that might not reflect well on them. This does not mean that such a person should go without access to the available legal remedies.

But the reality is that when you bring a lawsuit you put yourself on trial too. That carries with it the obligation to be truthful or face the consequences. So make sure the Defendant's lawyer doesn't know more about you than your own lawyer does.

FOLLOW YOUR LAWYER'S ADVICE

In keeping with everything we have discussed so far, your choice of a lawyer to represent you in your injury case was the result of an informed and careful decision-making process.

As a corollary, it should be expected that you will heed the advice you receive from your chosen counsel, for your own good.

Such advice is likely to include: do not delay obtaining medical treatment; once you do obtain medical treatment, follow all of your doctor's orders scrupulously; make sure to report and document all of your symptoms; make sure to attend all appointments, be they for physical therapy, rehabilitation or counselling; obtain any tests, imaging or diagnostic procedures recommended by your providers; do not discuss sensitive details about your case with anyone other than your spouse; file your taxes; document and record your harms and losses; etc.

To the extent that you ignore this advice, your claim will be undermined.

KEEP YOUR EXPECTATIONS REASONABLE

As discussed above, case valuation is both art and science.

Case valuation is not, however, about wishful thinking. (Buy a lottery ticket….) It's not about envying what someone else recovered in their case. (Their case is their case, with their facts, their injuries, their jurisdiction and their insurance coverage limits….) It's not about your financial needs. (That's what jobs are for….) It's not about what could have happened "if." (It didn't happen so count your blessings….)

Cases only settle for reasonable amounts in view of the facts on liability and the provable injuries, harms and losses. This is because the settlement of a case is a transaction that needs to be looked at as a business decision.

Also, settlements are, by definition, compromises of disputes. In return the parties keep the decision-making power in their own hands, avoid delay and expense, and get certainty and

repose. The alternative, going to trial, involves the surrender of the decision to a group of "impartial" strangers, and is fraught with uncertainty, delay and expense.

That said, there are situations when a client can only get a fair hearing and, hopefully a fair result at trial, even with all the risk, uncertainty, expense and delay involved. Those are the cases that people who call themselves "trial lawyers" live for. No trial lawyer worth their salt would walk away from such a fight.

However, experienced trial lawyers also know the difference between a reasonable settlement offer and an unreasonable one. They also know that when a reasonable settlement offer is declined, the party who walks away usually lives to regret their decision at trial.

Personal injury cases are emotionally challenging. Settlement decisions should not be based on emotions though, but rather on an objective calculation or risk versus benefit based on the odds of recovery and factoring in the time-value of money.

It is far wiser to base such a decision on the advice of experienced counsel rather than on needs, expectations, hopes, desires or, worst of all, anger.

LET YOUR GREAT UNCLE JOEY RUN THE BARBECUE, NOT YOUR LAWSUIT

Almost every client has one.

The relative who had a personal injury case of their own—or who knows someone who did, or who read a newspaper article about a case just like yours—and is eager to share with you their evaluation of your case, and how much you should "walk away with."

The problem with this is that, as discussed above, case valuation involves many factors and variables that must truly be comparable in order to prove useful in deriving a reasonable range of settlement. If Uncle Joey, or Uncle Joey's friend from New Jersey, got "x" dollars for "the same injury" as you have sustained, that does not mean your case is worth that much, or that little, for that matter.

Case outcomes vary tremendously from jurisdiction to jurisdiction, and it so happens that Vermont tends to be on the lower end of the range of values for reasons alluded to in an earlier Chapter.

That is not to say that your case will always be worth less than an out-of-state case or, for that matter, more. It is to say that case valuation is influenced by so many variables that differ from case to case, person to person, circumstance to circumstance and location to location that free drive-by anecdotal information is usually worth what was paid for it.

In fact, having read up to this point in this book, you probably know a lot more about personal injury law than Uncle Joey himself.

"Nothing can make injustice just but mercy."

– Robert Frost

CHAPTER 10

And Now…The Rest Of The Story.

At this point, the playing field has been laid out for you, you know how to handle the initial stages of your case, you are familiar with the pitfalls to avoid, you know whether you need a lawyer, you know how to choose one, and how to be a good client. What about the rest of the process? How does your case move forward? What are the steps along the way? What if your case doesn't settle out of court?

CASE DEVELOPMENT

During the initial stages of your case, your lawyer will interview you, have you answer a background questionnaire, investigate the accident, gather facts about the Defendant, obtain information about your damages and initiate contact with the Defendant's insurance company.

THE CLAIMS PROCESS

This begins the "claims process," which is to say the process of providing documentation of liability and damages to the Defendant's insurance company with the goal of convincing them that you have a good case for obtaining a recovery in court, and therefore one that they should settle in order to avoid the expense of hiring defense counsel and exposing themselves to the risks of a verdict that is out of proportion to the case's settlement value.

(This is why, as discussed above, your lawyer's level of experience and skill in the courtroom has the most impact on whether or not your case gets put on the trial track by the Defendant's carrier….)

The claims process often ends with a settlement, which is to say a compromise of positions based on what both sides agree is a reasonable valuation of your harms, losses and damages. This will enable you to obtain the benefit of a recovery without

further involvement with the legal system. It typically represents for you the best, most efficient and least demanding manner of resolving your case.

If your case settles, your lawyer will provide you with a written Settlement Statement, which sets out the amount recovered, the contingent fee, the expenses, the medical liens and then the net recovery to you. By law, a settlement statement signed by the Plaintiff must precede the distribution of the funds.

LITIGATION

If your case cannot be resolved pre-suit, then litigation commences.

Litigation, or the filing and prosecution of a lawsuit, begins with the filing of a Summons and Complaint, which are served upon the Defendant. The Summons tells the Defendant which court they are being sued in, and the Complaint tells them what it is they are being sued for.

Next, a process called "discovery" begins. Discovery is the exchange of information between the two opposing sides in the lawsuit. One way discovery is obtained is through written questions, called Interrogatories, which are answered under oath. Another is Requests for Admission, consisting of factual statements that the other party must either agree or disagree with. Requests for Production involve asking the other side for documents or things.

In addition to "written discovery," the parties to a lawsuit can obtain information through the physical examination of people, places or things.

Then there is the "deposition." A deposition involves a question-and-answer session between lawyers and the parties and witnesses involved in the case. These question-and-answer sessions are conducted under oath and are recorded by professionally trained court reporters, who take down every word that is spoken during the deposition and reduce it to a printed transcript.

As the Plaintiff in the case you are certain to be deposed. Your deposition will involve meeting and answer questions from the Defendant's lawyer with your own lawyer in attendance to interpose objections and conduct other protective activities on your behalf. Meanwhile, your lawyer will take their own depositions of the Defendant.

Both sides will depose the various fact witnesses together, and each side will also depose the other side's expert witnesses. (Fact witnesses testify about what they have seen, heard, know or have learned about various issues in the case; expert witnesses offer scientific, technical or otherwise specialized knowledge and opinions based on their training, education or background.)

The materials obtained through these, and other, methods of discovery are designed to "prevent surprises" (see above) and to develop a common understanding between the two sides of the facts that inform the issues in the case for purposes not only of trial but also for mediation.

Mediation, which is mandatory in Vermont, entails a meeting between both parties and their lawyers in the presence and under the supervision of a trained mediator. These mediators are almost always senior litigators with experience on both sides of the bar, or retired judges.

This is because the legal, factual, technical and emotional issues that tend to come into play during a mediation demand skill, perspective and experience. The mediator must have deep first-hand experience in the litigation process from discovery all the way through trial and appeal in order to really grasp the issues and their significance, and to persuasively articulate each side's position and risk-benefit profile.

Mediations begin with the parties and the mediator in the same room. The parties then go to separate quarters and the mediator goes back and forth between them in a process of shuttle diplomacy. Hopefully the mediator is able to present reasons to each side why

they should come toward the middle. If the mediator is able to get the two sides to meet, the case settles. If not the case proceeds toward trial, but the parties are usually at the very least closer to each other than they were before the mediation began.

Mediation is confidential, meaning that no one may disclose to outside parties what was said during the proceedings. This policy is designed to encourage frank discussion of the parties' positions and the risks of trial facing each side. It is, however, acceptable to use information obtained in mediation to track down new leads in the case and develop additional evidence for trial.

Mediation is where most cases are resolved.

If the case does not settle at mediation it is set on the trial calendar. The first step is a pre-trial conference, in which the Court meets with the lawyers and discusses the timetable for trying the case. In this conference arrangements are begun for the jury draw.

The jury draw involves something called a "voir dire", literally "to see, to say" in French. In voir dire, prospective jurors, usually drawn at random from the local voter checklist, are summoned to the Court and required to make themselves available for questioning by the lawyers. The lawyers' questions are designed to identify biased or prejudiced jurors who for whatever reason cannot be expected to render a fair verdict based only on the evidence admitted at trial.

Political beliefs, moral issues, personal knowledge of the parties or their lawyers, philosophical convictions and strongly held opinions are among the many reasons a juror may be excused from service "for cause" after being questioned on these topic by the lawyers, and sometimes the judge. Each side is also permitted to strike a certain number of jurors based on any reason of their choosing. These are called "preemptory strikes."

Obviously, careful and skilled lawyering is required in order

to explore the hearts and minds of prospective jurors in order to develop a feeling as to which ones would be naturally sympathetic toward and which ones would be inherently skeptical of a given side in a case. Trials are often won or lost at the jury draw.

The trial itself begins with instructions from the Court about the jury's role in the process. Then come the opening statements of the lawyers for each side. Opening statements are often likened to a road map of the case, a preview of what each side expects the evidence will show. Argument is not allowed at this stage of the proceedings because arguments may only be made based on facts, and no facts have yet been admitted into evidence.

At the conclusion of the opening statements the proceedings are opened for the presentation of evidence. Evidence comes in the form of witnesses, documents, recordings, images and tangible things.

In the presentation of evidence, the Plaintiff goes first because the Plaintiff has the burden of going forward. When the Plaintiff's

lawyer finishes with a witness, the Defendant's lawyer is entitled to cross-examine that witness. The Plaintiff's lawyer may then re-direct, followed by a re-cross, until the two sides run out of issues or the Judge gets annoyed and puts a stop to this legal tennis match.

When all of the Plaintiff's evidence is in, the Plaintiff rests. It is then the Defendant's turn to bring on witnesses, whom the Plaintiff's lawyer will cross-examine, followed by the same process of re-direct and re-cross. At the end of its case the defense rests as well.

Once all of the evidence is finished, the two sides have the opportunity to make motions for directed verdicts, meaning that the admissible evidence when viewed under a certain standard is so clear that the Court should decide the case, or an issue in the case, on its own. The case goes to the jury if the judge rejects the motion for a directed verdict.

Before submitting the case to the jury the judge will instruct them in the law, based on proposed jury instructions submitted by the

lawyers for the two sides in combination with the judge's own views and preferences.

The jury is then sent behind closed doors to deliberate. The parties await their verdict until they are called back into the court, where all of the participants—Plaintiff, Defendant, their lawyers, the judge and the jury—are assembled for its announcement.

After the trial, either side can petition the judge for a new trial, or an order vacating the result and dismissing the case, based on some problem with the proceedings or the claims themselves. If this motion succeeds, there is either a new trial or an appeal by the side that lost the motion.

If the motion to vacate the result is denied, the losing party may appeal the case to the Vermont Supreme Court. On appeal, the Supreme Court may uphold the lower court or reverse it. Sometimes the result of an appeal is an order for a new trial.

Once the case is finally over, a process that can take from 2½ to over 10 years, a victorious Plaintiff is awarded the verdict plus interest and their costs, not including attorney's fees, at trial an on appeal. If the Plaintiff loses, the Plaintiff must pay the Defendant's costs, again usually excluding attorney's fees.

This brief description of the litigation process should illustrate the reasons both sides have for being open-minded about settlement and receptive to compromise in favor of a reasonable and amicable resolution. It should also underscore the importance of retaining experienced, trial-hardened counsel, not only for purposes of maximizing your odds of success in court, but also for purposes of avoiding it in the first place.

CLOSING THOUGHTS

At this point, you should feel as if you have experienced vicariously a little bit of what is in store for you as you take your first steps along the path of recovering for your injury.

I hope you are not discouraged. On the contrary, I hope and believe that this review of the unfamiliar landscape that now looms before you will assist you in making wise and informed decisions on the many challenges that lie ahead. In some ways the picture that I have sketched for you may be discouraging, but in these areas I feel it is my duty to offer you, an injured person in need of legal redress, a realistic assessment of the personal injury environment.

I certainly hope that, far from deterring you in proceeding with your case, that I have offered you some comfort in the form of

the knowledge that there are skilled, dedicated and caring legal professionals who have devoted their careers and their lives to the fight for social and economic justice on behalf of regular people facing off against the monolithic corporations and the claims handlers and lawyers who are paid by the hour to obstruct your journey simply because you were hurt by a careless actor who wishes to evade responsibility for the harm they have caused you.

By the same token, I have sought to make you a wise and informed consumer of legal services, which is critical if you are going to have a fighting chance at obtaining justice, especially in this age of cutthroat legal marketing on the one hand, and, on the other, withering attacks against the legal profession by monied interests bent on driving a wedge between the victims of their corporate or individual carelessness and greed, and those who would come to their aid.

Finally, let me tell you that this need not be the end of our time together. If you are in need of legal help for a personal injury, or if

you have any questions that you feel I might be able to help you with, please do not hesitate to contact me:

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(802) 878-1500

Or visit us on the web at:

www.accidentattorneysvermont.com

STEVEN A. BREDICE, ESQ.

Author and Board Certified Vermont personal injury lawyer Steven A. Bredice limits his practice to plaintiff's civil litigation, with a heavy emphasis on accidents, medical malpractice, products liability and wrongful death cases.

Admitted to all state and federal courts in Vermont as well as the Second Circuit Court of Appeals, Attorney Bredice has successfully tried numerous cases to verdict before juries throughout Vermont. A former insurance defense lawyer whose practice is now devoted to representing only the injured, attorney Bredice has a behind-the-scenes knowledge of insurance company settlement and litigation tactics and strategies.

Attorney Bredice is a Board Certified Civil Trial Specialist by the National Board of Trial Advocacy, which is accredited by the

American Bar Association. He is a frequent lecturer at accredited seminars providing continuing legal education to other lawyers in the areas of trial practice, personal injury litigation, legal ethics and insurance law.

A 1982 cum laude graduate of Middlebury College, Attorney Bredice received his Juris Doctor degree from Emory University School of Law, where he was a managing editor of the Law Review and a Teaching Fellow. He is the author of Media Hybrids and the First Amendment: Constitutional Signposts Along the Information Superhighway, 44 Emory Law Journal 213 (1995). Attorney Bredice has also served on the faculty of Burlington College, where he was an instructor in the Department of Paralegal Studies.

Steve lives in Jeffersonville with his wife, three children and many pets. He is an avid skier and a fourth-generation working musician playing jazz saxophone and flute. He is also a commercially published novelist.

From Opposing Counsel:

"I was amazed at your dedication to your client's case, including your diligence and determination to see it through … Your client should be enormously grateful for the Herculean effort you put into her case."

From Our Clients Post-Trial:

"Thank you for your extensive hours, diligent work, and persistent attitude throughout this arduous case. Your perseverance, talent and ability to remain compassionate are deeply appreciated."

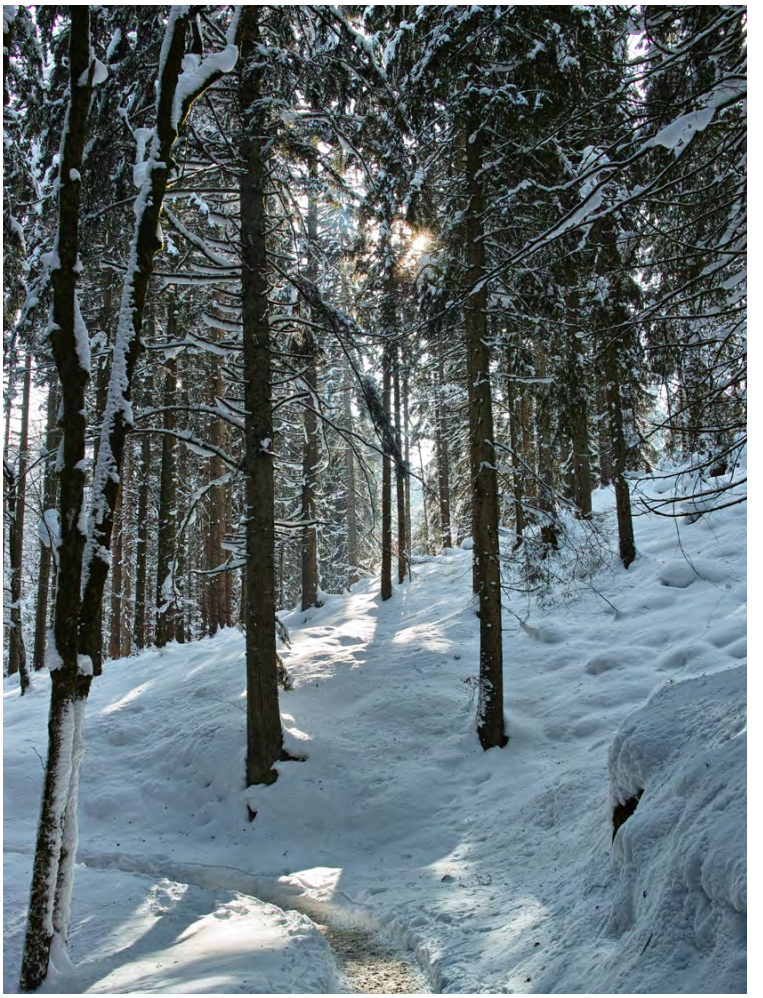
"I can't begin to express our gratitude for all that you have done for us … [A friend] remarked this morning, 'I guess there is still justice in this world.'"

From Our Clients Regarding Settlement Efforts:

"*I just wanted to take a moment to express my gratitude for the time that the attorney you assigned to our case has been providing to my son and his pending legal matter. He was assigned to our case a few weeks back and we are very pleased with his performance … Since the day he contacted us, our minds have been put at ease*

… We have heard from him almost daily, sometimes several times a day, either to request information or to simply let us know where we stand. He has included us in all correspondence and kept us very informed on what is going on from his end. We are enjoying his aggressive approach to get this settled … I will definitely be recommending him to anyone that needs representation. I think he is a great addition to your firm and he will be where I turn to if I ever find I need legal advice in the future."

"When the accident first happened friends and family gave me different advice. I wasn't sure who to listen to or what to do. I knew I needed help. So I called two accident attorneys and spoke to their secretaries whom I told the situation to. One was kind enough to call back to let me know it wasn't worth his time. I thanked him for his honesty. I decided to give it one more try and called your office. I couldn't be happier since I was let down by the first two. Once in a while someone touches us in a way that restores our faith in others. You got me a settlement and also gave me something money can't buy. I thank you from the bottom of my heart and will never forget you for your compassion and kindness among other positive attributes. You have truly been a blessing."



"These woods are lovely, dark and deep,
but I have promises to keep, and miles
to go before I sleep."

– Robert Frost

Dedicated to Gianna,
Alexandra and Sebastian.

Powell Bredice & Stern PLC

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