The Utah Accident Book

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Introduction

Insurance companies have one goal: to keep their money. This is why insurance company adjusters are trained to closely scrutinize claims so that they can find reasons to pay less than they have to. And it is not difficult for an insurance company to do this. Adjusters are very adept at finding multiple excuses to justify this type of cut-throat claims practice.

Indeed, many of the mistakes that claimants make after their accident play right into the insurance company's "good" hands. These mistakes are addressed in this book with the hope you can learn from the mistakes that others have made that have reduced the value of their case.

My hope is for you to educate yourself so that you can avoid these mistakes, while at the same time, taking to heart the suggestions included in this book on how to make your case stronger. If you do, you are guaranteed to be in a better position when it comes time to try and resolve your case.

Across the board, most accident cases, probably in excess of 90 percent, are resolved with the insurance company. I would venture to say that most of these cases – especially when handled by those who don't have an attorney – are resolved for less than what I would consider to be fair value.

Sometimes the claimant has made some mistakes along the way that have reduced the value of their case. Sometimes, the insurance company cannot appreciate the severity of the injury. Sometimes they allege that you are more than 50 percent at fault in causing the crash. And sometimes, the insurance company has developed guidelines so that no matter how hard you try, you will never get to the fair value of the claim.

This results in the reality that sometimes your case will need to be moved to the next level: filing it in court.

Filing your case in court will give you and your attorney the ability to "arbitrate" your case under Utah's arbitration statute, where your recovery is capped at $25,000 against the at-fault person. (You still may be entitled to benefits under your own insurance policy.)

If you don't elect arbitration, then filing in court allows you and your attorney the ability to ultimately present your case to a jury. At this level, you are removing the decision-making process from the insurance company and delegating it to a jury of your peers.

But don't think for a second that doing so will help you collect more money. I would say in most cases you do, but sometimes you do not. Sometimes you can do worse, much worse, as in completely losing your case if a jury doesn't see the link between the crash and your injuries. This is especially true in low

speed, low impact crashes.

So you want to educate yourself. You want to be informed as to how accident cases work. This book will help you to do just that.

I welcome any suggestions you have for future editions on material you would like to see covered here. And if you have any questions after reading this book, please do not hesitate to give me a call personally so that we can discuss your question(s) in detail. I can be reached at (801) 553-8840.

– Ron Kramer

Chapter 1
Do I Have a Case?

In law school, lawyers are taught that there are four elements that every case must have for it to be successful. Lawyers who evaluate your case will look to see if these elements are present.

The elements are: (1) a duty or responsibility on the part of the wrong-doer, (2) a violation of that duty, (3) a showing that this violation "caused" the injury, or showing a link between the accident and the injury, and (4) identifiable "damages" that flow from the injury. A case will most likely be lost if it is missing any one of these essential elements.

Indeed, insurance companies routinely try to get out of paying fair value on cases by arbitrarily claiming that one or more of these elements is missing. Knowing in advance that you have satisfied these minimum requirements will help you and/or your lawyer in answering arguments that the insurance company may make.

First Requirement: Establishing a Duty.

Not every injury comes with a remedy. When I talk to new clients, I tell them that unless they can blame someone (or a company) for their injury, they probably do not have a case.

A simple example of this is the duty that motorists

have to stop at red lights. It's a basic rule that requires a driver coming to a red light to stop. Another basic rule is the duty to yield to oncoming vehicles when making a left-hand turn. These traffic rules are sometimes referred to as the "Rules of the Road." These are well-understood rules that all motorists agreed to when they got their license.

Other duties, or rules, however, are not so obvious. In a slip and fall case, for example, the "rules" or duties that govern a property owner's behavior are much less clear. In this area, the courts have, over time, laid out the laws that propery owners have to follow in keeping their properties safe.

A supermarket, for example, has to clean up spills that the market becomes aware of before someone gets hurt. This is a "rule" that they are supposed to follow. It is a rule just like the one that prohibits a driver from running a red light, and is just as binding on the wrongdoer.

Second Requirement: Proving Violation of a Duty.

Once a rule or duty has been established, the injured person must then prove that other person broke the rule. In an auto accident case, where both sides claim the other person ran a red light, the fact finder will have to piece together the evidence to find out who is telling the truth. Witness testimony, skid marks and the vehicles themselves can provide important clues as to how the crash happened.

Third Requirement: Linking the Accident with the Injury.

Of the four elements that you must prove in a motor vehicle crash case, this is the one most likely to derail the case. In these kinds of cases, a person who is making a claim must prove that the wrongdoer's actions actually "caused" the injury to occur.

A common situation where satisfying this requirement becomes a problem is in the case of a rear-end car accident. Many of these crashes result in only minor impact to the car. Yet people can still be seriously injured from this type of crash.

In these situations, the insurance company lawyer will almost without fail argue that because the car wasn't badly damaged, that the person inside the car could not be that badly injured either. The insurance lawyer will blow up a picture of the dented or scratched rear bumper to make their point. It is a very compelling presentation.

In this author's opinion, too many jurors buy into this "snow job" and find no link between the crash and the person's injuries. For this reason, many attorneys will simply not take cases that involve minor rear-bumper damage to the car. Their staff will routinely turn these down over the phone.

Other lawyers, like those in our office, will require more than just a bumper scrape to get involved. This will usually mean, absent extenuating circumstances, that the damage to the car should be at least $1,200 to

$1,500.

Another element to consider when looking at the link between the crash and the injury is whether the client can be blamed, at least in part, for causing the injury to happen.

For example, a person who is walking outside on icy surfaces in flip flops will not be free from blame. A person who is speeding will not be blameless when the other driver makes a left-hand turn directly in front of them. A patient that was supposed to return to the hospital if they had chest pains will likewise not be free from fault if they later have a heart attack.

You should know that the amount of any eventual recovery will be reduced by the same percentage of fault that the fact finder puts on the injured party. For example, if a speeding motorist is found 30% to blame for a crash that happened when the other driver failed to yield, and the verdict is $100,000, then their recovery will be $70,000.

And that's not all. In Utah, you need to show that the person who caused the harm is at least 50.01 percent responsible for the injury you received. This means that if you personally are more than 50 percent at fault, you don't have a case. You are out of court. (Don't be too discouraged, in some states, if you are even 1 percent at fault, you don't have a case.)

Fourth Requirement: Proving Damages.

The final thing that must be shown is that the person who was injured actually incurred what the law refers to as "damages." Utah law says that unless the injured person suffered a permanent injury, or $3,000 or more in medical bills, then they are not legally allowed to make a claim.

Insurance adjusters will routinely use this law as a way to deny claims.

Two typical ways they do this is by first arguing that because of a gap in treatment, the person never got to the $3,000 level, and the treatment they got after the gap in treatment must have been from some other ailment.

Another way adjusters may try to defeat the claim is to point to a visit the patient had with their doctor or health care provider where the patient said they were doing better. In situations where the patient reported feeling better and there was less than $3,000 in medical bills, the adjuster will sometimes claim that the person failed to establish their claim under Utah law.

One Last Question: Where is the Money?

Finally, there is yet one more question that needs to be answered: where is the money?

In car accidents, the money in almost all of these cases will come from the insurance companies. I should tell you that 99% plus of personal injury claims

will only be brought if there is an insurance policy, or if the claim is against a big company. Large companies tend to have large insurance policies to protect against personal injury claims.

In most law offices, whether there is insurance coverage, is actually the first question a lawyer might ask before deciding to take a case. You could have a catastrophic injury, an at-fault person to blame, and yet not have a case because of the fact that there is little to no insurance money available. These are sad cases because even the best lawyers cannot get money for an otherwise worthy client when there is none available to get.

I will therefore almost always turn a case down when there is no insurance and where there is not a large company to blame.

It is my experience that people who drive with little or no insurance, are in that particular situation because they couldn't afford to pay for more coverage. This almost always means that there is no money to go after in court. In other words, suing a person who doesn't have insurance – in most cases – is going to be a big waste of time.

Yyou also need to consider that in many cases, all a person has to do to get out from a court's judgment is to declare bankruptcy. Depending on the type of bankruptcy declared, your claim and/or judgment against them could completely evaporate.

Chapter 2
Do I Really Need a Lawyer?

I am here to tell you that you may not actually need an attorney to settle your personal injury case. I know that this may be hard to believe coming from a lawyer. However, if your case is a smaller one, then there's a good chance that you could actually get by on your own without having to retain an attorney.

Your case is "smaller" if it meets the following criteria: (1) your vehicle was only lightly damaged, e.g., bumper scratch/dent, (2) the medical treatment was for a "soft tissue" injury and lasted only 2-3 months, (3) the bills were at least $3,000 (remember, this is a Utah State minimum to make a claim), (4) the bills did not exceed $5,000, and (5) the injuries were not permanent and all the pain has gone away.

Cases that can qualify as "small" cases are typically rear-end collisions where the damage to the rear bumper is less than $1,000.00, where the injured person only saw a chiropractor (maybe an ER doc) and was diagnosed as having a "soft tissue" injury, who recovered fairly quickly and who had no long-term permanent effects.

In these cases, it is actually possible to settle the case yourself. And quite honestly, people do this every day. In fact, right or wrong, consumers settle much

larger cases with the at-fault insurance company every day – probably to their detriment. There is nothing to stop you from doing this.

If you have a small case, and your bills are more than $3,000, you will first want to finish your treatment and get "released" from your doctor. Once you are released, you will want to collect the bills and records from all medical providers who have treated you for your injury. If you were taken by ambulance and were treated in the ER of the hospital, you will want to collect these records as well. (An exception to collecting these bills and records is if you signed the at-fault insurance company's medical authorization and gave them authority to collect your bills and records for you – almost always a really bad idea!)

If you are collecting your hospital billing statements, don't forget to get the radiology and physician billing records as well.

After you have collected your records, you will want to write a letter to the insurance company with your "demand," or request for settlement.

In your letter, you should ask to be reimbursed for your medical bills (and future medical bills if applicable) as well as the pain and suffering you went through and/or expect to go through in the future. You may present your own offer, or do as we do, ask *them* to make the first offer.

The insurance company will then contact you and make you an offer. Brace yourself, though, because in

most cases, their opening offer will much less than you were hoping for. You are free, however, to make a counter-offer and to "negotiate" with them.

When you negotiate, you need to keep in mind that the settlement will include the at-fault insurance company paying back your own car insurance for "personal injury protection" or "PIP" benefits that they may have already paid toward your medical bills. You should therefore negotiate in terms of "new money," or in terms of the at-fault insurance company taking care of your insurance company's right to be reimbursed.

Be careful here, because you don't want to settle your insurance company's claim, you want to settle your own claim. If you do for whatever reason settle your insurance company's right to reimbursement, you could inadvertently cut yourself off from future PIP benefits you may have under your policy.

For example, the insurance company might say that they will settle your case for the cost of medical bills *plus* $500 to $1,000 for your pain and suffering. They might offer you less. Maybe more. But this is probably in the range of what you might see if you negotiate with them directly on a "smaller" case.

If you are negotiating a larger case, you should expect more than this. Some law firms, like ours, offer a free service where they will review the offer from the insurance company, compare it against your own records, and let you know whether or not the insurance company is making a fair offer.

Now if your case is larger, you will want to carefully consider whether you should settle it on your own. Generally speaking, the larger your case, the more important it is to retain a lawyer who is familiar with personal injury cases. The reason for this is that they know, or should know, what the general value of these cases are.

And, attorneys worth their salt have the ability to "push the envelope" to get you compensation that is fair and reasonable. The result is that they can remove the decision-making process on what is fair value for the case from the insurance adjuster to a jury, or to arbitration. Insurance companies know that the typical person trying to resolve their own case does not have this ability.

In deciding whether to hire a lawyer, you should consider that even when an attorney charges their typical 33 1/3 percent contingency fee, the injured person is still more likely to come out further ahead than if they went at it alone. A study that was done in 1999 by the Insurance Research Counsel, a non-profit agency, confirmed this.

If you have a larger, more serious case, you should ask the attorney you are considering whether they will "guarantee" to you the amount offered by the insurance company. In our office, for example, I tell our clients that they will never be penalized for allowing us to help them in their case.

And if for some reason the insurance company

doesn't offer you more money, then we will "guarantee" them at least the amount offered by the insurance company, even if we have to cut our attorney fee to do it.

I can tell you that in the cases where we have made this guarantee, the client has always ended up with more money in their pocket than if they had done it alone. You should therefore ask the attorney you are thinking of using whether they will do this same thing for you.

Finally, in deciding whether or not to hire an attorney, you should consider the 1999 study which concluded that insurance companies pay higher settlements to injured people who use an attorney versus those who do not.

The study was performed by the Insurance Research Council ("IRC"), a non-profit organization that is supported by leading property and casualty insurance companies across the United States. The mission of the IRC is to advance the insurance industry's view on matters crucial to insurance companies.

The IRC discovered that people who used an attorney received on average 3 ½ times more money in settlement than those persons who settled their cases on their own. And this is after the attorney fee is paid!

Often times accident victims are told by the insurance adjustor that they shouldn't hire an attorney because they will receive less money in settlement.

The study shows that this simply is not true!

Chapter 3
How Long Does it Take?

The answer to this question is: it depends. If your injury is serious and there is only a small amount of insurance money (say around $25,000 or $50,000), the settlement could happen quite quickly. In fact, in many situations, the insurance companies, once they learn of the severity of the injury, may actually call you (or your attorney) to see if they can pay their policy limits and settle the case.

In situations where your injury is not as severe, or where the policy limits are higher (say $100,000 or more), then the claim will generally take longer to resolve. In these cases, attorneys will want to wait and see what the full scope of your medical treatment is and what the medical bills come to.

If the treatment looks like it will extend into the future, we will ask your doctor to give us a letter outlining the expected costs of those procedures. In the appropriate case, we get a doctor to write us a letter about the client's condition, the doctor's prognosis for the future, and the type of "permanent impairment" the client may have.

Now, sometimes your treatment might end fairly quickly, say 2-3 months. Sometimes, it can take over a year. Sometimes over two years. It really depends on the nature of your injury and the medical treatment you get. Generally speaking, cases involving a "soft tissue"

injury will resolve much quicker than those involving an "objective" injury, or one that can be seen on an X-ray or MRI.

So once you or your attorney has a handle on your case, they will want to package all the documentation regarding it and send it to the insurance adjuster with a demand for fair payment. Or you can ask the adjuster to make the opening offer. The case at that point is in "negotiation."

In demands that we prepare, we will ask the adjuster to contact us within 15 days. (There is actually a state law that requires a response in 15 days.) In our experience, we have found that the insurance company will usually respond within 2-3 weeks of receiving the demand. (Sometimes, however, they will want additional documentation or statements from the claimant.)

The speed of the negotiation can vary greatly, depending on the insurance company and the adjuster assigned to the claim. It might go fairly quickly if the insurance company comes to the table with what the attorney feels is an above-average offer for that kind of case. It will go slower if they come back with a low number.

In our office, we will never accept the first offer from the insurance company. (The only exception is when the insurance company offers to pay the maximum amount of the policy.) Once we receive the first offer, we continue our negotiation by making a

counter-offer.

The insurance company then responds with their counter-offer, and so on. Depending on how easy (or hard) it is to contact the adjuster, this process might take a few days (if it goes quickly), or if the adjuster is hard to contact, it could take weeks, and sometimes, months.

In situations where the insurance company is paying less than what we feel is fair value, then the whole process will almost always take longer.

As a consumer, you need to be wary of attorneys that tell you they will get you your money fast. What this means is that they (or what is the more likely case, their non-lawyer "negotiator) are going to take the first or second offer from the insurance company and settle the case quickly.

The reality is, in cases where the insurance is offering less than fair value, the negotiation will usually take a minimum of 1-2 months to get the settlement into the "fair" range. Sometimes longer. Sometimes quicker.

The bottom line is that you usually will not get to the "fair" offer in only 1-2 rounds of negotiation. In fact, in negotiation, you may never get to what you feel is fair. In those situations, the attorney is left with an option to arbitrate the case under Utah's arbitration statute (where your recovery is capped at $25,000), or to request a jury trial.

Chapter 4
What Is My Case Worth?

I am asked all the time when meeting with new clients what I value their case at. I squirm when I hear that question because usually I'm asked this shortly after the accident happened.

At this stage in the game, I have no idea what the extent of their injury will be, whether they will have a good recovery, the amount of their medical bills, whether the client will end up with a permanent impairment, whether they will be able to work like before, etc. I would say that once a client has stopped treating and their symptoms have tapered off, we are in a much better position to evaluate their case.

In short, there is no process or formula that I'm aware of where we can predict, with accuracy, what the value of a case is.

I suppose if someone came up with one, there would be no need for personal injury lawyers. In those situations, one could just apply the formula to come up with the perfect amount to settle the case for. And if everyone was okay with that, there would be no need for trials, since trials for the most part are had when the parties are unable to agree on the value of a case. This, however, is not the world we live in.

In order to determine what a case is worth in settlement, we need to flash forward to picture a trial

involving the witnesses in that client's case and the evidence that we will be able to present concerning the case's value.

At trial, we would present tangible evidence concerning: medical records and bills, future medical treatment, lost and future wages, lost earning capacity, level of property loss, life-care plan data, etc. These would be considered "special damages," or damages that can be expressed with some degree of financial certainty (although the sides will disagree on the values).

Another component that we would present at trial would be what we call "general damages." These damages involve pain and suffering and mental anguish, both past and present, loss of quality of life, having to live with pain in the indefinite future, loss of relationships that the client may have enjoyed in the past, disability, scarring, permanent impairments, inconvenience, etc. These damages are considered "intangible" since they are largely subjective and can have a different value depending on who you talk to. A client's recovery at trial is thus a combination of the special and general damage claims that we can support at trial.

Other factors will also go into determing how well a case will do at trial. These factors include the likeability of our client, whether they will be seen as a fighter (good) or a whiner (bad), a client's work history and accomplishments, the facts giving rise to the acci-

dent (was alcohol, a cell phone or text messaging involved?), the extent and permanency of a client's injuries, their age, time off of work, who the defendant is (sympathetic individual versus "evil" corporation), who the insurance company is, who the defense attorney is, specific legal issues in the case, what jurisdiction the case will be tried in, average settlement and verdicts for that area and/or attorney, etc.

Now it is important to remember that when you settle a case before trial, you will almost always allow a "discount" to the defendant off the value that you expect you might get at trial.

This is so because the client will not have to incur the expenses of putting on a trial, such as bringing out expensive expert witnesses, preparing exhibits, etc. The client also does not have to wait around for a trial and undergo the stress that goes with it. The client is thus "saving money" by settling her case sooner rather than later. This has a certain value to it.

From this discussion, hopefully you can see that it becomes easier to project what the value of the case is when the case has been around a while.

Everyone heals differently and at different rates. And while we might think a client will shortly be done with therapy, we might later find out that their doctor requires them to have much more. Or that the doctor now wants them to take a certain test, or that the client's doctor is now suggesting surgery.

Thus, until the client reaches what we call "maxi-

mum medical improvement," it is almost impossible to predict how much more medical treatment they might need. This, of course, greatly affects the value of a case.

Cases will also vary in value depending on who is handling it. You could have the very same case and the value of it could vary greatly depending on who the attorney handling it is.

I have been told by former insurance attorneys that one of the first things that the counsel for the insurance company does in evaluating the case is look to see which attorney filed it. If that attorney would have a hard time finding the courthouse, then that case is going to be worth significantly less in that attorney's hands than if the attorney took cases to trial. This is another thing that needs to be considered.

The fact is, no two cases are alike, even ones that seem pretty similar. Thus, Evaluating personal injury cases takes a fair amount of experience, knowledge and intuition. Without these qualities, you can be at a serious disadvantage if you are trying to negotiate with an insurance adjuster.

Thus, the lay person who does not do this for a living should look to an experienced and competent personal injury attorney for guidance to maximize the full value of what their case might be worth.

Chapter 5
How Does Insurance Work?

Insurance can be confusing. In the end, however, there are what amounts to three separate insurance policies that you need to be concerned with in making a personal injury claim. These three coverage areas are: (1) bodily injury (BI), (2) uninsured (UM) and (3) underinsured (UIM) coverage.

First, all car insurance policies written in Utah carry bodily injury, or BI coverage which provides money for the innocent person injured by the at-fault driver. In Utah, the minimum policy amount is $25,000 per individual claim, with a maximum of $65,000 for multiple claimants. (This amount can be different if the insurance was written in a different state.) Maximum amounts, especially those belonging to companies, can be $1 million or more.

Bodily Injury Coverage.

Remember that when you are injured in a car accident, you will be making a claim on the BI policy of the driver who caused the crash.

Based on the clients I have spoken with over the years, there is a common misconception that if there is $25,000 or more available for you to make a claim on, that you can tap into this little-by-little, as your treatment progresses and as your bills accrue. This is

incorrect.

There will generally only be one settlement with the insurance company, and that will typically happen once the treatment ends, or in the case of a serious injury, when it becomes clear that the value of the injury exceeds the amount of available coverage. You won't be sending the insurance company your bills for payment as you incur them – only at the end of your claim with them.

Uninsured Motorist Coverage.

In cases where the at-fault driver carried no insurance, you will need to make an uninsured motorist (UM) claim against your own insurance company. This is a basic component of your insurance that will typically provide at least $25,000 in coverage.

In some cases, however, there may be less coverage, and in cases where the person "waived" uninsured coverage, there may be no coverage available.

Unfortunately, some unscrupulous insurance agents are deceptively selling consumers budget insurance plans that contain only minimal protections, and which may not contain any UM or UIM coverage. The consumer that is buying these policies, in many circumstances, doesn't fully understand what they are not getting since it is not explained to them the additional amount they would need to pay to get the additional coverage.

Under-Insured Coverage.

This coverage, called a "UIM" policy by insurance companies and attorneys, covers you when the at-fault person's insurance does not have enough money to make you "whole."

In these situations, the UIM policy provides additional money to make up for what the at-fault person may not have by way of insurance coverage. In Utah, the minimum amount you must have for UIM coverage is a paltry $10,000.00. Most will have this coverage, although some may have unwittingly signed away their coverage along with their UM coverage.

It therefore makes sense to make sure you have plenty of UM and UIM coverage to protect you against those that drive with little or no insurance. See Chapter 12: 15 Minutes Could Save You From Financial Ruin.

Chapter 6
The Minimum Benefits Your Car Insurance Gives You

In Utah, insurance companies are required to provide their own customer, or insured, with certain basic benefits. These benefits are called PIP benefits. PIP stands for "personal injury protection" and provides benefits to cover the driver and passengers in a vehicle if they get injured from a motor vehicle crash. If you were a pedestrian at the time, the PIP coverage of the driver that struck you would provide benefits to you.

It is important to remember that these are "no-fault" benefits that will cover you even if you caused the crash or significantly contributed to it.

There are three components to PIP benefits you may be entitled to. They are: (1) $3,000 for medical bills, (2) one year of lost wages, which are your actual wages or $250 maximum per week, whichever is less and (3) household services reimbursement of up to $20 per day.

PIP Benefit #1: $3,000 For Medical Bills.

First, the $3,000 is used to cover medical bills and therapeutic medicine and devices which are directly related to the crash. (Some policies may actually have higher limits, although all must have at least $3,000

available.)

This is why after the crash, medical providers will ask you to give them the name of your insurance company (or the driver's, if you were a passenger) and the claim number. They ask for this because they will bill the insurance company directly.

Some health insurance companies, such as IHC, will not begin to pay any benefits until they are satisfied that the $3,000 in PIP benefits is used up.

Please note that if your insurance company suspects or suggests that your treatment is not fully related to the crash, they might cut-off benefits and request that you be examined by one of their select insurance company doctors. They have the right to do this because in most situations, you, the insurance holder, gave them that right!

PIP Benefit #2: Lost Wage Coverage.

Second, PIP coverage pays for a portion of your lost wages if and when you have been released from work by your doctor. If you were put on "light duty" and there is no light duty work for you to perform, you are still eligible for this benefit. The benefit, though, is pretty paltry: a maximum of $250 per week.

This basically comes to $6.25 per hour for 40 weeks. Most Utahns make more than this. Still, as I tell my clients, it's better than nothing. Your doctor will need to provide a note that you can submit to your

insurance company before they will approve benefits. If your injury is more serious and it's clear from the records that you are seriously injured and therefore cannot work, then those medical records may also suffice.

PIP Benefit #3: Household Service Benefits.

Finally, if someone is helping you with your activities of daily living following your injury, then that person is entitled to be reimbursed for up to $20 per day.

This would apply, for example, if your spouse is now doing the laundry, mowing the law or cooking your food for you. The pay isn't much, and there is a form that you will need to fill out to claim this benefit, but it's still better than nothing.

In fact, this benefit is good for up to $600 per month. Not too bad. And, it can help supplement a wage earner who usually makes more than what his insurance company will cover in lost wages.

Of all the three benefits, this one is most likely the one your adjuster forgot to tell you about when they explained the benefits you are entitled to.

Chapter 7
The 13 Mistakes to Avoid in a Personal Injury Case

In handling literally hundreds of accident and personal injury cases, I have learned of the many ways where my clients' cases were weakened, or in some cases, destroyed, by different things they did.

During this same time, I have heard and learned from insurance adjusters, focus group members, other attorneys, judges and from jurors who have listened to cases that I have tried, about things that claimants do that hurt their case.

The purpose of this chapter is to illustrate these mistakes with the hope that you can avoid making them in the future. Here then are the thirteen mistakes you want to avoid if you wish to prevail in your case.

Mistake #1: Waiting Too Long to Get Medical Treatment.

Many clients who wait too long are people who really were hurt, really were in pain, but wanted to "tough" out their symptoms. The reality is, however, that when a client waits a week or two or three, or more, the insurance company is sure to make an issue of this delay in treatment.

What they will say is that if the person was really

injured in the accident, as they claim they were, then they would have gone in for treatment right after the accident happened. The fact that they didn't, says the adjuster, means that they were not really hurt.

Attorneys representing the insurance company continue this argument by telling jurors who hear the case that a normal person who is hurt would see a doctor right away. This is an argument that many jurors will accept, to the detriment of the injured client. So unless the claimant has a really good reason why they waited two months to get treatment, they may be out of luck. In some cases, even the claimant's own insurance carrier, who is supposed to pay the first $3,000 of their medical bills under their PIP policy, may refuse to pay because of the gap in treatment.

The solution, obviously, is to get medical treatment promptly, ideally the same day of the injury, but in no case should it be more than a week after you were injured.

If your injury or symptoms are severe, you should go to the ER. If they are less severe but still significant, then an urgent care clinic may be appropriate. Keep in mind that most chiropractors, and even some physical therapists, can generally see you the same day and don't require a doctor's referral.

And once you are treating, you should continue to treat and make sure that no gaps in treatment develop. Gaps between treatment can also cause big problems in your case.

Mistake #2: No Police Investigation.

This problem usually comes up when the at-fault driver begs the injured party NOT to call the police. They plead to let them take care of it to keep their insurance rates from going up. Big mistake! The at-fault person who seems so sincere at the scene will often lie like a rug later on and try and blame you for the crash. Without an investigation detailed in a police report, the claimant will face an uphill battle.

You see, police reports are essential to show where the crash happened, who was involved, the vehicles involved, the direction they were going, the witnesses who may have seen the crash, etc. Especially critical on the police report is the insurance information for the at-fault driver. If the other guy is begging you not to get his insurance involved and you fall for this, they may never give you their insurance information unless you sue him.

The solution is to always, always call the police after you're in a vehicle collision. If you decided not to do it the first day and you are maybe on day two or three, call the police right now and make a report. While not ideal, a late report is better than no police report.

If the police never came, you may still be okay if the at-fault driver gave you their true insurance information and there are witnesses that can say how the crash happened. You may also be okay if the at-fault driver admits that he or she caused the crash.

You can usually talk to an attorney for free over the phone and find out if you can still make a claim.

Mistake #3: Giving Too Much Information to the Adjuster.

In many case, often before an attorney even gets involved, a claimant will have a one-on-one recorded interview with the insurance adjuster for the at-fault insurance company. In the interview, bad things can happen when the client reveals confidential things that are really irrelevant to their particular claim.

Some of these things can include sharing a history of mental problems or substance abuse. They can include providing too much information on past car accidents or medical issues the client may have had in the past, along with sharing information about legal claims they may have brought.

All of these things, as well as other potentially negative things about the client, can weaken the claimant's claim with the insurance company.

Signing the insurance company's medical release to allow them the opportunity to conduct a witch hunt into your medical history, can also have the same effect. You should know that medical releases that the insurance company asks you to sign are very broad. These releases allow them to get all records pertaining to your mental health and substance abuse (if applic-

able) history. If you're a woman, your ob/gyn records concerning fertility issues and sexual activity are also fair game.

I think most persons who have the opportunity to review their own medical records would be shocked at all the private things that these records contain. And here you are, giving the wrongdoer's insurance company free reign to the lot of it!

Honestly, the only records that the insurance company should have are those that are directly relevant to your crash. Medical records which show a pre-existing history of injury in the same area where you are experiencing problems now, might also be relevant to your case.

The solution is not to give a recorded statement. You can give a statement if you want, but make sure that they are not recording it. The insurance adjuster/investigator might act as if she has a God-given right to do this, but she really doesn't.

If you refuse permission for the insurance company to record your statement, and they do so anyway, they cannot use your statement against you later on. It's sort of like a cop who doesn't get a warrant and finds drugs in a house he illegally searched: in those cases, the incriminating evidence is excluded in court.

Now if you have already given a statement, don't despair. It may be that the the statement you gave may be harmless or that it was given within 15 days of the accident occurring, or both. If the statement was given

within 15 days of the crash, it is inadmissible at trial under Utah law unless you were given a copy of the transcript.

Mistake # 4: Failure to Disclose Past Accidents to the Lawyer.

Being involved in a prior car accident won't kill your case. If we know about your prior wreck(s) and whether or not you were hurt, we can explain how the prior wreck is relevant – if at all – to the claim you are now involved in.

The problem arises when a client attempts to hide the wreck from their attorney and from the insurance company. Because insurance companies keep extensive databases on past accidents and claims, chances are good that they will find out about it. And when they do, you face the problem of explaining why you earlier said you were not involved in a wreck.

At trial, they could use these inconsistent statements against you to "impeach" your credibility and to show the jury that you were not being honest. The jury at that point may decide to totally dismiss the other, more important things that you testified to during the trial because they see you as untrustworthy.

The old adage therefore applies in these situations: honesty is the best policy. And that goes to ALL aspects of your case. You should conduct yourself in such a way that you don't have to worry about the insurance company catching you in a half-truth, exagg-

eration, or in concealment.

Mistake #5: Failure to Disclose Past Medical History to Lawyer.

This is another trap that can damage your case. And many times, it is not intentional. Because memory fades over time, you might simply have forgotten about all the medical problems you may have had in the past or the doctors and therapists you have seen. This is not uncommon.

Problems happen when you fail to disclose that you had a medical issue that is related to the one you are saying you have problems with now.

I recently had a case where during my client's deposition, the insurance company attorney asked him if he had any prior problems with his lower back. He said no. Later, when he was examined by the insurance company doctor, he also said that he had not had any prior back problems.

Well, it turns out that he had complained on at least two occasions of back pain before the accident. At trial, the insurance company attorneys attempted to portray him as dishonest because he had not mentioned these earlier. He told us he had forgotten all about them.

Regardless, though, the other side was able to show that our client was inconsistent in his testimony. During closing argument, they suggested that our client could not be trusted because of this inconsistency. It

became obvious that this had the effect of damaging the value of his case.

Mistake #6: Large Gaps in Treatment.

Here is another unfortunate, but usually preventable problem that we see all too often in personal injury cases, and that can seriously damage your case. This is the situation where for one reason or another, the client stops going to their doctor or physical therapist appointments and gaps arise in treatment.

Missed appointments can happen for a number of reasons, such as work schedules, ill health, transportation problems, child care issues, etc. We know that emergencies do come up.

If a situation comes up in your treatment that prevents you from making your appointment(s), and you call and advise your doctor or therapist in advance that you will not be there, then the missed appointment will be excused. Maybe twice you can do this and get away with it. (Remember, you need to call in advance, otherwise the doctor or therapist will mark you as a no-show.)

However, when you have a large span of time when you are away from your treatment, there has to be a really good excuse for this. Unfortunately, there usually isn't. Juries figure that if you're away from your treatment for a long period of time, then you cannot be as injured as you say you are.

It can also be very difficult to prove that the treat-

ment you received after your significant gap in treatment was actually caused by the crash.

In these situations, insurance adjusters and juries may very well believe that you had been healed of your injury before the gap in treatment and that you returned to treatment because something else happened in your life – something unrelated to the accident.

Keep in mind that in Utah, your case could be decimated if the total amount of your medical treatment before the gap in treatment was less than the legally-required $3,000.

Mistake #7: Giving Damaging Statements to Your Doctor.

Your doctor will write down (or dictate) in the medical chart much of what you tell him or her about what is going on in your life – from the most mundane to the most embarrassingly-private detail. It's all in there. Including, what you told your doctor about the lawsuit you are currently involved in and how your attorney is going to clean house.

It is my considered opinion that many doctors actually relish the ability to add such legal drama to their otherwise boring medical chart. In a case we took to trial, our client told his doctor that he "would feel better when his lawsuit was over." The defense attorneys really focused on this unfortunate statement at trial, suggesting that the client felt that getting a verdict from the jury was going to cure his injury and

pain. I had to work hard to deflate this, by saying that everyone would feel better when the suit was over, including legal counsel, the judge and the jury.

Likewise, when you minimize or embellish your pain or symptoms, such as saying that your pain is 10/10, you can be easily painted as someone who is an exaggerator or embellisher. Furthermore, when your doctor asks you about your medical history, that part that occurred before the accident, make sure you are completely honest and answer all his or her questions.

Concealing or failing to tell your doctor about your past medical history will hurt your legal case since the insurance company will paint you as someone who is not honest. You could actually be questioned at trial as to why – after your past medical history has come to light – you withheld information from your doctor. It's not a pretty picture.

The solution is to be very careful what you say around your doctor. You have to consider that when you are meeting with him or her that everything you tell them will be written down and later read out loud to a jury. This is why I always counsel my clients to never even mention the word "attorney" or "lawyer" anywhere near their doctor's office. Make no mention whatsoever that you have any type of legal claim pending.

Mistake #8: Settling Your Case Before It's Time – And Without an Attorney.

Many of those injured in serious car accidents attempt to settle their cases themselves. They figure that they will come out ahead since they don't have to give up any of their settlement money as an attorney fee. Problems surface, however, when they are pressured by the insurance company to settle their case before it should be settled.

This is a common insurance tactic. The company knows that if they can resolve the case right now, that they will "cut off" the injured party's claim in the future, should they have one. This kind of move also reduces the risk that the claimant will go out and hire an attorney.

For example, if the injured party needs surgery in the future, but they already settled their case, then they are absolutely cut-off from making any additional claims against the insurance company in the future. Without an attorney to advise the injured consumer about this possibility, they end up settling the case for far less than what it is worth.

A similar situation came up a couple years ago when I consulted with a potential client who had been sent a check by the insurance company for $700. After reviewing his case, I determined that his case was worth far more than the money offered because of the permanent neck injury he had. With the client's permission, I sent them back their check with the word

"VOID" written on it and told them their offer was rejected. Later, we ended up settling the case with that insurance company for $25,000, the full extent of insurance coverage.

Other pitfalls that unrepresented persons run into include the possibility that signing the release for one claim will have the effect of releasing other types of claims.

For example, a party might settle their claim against the careless driver for $25,000 and then go after the person's own "underinsured" policy for the remaining $100,000. The person feels they have done the right thing because the defendant's insurance company tells him that the at-fault driver had no assets worth going after. This person congratulates himself that he was able to get the $25,000 without having to pay any lawyer fees. So he signs the release and cashes the $25,000 settlement check.

Only after later consulting with an attorney, however, does he realize that he has lost the right to make a claim on his own Underinsured Motorist policy. He didn't realize that his own insurance policy contained a requirement that he not sign the first insurance company's release until his own insurance company received proper notice of the settlement against the other driver's policy.

If he had met with a lawyer, he would have been much better off in his settlement. The solution to his problem would have been to at least have an initial

consultation with a lawyer to see what his rights were and to get advice on resolving the case himself.

Mistake #9: Failure to Follow Doctor's Instructions.

During the course of a patient's treatment with doctors, physical therapists, massage therapists, and other medical professionals, the patient will be given instructions on exercises they should do, lifting and work to avoid, medications they should take and when they should come back for another visit.

Problems arise when patients fail to do the things their medical providers ask them to do. In these situations, the insurance companies, who comb the records with a fine-toothed comb, will use these omissions to suggest and argue that the claimant failed to actively participate in their recovery and that the at-fault person cannot be responsible for the claimant not following their doctor's instructions.

One example of this is the patient who is set up to get physical therapy three times a week, but does not show for appointments or gives an excuse as to why he cannot make it. In the record, there will be a date of when their appointment should have been and next to it a "no show" notation. This can be very damaging to the case since it undermines our argument that for the at-fault person's actions, our client would not have the ailments they have.

It also has the effect of revealing a double standard: namely that the claimant expects the at-fault person to

play by the rules in driving safely but excuses themself from following the rule that they follow their doctors' instructions and keep all their appointments.

Please keep in mind that if the case goes to trial, that medical records containing these notations will be put on large poster boards or projected onto a large screen with the words "no show" highlighted in yellow. The client will then be asked to explain why they didn't follow their doctor or therapist's instructions. The client's medical witness will be asked to agree that it would have been best if the client made all their appointments. They will obviously have to agree with insurance lawyers on this point.

So please don't give the other side any ammunition that they can use against you. If you need to cancel an appointment, make sure you call in advance and reschedule it. And please don't do this too often.

Failing to follow a doctor's instructions might also include the patient who fails to do their home exercise programs, who doesn't quit smoking or lose weight as recommended by their doctor, who doesn't go in for the test their doctor told them to have taken. For the reasons above, all of these omissions can come back to haunt you when it comes time to try and resolve your case.

The solution is to obviously follow all of your medical providers' instructions. By so doing, you will be able to show that you have followed the "rules" and have done everything in your power to get better as

soon as possible and that you are "worthy" to receive fair compensation from the insurance company.

Don't put yourself in a position where you will have to admit that you chose not to follow your doctor's orders. This can be devastating to your case.

Mistake #10: Signing Insurance Co. Medical Release.

Your own insurance company has a right to review your medical records. Many times this is a necessary requirement to getting PIP, or "personal injury protection" benefits, such as $3,000.00 for medical bills, lost wage money and household service benefits. The at-fault insurance company, however, does not have this right, even though they want you to think so.

The at-fault carrier will often ask you to sign their over-broad, all-encompassing medical release. Such a release will allow the at-fault insurance company to get not only those records related to the accident, but also all of your past medical records.

Insurance companies love past medical records because they can often contain "dirt" that they can use against you, such as prior, similar medical issues, drug or alcohol abuse, or mental health issues. As an example, if you had a prior back issue from lifting something at work but had not received any treatment for it for years, the insurance company can exploit this.

Using this record, they may claim that your complaints of back injury from the crash existed before

the crash and that the at-fault driver shouldn't be responsible for any aggravation of what they would call a "pre-existing condition." This is such a common tactic, that we expect them to use against you either in settlement or should you case need to go to trial.

If your case is filed and moving toward trial, then at that point, you will need to provide information of past medical treatment you received. But you still do not need to sign an over-broad medical release.

Your attorney should actually refuse to provide them such a release and should especially safeguard any records related to substance abuse or mental health issues, since these kind of records are irrelevant to the injuries you received in the crash and they could have a damaging effect on your case.

Mistake #11: Exaggerating Injuries/Pain Levels.

I tell my clients that if they remember no other piece of advice, to remember this: be completely honest. Some people, for whatever reason, feel that they have to complain a little bit more to make their claim more valuable.

In reality, this practice has the exact opposite effect. You see, doctors, physical therapists – and especially insurance adjusters – are trained to spot insincere complaining. This may come from a person that insists that their pain levels are always at a level 10 out of 10. Or from a claimant that complains they are hurt in an area that could not be associated with the

accident. Or from a claimant that does not give their best effort when the doctor or therapist asks them to perform certain tests.

In these situations, the exaggerating claimant "holds back" their best effort. This is easily detected when the medical professional repeats the test a couple more times. Tests such as the grip squeeze test, can "catch" a claimant that is trying to "milk" their injury because the test results will show "inconsistent effort" on the part of the patient.

The solution, as mentioned above, is to be completely honest with the medial provider, therapist or evaluator and to never exaggerate symptoms or pain levels.

Mistake #12: Minimizing Injury/Pain Levels.

This is the opposite of the exaggerator and by far, the most prevalent. This happens usually with men, when they don't want to honestly complain about how the injury is hurting them or how it might be affecting their work. In fact, many will go out of their way to downplay their injury and pain levels. This obviously hurts their claim since their true condition is not documented in their medical records.

Another issue we see with these minimizers is that they will want to voluntarily discontinue or shorten their therapy – if they go to therapy at all. Many of these folks will use the excuse that they need to get back to work to support their family. The sad result is

that their injury never really has a chance to recover and heal properly. So not only do they damage the value of their claim, but they short change their ability to properly recover.

The solution, as above, is to be completely honest with all the pain and injuries you might have and to make sure you follow your medical providers' instructions. Remember that insurance companies and juries will not believe that you are in pain just because you say you are. They need to read about your pain complaints in your medical records. They will be interested to see when you first started complaining about the pain and how long it continued for.

One tip to make sure that you accurately and throughly tell your doctor about all of your problems is to write it out on a piece of paper and give it to them.

Mistake #13: Believing the Insurance Company Will Take Care of You.

Finally, a common mistake that people make, especially among those that don't hire an attorney, is to trust the insurance company and believe that they will take care of you.

Before you do this, however, you need to remember that the insurance company's obligation is to their shareholders, not you, the injured person. They simply do not have your best interests at heart.

We receive numerous calls from potential clients who cooperated with the insurance company by giving

them a statement, signing their medical release, only to find out that the insurance company will not return the favor by making a fair and reasonable offer. What they get instead is a paltry "take-it-or-leave-it" offer.

Especially in Utah, there are many out there that will simply never hire an attorney. Insurance companies like to take advantage of this fact by playing like they are friendly and sympathetic. Some may even suggest that the injured person will do better without an attorney because they would have to give up part of their settlement as an attorney fee.

And, regrettably, I have seen insurance companies lull some of these injured persons to the point where they miss the deadline for making a claim and basically lose their chance to get any kind of settlement.

All of these tactics are designed to do one thing: reduce or eliminate the need for the insurance company to pay fair compensation to the claimant. As one insurance commentator has said: insurance companies can handle claims quickly or fairly, but rarely do they do both.

If you were injured in a car accident, you need be careful with the insurance company. You must assume that everything they do is in their own best interest and is against yours. I would recommend that you consult with an experienced personal injury lawyer and get one of their "free consultations" that they offer. You can always decide after the consultation that you do not need a lawyer. Yet the additional education you will

have received will be invaluable in your dealings with the insurance company.

Chapter 8
What a Personal Injury Attorney Can Do For You

The average consumer hires a lawyer because they feel that the lawyer can do things in their case that they themselves cannot do. And while I cannot speak to what other attorneys might do on their cases, I can tell you what we do for our clients in the cases that we handle:

*Initial interview with the client
*Educate and teach our client about making a personal injury claim
*Educate and teach about what happens when a case is in "litigation"
*Gather documents that we will use to support the claim, including the police report, medical records and bills and employment records
*Conduct an investigation, as needed, into the liability part of the case, i.e., who is really to blame for the crash; talk to witnesses, closely evaluate the police report, do a scene visit and inspection as needed
*Review and investigate all sources of insurance, including what benefits the client's own policy provides; determine health insurance benefits the client may be entitled to and determine whether our client is

eligible and/or receiving government benefits, such as medicaid, medicare, VA benefits, etc.

*Meet and confer with the client's treating medical providers, as needed, to get an understanding of the client's injuries, current condition and future prognosis; on select cases, get a written report from the doctor and/or a video statement

*On larger cases, hire expert medical witnesses to examine and provide opinion testimony as to the client's injuries, current condition and future prognosis

*Review and analyze any relevant legal issues that may be part of a client's case, such as a client's possible "contribution" to the injury or crash, insurance coverage issues, or other legal issues that come up

*For cases that involve a claim against a Utah government agency, filing the required notice of claim with the proper governmental agencies

*Review benefits that the client may have received from their own health insurance or a government benefit program such as medicaid to determine a client's reimbursement or "subrogation" obligation

*Review and address whether there are any "liens" on our client's cases that need to be resolved before we disburse money on their case

*Contact the insurance compan(ies) early to help them understand the seriousness of the case so they can set sufficient "reserves"

*Submit a demand to the insurance company for payment and negotiate with them in an effort to resolve

the claim without resorting to litigation or conducting a trial

*If we and the client agree that a lawsuit should be filed, then the preparation of a complaint and summons to serve on the at-fault individual or company

*Investigate the whereabouts of the at-fault person or company ("defendant") so that we can serve a copy of the summons and complaint on them

*Arrange with a process server to have the summons and complaint served on the defendant

*When the defendant, through their attorney, files an answer, then review of that answer and the various defenses that they might make

*Set up an "attorney planning meeting" to set dates with counsel for the defendant that will guide litigation activities, such as deadlines for doing discovery, providing information about experts, etc.

*Preparing questions to submit to the defendant for information from them (called requests for production of documents and interrogatories)

*Meeting with and preparing the client for their deposition

*Preparation for taking the deposition of the defendant, possible witnesses, police officers, and other witnesses in the case

*When the defendant wishes to take the deposition of my client's treating doctors, then meeting with those doctors in advance to prepare them for their deposition

*Preparation to take depositions of paid medical

witnesses that the defendant might hire in their effort to minimize or weaken our client's medical case

*In cases where the defendant requests a "Rule 35 Medical Exam," which often requires our client to submit to a medical exam by a doctor of the defendant's choosing, then meeting with our client to prepare them for that exam

*Answer questions and produce information requested by the defendant or "other side"

*Review and analyze the client's medical records, billing statement, and as necessary, their work history, education records, tax and income records, etc.

*Hire medical, vocational, economic, bio-mechanical experts, etc., to support or prove our client's various claims and/or theory of their case

*Review and analyze reports from our client's treating doctors and/or opinion witnesses

*File the necessary pleadings in court as required by Rule 26 of Utah's Rules of Civil Procedure, including initial disclosures, lay witness lists (if agreed to by the parties), expert witness designations, supplementation of initial disclosures, pre-trial witness and exhibit lists, proposed jury instructions, proposed special verdict forms, etc.

*File any "motions in limine" with the court in advance of trial to limit evidence that the defendant may try and produce and/or address issues that might come up or be relevant at trial

*Prepare the client and other witnesses for trial

*Create and organize exhibits that we will use at trial and submit our exhibit list at least 30 days before trial
*If the case is to be mediated or arbitrated, then preparation for this and organization of records and other relevant documents for submission to the mediator or arbitrator
*Set up jury "focus groups" to test certain issues that will arise at trial and get feedback from conservative members of our community
*Try the case to an actual jury
*Write and submit briefs and/or motions following the verdict to obtain any post-trial relief or to have the judgment entered
*Negotiate any liens and/or subrogation claims made by the client's insurance company or government agency such as medicaid that provided benefits to our client
*Disburse proceeds after the deduction of fees, costs, liens, medical records, to the client

Chapter 9
10 Things to Ask When Hiring an Attorney

When you're considering who to hire as your attorney, there are a number of things you should look for to make sure you hire the right one. Take this list with you and be sure to ask the attorney you meet with the ten questions below. Keep in mind that when you have a case the attorney wants, you have a tremendous amount of leverage to make sure things will be done to your satisfaction. So here are the questions to ask your prospective attorney:

Question One: How Long Have You Practiced?

When it comes to choosing an attorney to represent you in your personal injury case, you don't want to hire one that just graduated from law school. And you probably don't want to hire one that's about to check into a nursing home either. It's sort of like deciding who would be the best person to perform neck surgery on you. You wouldn't want it done by a resident. Neither would you want it done by someone who couldn't hold their scalpel steady.

In the field of personal injury law, it can take years to develop the skill and knowledge it takes to successfully negotiate with insurance companies. It can take many more years of experience and practice to

become successful trying cases in front of a jury.

To be safe, you will want to hire someone who has at least 10 years experience in personal injury law. After this much time, an attorney who has practiced in this area of law has developed a feel for the types of injuries his or her clients receive following a car accident.

The experienced attorney knows what to look for in these cases, knows how to explain injuries to a jury and/or insurance adjuster and has an understanding of what these injury cases are worth.

The attorney, by this time, also has an understanding as to the strategies and tricks that insurance companies use to pay less than fair value on cases and knows how to deflect and defeat them.

Question Two: What Area of Law Do You Specialize In?

If you have received a significant personal injury, you don't want to hire a "generalist" as your attorney. The guy who does family law, wills and estates, along with criminal law, is probably not the guy (or gal) you want going to bat for you in front of the insurance companies.

If you really want to do it right, hire an attorney who devotes his or her practice to representing personal injury clients. These types of cases can be quite complex and you want to have an attorney that knows the system forward and backward.

One hallmark of an attorney who has devoted him or herself to the cause of representing injured personal injury clients is extensive attendance at continuing legal education courses.

While many attorneys attend only the minimally-required courses to meet the Utah Bar bi-annual requirement, those attorneys who seek excellence in this area of law go above and beyond and study with the legal masters who have achieved great success at trial. This in turn allows the attorney to duplicate exceptional results at trial in Utah in their clients' personal injury cases.

Question Three: What is Your Trial Experience?

Believe it or not, a good number of lawyers in Utah who claim to practice personal injury law, have never taken a personal injury case to trial. These attorneys have very little "street cred" with insurance adjusters or insurance company attorneys. They are therefore simply unable to get the same amount of compensation for their clients that attorneys who actually take their cases to trial get.

And believe me when I tell you that the insurance companies do actually notice which attorneys take cases to trial and which attorneys do not.

In fact, an adjuster for an insurance company recently told me that he "heard" about the verdict I got for a seriously injured client in Ogden. I didn't bring it up, but he already knew. I say this to illustrate that

insurance adjusters and their attorneys read the reports that discuss who is taking cases to trial and the amounts they are getting.

Now it may seem obvious, but one of the first things that an insurance company attorney asks in determining the value of a case that has just been assigned to them, is whether the injured party's attorney takes cases to trial. If they know the attorney on the case only settles their cases, this will negatively affect the value they put on the case and the amount they are willing to pay out to resolve it.

Ironically, it is the attorney who is in court the most that will do the best job at getting you a good out-of-court settlement.

Question Four: Do You Win at Trial?

Naturally, you want to find out if the prospective attorney actually wins cases at trial. If they go to trial, but lose all the time, this should make you a little nervous that the same thing could happen on your case, if it goes that far. You should know that many attorneys lack the trial skills that make it more likely that their client will do well in trial.

And so attorneys keep doing the same stuff at trial they've done before. Some do get books and literature to aid their trial preparation, which is good. But in terms of specialized legal instruction teaching the finer points of trial advocacy, Utah attorneys who are serious about refining their trial skill sometimes need to leave

the state and go to trial seminars and colleges taught by the best trial attorneys in the nation.

By getting this extra education and associating with attorneys and trial consultants who are tops in their field, the attorney's clients are benefitted in significant ways, namely, increased compensation when the case is over.

Question Five: Have You Handled Cases Like Mine?

While the facts of every accident are different and unique, you will want to be sure that your attorney has handled cases that are like yours. There are many types of accident cases, such as car vs. car accidents, trucking accidents, pedestrian vs. auto cases, motorcycle/scooter crashes, etc. Further, many attorneys focus on specific types of injuries, such as wrongful death, brain injury, trucking accidents, spinal cord injury (SCI), orthopedic injuries, etc.

Make sure the attorney you hire has experience dealing with the same injury and mechanism of injury that you have experienced.

Question Six: Do You Have a Website That Educates the Public?

The vast majority of attorney websites out there, including those of attorneys in Utah, are just glossy, feel-good brochures for the law firm. They provide

very little in terms of substance that the public would find useful. These days, I think the public expects their attorney to have a decent website that provides valuable information. Reviewing their site can go a long way towards deciding whether this is the attorney you want to entrust with your injury case.

Look for websites that educate and inform the public regarding personal injury law, that gives good advice to people who don't have attorneys (or don't want an attorney) so that these people can help themselves.

Finally, look for one that provides legal resources in other areas of law for those persons the attorney is personally unable to help.

Question Seven: Will You Timely Return My Calls?

I hear all the time from clients who have fired their former attorney that the reason they did so was because they were unable to contact their attorney or the attorney's support staff. I think this has to be the number one frustration that clients have with their attorneys.

So find out from the start what the attorney's policy is on returning phone calls. Make sure you are confident that they will return your phone calls the day you call or by noon if you call later in the day, but no later than 24 hours (excluding weekends/holidays) from when you called them.

Question Eight: Do You Guarantee Your Legal Services?

You're going to get some blank stares on this one. But in this day of poor customer service and substandard quality, you don't want to get yourself in a position where you are stuck with an attorney who is not doing their job or who is not providing the personal touch you want. This especially applies to that attorney who puts the "golden handcuffs" on you and makes it too financially difficult to leave them.

This happens when the attorney has a large lien on the case, as in those situations where the firm claims that they have put a large number of hours into the case or have secured a settlement offer from the insurance company.

Look for an attorney that will guarantee the quality of their legal services and one that will not hold your case hostage if you can honestly tell that you are not satisfied with the job they're doing.

Question Nine: Will I Be Billed for Hidden Charges?

Some attorneys will charge you an "administrative fee" of between $150 to $250 for work done on your case. They will tell you that this is necessary to for pay costs associated with making copies, requesting records and the like. It's true! You will also get a bill at the end of your case for things like copies, faxes, long-distance phone calls, etc.

All these charges can add up to big money that comes out of your share of the settlement. You might be thinking: "Hey, aren't those things supposed to be covered in the 1/3 attorney fee the attorney is charging me?" I personally think they should.

So find out early what these surprise charges will come to. You should know that before hiring your attorney – especially if you have a good case – you have a tremendous amount of leverage to negotiate the "pork" expenses out of the contract.

Tell your would-be attorney that you only want to pay for those bills that his or her office actually incur in working up your case, such as getting medical records, police reports, doctor evaluations, etc.

Question Ten: How is Your Support Staff?

There are a number of things that must be done to successfully resolve a client's case. Attorneys therefore employ support staff, such as paralegals, secretaries, and legal assistants to help them with this. These people can often do things much better and efficiently than the attorney.

For example, a paralegal is likely to do a much better job timely and efficiently getting medical records on a client's case than an attorney. They are going to do a better job copying the file, answering the phone and typing letters than the attorney can.

Working together as a team, they can work as a well-oiled machine to get the client the recovery they

hired their attorney to get. During certain stages of the case, it will not be uncommon for a client to have more contact with members of this legal team than they do with their lawyer.

So find out about the quality of the legal staff when you interview the attorney you are thinking of hiring.

Chapter 10
What if I Need to Change Attorneys?

Firing your attorney is something that you should consider very carefully. Sometimes, even if you feel like your attorney is not doing a good job, the detriment to firing them may greatly outweigh the benefits to be gained.

For example, if your attorney has started negotiating with the insurance company and they have made you an offer, then that attorney will probably have a "lien" on your case. You can find out by looking at the retainer agreement that you signed with them. A typical agreement will allow the attorneys to have a lien of 30% on cases that they get a settlement offer on. Typical language also allows them to make a claim for the value of the time they have put into your case. So, if they can claim that they put 20 hours into your case, then at an hourly rate of $200 per hour, they have a lien of $4,000. Not a small amount.

The problem for clients arises in finding an attorney who will want to take their case with a large lien attached to it. This is because the second attorney will basically be working for the first one to get their lien paid before the second attorney can get a fee on the case. Unless the lien is well below the expected value of the case, most attorneys will not want to get involved.

Some attorneys don't want to get involved anyway on the assumption that you are a "problem client" or "damaged goods" because of the simple fact that you are firing your attorney. They figure the same thing can happen to them.

You also need to consider who your next attorney will be after you fire this one. Do you have an exit plan in place? Is there an attorney waiting in the wings who has told you they will help you with your case?

The last thing you want to do is fire your lawyer, who may have gone out on a limb in the first place by taking your case, and then find out you can't replace him or her. And then you find out that the original attorney, who actually now feels relieved that you fired him or her, doesn't want you back. This is a bad situation to be in. If your case is very strong, however, some of these concerns may not be there and finding a good replacement attorney won't be that difficult.

In cases where the injury has just happened and where there is no offer on the table, the former attorney lien should be much less. And sometimes, in the early stages, there will be no lien at all. And in cases where you can honestly say that your attorney has done nothing on the case, or "dropped the ball," you have a good argument to use for getting out of the lien completely.

Which brings us to actually letting the lawyer loose. This can be done in a number of ways.

The quickest way is to call up your attorney (or

their assistant) and tell them that they are fired. You should also tell them that you want a copy of your file. You can either have them send it to you or tell them that you will be by to pick it up personally.

When you call, you should be prepared to defend your decision to fire them. In other words, you need to be firm about it or they may try and "talk you out of it." (If your are ambivalent, then this may not necessarily be a bad thing.) Another way to leave your lawyer is to write them a letter and mail it to them. In your letter, you should let them know they are fired and request a copy of your file. You don't have to give any explanation, but I would recommend in cases where you feel that they weren't doing their job, tell them so. Perhaps this will cause them to take a closer look at fixing problems that may be there. This will also make it less likely that they will impose a lien on your case.

Yet another way to fire your attorney is to simply show up at their office and tell them that you are firing them and that you want a copy of your file. Depending on where the file is and who has it, it may take some time to put this together. All things considered, it is probably best to give them advanced notice that you will be asking for a copy of your file.

Which brings us to the next point I want to make: you are entitled to a copy of your file. Don't let your attorney's office tell you that you are not entitled to it or that you have to pay for the records they collected or that you have to pay their attorney lien before you can

get your file. If they say this, tell them that you will be calling the Utah State Bar. Their phone number is (801) 531-9077.

Chapter 11
What the Jury Will Never Know About Your Case

There are rules of evidence that attorneys are required to follow in presenting and defending cases. These rules specify the type of evidence attorneys are allowed to introduce and share with the jury. One fact that is involved in almost every personal injury case that goes to trial, is the existence of insurance. In Utah, this fact will never be shared with a jury.

In Utah, attorneys are strictly prohibited from even mentioning the word “insurance” in front of a jury. Mistrials can happen when the word accidentally slips out. The reason for this rule is simple: the legislature (fed and nourished by powerful insurance lobbyists) is afraid that if juries knew that there was actually an insurance company behind the scenes that would pay the jury's verdict, they might actually include more money in their verdict for the injured person.

The fact is, lawyers almost never even file on a claim unless there is insurance company or unless the claim is against a large corporation. So if there is a trial going on, you can be 98% plus certain that the defendant in the case has insurance. For an attorney, it makes no sense to bring a case unless there is insurance or unless the company is large and "self-insured."

No lawyer will want to spend time and money to

bring a case to trial if there is no money to pay the verdict. Garnishing wages and/or attaching assets after a verdict can be very unsatisfying. It could literally take decades to collect a verdict amount. And there is nothing to stop the defendant who has a judgment against them from filing for bankruptcy.

I can tell you that in my last trial that the jury we spoke with afterward didn't even think the defendant had insurance. To make matters worse in that case, the original defendant actually died of cancer before trial, leaving behind her widowed husband. Talk about an unfair advantage for the insurance company!

Juries are supposed to make decisions on cases without resorting to sympathy, for one side or the other. Juries, however, are human. Even at an unconscious level, they will want to protect a defendant they feel sympathy for. Insurance companies obviously benefit greatly from this and as a result, regularly pay out less than the fair amount following a jury verdict.

Chapter 12
Getting the Right Insurance: 15 Minutes Could Save You From Financial Ruin

It was late in the evening when I met with this family in the waiting room at LDS Hospital. I learned that the mother of this family had been returning home from running an errand when a drunk driver ran a red light and t-boned her on the driver's-side door.

She was still in a coma when I met with the husband a week later, with the family holding vigil over her there in the ICU waiting room. The situation looked bleak.

The husband told me the bills were already easily past $100,000 and they had no health insurance. Unfortunately, it turns out the other driver had no insurance at the time of the crash. He was "uninsured." And the husband had only gotten the Utah minimum, which was $25,000. He also only carried $25,000 for uninsured motorist and under-insured motorist coverage.

We found out later that the person that struck his wife had no significant assets and was most likely "judgment proof." In the end, I regrettably had to turn this case down. The husband's insurance company was willing and anxious to pay the $25,000 for this claim. He didn't need me. Sadly, I don't think this amount would even cover her first day in the hospital.

What this man did not realize is how relatively cheap additional insurance coverage would have been. While many people opt to get minimum coverage because the premium is less, it really doesn't cost that much extra to get a policy of at least $100,000. Even getting a $500,000 policy is a relative steal when you consider the peace of mind it gives you. It is like having a disability policy for you when you are injured while driving.

So take 15 minutes and call your insurance agent. Make sure your policy includes healthy limits on uninsured coverage as well as "under-insured coverage." This coverage is just as important as uninsured motorist coverage. It is used for those times when the other driver doesn't have enough insurance to pay fair compensation on the injury claim.

Chapter 13
5 Ways to Get the Most for Your Totaled Vehicle

It should come as no surprise that insurance companies are in business to make money. They do this most effectively when they implement company-wide policies that in essence reduce or eliminate what they would otherwise pay out if they played by the rules.

Each state has their own rules which govern the conduct of these insurance companies. Rules governing how insurance companies are to handle automobile property damage claims in Utah are found in Utah Administrative Code R590-190-1.

Attorneys are generally aware of these rules and some share this information with their clients. The reality is, though, that because attorneys don't stand to make a fee in helping their clients in this area, they are hesitant – or even refuse – to get involved. This is the best possible scenario for the insurance company, who uses this situation to take advantage of you. Those that educate themselves as to what their rights are, however, stand a much better chance of coming out ahead.

FIVE KEY WAYS TO MAXIMIZE YOUR PROPERTY DAMAGE CLAIM

1. Always Keep the Goal in Mind.

There are a number of things you can do to maximize the value of your vehicle claim. The most important thing, however, might be to understand the basic purpose behind property damage coverage and tort law in general. This is, namely, to put you in the same position, to the extent possible, of where you were immediately before the crash.

Although specific ideas discussed below can help you recover what you are owed, this basic principle, if remembered, will help you to keep your focus on getting what is fair. The other principles discussed below will then become tools to you in accomplishing this goal.

2. Insist that the Insurance Company Play by the Rules.

Unless pressed, the insurance company will settle your claim based on what their policy handbook and computers tell them. This, however, is not the standard! The standards that insurance companies are required to follow in "adjusting" auto property damage claims are found in the Utah Administrative Code ("Rules"). You can pull these Rules up on the internet by entering the following in your web browser:

www.rules.utah.gov/publicat/code/r590/r590-190.htm.

The most important of these sections is section R590-190-11 of the administrative rules. This section tells you basically all you need to know to get a fair

resolution from the insurance company. Make sure that you insist that the insurance company follow the provisions of these rules, as explained below more fully.

3. Value Your Wrecked Vehicle Yourself.

Whether you are trying to settle your claim with a third-party insurance company (the insurer that insured the driver who caused the crash) or a "first-party" insurance company (your own insurance, usually on a full-coverage policy), the same rules apply. (See Rule R590-190-11 (1) and R590-190-11(2)).

Failing to properly value your own vehicle is probably the number one mistake that you could make when dealing with the insurance company. By failing to assert the proper valuation, you are essentially allowing the insurance company to tell you what your car is worth. They do this in a number of ways.

For example, the insurance company might say that according to their "sources," your car is worth X amount of dollars. They might also tell you that according to the "Kelly Blue Book" your car is worth this much. In many cases, however, these quotes do not conform to the reality of how much it would actually cost to replace your car.

The solution to this problem is to do your homework. You need to know what cars like yours are going for in the local market. You will need to compare like year, make, model, mileage and condition. The

Rules specifically state that the comparison should be to a vehicle of "like kind and quality" (see Rule R590-190-11(1)(b)). This will not be difficult if you have a popular car, such as a Honda Accord. There are many of these cars around.

If your car is an uncommon or rare car, then you may need to expand your search a bit. The Rules state that valuation of the vehicle should include "all applicable taxes, license fees and other fees" (Rule R590-190-11(1)(b)). In other words, the insurance company should provide you with a check large enough for you to actually replace your totaled vehicle with another like vehicle on the market – without having to come up with anything extra out-of-pocket.

In determining the value of your vehicle, the Rules state that the cost of the vehicle can be determined by using "the cost of two or more comparable automobiles in the local market area when a comparable automobile is available or was available within the last 90-days to consumers in the local market area" (see Rule R590-190-11(1)(b)(I)). There are number of ways to do this.

One easy way is to get on the internet and search the online directories for cars in your local market. (For uncommon cars, the Rules provide under Rule R590-190-11(1)(b)(ii) that you can look to areas proximate, or outside the local market area, or even get quotes from a local dealer – see Rule R590-190-11(1)(b)(iii).) One excellent website to use is KSL.com. You can also try Autotrader.com.

Also, you should search your local online classifieds. In these sections, you will find cars that are currently for sale. Remember, however, that the Rules allow you to take a snapshot back in time as to what a comparable vehicle may have gone for in the past 90 days. To find out, you can contact local dealerships.

To guarantee their help, you may want to tell them that you're in the market for a used car and that this information will help you to resolve your insurance claim so that you can come back and possibly purchase one of their vehicles. At this point, they are in essence helping you to "arrange the financing." And when you find your "comparables," print up your results so you can e-mail or fax them to the insurance company.

4. Ask for an "Accounting."

If the offers you are receiving differ from what you have learned it will cost to replace your car, you are entitled under Rule R590-190-11-(1)(c) to have the insurance company provide documentation as to how they valued the vehicle.

The Rule states that any deviation from the real market price "must be supported by documentation giving particulars of the automobile condition." The Rule further states that "any deductions . . . must be measurable, itemized and specific to the dollar amount and shall be appropriate in amount." Most importantly, however, the Rule requires that the "basis for such [low offers] shall be fully explained . . . to the claimant."

What you might see when you request this valuation information are references to vehicles that are not comparable to yours.

For example, these other vehicles may have been in a prior accident, have cosmetic damage, etc. Furthermore, because this documentation may relate to vehicles that have already been sold, there will be no independent way to verify the actual condition of the vehicle.

One way to investigate these vehicles is to run a "Carfax" report on them by researching the VIN number of the vehicle. This method may also help you discover whether this so-called sale was from one dealer to another, which could explain the artificially-low price. If the insurance company is doing this, you can easily argue that this method of valuation is unreasonable since these quotes do not reflect the actual value of vehicles that are currently on the market that you (a non-car dealer) could purchase.

5. Exercise Your "Appeal" Rights.

Despite your valiant efforts to "educate" the adjuster on the real value of your car, the insurance company may still decide to "low ball" you on the value of your vehicle claim. This is one of the things that Utah's commissioner of insurance has found to be "misleading, deceptive, unfairly discriminatory or overreaching in the settlement of claims" (see Rule R590-190-12(10)).

This low-balling usually comes about when the insurance company refuses to pay the proper amount and just sends you a check. The check you get, in most cases, allows you to still cash it and assert your claim for underpayment. Be careful here, however, because language in the property damage settlement documents – or on the check itself – may act to release further claims on your vehicle claim. You may wish to hire an attorney to take a look at these documents to make sure they don't contain any "hidden traps." In our office, we offer this service for free.

Once you have received what usually amounts to underpayment for your car, you have thirty days under the Rule to advise the insurance company that you "cannot purchase a comparable vehicle for such market value." (See Rule R590-190-11(1)(b)(v)). This notice, under the Rules, requires the company to reopen the claim!

At this point, you are basically appealing their decision and the insurance company under the Rules is required to respond in one of four possible ways:

a. The Insurance Company May Locate Suitable Replacement Vehicle. This outcome is allowed under Rule R590-190-11(1)(b)(v)(A). Under this provision, the insurance company has the option of making things right by notifying you of a comparable car in the range of what they have offered to pay.

b. The Insurance Company Can Pay the Difference, or Purchase the Car. Under subsection (B), once the insurance company has provided documentation showing the real market value of the car, they can choose to pay the difference between what they may have initially provided or offered and what the real market value is, or arrange to purchase a comparable vehicle that you may have picked out.

c. Insurance Company Can Provide Replacement "Comparable" Vehicle. Under subsection (C), an insurer may choose to purchase a comparable vehicle in accordance with Rule R590-190-11(1)(a). In my years of practicing, however, I am unaware of any insurance company that has actually exercised this option.

d. Insurance Company Can Stand by Its Offer. One way out for the insurance company is to show that they told you in writing about a comparable vehicle by the same manufacturer, year, body style and similar options in as "good or better condition as the total loss vehicle" (see Rule R590-190-11(1)(b)(v)(D)). If the insurance company can actually pull this off, then perhaps their offer to you is not as unreasonable as you might think!

Chapter 14
Getting the Rental Car You're Entitled To

After a crash, your car will either need to be replaced or repaired. Many cars are towed from the scene of the crash right to the wrecking yard or body shop. Unfortunately, insurance companies routinely fail to provide claimants with the rental cars that they are entitled to, either because they delay providing it or they cut you off early when they claim they have provided a "fair" settlement offer.

The duty to provide a rental car is spelled out in Rule R590-190-12(9) of Utah's Administrative Rules. In this section, the Rules state that where there is third-party insurance available, that the "loss of use payment shall be made to a claimant for the reasonably incurred cost of transportation, or for the reasonably incurred rental cost of a substitute vehicle" (emphasis added).

The Rule says that a rental car should be provided from the date of the accident to the date that a "reasonable settlement offer has been made by the insurer." This Rule further states that "an insurer is prohibited from refusing to pay for loss of use for the period that the insurer is examining the claim."

What this Rule basically means, is that you are entitled to a "substitute" vehicle (or its money equivalent) from day one to the day you get a reasonable settlement offer. If the insurance company,

for example, failed to provide a rental car for one week after the accident, then you are entitled to the value of the rental car for the period of time they refused to give you one. This amount will be in addition to the valuation for the wrecked vehicle. To qualify, you vehicle must be considered a "total" and should not have been driven following the crash.

Chapter 15
The Kinds of Cases We Take

I hope you have found some value within the pages of this book. In closing, please remember that everyone who calls our office for help will end up receiving just that; help. It may be that we can give you a referral to an attorney who can handle your kind of case. Or perhaps it may be that we can point you to a resource that will help you. And it may be that we can actually help you with your case.

Keep in mind that almost all attorneys offer a free consultation on an injury case. I would recommend that you take advantage of this, especially if you have been seriously injured. One of the worst mistakes that an accident victim can make is to decide against meeting with an accident or injury attorney to learn what their rights are.

Our focus at the Kramer Law Group is on car accidents, in all their varieties. This includes auto versus auto collisions, auto versus pedestrian accidents, motorcycle and scooter collisions, single-car rollover crashes, trucking or 18-wheeler crashes, etc.

We also are pleased to evaluate other types of injury cases, such as slip or fall cases, nursing home, defective drug, landlord negligence cases, etc. And our consultations are always free, no matter how long they take.

Our fee is a percentage of the amount that we collect on the case, and is sometimes referred to as a "contingency" fee. Our fee is that same as what other firms charge, which is 1/3 of the gross amount collected on your case. If the case is filed in court, our fee is 40 percent of the gross amount collected.

If we can help you in your injury case in any way, please do not hesitate to call!