INJURED in an auto accident in Nevada?

Info That May Be Extremely Useful For You

Mace J. Yampolsky, Esq.

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"Mace is no-nonsense, to the point, effective, personable, comforting, kind, phenomenal is an inadequate description but I can't think of a better word to use. Mace is still, and always will be my go-to guy for legal matters." ***- Terri***

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AUTHOR'S INTRODUCTION

Mr. Yampolsky is AV rated by Martindale-Hubbell, the highest rating available to any attorney. This rating is obtained by an independent rating of lawyers and judges who are familiar with his representation of clients. Less than 7% of all law firms in the United States are accorded this honor. Mr. Yampolsky is past President of the Nevada Attorneys for Criminal Justice.

Mr. Yampolsky graduated from Boston University in 1976 and the University Of San Diego School Of Law in 1980. He was admitted to California State Bar in 1981, admitted to Massachusetts State Bar in 1982 (currently inactive), admitted to Nevada State Bar in 1984, admitted to Colorado State Bar in 1994, and admitted to Washington D.C. State Bar in 1999.

WHAT MAKES A PERSONAL INJURY CLAIM VALID?

The first thing would be to establish the liability and see whether or not there was a clear liability. An accident involving a rear-ender would for the most part be clear liability, which would make a good case.

If both people entered an intersection and had a head-on collision, in which one was coming from the right side and one was coming from the left side through the intersection, then the question would be whether there was a light, and if there was a light then who had the green light and whether witnesses supported that. If the cars were driving towards each other, witnesses would be needed to decide who was at fault. If there were no witnesses and both parties claimed that the other party was at fault, in that case you would probably need an accident Reconstructionist.

Another situation occurs if there was no light and both people entered the intersection at a ninety-degree angle. If they entered at the same time, then the car on the right

would have the right of way, although if the car on the left entered the intersection first, then that car would have the right of way. Sometimes this is difficult to determine.

Another thing that validates your claim is whether there were definite and significant injuries. If someone was tapped in the rear and this minor accident caused $200 worth of damage, and injuries were not significant, if they were treated by a doctor for over $10,000, it would seem like they had over-treated and that they were malingering, which would not be a good case. Most insurance companies would say the person was not really injured, obviously malingering and lying.

It is preferable if the person had not had an accident previously. If so, we would need to determine how much their damages were caused by the present accident, and how much were caused by the accident. The insurance company will use this information in an attempt to lessen the value of the claim.

It is better to have someone with a clean driving record and someone who does not over-treat. It is one thing if someone whose car was totaled ended up with a $5,000 medical bill from the medical doctor and the chiropractor or the physical

therapist and it is another thing if the person was tapped and had $5,000 or more in medical bills.

I usually do not take cases unless there is clear liability and the damages are significant. I prefer not to take fender-bender cases, although every now and then I will for a friend, a past client or someone who had been referred to me. But for the most part, as far as what I consider a good case, it needs to have significant injuries and the client went to the emergency room.

If I had my druthers, I would not do any cases in which the person did not go to the emergency room, did not go to the hospital or did not have some sort of medical issue. That being said, if someone came in and the injuries were not that bad but we seem to connect, then I would handle their case.

What Would The Compensation Amount Depend On?

If someone was rear-ended and they have $300 worth of auto damage and they had been treated for two weeks so they had $500 worth of medical bills, then their case would not be the same as if they had been rear-ended and their car was totaled, the airbags went off, and the medical bills

totaled over $50,000. The amount of necessary treatment is the main factor in determining the value of a case.

Usually the more serious the injury, the higher the medical bills would be. Sometimes the victim may have a soft tissue injury in which the injury would not be visible and there would be no broken bones. We would be able to see that they had been going to the doctor for three months and because of that, the medical bills were $3,000. We would know the case was worth approximately $10,000. However, each case is different. Another factor is loss of earnings if the client was not able to work for a while and needed to miss work for their medical appointments, this is an element of damages.

What Else Can Someone Claim Besides Physical And Property Damage?

When someone is involved in an accident, in addition to physical injuries and property damages, they can recover for something called pain and suffering.

If their medical bills were for $35,000, then that would not be the value of their total claim, because they would still

need to be compensated for pain and suffering from the accident, and if they were not able to work then they would be able to recover for their loss of earnings. Rental car costs, taxi fares, bus fares, Uber fees, etc. These all need to be factored in.

What Happens If The Injury Worsens After The Case Is Over?

Each case is different, but, it helps if the person had insurance or if there was some sort of governmental assistance, like Medicaid or sometimes even social security disability. However, when we settle cases, we take into account what the future medical bills could be.

What's Important to Remember About Personal Injury Claims?

I just think that it is important for someone who is injured to see a doctor right away and they should not worry about seeing an attorney at first, because their health is the most important thing.

If they sustained some injuries, then they should see a lawyer because the only way to recover fairly from the insurance companies would be to hire a lawyer. A lot of lawyers advertise on television, on billboards and all over the

place, but just because they advertise on television does not mean they are the best lawyer for a particular case.

I always advise clients that they should only retain a lawyer with whom they are comfortable. They should contact the state bar and see if that attorney had ever been disciplined. I have never been disciplined. The person should be comfortable with their lawyer, not everyone gets along with everyone else.

I can be quite aggressive and abrupt, which some people do not like. If that is the case, I am probably not the best lawyer for them. Although by the same token, by being aggressive, I represent my clients to the best of my ability. I like handling the legal side, meaning that I like dealing with the adjusters, the doctors, and other lawyers.

My strengths are not handholding, and I am not really a touchy feely kind of guy with my clients. Although my bedside manner is not my greatest strength, I recognize that clients require reassurance and that client communication (i.e. being heard) is essential to client satisfaction. We strive to provide a top-notch client experience.

I have assembled a staff that is attentive and responsive to all client needs. We are all aware that being involved in a

personal injury claim can be nerve racking, unsettling, and downright scary. Accident victims need to be reassured. Unfortunately, that is not one of my strong points and I recognize that, which is why we have people in the office who are better at that than I am.

LIABILITY AND ITS EFFECT ON DAMAGES RECOVERY

In the past, in any accident in which there was no problem with liability, the claimant would recover approximately 3 times the cost of their medical bills, for soft tissue injuries these days, insurance companies have taken a harder line. And it would be great if the claimant was able to get twice the cost of their medical bills if they decided to settle. This would be in a situation where there was no permanent injury.

I have a client right now who has a broken femur from being involved in a bicycle accident. First, his broken femur is something objective that we can see, and second, his medical bills from the emergency room were over $120,000. His doctor said he would never recover the full use of his legs because of the injury, so he has a permanent injury. The damages in this case are significant based on the extent of his injuries.

Each case is different. In this particular case, my client on the bicycle came around the corner right across the street from a construction site. The construction site had cones to keep people away because they were using a lot of water and they did not want people to injure themselves. Unfortunately, the water came out past the cones where he was riding his bicycle and he hit the water. There was nothing he could do to avoid it. In addition, we believe that there is a foreign substance that came from the construction site which makes the road more dangerous.

Of course the insurance company would say that the water was open and obvious, and that he should have avoided it, so it was his problem or he was at fault, which I think is ridiculous. Insurance companies will do just about anything to deny liability. I am sending a letter to the insurance company with pictures included, to ask whether they would accept liability.

My belief is they will not accept liability, meaning we would either need to arbitrate, in which case both sides would need to present their case to an independent arbitrator, or we would need to mediate. Both sides would need to meet with a neutral party, sometimes a retired judge or another attorney. The mediator meets with both sides

independently and attempts to get both sides to agree on a dollar amount for a settlement.

If we are unable to arbitrate or mediate, then we must litigate. This means we will need to go to court and try the case in front of a judge or a jury. Most personal injury cases are tried to a jury.

Are Cases Difficult Even If There Is Clear Liability?

Some cases are easy. For example, if there is a clear liability because it was a rear-end collision, the car was totaled, the person received proper and reasonable treatment and the insurance company had adequate coverage, then we would be able to settle at an appropriate figure. If there was insufficient insurance coverage from the adverse insurance company to fully compensate the victim for all of his injuries, we would need to access our client's Uninsured Motorist (UM) coverage or Underinsured Motorist (UIM) coverage. This would supplement the adverse driver's insurance to fully compensate our client.

For example, let us say the adverse insurance coverage is the minimum limits (15/30). This means that there is up to $15,000 available for one claimant and up to $30,000 for

all claimants. So if there are 5 claimants, the total they all can receive at $30,000.

What happens in this situation is the insurance company attempts to get the claimants to agree on respective amounts up to the limit even if they would be entitled to more if there was more coverage.

If the claimants can NOT agree to a settlement within policy limits, then the insurance company will interplead (tender the entire amount to the court) the policy with the court. The court will then decide the respective amounts that each claimant will get.

What Misunderstandings Do People Have About Uninsured Motorist Coverage?

One misconception people have is regarding uninsured motorist coverage. Uninsured Motorist (UM) coverage and Underinsured Motorist (UIM) coverage is required in this state and in most states, unless you specifically waive it in writing.

It is specifically for situations, in which a person was injured through no fault of their own, but the other driver did not have insurance or they did not have adequate insurance to fully compensate the victim.

For instance, I have a client who was the passenger in a vehicle that was T-boned. The adverse driver had 15/30, just $15,000 for one person and $30,000 total for the accident, which is the minimum required in Nevada.

My client went to the emergency room with a broken pelvis and his emergency room bills were $34,000. He was able to recover $15,000 from the adverse driver, and he recovered $15,000 from the uninsured motorist coverage from the driver whose car he was in.

In this case, if the driver with whom he was riding was even 1 percent liable, then he could also recover under that person's bodily injury coverage. In this particular case, he had the green light, he was in the intersection, he was not speeding, and the other person T-boned them. So the driver of this vehicle was not at fault at all.

How Do People Manage Financially When They Are Disabled And Waiting For Compensation?

This can be a problem. Hopefully the person will have health insurance, although some people do not. Sometimes, people get fired due to a disability caused by their accident. For instance their job required them to do heavy lifting but

because of the injuries from the accident they were no longer able to do it anymore, so they end up losing their job.

There are companies that I like to call "Litigation Funders" that will lend people money while the case is going on if they think the person has a good case. Although, the down side is that the interest rates can be prohibitive. So, the client ends up recovering a lot less. Nevada does not have the crime of usury (lending money at unreasonable high rates of interest), whereas California and many other states do. The usury rate in California is 22 percent per annum.

In Nevada, we have companies that do payday loans, or short-term loans, and the annual interest rate for them is 200 percent or more. It sounds ridiculous, but sometimes a person will use any port in a storm, which is unfortunate. I always counsel people to try not to do this, but sometimes they do not have any other alternatives.

TALKING TO THE INSURANCE COMPANY

The adverse insurance company will always want to talk to the claimant. I never let them do so because it never helps the client. If they say something now, and then after we filed a lawsuit, they are deposed, (they give a statement under oath, that is written down and transcribed by a court reporter) and they say something a little different at the deposition, they would be accused of lying. One of my recurrent themes in final argument is the truth never changes.

However, everyone has a duty to cooperate with their own insurance company. If somebody was rear-ended and the other side had 15/30 coverage and the medical bills were well over $15,000, then that person would need to access their own uninsured or underinsured motorist coverage to be fully compensated.

Their insurance company would also want to interview their insured. According to the terms of their policy, the client must cooperate. If they did not give a statement to

their own insurance company, it could say that the person was not cooperating, and therefore it was not obligated to provide any compensation. It would deny coverage.

In those situations, I always advise my client to cooperate. But they should just answer the questions the insurance company asks and not volunteer any additional information. When preparing for a deposition, I often tell clients that if they are asked what time it is they should not talk about the history of Swiss watch making in the 21st century.

Would The Person's Own Insurance Company Be On Their Side?

People do not know that even though they would be dealing with their insurance company in this situation, every insurance company wants to minimize any and all claims they were required to pay.

Even if the person had paid their premiums for years and never made a claim, and even though they had specifically purchased this insurance coverage to protect them against being in an accident in which there was not adequate coverage, their insurance company would essentially become an adverse insurance company because the adjuster wants to pay as little as possible.

A lot of people just do not realize that; they assume their own insurance company will look out for them, which is an incorrect assumption. Many times we will make a demand to your own insurance carrier for the UNDISPUTED amount of the claim. Some companies will pay that amount quickly, but you still are able to negotiate for more compensation later.

Are You Required To Show The Other Insurance Company Any Medical Records?

We had a law in Nevada that states if we show medical bills to the other insurance company; they are required to tell us what their limits are. Unfortunately, the law just changed, so now they don't do this, which I think is ridiculous. If someone's car was totaled and he had $20,000 worth of medical bills, then if the other side had a $15,000 policy, it would obviously not be able to fully compensate the victim. If we know that we can make a policy limit demand and most likely settle the case quickly.

How Should You Handle The Opposing Insurance Company?

The adverse insurance company's representative and even your own insurance company's representative may act very friendly, but they are not on your side. Their goal is to pay as little as possible, which is why I always advise people not to say anything about their medical condition right after an accident because their body is in shock when they first get hurt. They may feel OK at that time but much worse later.

I was involved in an accident. While I was making a left hand turn with a green arrow, a pick-up truck blew through a red light and smashed into me at a 90-degree angle. The impact spun me around one-and-a-half times and I think I lost consciousness briefly. The airbags went off and broke a bridge in my mouth, and broke my sunglasses. My wife took me to the emergency room. I had a concussion and my medical bills from the emergency room were over $10,000, so I made a claim against the adverse driver. He had 15/30, (minimum limits policy) so they asked for a copy of the medical bills. They also asked for a statement from me.

I sent them a copy of my emergency room bill and informed them I was making a policy limit demand and they had 20 days in which to respond, because if they did not respond then the offer would be off the table. They paid, but $15,000 certainly was not enough to compensate me. I had

to go to an orthopedic surgeon and a neurologist, and because my injuries were significant, I made a claim against my own insurance company.

My own insurer interviewed me, which they had a right to do. We were not able to agree on an amount so we ended up going to arbitration. It was not binding arbitration but we presented our case, the insurance company presented their case, in front of three arbitrators, who then made a decision. Based on the decision, we could have accepted it or rejected it as the insurance company could have, but we ended up accepting it. The case was over.

I thought it was a little on the light side but it was not worth it for me to litigate this and spend tens of thousands of dollars for experts to come in and testify. We would need the orthopedic surgeon and the neurologist and the neuro-psychologist and the treating doctor, not to mention other experts.

DO INSURANCE COMPANIES LITIGATE CASES?

Some insurance companies have a policy that they will not settle. They will arbitrate or litigate everything no matter what. I had a client who was rear-ended and she had $8,000 worth of damage to the car. She was treated for approximately 3 months, and her medical bills were about $3,500. She properly treated. She did not over-treat. There was no question on liability and the insurance company made an offer of $4,000. We thought that was absolutely ridiculous, so we filed the lawsuit. I believed that the actual damages were less than $50,000, (which is the limit on mandatory arbitration in Nevada) so we then arbitrated it.

The attorney on the other side seemed to have a better idea of the value of the case. When he took the case over, we were able to eventually settle the case for a lot more than $4,000. If we had not been able to settle the case, we would have gone to the arbitration.

The only problem with arbitration in Nevada is that the court-ordered arbitration is not binding; meaning if we received an award of $25,000 in that case, we might think

this was great. But the other side might not think it was such a great result. In this case they could do a petition for a "Trial de Novo", which means a new trial. At the new trial, the case would have to be proven and submitted to a jury.

What Is A Policy Limit Demand?

A "Policy Limit Demand," asks for the entire amount of the policy because our client's damages exceeded the limit of their policy. We would give them a specific deadline to tender their policy. If they do not give us the entire policy then we would say "the cap is off", meaning that even though it was just a $15,000 policy, since they refused to pay, if they went to trial and lost, the insurance company would be on the hook for the entire amount of the judgment, even if it exceeded $15,000 (which would be the extent of their obligation if they paid it, no matter what the actual damages were.)

If they refused to pay the policy limits and we then went to trial and recovered a million dollars, they would be responsible for the entire amount. Insurance companies will often pay if we make a policy limit demand, but sometimes they do not, so in those cases we would need to litigate (go to court and have a judge or jury decide).

With regards to the medical reports and bills, it is in the client's best interest to provide them, because that is how the insurance company is able to objectively evaluate whether or not the client was hurt, and if so, how much i.e. they would be able to see if there were broken bones. This is objective evidence. We always provide x-rays and results from any other tests such as Magnetic Resonance Imaging (MRIs). We also would provide a report from any specialist, such as an orthopedist. If surgery was necessary we would always provide the reports in the medical bills from the operation.

Of course, the insurance company unusually says certain treatments were unnecessary, and that the doctor charged more than he should have. They always want to discount the seriousness of the accident and minimize any amounts that must be paid to the injured party.

The severity of the damages is a topic for negotiations back and forth with either the adjuster, if the person was just making a claim, or with the opposing attorney if we needed to litigate. If both sides can't agree, then they will arbitrate, mediate or litigate.

Why Is It A Bad Idea To Settle With The Insurance Company?

Some people want their money right away so the insurance company tells them to just sign a release and they pay them

an amount that is much less than they are entitled to, i.e. a thousand dollars, when the medical bills end up totaling much more. When someone is involved in an accident, their body is in shock for the first day or two, and they may not realize how badly they were hurt.

The insurance adjuster might tell the person that they will give them $1,000 to make it go away, but then and all of a sudden the next day, the person will be in a lot of pain so they need to go back to the doctor. They may then find out they have some sort of misdiagnosed injury like a broken bone or a disc that is bulging because of the accident, but they would not be able to recover anything additional at that point because once they sign a release, there would be nothing more they could recover.

What Kinds Of Cases Are Better To Litigate?

I usually want cases with clear liability, when there is no question that the other side is at fault. For the most part, the driver at fault is pretty obvious in auto accidents involving a rear-ender or if someone blew through the light.

In some cases, I might think the liability is clear but the insurance company will still try to contest it. This would not normally be a case I would want to take, but if the medical bills were high, I think it would actually be a good case to take. If we need to litigate it and go to a jury trial, then so

be it. I have handled over 200 jury trials. There are some lawyers who do not want to go to trial and they never go to trial, but that is not me.

Settling The Case Vs Litigation?

That being said, it is usually in everyone's best interest to just settle the case. The parties should not need to litigate. If both sides can resolve the issues early, this keeps costs down. Sometimes the other side might be unfair and not make a decent offer. In that case there would not be much choice but to arbitrate or litigate.

It is bad enough for lawyers but it is even worse for the injured victims; because the insurance company will do everything they can to discredit them. They will do everything possible to minimize the value of the claim. They will inquire whether the person went to the doctor ten years ago with the same injury.

Then they will ask if the person was claiming damages for the same injury, and the person would say no. The person might have had that injury and it had healed but then the new accident just exacerbated (made it worse) it, or maybe they still had this nagging injury but after the new accident the pain became more severe. So they would need to be compensated for the fact that they were now injured more.

The best experts evaluate cases fairly. They have worked for both the plaintiffs and the defense. Frankly, I prefer to find an expert who testified more than 50 percent for the defense, because it would be hard for the defense lawyer to say, "Well, this guy is bought and paid for (an oft used term of art is "A Plaintiff's whore)", he is not evaluating this accurately, he is biased," when that particular expert testified many times for the defense.

The average client has no clue what they are stepping into during the litigation process. This can be stressful even for lawyers. The client would be looking at the significant costs. The lawyers usually advance the costs but in the end the client would ultimately be held responsible. A litigation case will usually not get in front of the jury for at least 2 or 3 years, and the client would have all these medical bills. Paying them is onerous, especially if the client did not have health insurance.

Will A Doctor Have To Attend The Trial?

One good thing about arbitration in personal injury cases is that the medical records of the doctor may be used without needing the treating doctor to come to court and testify. But, if you litigate, you need the doctor to testify. The costs of arbitrating are much less than the costs of a jury trial.

Doctors charge a lot of money for testifying, up to $1,000 an hour. Some experts charge even more. In addition, there may also be a 2-hour minimum or half-a-day minimum if a doctor or expert witness is needed to testify. This is common knowledge of insurance companies. Sometimes going forward can be cost prohibitive for a client.

Often, the defense will hire a doctor and do a "records review," meaning he or she will review the medical records of the client but will not actually see the client. Based on that, the reviewer will give an opinion on how serious they thought the injury was.

Usually the defense doctor will downplay the seriousness of the injuries and say that they did not think that much of the medical treatment was necessary. Based on that, they will say that you were not hurt as badly as you claimed. Usually each side will have an expert, so the jury will need to make a credibility evaluation regarding which expert was more believable.

How Do Doctors Get Paid In Personal Injury Cases?

Some doctors work on a lien basis, meaning they would treat the client and whatever the medical bills were, they would be willing to wait to get paid until after the case was settled or until after the case was tried. But, they would usually only do this if there was an attorney involved. Some doctors will not work on a lien basis.

But, the client is still being responsible for those medical bills if they lose the case and if there was no recovery. Many doctors will take a much reduced fee if the settlement is lower than expected. We always request that the doctors we work with, reduce their bills when appropriate.

The attorney will usually negotiate the liens down, talk to the doctors and ask them to discount the bill based on the final settlement. For example, we might ask the doctor to discount the bill from $6,000 to $4,000. The doctors will usually do this, but then they would ask if the attorney was also discounting their fees, which is something we generally do. My philosophy is that I never want to make more money than the client.

Sometimes we are in a situation in which the medical bills are really high but the provider will not reduce them. For instance, UMC (University of Medical Center) is a county hospital. They will not voluntarily reduce their bills.

I handled a case in which the medical bills were over $30,000 and the entire available insurance coverage was $30,000, so we had to interplead the funds with the court. This means I took the $30,000 that I recovered and tendered it to the court. I filed my retainer agreement stating I was entitled to get one-third of my client's recovery. I then filed everyone else's bills and asked the court to decide what a fair allocation was.

The court discounted everyone's bill, (including mine unfortunately), and determined what it thought was fair. Generally, when I talk to doctors' offices about reducing their bill, I tell them that if I need to interplead the entire settlement. There is a good chance that the judge will reduce their bill more than I would. Most medical providers are reasonable, but if someone treated at UMC they would unfortunately not reduce their bills. So more often than not we would need to interplead the funds with the court. This can be a very time consuming and complex, which is why it is better to involve an attorney, than to try and do it yourself.

How Does Medical Insurance Help?

When the person's own insurance company pays his or her medical bills under Medical Payments Coverage (Med Pay), the clients need not reimburse the insurance company for any portion of the amount paid. (So more money goes in the client's pocket) Medical Payments Coverage is coverage that pays the insured's medical bills if they were not at fault in addition to the other coverage.

If someone uses their own health insurance, that company will usually file a lien on the client's case, which must be paid out of the recovery. But most health insurance

companies will reduce their lien to 1/3 of the funds they have paid out.

For instance, consider this hypothetical situation. You were in an accident and the other side had $15,000 worth of coverage and they tendered the $15,000 to the court. Your medical bills were around $6,000. You would need to pay your medical bills and attorney fees from the settlement. Most of these cases are done on a contingency basis, meaning the attorney takes a percentage of the damages recovered.

Most attorneys, before a complaint is filed, charge a one-third contingency fee. Assuming there is a $15,000 settlement, and $6,000 in medical bills, the doctors would be paid $6,000, the attorney would be paid $5,000, and the client would be paid $4,000.

If $5,000 medical payments coverage (Med-Pay) was available, it would pay $5,000 of the medical bills, so the client would get a recovery of $9,000 instead of $4,000, meaning they would get an additional $5,000 because of the $5,000 Med-Pay coverage.

PRE-EXISTING CONDITIONS IN PERSONAL INJURY CASES

Each case is different. If you had an accident that happened 10 years ago and still experienced some low level back pain which was manageable this is a pre-existing condition. If you were rear-ended now, your back pain would be much worse. Maybe you would now need a back brace. After your recent accident there is a question whether your pain was due to this injury or because of your previous injury.

The insurance company will always try and minimize the new damage. They will say things like, "the previous x-ray showed that a disc was bulging a little, therefore, the recent accident really did not cause any more pain."

We would then argue that the bulge was actually more pronounced in the recent x-ray, it was more significant and the recent accident exacerbated (Fancy Schmancy legal word meaning "made it worse") so you would be entitled to compensation for this additional serious damage.

What Is An Eggshell Skull Plaintiff?

Some people legitimately suffer a critical injury that does not seem like it would be that serious. This is the "eggshell skull" doctrine. In most cases, if a person was hit by a car that was traveling slowly and they banged their head into the windshield, they would usually have a bruise or some sort of minimal injury. They would see the doctor, receive treatment for a short period of time and then recover completely from the injury.

Let us suppose the same force was applied to someone who had a previous head injury, or was extremely susceptible to head trauma. He was knocked out and ended up with a traumatic brain injury and permanent brain damage from the same accident. In this case, the person with the "eggshell skull" was injured much more seriously for him to be fully compensated; the recovery would need to be much more than the first example.

People usually wonder how this could have happened when the car was only going 5 miles an hour when it was rear ended. The experts would be brought in and they would identify these injuries as TBI (Traumatic Brain Injury). Even though the accident doesn't seem that bad, certain individuals could still sustain serious, significant injuries, although this may be very difficult to prove.

We would need to hire experts and these experts are very expensive. The other side would also hire their own experts.

How Does A Gap In Care Affect The Case?

This really makes a huge difference. A good case would be: if the person was injured, there is clear liability, they went to the doctor right away and were treated properly.

I have a client who is a cocktail waitress and was rear-ended. Initially she said she was fine. A few days later she started hurting. She went to a massage therapist about 6 times. She was not getting better. She finally went to a doctor about 2 months later. The doctor treated her because she was hurt.

When she finished treatment, her medical bills (meds) were not that high. But the insurance company argued that she could not have been hurt that badly because she did not go to a doctor right away.

I argued that my client did not like doctors. She didn't want to go to a doctor. Obviously she was hurting so she went to this massage therapist. They wanted to know how many times she had gone. I told them she had gone to the massage therapist 6 times in a 3-week period. When she didn't get better, then she went to the doctor. The opposing insurance company said she could not have been hurt that

badly. But she actually was. If she had come to me right after the accident I would have advised her to be evaluated right away by a doctor and to start treating.

I like it when people are evaluated by a medical doctor, an MD, first for evaluation. But sometimes they go directly to physical therapists, or directly to a chiropractor. To best maximize the value of our client's case, it is better to see an MD first. If they do not respond well to treatment and are not healing properly, they then need to be referred to a specialist depending on the injuries.

Some insurance companies do not believe that chiropractic treatment is as beneficial as treatment by a medical doctor. But, I have been in a few accidents and chiropractic treatment really helps me. I love my chiropractor. Recently, I hurt myself playing tennis and riding a bicycle. I went to my chiropractor right away and I felt better quickly.

The insurance companies will do anything possible to reduce the value of your claim. They will say things like "You treated too much. You treated too long. You never saw an MD. You didn't get treated right away so you couldn't be really hurt, etc."

Do You Advise Clients To Keep A Journal Or A Diary Of The Accident And Treatment?

YES! This is a really good idea because if you were injured today and your case was going to trial 2 years down the line you would not be able to remember everything in detail 2 years later.

You should write down things like "I had a shooting pain in my back when I bent over, or I had a stabbing pain when I tried to stretch to get a can of soup from the top shelf of the pantry." The journal would show how bad the pain was, what types of activities made it worse and how it was getting better. So when the defense is skeptical about your injuries, we would be able to present the contemporaneously written, accurately kept journal to corroborate.

Do You Ever Have To Show The Journal To The Other Side?

If it is a statement by a party, then it would be discoverable. But if you are telling the truth, then even if it was not

discoverable, you would want to provide it to the other side because it will help establish the value of your case.

IMPORTANCE OF EVIDENCE IN A PERSONAL INJURY CASE

Evidence is very important. If there were two people involved in a collision and there was no light at the intersection, and they both claimed to be there first, obviously they both can't be correct. If there was a collision at a 90 degree angle with the right front of one car and the left front of the other car, it may be difficult to determine who was at fault.

A witness who was present could say that, for example, the red car was in the intersection first and the other person came out of the blue and hit it. This would be called a disinterested witness, someone with no bias for or against either party.

Sometimes a friend who was also in the car at the time of the accident might say that the other car was responsible, even if the driver of their own car was the one at fault. In this case we would have to determine if there is bias and how it would affect that witness's credibility.

There is a Supreme Court case that says, “Bias is never collateral,” meaning that no matter what kind of case, whether it was a criminal case, personal injury case or an insurance fraud, bias must be taken into account.

If your spouse was with you in the car, then even if the person was at fault, the spouse could say that the other person was at fault. This kind of statement should be discounted and there is also a jury instruction which is called Falsius in Uno Falsius in Omnibus, meaning false in one, false in all. In other words, if someone will lie about one thing, they could lie about anything.

Is The Credibility Of The Witness Corroborated?

There is another instruction that says in your determination of the credibility of a witness, if you feel they have lied about anything; you have the right to believe any part of their testimony or no part of their testimony that has not been corroborated.

This would also apply to experts, so if an expert said that in a particular case it was obvious that the plaintiff was at fault

because of a certain situation, but if we could find another similar case in which he claimed that the defendant was at fault, it makes his testimony suspect. In the legal profession, we call this "impeaching their credibility."

For instance, sometimes a driver will be interviewed by a police officer and asked what happened right after the accident. He might say he was going too fast and the accident was his fault. Later he may change his story and say that he did not really remember, and he thought he was driving the speed limit, and he wasn't sure whose fault it was. Whose fault was it? It was.

In that case, the driver could be impeached, by his Prior Inconsistent Statement, which legally means that if the person said one thing before, but then said something else later, and then the jury must make a determination of which one was the truth. Was he lying during the first statement or during the statement that was made later?

If I ask people whether their memory would generally be better closer to an event that happened or further away, most people would say closer. Ninety-nine percent of people would say their memory is better closer to an event, and the other 1 percent is lying.

As a lawyer, I have an obligation to not put on a perjured (false) testimony, and I will not do that. The client would have a right to testify or not if they were in a criminal case, and they would be able to decide whether they wanted to plead or go to trial.

If the client in a criminal case told me that a certain event had happened, but then told me a different version of events when we got closer to the trial, I would not know which the truth was and because of that, I would not be able to put him on the stand.

In a personal injury case, the client would not have the right to remain silent, so if the client said something different, his attorney would be between a rock and a hard place. Attorneys have an obligation to represent their clients as zealously as possible but they also have an obligation to the tribunal (the court) to not put on false testimony.

It would be a tough spot. Usually in these situations, people tend to embellish things and say things to put themselves in a better light. The opposing attorney would generally catch them and bring it up in front of the jury.

It is very rare in a civil suit for someone to be charged with perjury, which means lying under oath about a material

fact, although this does happen sometimes. It has thankfully never happened to any of my clients.

Before they testify I remind them in advance about what they said before. They might explain it a little differently but one of the arguments I always use when I think a witness is lying is “the truth never changes”. It is what it is. There isn’t a truth that happens the day after the accident and then a different truth that happens 2 years down the line.

Let us suppose the total value of the case was less than $50,000. In Nevada, we have mandatory arbitration. In a personal injury action, we have up to 2 years to file a lawsuit or the case would be legally barred. In most "soft tissue" cases, whiplash etc., the client would usually finish treating within 6 months.

Once they finished treating if the insurance company's settlement was not adequate or both sides could not agree on the value of the case, then we would have to file a lawsuit. If the total damages are less than $50,000, we would go to arbitration.

In Nevada, the arbitration is supposed to be completed within six months from filing the complaint. This could sometimes be continued for various reasons but the courts really do not like it. Let us suppose the accident happened and the person treated for about 6 months.

If a claimant is unable to settle the case, he would need to file a lawsuit and it would go into arbitration. The case would be presented in front of an arbitrator who would rule. If one side did not like the result, it could file a petition for a "Trial De Novo" (new trial). The case would proceed to a jury trial often

and because of the crowding of the courts it might take several years for the case to be heard.

What Is The Statute Of Limitations?

A 2-year statute of limitations means that if you are injured, you would have 2 years from the date of the injury, to file a lawsuit or your case would be forever barred. If you had significant injuries and you or your lawyer did not file the lawsuit within 2 years, (even 2 years and one day), then the statute of limitations would have run out. The lawsuit would be dismissed and you would not be able to recover one cent.

If the person had surgeries or they had not finished treating, then we would not know the extent of their medical bills and what their injuries are and how well they healed. The person would still be treating while the litigation process was going forward because in a case like this, there would probably be several doctors, including specialists and both sides may want to have experts: accident reconstructionist, economists, forensic accountants, etc.

Let us suppose someone was working as a casino executive. He was earning $200,000 a year and 30 years old. If he had an accident in which he broke his spine and became a paraplegic, then he would not be able to work as a casino executive anymore. He would not be making $200,000 every year. This financial loss is a significant component of the total damages suffered. It could take 4 or 5 years to get to court.

There is something called a 5-year rule, meaning that the client would need to trial within five years of filing a lawsuit, or else the case could be dismissed. Obviously, no one except the defendant would want that to happen. The courts are cognizant of this and do everything possible to make sure that does not happen and prevent someone from having his day in court.

Sometimes you can waive the 5-year rule, meaning we could stipulate (agree with the other side) to continue the trial past 5 years. And not be barred by the statute.

Is Filing A Case An Easy Process Or Is It Typically Complex?

Each case is different. For instance, in one case my client, who was a passenger, had over $30,000 in medical bills and the opposing drivers' insurance company only had $15,000 worth of coverage. I sent them a letter along with

the medical bills and told them I was making a policy limit demand. I gave them 20 days in which to respond. Usually they respond one way or another or they ask for some more time to properly evaluate the case, which would be fine. In this case, they tendered the policy.

After that, the driver of the car in which my client was a passenger, uninsured motorist coverage was accessed. He was not at fault, but because he was driving the car, and my client's injuries were not fully compensated, we were able to access his UM or UIM coverage.

In Nevada, the driver is primarily liable and the owner is secondarily liable, whereas it is the exact opposite in California.

In any case, we made a policy limit demand to the uninsured motorist carrier saying that the victim's medical bills were over $30,000 and that we received $15,000, which was not enough so we were demanding policy limits.

If for example they had said it was only worth $5,000, then we would not have accepted it and we would need to either arbitrate or litigate. If we went to a court ordered arbitration, we would present our case and the opposing party would defend it. The arbitrator could say that the damages were worth at least $50,000 but the arbitration limit is only $50,000 so the award could not exceed that.

The other side could either pay it or they could file a petition for a "Trial De Novo" (New Trial) and litigate. In addition to just suing for damages, we could also sue for punitive damages, i.e. the defendant's conduct was so egregious that in addition to fully compensating my client for his injuries, the jury should assess additional damages to be punishing them for their conduct.

Regardless of what the judgment is, (for example $500,000) even though there is a $15,000 policy, because the insurance company did not tender their policy limits, the insurance company would be on the hook for whatever the full value of the jury verdict is. But the insurance company generally does not pay punitive damages. That comes directly from the defendant.

What Are The Rules Of Arbitration In Nevada?

Nevada requires mandatory arbitration if the total damages are less than $50,000. Sometimes, rather than going to arbitration, we would go to mediation. Both sides would agree on a disinterested third party who would attempt to convince both parties to settle. Usually this would not be binding. The mediator could say he believed the case was worth $100,000, and he could suggest we settle. The other side might say they felt it was worth $20,000, in which case the mediation would fail.

Sometimes people tend to over-treat and sometimes they overstate their case, or what I call it Gilding the Lily. Sometimes they might be in a wheelchair when they come to court but when they are not in court, they might be walking around or playing basketball or doing some other physical activity that they said they could not do, because of the accident.

Social Media Posts Can Be Detrimental to Your Claim of Physical Injury And Emotional Distress

People who are pursuing a personal injury claim are usually doing so because, in part, they have suffered physical injuries, such as a broken leg, chronic pain, concussion, traumatic brain injury, soft tissue injury, etc. As such, they are seeking damages for two things: first, expenses associated with the injury such as the costs of staying in a hospital, and second, noneconomic damages for pain and suffering that resulted as a direct consequence of the physical injury.

Consider a claimant who is seeking damages for chronic pain, some loss of mobility, and an inability to enjoy physical activities that he or she once loved, such as hiking. The defense scours through the claimant's social media pages and stumbles upon photographic evidence that suggests the contrary —photos of the claimant enjoying a beautiful hike in the mountains, while smiling, and with friends.

The defense in a personal injury claim may turn to Facebook and other social media sites or forums, such as a claimant's personal blog, in order to disprove claims of emotional distress, depression, etc.

Are My Social Media Postings Public Record?

The examples above raise a question of privacy, with those who have been injured in an accident asking, "Is my social media public record?" The answer is yes. Anything that you post publicly on the internet, or that others post about you, may be used as evidence and therefore used against you during a personal injury claim. Private messages cannot be accessed without consent or a warrant. Anything else, however, is up for grabs.

Best Practices For Social Media

Posting anything online after an accident may be dangerous to your claim, even if you think that what you are posting is harmless or is in no way related to your injury. After you have been in an accident, you should temporarily suspend all of your social media accounts. At the very least, you should be sure that your account is set to private, and that you do not accept any new friend requests during the time period after your accident. You should also ask friends and family members to refrain from posting anything related to you after your accident and to set their profiles to private as well. You may think this is extreme, but why take a chance?

What Should You Do?

If someone is injured, they should follow the doctor's treatment plan. Not treating properly, is not the fault of the defendant. Usually you require more treatment in the beginning, such as treating 3 times a week, gradually lessening the frequency of your treatment as you get better.

Let us suppose you treated twice a week, in the beginning and then one time per week for two more weeks. But, your injuries were a lot more significant than your medical treatment showed. Maybe you were supposed to go to a specialist but you did not. Or you were supposed to have surgery but did not want

to have surgery. This could certainly raise a legitimate concern by the insurance company.

Their position would be that, well if he really needed surgery, he would have had it. But from your standpoint obviously it would be better (and safer) if you did not need to have surgery. I would not want someone cutting on me if I could avoid it.

In my accident, the orthopedic surgeon recommended that I have surgery on my neck. The doctor told me he had done 2,000 of these and never had a problem, but then I asked him how many he had undergone himself. (NONE)

I opted not to have surgery. My recovery might have been higher if I had the surgery but I didn't want to risk it. Some people do not treat properly (let's say they hate doctors) or sometimes they are just bad witnesses, they cannot remember things or they are really nervous on the witness stand, then it would just seem like they are lying.

Let us suppose one of my clients is a stripper, so even though she was hurt legitimately, some jurors may think she would not be entitled to a significant recovery, because she is a stripper. But, a bank executive with the same injury

who did the exact same treatment would most likely get a bigger recovery.

Each case is different and I tell people to treat until they are completely well. If you are not certain, you should treat one more time just to make sure. If you did not treat for a year and then ran up medical bills worth $200,000, it seems like you really were not hurt and were just trying to increase the value of your case.

What Are The Biggest Challenges People Face In A Personal Injury Case?

The biggest challenge is recovering from their injuries and receiving proper treatment. If you are married or have a significant other, then it might sometimes affect the relationship because if the claimant was hurting, they would not have their usual sunny disposition and it would affect other aspects of life also. You may also be out of work and because you were unable to work, you would not be getting paid which could lead to financial problems for your entire family.

Sometimes it is just the uncertainty about what could happen. Will your health ever fully come back? How much will you recover? The litigation process can be really stressful. The

other side will usually take a deposition, meaning they would ask you questions under oath. Most people are nervous so, they sometimes may not remember exactly what they said and they may say something different.

In this case you would not be lying, but you just didn't remember. Just because you said something different does not automatically mean you were lying. When I point that out to a jury, I generally tell them that apparently, my client was mistaken.

If a witness' testimony at trial is diametrically opposite of previous deposition testimony, I would address the jury and tell them that both of these statements cannot be true. One statement could be corroborated by another witness. But, the other statement could not be corroborated. The jury would need to decide which statement they believed was true and which witness would be more credible. Usually the corroborated testimony is more believable.

Testifying can be very stressful and sometimes people are just not good witnesses: they don't have a good memory, they are shifty looking, they tend to embellish, they have a speech impediment, they have a fear of public speaking.

It would be great if the facts were not in dispute. The person was injured, for example on Monday, and we could evaluate exactly what their injuries were worth and exactly what treatment they will require, due to the collision. Both sides agree on an amount of damages and the insurance company pays very quickly so we could settle the case on Friday and it would be a fair settlement and everyone would be happy. This kind of scenario is a fairy tale because it never happens.

CHOOSING AN ATTORNEY FOR A PERSONAL INJURY CASE

One of the things is that the person should make sure to actually talk to the attorney because they would often have to deal with intake specialists, which is fine. Often they are more efficient in obtaining your relevant information because intake is their specialty.

But, you should make sure to talk to an attorney. Sometimes you may need to communicate with a paralegal assigned to your case, which is fine. But you need to know who the attorney is that handles your case, so that you may speak to him if necessary. With that being said usually the paralegal is more available because he or she is always in the office, while your attorney may be in court so he or she is not able to talk to you when you call.

Additionally, you should also make sure your attorney would be the same one who is representing you through the entire process. You should find out who will be handling your matter if the case goes to arbitration or trial. Some

firms will refer cases to other lawyers who specialize in litigation.

In some firms in Las Vegas, lawyers have a big thriving personal injury practice, but they do not litigate. If the insurance company does not settle, they will just farm it out to another lawyer. I am not saying that is a bad practice, but nonetheless the client should be aware of this, because in that case they could hire the "litigation lawyer" in the beginning and develop a relationship all the way through the process. In our firm we handle the case whether it settles, arbitrates or litigates (goes to trial).

What Are Some Common Misconceptions About Working With The Personal Injury Attorney?

A common misconception is that the person would have to pay the attorney a large amount of money, which would mean the client would end up with less money than they would have if they handled the matter themselves. Nothing is further from the truth. In fact, it is the exact opposite and insurance companies know this. Studies have shown that personal injury victims that are represented by attorneys recover more money than if they handled the matter themselves without hiring a lawyer.

Personal injury attorneys and doctors know that in some cases, after an accident you do not realize how badly you were hurt. Your body is in shock and the full magnitude of your injuries does not manifest for a few days. Insurance companies always try to settle quickly and not pay the full value of the claim. On some occasions the not-at fault driver will suffer serious injuries and they will not be fully compensated. That is why we always advise people involved in an accident not to discuss their condition at that time and get medical treatment ASAP.

Can Someone Afford An Experienced And Well-Established Attorney To Represent Them In A Personal Injury Case?

Most personal injury attorneys work on a contingency basis, meaning they will work on a percentage of the recovery. The percentage is typically one-third before a complaint is filed. No matter how good the attorney is, or how much time he spends or the amount of the award, he would receive one third of the recovery.

Let us say there was $9,000 worth of damages; the attorney's fee would be $3,000. For $30,000 worth of damages, the fee would come to $10,000. Most attorneys will charge more if the person files a lawsuit; at least 40

percent. If the recovery was $30,000, then the attorney's fees would be one-third prior to the filing of a complaint. But if the agreement states that the fee increases to 40% once the complaint is filed, the fee would be $12,000.

There are additional costs if you litigate or arbitrate. There are court costs of a couple of hundred dollars for filing and service fees. If there is a jury demand, there is an additional fee. Having a doctor testify also costs money.

If you hire an expert, such as an accident Reconstructionist, or an economist to calculate loss of earnings, it could cost several thousand dollars. Your gross recovery could be higher, but because of the increased costs, you may actually end up making less money. With that being said, in some cases experts are necessary; their testimony will increase the value of your case.

Additionally, let us suppose you won $400,000 and you were very happy. Your attorney would take 40 percent. Now let us suppose the other side appealed. Most attorneys will have a provision that in case the opposition files an appeal, the fee is increased. Many times it will be an additional 5 percent. So in this case it would be 45 percent. The cost would rise as the process drags on. If the litigation costs are $20,000 (transcripts, experts, deposition costs, printing,

service fees, etc.) to try the case, there would be additional costs if an appeal needs to be filed. Also it takes more time, sometimes years.

Let us suppose you waited for 2 years before you filed the lawsuit, and it took 5 years before you obtained a jury verdict. The other side might appeal, which could take an additional year or two years. The appellate court could rule there was a problem with your case, and reverse and remand (send it back to the trial court to retry) the case.

The case would be sent back to the trial court to be tried again. The court would direct the lower court to try the case differently. For example, the judge made an erroneous ruling and excluded some evidence that should have been presented to the jury and could have influenced the verdict. The court would instruct the trial judge to admit the evidence at the new trial. This process could take a long time and the costs would keep mounting.

Should You Choose An Attorney Who Would Prefer To Settle?

Another scenario would be if the lawyer was pushing for their client to settle too quickly. I still hear attorneys advising their clients to settle, because it is in their best interest, when it is not. This is another thing to watch out for.

Do I Need A Specialist Attorney?

You should choose an attorney who has experience. You do not want someone who practices divorce, workers' comp, personal injury, estate planning corporate litigation, or who does not even practice personal injury.

I always advise people, "Don't go to a foot doctor for a heart problem." You should make sure the attorney you choose does personal injury cases and make sure they have a good reputation.

What Sets Your Firm Apart To Handle Personal Injury Cases?

I have been practicing for over 35 years and I have handled tons of personal injury cases. My first job was in personal injury I have tried over 200 cases so I am not afraid to go to trial, and everyone knows that. Because of this, I don't end up going to trial often. The insurance companies will properly compensate my clients. My feeling is that my clients deserve a fair settlement. If we do not get a fair settlement, then we can just let the court decide. A lot of firms do not want to go to court. I love to go to court!

We have had a lot of experience, we know what we are doing and I am plugged into which doctors handle personal

injuries properly. I can usually get these doctors to work on a lien, meaning that the doctor will not demand the money upfront from the client. He will be paid when the case settles.

This makes a big difference. The client will not need to pay for medical treatment until the case is finished. In addition, many times we are able to convince the doctors to reduce their liens so that the client recovers more money.

We do not like our cases to take forever. If the case will not settle, then we file a lawsuit right away and we keep things moving along. Some attorneys will sit on things and not process the case as quickly as we will.

Why Do You Think People Recover Faster With An Attorney?

While you may recover more quickly, the goal is to get the best settlement possible. My clients usually get better settlements, better results and a larger recovery, since they have an experienced attorney like me fighting for them every step of the way.

Injured in An Auto Accident in Nevada?

Info That May Be Extremely Useful For You

"Mace is no-nonsense, to the point, effective, personable, comforting, kind, phenomenal is an inadequate description but I can't think of a better word to use. Mace is still, and always will be my go-to guy for legal matters."

- Terri

"Mace Yampolsky and staff were extremely knowledgeable and efficient. The service we received was expedited quickly and was successful. I recommend consulting Mace Yampolsky for any legal service needed."

- Mike

"I got the most for the money I paid for Mace. During the whole process I had to go thru, my nerves weren't as bad with Mace taking care of all the legal stuff for me. Highly recommended."

- A Criminal Defense Client

"I went to Mace after getting into some trouble with the law in Las Vegas. Mace and his team also helped my partner get some charges dropped. They kept both of us out of jail, and we are thankful for their help. I highly recommend Mace and his staff if you face legal problems."

- Serenity

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