



Nager, Romaine & Schneiberg, Co., L.P.A.

Attorneys & Counselors At Law

NAGER, ROMAINE & SCHNEIBERG is a full service law firm dedicated to the representation of individuals with personal injury, workers' compensation, premises liability, insurance coverage disputes and medical malpractice cases. These instructions are not designed to give specific legal advice on any particular case, but are designed to assist our personal injury clients with commonly asked questions and concepts that affect their cases. If you have specific questions or do not understand any part of these materials, please call us to discuss the same.

INSTRUCTIONS TO PERSONAL INJURY CLIENTS

We are privileged to be able to assist you with your personal injury case. The following instructions are designed to help all of us. We find that there are many common questions asked by accident victims and this should prove to be a valuable reference guide for you. Although there may be significant periods of time when there will be no reason for us to contact you, remember we work for you so you should always feel free to contact us.

IMPORTANT: IF YOU MOVE OR CHANGE YOUR PHONE NUMBER

If you move, change mailing addresses, jobs, telephone numbers, etc., please let us know at once. A quick phone call, fax, letter or e-mail with your new information could avoid unnecessary delays and other problems with your case. We must always be able to communicate promptly with you. With that in mind, here is how you can contact us:

Address:

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Assistants:

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Clairese Marlin	Receptionist

KEEP A DIARY

We cannot emphasize too strongly the importance of maintaining a diary regarding your injuries and damages. This is nothing fancy and may simply be a notebook or notepad. It does not have to be kept every day, or every week, but it is important that you keep it in an attempt to document your specific complaints. Remember, you and I may have to convince a jury (composed of eight strangers) that you were injured in this accident, your injuries caused you pain and suffering and your pain and suffering entitles you to compensation. This is best accomplished by providing specific examples and, where necessary, witnesses that can support your testimony. **All pain, discomfort and injuries should be documented no matter how minor they may seem at the time.** Injuries have a way of progressing. If you have a bruise from banging your knee and later you develop functional knee pain, it is vital to have some proof of your injury at the time of the accident in order to relate the damages.

Your diary should briefly describe how you felt, in general, prior to the accident. You should then diary how you felt immediately after the accident, telling in the greatest detail possible what happened to you and the pain and suffering you endured immediately thereafter. As you keep the diary, note the date, describe the effect that the injuries are having upon you and the pain and suffering that you have experienced. Describe both the symptoms you are having and the activities that you could not do or cannot do as well as you could before your accident and/or injury. You should record your anguish such as worries you have on your mind about your ability to get well or the effects of your injury on your everyday living and your ability to provide for your family.

Try to use pictures words. For example, "I was in a lot of pain today" is not nearly as helpful as "I was in so much pain today when I reached down to pick up the sweeper I let out a groan and realized that I could not pick it up because of the pain in my right shoulder." This is what we mean by picture words. If somebody witnessed your pain or limitations, be sure to put down their name. For example, "Today I had to ask my friend to reach up in the cupboard and pull out the saucepan because I was unable to extend my arm upward above my head. My friends name is John Smith. His address is 22 West Main Street in Cleveland and his phone number is (216) 222-4422." Use as many picture words as you can to describe your injuries and pain that you are suffering. At the conclusion of your treatment, I ask that you forward to me a copy of your diary to assist me in making a demand on your behalf.

DOCUMENT YOUR DAMAGES

Photographs are **very important** and **cannot be overemphasized**. We will assist you in taking photographs if you cannot do them yourselves, but we do need photographs of your injuries and damages. If you were injured in an automobile accident or by a defective condition on someone's property or a defective product, it is imperative that we obtain photographs before repairs are made. In a motor vehicle case, you should have at least four (4) or five (5) photographs of your vehicle. If there is not much damage to the exterior of your vehicle, there may be damage visible inside the car or underneath the vehicle. It is very important that you take photographs of those hidden

damages in these cases. If you need help obtaining photographs, call us before repairs are started. If you have injuries that show up on photographs (scars, bruises, swelling, cuts, stitches, etc.), be sure to take photographs of those areas as well. If the visible injuries take more than a few days to heal, document them with a photograph every week and use a camera that places a date stamp on the photograph. Our ability to reconstruct injuries by photographs is very important. There is truth to the saying that "pictures are worth a thousand words." **SO TAKE PLENTY OF PICTURES.**

Keep track of any expenses such as childcare, housekeeping, traveling for medical treatment and the like. All expenses should be noted and if you are in doubt, you should make a record and let us assist you in determining the appropriate ones. Remember that your inability to do certain activities may be compensable. But also remember that it is very important to have independent documentation of this impairment. For example, if you cannot run the sweeper or do the laundry, write down the name of somebody who has seen that you are unable to do these things. If you are unable to play golf, bowling, tennis or the like, write down the name and address of that person who from his or her observations can document the fact that you have not been doing or cannot appear to do those activities.

DOCUMENTING WAGE LOSS

If you are expected to miss any time from work as a result of the injuries caused by your accident, it is important that you have documentation from your physician indicating that you will be unable to work for a specific period of time. If your doctor does not provide this for you, we suggest that you contact your treating physician and/or family physician to request this documentation (i.e., a doctor's note). Insurance adjusters often will not consider wage loss submitted without a doctor's recommendation that you stay off work.

FOLLOW THE DOCTOR'S ADVICE

You should visit your physician as often as is required. If you are hurt, go and visit your physician. If you do not hurt, do not visit your physician as this may cause confusion and unnecessary expense. When you do decide to visit your physician, describe all of the pain and suffering and difficulties that you are having to the best of your ability. Remember that whatever you tell your physician in the course of your treatment will end up in your medical records and may be admissible as evidence later in court. You should be careful and honest as to what you tell your medical providers. If you had prior injuries or prior difficulties, tell your physician about them. If this incident has aggravated your prior injuries, tell your doctor immediately. If your injuries are affecting your employment, be sure that you tell your doctor and your employer about them. If your injuries are affecting your ability to do recreational activities or the functions of your daily life, be sure that you tell your doctor about them as well. Above all **FOLLOW YOUR DOCTOR'S ADVICE**. If he/she recommends a consultation with another doctor or a follow-up visit, follow through with that advice. **Also remember that any injuries to any body parts, no matter how minor they may seem, must be documented with your physician as soon as possible after an accident. By doing so you will**

protect yourself in the event that these seemingly minor injuries worsen weeks or even months after the accident.

Occasionally people become dissatisfied with certain physicians or their decisions regarding treatment and/or diagnosis. Different physicians often have different opinions. If you ever desire our help with obtaining a second opinion or advice about selecting a physician, please do not hesitate to contact us.

HOW LONG WILL MY CASE TAKE

Generally, settlements, recoveries, jury awards, etc. take a long time. It may only be three (3) or four (4) months before we reach a settlement on your behalf. More often, it will take two (2) or three (3) years after the date of your accident or injury to resolve your case. The length of your case depends on a number of factors including, the severity of your injuries, the length of your medical treatment, how long it takes to get the proper diagnosis of your injury and whether or not liability for an accident is disputed or accepted.

One of the main reasons that your case may take a long period of time is to protect you. When a settlement or recovery is made it is final and its effects can be felt for a lifetime. You are not allowed to get back into court two (2) years from now or ten (10) years from now or twenty-five (25) years from now and ask for more compensation. All of the compensation that you receive as a result of your accident or injury will be received by the time you execute a release or receive a verdict in this case. We are very careful about settlements and want to make sure that you make a voluntary, intelligent, and knowing settlement or decision regarding a jury trial. Even after a case is filed in court we often have to wait a year or two (2) before the case is called to trial. Since these cases do take a long time, you can see how important it is to document all of your injuries and damages because our memories are not as accurate as we sometimes think they will be. In any event, we will not settle your case without your authority and approval.

WHO PAYS MY BILLS WHILE I AM WAITING

You are ultimately responsible for your medical expenses. If you have any type of medical/health insurance (including Medicare/Medicaid), we strongly urge you to provide your insurance information to your providers or if you receive unpaid medical bills that you submit them to your health insurance company to avoid harassing creditors' actions against you. When asked by a provider how you wish to pay for your treatment always insist upon the use of your health insurance coverage first. There are many advantages to handling your case in this manner. Sometimes you must fill out forms from your health insurer before they will pay your bills. Contact us if you need assistance with these forms but take care of them promptly.

You may have the ability to get medical bills paid by your automobile or homeowner's insurance if your injury occurred while operating your car or on your property. Likewise, you may be able to get those bills paid under the insurance policy of the person that

owns the car or home where you were injured. This type of coverage is called “medical payments coverage” or “medpay.” Clients often say, “I don’t want to submit my bills to my insurer because my insurance will go up.” You have already paid a premium for this coverage. If your automobile or homeowner’s insurer pays the bills it is only temporary as they will get their money back when we settle or resolve your case with the at-fault party. This is what is known as subrogation.

If you do not have any kind of medical/health insurance, some physicians will wait for payment from the proceeds of your case. Ask us about this. The law does not allow us to assist you with payment of your medical bills. What you can do for yourself is write to the various creditors and tell them that you have authorized us to pay them out of any future settlement. We can also write letters to your providers asking them to be patient and accept payment from the proceeds of your case. Many times these types of letters are helpful to our clients, but not always. Be sure to keep us informed if you are being called upon for past due bills.

DO YOU UNDERSTAND SUBROGATION

Subrogation is a principle that generally means you cannot be paid twice for the same damages. If someone (or some insurance company) pays for something (a medical bill) on your behalf and then someone else (the at-fault person or their insurance company) pays you for that same bill, then you have to pay back the money you originally received from the person or company that was not at-fault but was contractually responsible for paying your bills. For example, if you had health insurance with ABC Insurance and it has paid some of your medical bills, when you finally obtain a recovery or settlement funds as a result of your accident or injury, we will probably have to pay ABC Insurance back. The same is true for “Medpay” benefits paid under an automobile policy or homeowner’s policy of insurance. If a public agency such as Welfare, Medicaid or Medicare has paid some of your medical bills, we will **definitely** have to pay them back. This is known as the principle of subrogation. You should understand it because it may affect the amount of your eventual recovery or settlement funds and it may work in your favor if handled properly.

WHAT IS THE DIFFERENCE BETWEEN A CLAIM AND A LAWSUIT?

We find that many of our clients experience apprehension, anxiety or even guilt about being involved in a lawsuit or “suing” someone for their injuries. First, you must understand there is a big difference between submitting a personal injury claim (usually to an insurance company) and filing a lawsuit. Only 10-20% of our clients actually end up in a lawsuit regarding their injury case (although the trend has been increasing as more insurance companies take a hard line stance in negotiations). When you retain us to represent you, we investigate and document your injury case and submit the claim to the insurer in an attempt to negotiate a fair settlement. It is only when the insurance company refuses to offer a fair settlement or denies responsibility for your injury that a lawsuit becomes necessary. Second, the only reason **any injury** case has value is because you have the right, under our civil justice system, to have a jury of your peers settle any dispute you have regarding the value of your injury. With this in mind, we

must prepare every case with an eye toward proving your damages to a jury and only then will the insurance company offer a fair settlement to avoid going to court in your case.

PROPERTY DAMAGE (AUTOMOBILE CASES)

By far the greatest complaint of our clients has to do with the way the insurance companies handle the property damage to their automobile. Unfortunately, the law does not give us much ammunition to fight them in this area and for the most part your property damage can be handled without our involvement. If you encounter problems with the property damage portion of your case, do not hesitate to call and we will try to assist you.

If liability for an accident is accepted, the at-fault party's insurance company is required by law to pay for the damage to your car and provide a reasonable replacement vehicle (rental) while your car is being repaired. They do not have to rent you a Mercedes Benz. However, if you use your vehicle for work (i.e., a pick-up truck to move materials to a job site or you have a minivan to transport your children), you should request and get **pre-approval** from the insurance company for this type of rental to accommodate your needs). In any event, the insurance company only has to provide a rental until the repairs are complete or they offer you the fair market value of your vehicle if it is a total loss ("totaled"). The insurance company for the at-fault driver is **not obligated by law to pay for the additional insurance** offered by rental companies. Therefore, you should not pay for this additional insurance unless it is necessary. A rental vehicle is a "replacement vehicle" and **most of the time covered under your automobile policy**. You should check with your automobile insurance company to **verify** that the rental car is covered under your policy then you can safely elect not to purchase the additional insurance. If you have only a liability bond or a policy that only provides liability coverage, you may be required to purchase the additional insurance on the rental vehicle and unfortunately the law does not require the at fault insurer to reimburse you for the insurance charges on the rental bill.

If your car is "totaled" (meaning it would cost more to fix it than it is worth) then the insurance company is required to pay you the "fair market value" of your vehicle. **Make no mistake about it, there is nothing fair about fair market value but it's the law.** The fair market value is not the Blue Book or NADA value nor is it what a dealership would charge you for the same car (the theory is that the dealers mark up the price to make a profit and you are not a dealer). However, many clients find that the fair market value is not enough for them to go out and buy the same car, or even worse, they owe more to the bank than the car is worth leaving a balance after your car is totaled. There is a type of insurance coverage that pays this difference called "gap insurance." You may have purchased this type of insurance when you bought your car, check your paperwork and report the loss to the insurance company immediately if you have gap insurance coverage. Note: Many used car dealers that finance the sale of their cars require gap coverage so check the paperwork you received with your car!

If your car is totaled and you have to replace your car, you are entitled to the sales tax you pay on your replacement vehicle up to the fair market value of your loss vehicle (i.e., you own a 1995 Escort worth \$2,000.00; it is totaled in an accident that is not your fault; you go out and buy a new Cadillac that costs \$25,000.00; the insurer will have to pay the sales tax on the first \$2,000.00 only). Sometimes the insurers pay the tax up front and sometimes they will only pay it if you provide a receipt showing the sales tax within thirty (30) days of your vehicle being declared a total loss – check with the adjuster to make sure you are clear on this.

If liability (or fault) for the accident is disputed or being investigated, the other driver's insurance company does not have to pay your property damage or provide a rental car. In this case, you should check with your insurance company regarding your coverage. You may have to pay a deductible under your policy, but this may be refunded to you if the other driver is later found to be at fault.

TRAFFIC OFFENSES

If you are arrested or cited as a result of an automobile collision, call one of the lawyers in this office immediately, and we shall see that someone represents or advises you appropriately. NEVER plead guilty to a traffic offense, and do not even pay a traffic ticket without first consulting us!

DO NOT SIGN ANYTHING THAT YOU ARE UNSURE ABOUT

Of course, you should not sign anything for anybody unless you absolutely know it is okay or you have it approved by us. Do not talk to your own insurance company without first notifying us prior to your conversation. This is not to say that you should not say anything about your injuries. If you have friends and fellow employees, members of your family, feel free to tell them about your difficulties because they later may be able to corroborate and provide support for your claim.

REMEMBER: WE ARE ON YOUR SIDE

If you do not understand any of these instructions or you have additional questions or concerns, remember that we are here to represent you, to assist you and to teach you about the civil justice system and your rights under the law. Our office is open from 8:30 a.m. to 5:00 p.m. Monday through Friday. When we are not here, leave a detailed message including your name, number and the nature of your question. This will help us to serve you more quickly when returning your call. We look forward to working with you.