# STOP LEARN THE FIVE DEADLY **MISTAKES**

THAT CAN KILL YOUR ACCIDENT CASE!



What you need to know BEFORE talking to the insurance company Myths about Insurance Claims that simply are NOT true What you need to know BEFORE talking to any attorney How to find the right attorney for YOU Why honesty is ALWAYS the best policy for your case

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Learn The Five Deadly Mistakes That Can Kill Your Accident Case!
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## **MYTHS**

- If you write the insurance company a letter and are reasonable, you will get a reasonable settlement offer.
- > When you are in an accident and the insurance company calls you to ask for a recorded statement, you are required to give them a recorded statement or they won't settle with you.
- ➤ All lawyers who advertise that they handle accident cases have the same ability, tools and experience to handle your case.
- > The insurance company for the person who hit you is obligated to pay your medical bills as they are incurred.
- > The tort liability system is some sort of lottery that will help you get rich.
- > Just because there has been an accident and it wasn't your fault, there must be some insurance company that will pay for your medical bills, lost wages and injuries.
- > If a lawyer refers you to a doctor, that is a good idea.
- > Juries in New York or Pennsylvania are generous.

### Why Did I Write This Book?

I am sick and tired of **insurance companies** taking advantage of people <u>before</u> they have a chance to talk to an attorney. Every day highly trained insurance company representatives encourage accident victims to NOT hire an attorney. They tell folks "you don't need an attorney, we will take care of you." They sure will "take care of you" but not in the way you hope. Remember, these folks are TRAINED to pay you as LITTLE as possible. While it is true that you may not need an attorney to represent you in your case, you can't make that decision until you are aware of your legal rights. I wrote this book so that you can be informed, TODAY!

I am also sick and tired of **outrageous lawyer advertising** where lawyers with a reputation for handling hundreds of cases at a time make promises that can't be kept or equate your injury to "cash, cash, cash." I am also tired of lawyers who file **frivolous lawsuits**, because frivolous lawsuits hurt everyone by delaying real claims from getting to court.

Most attorneys require you to make an appointment in which you would get some of the information that I have provided here. I believe that you should be able to have this information, right now, and without any pressure. The hiring of an attorney to represent you is a very important step that should not be taken lightly.

Frankly, this method of talking to you also saves me time. I've packed a ton of information into this book and it saves me the hours of time that it would take each day just to talk to all of the new potential clients who call. I cannot and will not accept every case and, frankly, each year we turn down good cases that simply do not meet our case selection criteria. So, rather than cut you short on the phone, writing this book gives me a chance to tell you what you need to know so that you can make an informed decision about what steps to take with your case. Even if I do not accept your case, I would like you to be educated about the process so that you don't fall victim to the insurance companies.

## I AM NOT ALLOWED TO GIVE LEGAL ADVICE IN THIS BOOK!

I know the arguments the insurance company will make — and so should you — even before you file your claim. When you were injured, you entered a war zone. The insurance industry has spent hundreds of millions of dollars to inflame the public against you and me. We will be in this together.

I am not allowed, however, to give legal advice in this book. I can offer suggestions and identify traps, but please do not construe anything in this book to be legal advice until you have agreed to hire me AND I have agreed, in writing, to accept your case.

# DO YOU REALLY NEED AN ATTORNEY TO HANDLE YOUR CASE?

You may be shocked to learn that I often recommend to people who meet with me that it is NOT necessary for every person to be represented in every auto accident case.

Quite frankly, in smaller cases where there is only minor damage to your vehicle and in which you have suffered only minor injuries (for example, bumps and bruises that quickly heal), you might be better off handling your own case.

Why do I make this recommendation? Because in these smaller cases, by the time you pay attorney's fees and costs, it may leave little or no money for you. Clearly, that is not fair to you and accordingly, I have often advised people in this situation as to how they can best represent themselves.

On the other hand, I tell folks that a nationwide study showed:

# PEOPLE REPRESENTED BY ATTORNEYS RECOVER 300% MORE THAN PEOPLE WHO WERE NOT REPRESENTED BY AN ATTORNEY.

That means that after the deduction of the usual one-third attorney's fee, represented people took home 200% more even after their attorney was paid.

By reading this book, you will have the benefit of much of the information I discuss with folks meeting with me in my office. In the event that you have any questions <u>after</u> reading this book (please read the book first), you may feel free to e-mail me at <u>JReed@Zifflaw.com</u>, call me at 1-800-ZiffLaw or visit my website at <u>www.zifflaw.com</u> (there are answers to many commonly asked questions on our Frequently Asked Questions pages). I would be happy to speak with you.

However, before going any further, I want to make one very important point:

# YOU SHOULD <u>NEVER</u>, <u>EVER</u>, SIGN OFF ON YOUR RIGHTS FOLLOWING AN AUTO ACCIDENT UNTIL YOU ARE ABSOLUTELY CERTAIN THAT YOU KNOW THE <u>FULL EXTENT</u> OF ANY INJURIES YOU HAVE AND YOU KNOW WHAT FUTURE TREATMENT YOU MAY REQUIRE.

Many insurance companies have become very aggressive in approaching people shortly after an accident and convincing them that they should sign off on their rights at a time when these folks simply don't know the full extent and duration of their injuries. Having represented injured people for more than twenty years, I can tell you that in the first few weeks and even first few months following a collision, it is virtually impossible for anyone to know whether their injuries are going to be serious or not. Over the years, I have seen many people who initially felt that

they were just "shook up" in an auto accident end up requiring several surgeries because what they thought was merely a minor injury got progressively worse and worse, requiring major medical care.

# REMEMBER, IF YOU SIGN OFF ON YOUR RIGHTS, YOU ARE SIGNING OFF ON ANY AND ALL CLAIMS YOU MAY HAVE FOR ALL TIME!

In other words, you have just one bite at the apple. Accordingly, it is crucial that you be careful before signing any documents that might come back to haunt you later.

#### You Are At War — But It's a War That Can Be Won

The day you were injured, you entered a war zone. Insurance companies and some in the government have declared war on injured people and their attorneys. They have waged the war in the media and their propaganda has had a tremendous effect on juries and their verdicts. This is called tort reform. The success that the insurance companies have had in tainting the minds of jurors has emboldened them to not offer fair settlements until you prove to them that you are ready, willing and able to go to trial.

# BEWARE THE "GOOD COP/BAD COP" INSURANCE ADJUSTER

Many insurance companies have developed very sophisticated training procedures to teach their representatives how to approach an accident victim and persuade those persons to prematurely sign off on their rights. These companies have developed strategies for maximizing what they refer to as an "ESO," an "Early Settlement Opportunity."

# INSURANCE COMPANIES KNOW THAT ACCIDENT VICTIMS ARE VERY VULNERABLE AFTER A COLLISION.

They know victims are often hurt, taking powerful medications, anxious about how their bills are going to get paid and totally uninformed about their rights under the law. Knowing the accident victim's vulnerability, the insurance companies send their "Good Cop" to visit the victim in the hospital or at home.

- The "Good Cop" tells you that the insurance company is very concerned about you and wants to make sure you are taken care of.
- The "Good Cop" tells you they will work with you to get your case promptly settled.
- The "Good Cop" tells you that you don't need your own attorney to represent you and they go to great lengths to tell you that an attorney will just take one-third of whatever you recover. (By the way, the usual attorney's fee in these cases is one-third, but what

- they don't tell you is that a national study proved that people represented by attorneys receive three times more than people not represented by attorneys. Hmmm...why do you think they don't tell you that?)
- The "Good Cop" tells you that you must have suffered a "serious injury" in order to bring a claim (that is true) and they will suggest that you do not have a "serious injury" (often totally false and almost always way too early to know for sure).
- The "Good Cop" tells you that they won't offer a single penny more if you hire an attorney (a claim we know to be totally false because over and over again we have settled claims for 5 times, 10 times, even 50 times more than the adjuster originally offered our clients!)
- I have even represented clients who tell me that the "Good Cop" had told them stories that they too have personally been in an accident, but "don't worry, I recovered just fine from my injuries and so will you..."

Now, I don't mean to suggest that every insurance adjuster or every insurance company operates this way. In fact, I have friends in the insurance business myself who are decent, hardworking folks. But, I can tell you that the number of insurance companies employing such tactics has risen dramatically during my 20-year career and it is of epidemic proportions today. Even worse, even the decent folks who work for insurance companies often tell me "I'm sorry, Jim, I really would like to help, but our company policy won't permit me to pay your client who needs the money..." Sad.

## **SO WHAT SHOULD I DO?**

My advice to everyone who has been involved in an accident is:

#### SLOW DOWN, GET INFORMATION AND MAKE AN INFORMED DECISION!

So let's talk about these one at a time.

<u>SLOW DOWN</u>— You should slow down because there is no reason that you need to make a fast decision as to how you should handle your case. If an insurance company is willing to offer you money to settle your case today, they certainly are going to be willing to do so tomorrow, a week from tomorrow, or a year from tomorrow. In my experience, it is very rare that any insurance company would follow through on its threat to withdraw an offer. Even if they did, the offers they have made are usually so low that the accident victim would not have been wise to accept them in the first place. So, take a deep breath, slow down, and get the information you need to make an informed decision.

GET INFORMATION — By reading this book, you are taking a good step toward learning what you need to know before making a decision as to whether or not you try to handle your claim on your own or retain an experienced accident attorney. In this tremendous information age, there are many resources where you can learn the things you need to know about accident law. For example, my firm's website at <a href="https://www.zifflaw.com">www.zifflaw.com</a> has a great deal of useful information that you can easily and freely access. We have a full section of "Frequently Asked Questions" covering questions our clients have repeatedly asked us over the years. This is a treasure-trove

of information and our website very specifically covers New York and Pennsylvania law on a wide range of personal injury topics including auto accidents, insurance issues, etc. If you do not have access to a computer or are like my mother and absolutely refuse to go anywhere near a computer, you can call my office at 1-800-ZIFFLAW and we will be happy to print out the relevant pages from our website and send them to you at no cost.

MAKE AN INFORMED DECISION — Once you have the benefit of learning more about New York and Pennsylvania law, you will be in a much better position to make a decision as to how you should handle your case. My rule of thumb with the folks with whom I've consulted over the years is that if you take your time, have done your research, and still are not sure as to whether or not you would be best served by hiring an experienced accident attorney, you should definitely take advantage of the fact that most personal injury attorneys offer a free consultation.

In an average week, I routinely meet with five to ten people providing free consultations. I would like to believe that the vast majority of them feel that it was well worth their while to sit down and discuss their case. I make it clear at the outset of their consultation that there is no obligation that these folks retain me to represent them and it is not at all uncommon that I offer folks free advice on how they can safely handle their claim on their own.

# HOWEVER, IF YOU HAVE SUFFERED SERIOUS INJURIES IN AN ACCIDENT, I STRONGLY RECOMMEND THAT YOU PROMPTLY HIRE AN EXPERIENCED ACCIDENT ATTORNEY

While it is indeed true that folks who have not experienced significant injuries can often handle their claims on their own without being represented by an attorney, it is almost always unwise to delay in hiring an attorney if you have suffered a serious injury like a broken or fractured bone, a significant laceration, a disabling neck or back injury, or any other injury that appears will keep you out of work for a period of weeks if not months.

Why do I feel it is necessary to quickly hire an attorney in these circumstances? It's pretty simple. If you have suffered serious injuries, the stakes will be much higher and your case will be much more complicated. Insurance companies are in business to make profits. Their goal is to make as much money as possible. Insurance companies make money by charging as much in premiums as they possibly can and by paying out as little as possible on claims. Every year, insurance companies make billions in profits by paying out much less than they take in.

If an insurance company knows that you have suffered a serious injury, in effect, you have painted a big red bull's-eye on your forehead and it will be the goal of that insurance company to utilize its resources to pay you <u>as little</u> as possible on your claim. Because YOU are now the target, you need someone to help defend you from the many tricks and traps that will be thrown your way.

Remember earlier when I talked about the "Good Cop/Bad Cop"? Well, the "Good Cop" is the adjuster who appears at your door to settle your case early on. If the Good Cop is not successful in getting you to settle early, you will now get very rapidly introduced to the "Bad Cop."

While the goal of the "Good Cop" is to get you to sign off early or to stay out of an attorney's office, it is the goal of the "Bad Cop" to find any way that they can to pay you little or nothing on your case.

- The "Bad Cop" will be looking to take a recorded statement from you in hopes that you will say something wrong that they later will be able to use against you.
- The "Bad Cop" will be trying to find out if you have ever had another injury (even many
  years before) and they will try to claim your accident injuries are due to your old injuries
  (even if you fully recovered from those old injuries).
- The "Bad Cop" will be out at the accident scene taking photos and taking measurements while at the same time discouraging you from seeing a lawyer who would send their own investigator to take photos and develop evidence to support your case.

You see, if the "Good Cop" can keep you from getting good early advice from an attorney and keep that attorney from performing the necessary early investigation to identify witnesses and to secure other evidence supporting your side of the case, then later when the "Bad Cop" shows up on the scene, you are left in a horrible position. While the insurance company has all the information they need to protect themselves, you on the other hand, have no information to adequately protect yourself. The whole purpose of this book is to explain to you the need for prompt action if you have been seriously injured in an accident.

# ASSUMING YOU WANT TO CONSULT WITH AN ATTORNEY, HOW SHOULD YOU GO ABOUT FINDING THE RIGHT ATTORNEY FOR YOU?

My dad was a plumber and my summers spent working with him taught me many valuable lessons. Perhaps one of the most important lessons I learned was that there is the "right tool for the right job." My father couldn't stand to see someone using a wrench as a hammer or a screwdriver as a pry bar. If I heard it once, I heard it a thousand times, "Use the right tool for the right job."

Picking the right lawyer for your case is just like that. In every city, there are hundreds if not thousands of lawyers and it's virtually impossible for anyone to know who they should hire as their attorney. I am shocked and amazed that given the importance of choosing the RIGHT attorney, that many people literally pick the first attorney they see on TV or in the phone book.

While I view it as a necessary part of my business that I advertise on TV and in the phone book, I would not for one moment suggest to anyone that the fact that I advertise like this means that I am the right lawyer for YOU.

I strongly believe that the choice of a lawyer is a very important one and I therefore urge you to keep the following suggestions in mind when you pick the RIGHT lawyer for YOU:

### 1. ASK FAMILY AND FRIENDS FOR LAWYER RECOMMENDATIONS

Despite the fact that I advertise, I strongly believe that the best source of information that people should consider when choosing a lawyer is the recommendation of their family and friends. Ask around. Talk to people you know and respect in the community and ask them who they believe would be a good lawyer for your case. Trust me, when you start asking around about lawyers, I know you will hear many strong opinions. While it is true that it is almost impossible to please everyone, you will quickly learn those lawyers who are respected in the community versus those who are not respected. As a plumber, my dad was highly respected and took great pride in the quality of his work. Although being a plumber is not generally seen as a glamorous job, I learned working with him that there were good plumbers who had reason to be proud of their work and there were horrible plumbers whose work was an embarrassment to the trade. The same is true of lawyers and virtually every other profession. The key for you is to identify who the good lawyers are so that you can stay away from the bad lawyers.

# 2. FIND AN ATTORNEY WHO HAS YEARS OF EXPERIENCE HANDLING ACCIDENT CASES

Just like the best plumber might be a disaster trying to fix your electrical problem, not all lawyers are experienced and competent in handling accident cases.

When I first started working as an attorney, I handled virtually every type of case that came across my desk. I handled family court cases, traffic tickets, real estate closings, divorces, workers' compensation, etc. Thankfully, for both me and my clients, I had a very wise and experienced mentor, Carl Hayden. In fact, it was Carl who convinced me to come to my current firm as I knew he was one of the finest trial lawyers I had ever seen in the court room. Trust me, this is no faint praise, as I was working in Washington, D.C. at the time and had the opportunity to see some of the best trial lawyers in the country. Although Carl could have gone to any big city and been a very accomplished trial lawyer, he settled in Elmira when a certain young lady caught his eye. Carl put down roots in this community; and at the time I was a new lawyer, he was widely respected by the local attorneys and judges. I was proud to have Carl as my mentor. After several years of doing virtually every type of legal case known to man, Carl sat me down and said it was time for me to focus on "those cases you truly love." He explained that being a jack-of-all-trades and master-of-none was NOT the way to become a good lawyer and he encouraged me to pick my passion. It was the best advice I ever received. Now, for more than twenty years, I have limited my practice to personal injury and medical malpractice cases.

Why is this history important? Because it illustrates my point that some lawyers dabble in all types of legal matters while others choose to concentrate their practice in a focused area of the law. If you needed a real estate lawyer, I would be the worst lawyer you could ask for and I would promptly send you down the hall to my partner, Mark Weiermiller, who focuses on real estate and bankruptcy law. Likewise, if you need a will, I am not the guy for you and I would refer you to my partner, Don Mustico, who is both a CPA and lawyer.

My point is that the law is very, very complex in every practice area. In my opinion, it is impossible to be competent in any given area of the law if you are trying to do many different types of law.

Accordingly, I think one of the best questions you should ask any attorney who you are considering for an accident case is whether that attorney restricts their practice to personal injury cases. Ask them how long they have limited their practice and how many years of experience they have representing accident victims. Ask them about their results. While it is true that past experience in cases does not guarantee future results, past results do provide some indication as to whether the attorney has successfully handled similar cases.

# 3. <u>CONSULT ANY PROSPECTIVE ATTORNEY'S WEBSITE OR THEIR</u> WRITTEN PUBLICATIONS

In this day and age, good lawyers usually have good informative websites. While I do not mean to suggest that a glitzy website necessarily means that the lawyer is a good one, a website is often a reflection of the lawyer's approach to his profession and his clients. A lawyer who has no website or a poor website may be a lawyer who is failing to take advantage of the latest technology, or one who doesn't approach his or her cases with the same level of seriousness as the lawyer who has invested the time and effort necessary to put together a good website.

Most good websites feature sections providing biographical information about the lawyer, a description of the types of cases the lawyer handles, a description of some representative cases the lawyer has handled, and client testimonials from clients the lawyer has represented. Reading through these sections will provide a great deal of information to you as to whether or not that attorney or law firm is right for you and your case.

#### 4. HIRE A LOCAL ATTORNEY WHEN POSSIBLE

I am often asked "Should I hire a local attorney or an attorney from a distant city who may advertise in my area?" My response is that I am strongly of the mind that hiring a local attorney is almost always better IF there is a good local attorney experienced with handling your type of case.

Why? Because the local lawyer knows the local "scene." What I mean by this is that:

- Local attorneys are much more convenient for you to meet;
- Local attorneys are familiar with the local judges and lawyers;
- Local attorneys know the local court personnel and the unique quirks of getting things done in the local courts;
- Local attorneys know the insurance adjusters who typically handle cases in that area;
- Local attorneys know the doctors and their medical staff from whom cooperation is most important:
- Local attorneys know the local police and investigators who can be crucial to an
  accident investigation;

Local attorneys know the local roads, the local bars and the local witnesses, so often
they have general background information that can assist them in understanding
your case.

Some people ask me whether they should worry about hiring a local attorney because they have some sense that the local attorneys or insurance adjusters might be friends or "in cahoots" with one another. My response is that I am in business to get as much money for my clients as possible. By doing so, I maximize my attorney fee. With three kids to put through college, trust me, I am NOT going to pull any punches just because I know the defense attorney or the insurance adjuster. To the contrary, I feel my knowledge of my local opponents (and their knowledge of me) helps me do BETTER for my clients. I know who is going to jerk me around, I know who is going to deal fairly with me, I know who can be trusted and who cannot. In other words, the local knowledge HELPS, not hurts.

This is not to suggest that you should ALWAYS use a local attorney. There are some circumstances when you need an attorney outside the area. If you have a unique type of case and there is no local attorney experienced with that type of case, you should definitely consider a specialist from outside your area.

For instance, I was once consulted by a family whose son had been very badly injured as a result of taking a particular prescription medication. My research revealed that there was an attorney in New York City who had focused his entire practice on handling cases involving this prescription and he had been successfully handling these cases for several years. On behalf of the family, I spoke with that lawyer and ultimately suggested to that family that they hire this lawyer instead of having me personally handle their case.

Most good lawyers are concerned enough about their clients that they will readily make referrals like this when it is in the client's best interests to do so

A local attorney may also not be appropriate when your injuries occurred in some distant state. Most lawyers are only licensed to practice in one or maybe two states. Therefore, they cannot handle cases that occur in other states. For instance, I am licensed to practice in New York and Pennsylvania and I can only handle cases in those two states. Often I am approached by local people who may have been injured in an accident in Florida, New Jersey, etc. Generally, I will sit down with these people, gather as much detail about their case as I can and then assist them in the process of identifying a good and experienced Florida or New Jersey, attorney to handle their case. Many times I end up handling the local contact with the client and cooperating with the other lawyer in making sure the client's case gets handled as conveniently as possible. This cooperative approach means that the client has to travel to the distant state as little as possible but that their case gets handled by a local attorney who knows the local "scene."

### 5. CAREFULLY CHECK OUT THE ATTORNEY'S PRIOR RESULTS

Although it is true that every case is different and that past results are no guarantee of future results, an attorney's past track record IS a very critical piece of information you should carefully consider. An attorney's track record is an indication of whether they have previously handled the type of case you have and whether they were able to successfully resolve that case. Also, because insurance companies keep a scorecard on all attorneys those attorneys with a good reputation for past results often get earlier and larger settlement offers because their good reputation precedes them. Most attorneys list their results on their websites, so that is an easy way for you to check out the attorney before you even meet with them. At the end of the book, I list some of my firm's results so you get an idea of what type of results information is usually provided by most attorneys.

#### 6. CAREFULLY REVIEW THE ATTORNEY'S CREDENTIALS

Every attorney has many credentials which will appear the same — they went to High School, College, and Law School and passed the Bar Exam in their state. However, despite the similarity of these credentials, I will be the first to tell you that the ability of two lawyers with credentials that look identical can often be miles apart. Every lawyer knows someone whom they went to Law School with or took the Bar Exam with who they can't understand how they got into Law School or how they ever passed the Bar Exam. I personally know lawyers who went to great Law Schools whom I would never refer a client to. I also know other lawyers from other Law Schools who do not enjoy good reputations, who nonetheless, are excellent attorneys. Achieving great results on behalf of their clients.

Given this fact, how are you supposed to pick a good lawyer from a bad lawyer by reviewing their credentials? Well, like I said before, the word of mouth and reputation in the community are in my view much more important than any "paper credentials."

However, there are a few things in the credentials that may suggest that one attorney may be better qualified to handle your case than another. Credentials that provide useful clues about the attorney include:

- Memberships in professional associations.
- Selections for merit-based or invitation-only organizations,
- · Whether the lawyer has been invited to lecture other lawyers on legal topics, and
- Whether the lawyer has authored and published articles in legal publications.

<u>MEMBERSHIP IN PROFESSIONAL ASSOCIATIONS</u> — Membership in professional associations may or may not tell you whether an attorney is right to handle your case. Quite frankly, most professional associations require nothing more than the payment of a membership fee. In other words, whether you are a good attorney or bad attorney, you can join that association by just paying a fee.

For instance, if I wanted to join a national association of bankruptcy attorneys, I would be able to do so even though I don't have a clue about bankruptcy and would never consider handling a bankruptcy case. While membership in these associations cannot definitely tell you whether an attorney is competent to handle your case, it can provide useful information because if an

attorney is NOT a member of a professional association in the area of law that your case involves, then that is a huge warning sign that the attorney may not be experienced enough to handle your case.

For example, I am a member of several professional associations associated with personal injury and medical malpractice cases: the New York and Pennsylvania Trial Lawyers Associations, the New York Academy of Trial Lawyers, the American Association for Justice (formerly the Association of Trial Lawyers of America). My membership in these associations does NOT mean that I am necessarily a good injury attorney, but it does show that I at least am interested in subjects involving injury lawyers. If you are looking for an injury lawyer, then these associations would be important. However, if you were looking for a bankruptcy lawyer and the prospective attorney was not a member of similar associations of bankruptcy lawyers, that would be a red flag that the attorney might not be a good lawyer to handle your case.

<u>INVITATION ONLY ASSOCIATIONS</u> — More important than membership in these associations who permit anyone with the money to pay the membership fee to join, are those associations where the attorney is either selected or invited to join because that attorney has distinguished themselves in some significant way.

For instance, I was invited to become a member of the Million Dollar Advocates Forum. This Forum is only open to those attorneys who achieved a recovery in excess of a million dollar on behalf of their clients. If an attorney has not met that significant milestone in representing accident victims, they are NOT permitted membership in the Million Dollar Advocates Forum.

Another great example is my partner and mentor, Carl Hayden. Carl is the only plaintiff's attorney in the Twin Tiers who has ever been selected as a Fellow in the American College of Trial Lawyers (FACTL). Invitations to join FACTL are only issued to those attorneys who have distinguished themselves by many years of successful and ethical representation of clients. The FACTL selection process is a rigorous one that requires the submission of several references from both judges and attorneys who have personal experience with the proposed member.

Obviously, a membership in merit-based associations like the Million Dollar Advocates Forum or FACTL provide good information for you in considering the selection of an attorney.

<u>LEGAL LECTURES AND PUBLICATIONS</u>— The fact that an attorney is selected to lecture to other attorneys or write articles for lawyer publications can also provide useful information. Obviously, it is very flattering for any lawyer to be picked by his peers to lecture on legal topics. Over the years, the attorneys in my office have often been asked to provide lectures on a wide range of legal topics and we have been flattered to do so. Likewise, we have published articles and a wide range of publications including the New York State Bar Journal, which is the most widely distributed legal publication in New York. If you are evaluating an attorney's credentials, be sure to find out whether they have lectured or published before and don't hesitate to ask that lawyer about their experience in doing so.

7. <u>CAREFULLY INTERVIEW ANY PROSPECTIVE ATTORNEY</u> — Once you have narrowed your search, there is no substitute for meeting face-to-face with any attorney you are

considering for your case. Do you like this person? If not, LEAVE, because often your first impression of the lawyer (and the lawyer's first impression of you) is an important one. If you have "bad vibes" right from the beginning, you are probably better off with another attorney. On the other hand, if you like the attorney's demeanor, that may be a great sign that this is the right attorney for YOU. This is probably the best way to find the attorney who is right for you.

# WHAT WILL WE DO FOR YOU IN HANDLING YOUR CASE?

Although every case is different, there are a wide range of things that we routinely do in assisting our clients including:

- We sit down and discuss the unique facts of your case with you;
- We explain how either New York or Pennsylvania law applies to your case;
- We explain how attorney's fees and costs work;
- We have you sign the necessary authorizations so that we can get your medical records and employment information;
- We obtain a copy of your insurance policy and analyze that policy to determine whether
  or not you have additional coverages that may apply to your case;
- We perform a complete investigation of your case, which may include the hiring of a private investigator or accident reconstructionist;
- We interview known witnesses:
- We obtain photos of the accident scene and your injuries;
- We contact your insurance company to let them know of our representation of you;
- We notify the other driver's insurance company of our representation of you and direct
  that they have no further contact with you and that all further contact be directed to our
  attention;
- We explain the process by which your medical bills and lost wage claims will be submitted to your insurance company;
- We enter all of your accident details into our computer system so that important deadlines are not missed;
- We analyze the law that will apply to your case including comparative negligence and assumption of risk;
- We collect and summarize your medical records and when appropriate, provide them to the opposing insurance company;
- We obtain your employment records and when appropriate, provide them to the opposing insurance company;
- We monitor your medical condition and ask that you frequently update us as your medical condition progresses;
- Once your medical condition stabilizes, we contact the opposing insurance company to
  determine whether or not they are willing to settle the claim before we put it in suit;
- If the insurance company is unwilling to make a fair settlement offer, we file a Complaint in the appropriate Court;
- We prepare Discovery Demands requiring the opposing insurance company and its attorney to provide information to us;

- We respond to Discovery Demands from opposing counsel;
- We conduct the depositions of the opposing witnesses and obtain their statements under oath:
- We prepare you for and accompany you at your deposition, when you are questioned by opposing counsel;
- We attend any necessary pretrial conferences in your case;
- We prepare your case for trial, which includes a number of activities such as preparing you and your doctors for trial;
- We take your case to trial with a jury or judge.

## THE LEGAL PROCESS IN PERSONAL INJURY CASES:

Although no two cases ever proceed exactly the same, below is a general overview of the usual steps in an accident case.

- 1. **INITIAL INTERVIEW**. The first time we meet with you we gather basic facts, explain the process of the lawsuit, and answer any questions you may have. We provide you with our instruction sheets and questionnaire, and have you sign the necessary papers.
- 2. INVESTIGATION. We then interview witnesses, secure and review employment, medical and other records, and locate expert witnesses if required. This may take a great deal of time, depending on the complexity of the case.
- 3. RESEARCH. In order to properly represent you, we study the applicable law, examine similar cases, and read medical articles if appropriate. We spend as much time as necessary seeking answers to all the potential defenses, and preparing the necessary briefs to explain the relevant cases and statutes to the court.
- 4. SETTLEMENT NEGOTIATIONS. In some cases, it is appropriate to open negotiations at this point in the case process. As a matter of strategy, we sometimes let the defendants open negotiations. Each case is very different and depends on many factors, such as strength of proof, theory of liability, defendants, insurance companies, and lawyers on the other side. etc.

Our usual approach is that once your medical condition has stabilized, we will then sit down with you at length to get a complete picture of how your injuries have affected you since the accident and how we expect those injuries to affect you in the future. Once we have your input, we then write to your doctors asking them for a complete narrative report setting forth your injuries and any expected permanent impairments from those injuries.

Once we have those reports back from your doctor, we assemble a very detailed demand package for the adjuster. To make the adjuster's job easier and to let the adjuster know that we are very well organized and prepared for trial, we actually assemble the demand package in a bound book that is sent to the adjuster.

I can't tell you how many times over the years adjusters have complimented me on the bound books that my office uses rather than the approach of most attorneys who just throw a disorganized collection of medical records in an envelope and hope that the adjuster will take the time to read through all of the information.

I am a firm believer that anything I can do to assist the adjuster in making a higher evaluation of my case rather than a lower evaluation of my case ultimately results in higher settlement offers for my clients. Let's face it. We all have a lot of work to do and if someone can make our jobs easier by providing the information we need to do our jobs in a clear, concise format, then we are going to move that case to the top of the stack and shuffle the disorganized mess from someone else to the bottom of the stack.

- 5. FILE THE COMPLAINT. The Complaint is the document that officially commences a lawsuit. The Complaint notifies the defendants that you are seeking damages (money) because of their conduct. Under New York law, the Complaint does not include a demand for a specific amount of money. After the Complaint is personally served on the defendants, the defendants are then required to answer your claim by admitting or denying each statement that we made—this document is called an Answer. The time to file an Answer is usually 20 days.
- 6. WRITTEN DISCOVERY DEMANDS. Written demands by each side are then filed. Usually, these demands must be answered under oath. They include background information, education, expenses connected to the incident, etc. Each side has either 30 or 45 days to respond to these demands.
- 7. REQUEST FOR PRODUCTION OF DOCUMENTS. Another tool for learning about the other side's case is to ask that they disclose relevant documents. We can make those requests at any time and often, as we proceed, we will learn of many different documents or pieces of physical evidence that we will wish to examine. The other side may, of course, file requests for production of our evidence. The usual time for answering these pleadings is 30 days.
- **8. DEPOSITIONS**. After the written discovery demands are answered, we will want to ask the defendants questions in person, and they *will* want to ask questions of you. A discovery deposition is the means by which each side learns the facts and contentions of the other side. Fact and damage witnesses may also be deposed. This is sometimes the lengthiest part of the pretrial procedure, because of the difficulty of scheduling enough time for several busy people to get together for these depositions.
- FILE TRIAL NOTE OF ISSUE. After the completion of depositions and other pre-trial discovery, we will file a document in court that indicates that we are ready to proceed to trial.
- 10. PRE-TRIAL CONFERENCE. A pretrial conference is a meeting of the attorneys for all parties before the judge who will be presiding at the trial or some other judicial officer. These conferences, which occur two to four weeks before the trial, are routinely held in all lawsuits filed in federal district courts and are optional in state court proceedings. The

- upcoming trial is discussed and the parties advise the court as to the trial's expected length. In addition, the parties generally will be asked to submit trial briefs, requested jury instructions, exhibits, pretrial motions and a list of witnesses at this conference.
- 11. TRIAL. Before we get to this point, we will have attempted to settle your case for an appropriate amount. However, we are always preparing for the possibility that such a settlement will be impossible. We will be continuously working on and thinking about what kind of jurors we will want to hear your case, what we will say to them at the beginning of the case, what witnesses and other evidence we will need to prove your case, what we will ask the judge to tell the jury about the law, and what we will say to the jury in our closing arguments. You will have several opportunities to discuss this process before it begins.

# THE MOST IMPORTANT THING TO REMEMBER FROM THE INITIAL INTERVIEW TO TRIAL, IS TO TELL THE TRUTH!

You have hired us to speak for you, to explain how your injuries occurred, and what amount justice requires that you be given. Unless you level with us at every stage, we cannot do our jobs properly. We will be as accessible as possible, provide you with our best judgment about the strengths and weaknesses of your case, and advise you about the applicable law. In return, we expect your complete cooperation, and your complete honesty. Together we can work toward a fair and equitable result.

## <u>DIFFERENT ATTORNEYS HAVE</u> <u>DIFFERENT APPROACHES AS TO HOW THEY</u> HANDLE CASES

Over the sixty plus years our firm has been representing accident victims in the Twin Tiers, our practice has evolved to a strategy that we think is particularly effective and permits us to achieve good results on behalf of our clients. We are constantly refining our strategy and responding to changes in the law but the description below is designed to give you an overview of how we generally approach accident cases.

The time limit to bring an accident case in New York is three years from the date of the accident and in Pennsylvania is two years from the date of the accident. We do not believe in letting your case get anywhere near these time limits before putting the case in suit. In fact, we generally will not accept a case when someone comes to us and there is only six months or less on the time limit to pursue the case. With that said, we also do not feel it is advisable to put every case immediately in suit. Normally, it is our strategy to gather as much information as possible early on about your case and then monitor your medical condition until it stabilizes to the point where we have a good picture of your initial injuries and any permanent impairments you may have suffered. We then attempt to negotiate with the insurance company before placing your case in suit. Some cases are able to be settled before being placed in suit and others are not.

## WE PREPARE EVERY CASE FOR TRIAL!

Some lawyers assume every case is going to be settled with the insurance company but we feel that this is a very dangerous approach. We feel that if you prepare every case for trial, you are negotiating from a position of strength and if the insurance company is unwilling to make a fair settlement offer, then you are perfectly ready to proceed to trial.

# THIS IS THE "SPEAK SOFTLY AND CARRY A BIG STICK" APPROACH.

If you prepare your case for trial and you have all your ducks in a row, then you are negotiating from a position of strength. Trust me; insurance adjusters know those attorneys who have done their homework and are prepared for trial and those who are not. In fact, insurance companies keep a scorecard on every lawyer and law firm and they know those attorneys who will go to trial and those who will not

# ATTORNEYS WITH A GOOD REPUTATION FOR PAST RESULTS OFTEN GET EARLIER AND LARGER SETTLEMENT OFFERS BECAUSE THEIR GOOD REPUTATION PRECEDES THEM.

That is why there is no more important commodity to an accident attorney than his or her reputation.

I hope you have found this book informative. If you have any questions after reading this book, you may feel free to e-mail me at <a href="mailto:JReed@Zifflaw.com">JReed@Zifflaw.com</a>, call me at 1-800-ZiffLaw or visit my website at <a href="https://www.zifflaw.com">www.zifflaw.com</a>.

Good luck!!

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Call 607-733-8866 and ask our receptionist to sign you up for our FREE newsletter.

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## **ABOUT THE AUTHOR**

For more than 20 years, Jim Reed has battled insurance companies on behalf of injured persons. Jim limits his practice to significant personal injury and medical malpractice cases. He is admitted to practice in both N.Y. and Pennsylvania and has

extensive experience handling cases throughout both N.Y. and Pennsylvania.

Jim is a member of the Million Dollar Advocates Forum. He has personally handled several Million Dollar Plus Cases. He is an active member of the New York Academy of Trial Lawyers and the N.Y. Trial Lawyer's Association. Jim has lectured frequently on legal topics and appears weekly on WETM-TV responding to viewers' legal questions.

Jim has not, and will not, represent insurance companies. He knows that insurance companies are in business to maximize profits and that they do so by charging high premiums for coverage and paying as little on claims as possible.

Jim wrote this book to level the playing field between you and your car insurance carrier to ensure that you do what is best for your family, not the insurance company. He firmly believes that information is power. Visit his website at <a href="http://www.zifflaw.com">http://www.zifflaw.com</a> for additional information on a wide range of legal topics including medical malpractice, motorcycle insurance, real estate, wills, small claims court, and more.

Jim is the Managing Partner of the Ziff Law Firm, Elmira, NY. For more information about the law firm and the settlements/verdicts ZiffLaw has earned for its clients, please visit http://www.zifflaw.com.

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