

The Ultimate Guide to
COLORADO
ACCIDENT CASES

7
COSTLY MISTAKES
THAT CAN RUIN YOUR

COLORADO

INJURY CASE

**Avoid them and you have a chance at beating
the insurance companies at their game!**

D.J. Banovitz

303-300-5060

www.TheColoradoAccidentBook.com

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Your Colorado Injury Case

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WORD ASSOCIATION PUBLISHERS
www.wordassociation.com
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Printed in the United States of America.

ISBN: 978-1-59571-461-9

Designed and published by

Word Association Publishers
205 Fifth Avenue
Tarentum, Pennsylvania 15084

www.wordassociation.com
1.800.827.7903

Stop! Before you sign anything, before you agree to anything, before you make any decision, read the information in this book. **What you don't know can hurt your claim.**

// ABOUT THIS BOOK

I know the tricks the insurance companies will try to use against you. You now have a book that will help you to know them too. The insurance companies have spent hundreds of millions of dollars proclaiming to the world that injury victims are phonies, fakes, and seekers of jackpot justice. Many people (perhaps you before you were injured) bought into this and thought of injury victims as folks looking for “something for nothing” and their lawyers as “ambulance chasers.”

I wrote this book to offer you some guidance and inform you about what to expect on your quest to get compensated for the harm that has been done. I believe that this book is accurate and valuable.

// DISCLAIMER

This book is not meant to be legal advice and does not create an attorney-client relationship. After reading this book, you should consult an attorney for legal advice.

D.J. Banovitz

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D.J. BANOVIKZ
Attorney at Law

1 // WHY I WROTE THIS BOOK

I wrote this book for you. If this is the first time that you've been injured in an accident, you are entering a playing field that is not even. You have probably had several calls from the insurance company representatives or even a visit where they just want to "get a little information." The insurance company's investigators or adjusters are nagging you to sign their forms so they can "get your records and take care of things for you." Worse yet, perhaps a day or two after your accident, they are pressuring you to settle your case by offering you a minimal amount for your pain and suffering (the extent of which at this point you couldn't possibly know) and promising to pay your medical bills if you sign a release. The insurance company's motives are clear. They want to settle your claim quickly - before you know the nature and extent of your injuries, before you've finished treatment, before you can begin to understand what your full damages might be, before you can get a fair settlement, before you have spoken with an attorney, and before know your rights.

I am sick of insurance companies claiming that you are in good hands, or that they are like a good neighbor - all the while doing everything they can to make sure that you aren't fairly compensated.

I wrote this book because I am dismayed by useless, meaningless, and sometimes downright slippery lawyer advertising. Perhaps you have started looking for a lawyer. If you simply called one of the lawyers whose ads you've seen on TV because you figure if "they are successful enough to advertise on TV, they must

be good,” you might not be well served. You may end up in a settlement mill that bounces you from paralegal to paralegal, sends you to their pet doctor or chiropractor, and doesn’t even take cases to court. You may wind up with mediocre doctors, mediocre service from your chosen law firm, and ultimately a mediocre resolution of your claim.

Your search for a lawyer may have begun on the internet. If you’ve looked at most lawyer websites, they are little more than electronic business cards. They provide little useful information beyond the laundry list of the types of cases they handle. How is this useful in choosing a lawyer? The phone books are even worse. The ads proclaim such meaningless headlines as: “we are aggressive,” “we are passionate about justice,” “compassionate,” “serious injuries only,” “we care,” or (my personal favorite) “injured?” The ads nearly universally offer a “free consultation” and mention “no recovery, no fee.”

This book is for you. You are now in possession of what I hope you will find to be good information that you can use in the privacy and quiet of your home *before* talking to an insurance adjuster, hiring a lawyer, or signing any forms. Do you even need a lawyer? You might decide that you don’t after reading this book.

2 // WHAT IS A PERSONAL INJURY CLAIM?

This is a good place to begin a discussion, since not everyone knows what exactly a personal injury or accident case is. A personal injury claim, whether it involves an auto, bike, truck, or slip and fall, means any incident where a person has been injured or killed because someone or something (such as a business) was negligent.

Negligence Defined

Negligence has been defined in many ways by the courts. One definition is the failure to exercise due care. Another is the failure to exercise the care of a reasonably prudent person under the same or similar circumstances. Huh? Basically negligence equals carelessness. The list of negligent acts could fill several books. At the law office of D.J. Banovitz, L.L.C. we only handle certain types of negligence cases. These cases generally are auto, motorcycle, pedestrian, bike, premises liability (slip and fall) and limited products liability. Negligence is a complex area of the law. Beware of lawyers who have a long grocery list of the types of cases they handle. It just isn't possible to be competent, let alone superior, in them all. They just might be jacks of all trades and masters of none.

Personal Injury Claim vs. Property Damage Claim

If you were in an automobile accident but only your car is damaged, you don't have a personal injury claim. You have a property damage claim. We don't handle claims that only involve

property damage. Most folks settle their own property damage claims even if they have personal injury claims. I have dedicated a section of this book and on the personal injury victim help center on my website www.coloradoinjuryfirm.com to provide you with solid information on how to settle your property damage claim. In some instances we will assist our clients with settling their property damage claims and never charge a fee. I think this is a courtesy that all injury lawyers should show their clients. Helping someone settle a property damage claim – only to take a percentage fee so the person ends up unable to replace his or her car – just wouldn't be fair.

Damages

To get money for personal injuries such as pain and suffering, medical bills, past and future lost wages, scarring, disfigurement, impairment and any other appropriate losses, the negligent or careless act must have caused injury. This is an area hotly disputed by insurance companies and defense lawyers, aided and abetted by doctors who act as paid opinion witnesses. Frequently, they will admit fault on behalf of the wrongdoer but deny that the accident caused your injuries. This is especially true in car accidents with little visible damage or if you have had prior or preexisting injury to the same part of your body. It seems that for insurance companies “you broke it you bought it” doesn't apply. Unfortunately, sometimes juries agree with them. Fair? Of course not. You need an experienced lawyer to advise you whether you have a case, whether your case should be settled and whether your case should go to trial.

Please use this book to increase your awareness and knowledge and also so you can ask your lawyer, if you are already represented, good questions. If you already have a lawyer, don't ask us to take your case – we won't.

3 // AN INTRODUCTION TO THE TYPES OF INSURANCE

What is liability insurance - also called bodily injury or BI coverage?

This is insurance coverage that is supposed to pay for injuries caused by negligent or careless people or businesses. If you've been in a wreck, the at-fault driver's liability insurance provides primary coverage. Incredibly, Colorado law only requires a \$25,000 minimum policy for drivers. With the high costs of medical care and factoring in some wage losses, this is grossly inadequate for most cases. What happens if you are at fault and injure someone and have only a minimum policy? You might personally be on the hook for damages that exceed your liability policy. The same is true for the person who injured you or your family member. By having a larger policy, you can protect your assets and future income from being collected or garnished in the event you cause significant injury to someone. Check with your insurance agent. You might find that increasing your policy to at least \$100,000 or preferably \$300,000 is less than you think. Keep in mind that saving money on a minimum or low limit policy now might result in financial ruin later.

What is underinsured (UIM) and uninsured (UM) motorist insurance coverage?

You or your loved ones have been badly injured in a crash, only to learn that the driver that hurt you has no insurance or only

a minimum liability policy. Some folks care only about their policy premium and not if they hurt someone. What protects you? This is where UM and UIM comes in. UM protects you if you are hit by an irresponsible driver without insurance or if you are involved in a hit-and-run.

UIM coverage protects you and your family when you are injured and the careless or reckless driver doesn't have enough liability or BI insurance to pay for the harm. If you have UIM coverage in the amount of \$250,000 and the wrongdoer has a minimum \$25,000 policy, his or her policy would pay for the first \$25,000 and then your policy would kick in to pay the next \$250,000 for a total available coverage of \$275,000.

Adequate UM/UIM coverage will pay for your pain and suffering, medical bills, past and future lost wages, scarring, disfigurement, impairment and any other appropriate out-of-pocket losses. Consider if you needed a neck or back surgery and missed six weeks of work what this would mean for you and your family. Your losses could easily exceed \$100,000. UM/UIM coverage is surprisingly inexpensive and you should get as much as you can afford. Most insurance agents do a terrible job of selling appropriate levels of coverage. Call and discuss this with your agent and if he or she downplays the significance of this coverage – find another agent.

What is my case worth?

This is the question that a lot of people want to know during an initial consultation. The answer is nearly impossible to determine at the beginning of a case. Many factors affect case value, including: the nature of the injuries, severity, permanency; amount of medical bills, future medical expenses; past and future wage loss; effect of injuries on daily activities and recreational activities; and intensity of pain and suffering. Age can play a

large role as well. A neck injury requiring surgery and resulting in permanent injury is worth more if the victim is 25 rather than 65. Why? Life expectancy, the amount of time both can be expected to live with the pain, plays a large role.

Forget everything you have heard about formulas!

There is no neat and easy formula such as three times medical bills. Take for example an individual who has a back injury with a lot of expensive diagnostics such as CT and MRI that eventually improves without surgery, and another who loses an eye. The eye case may have far lower medical expenses than the back case but there is little doubt that the eye case is worth far more. I have heard many potential clients tell me about the case they heard about or a friend who was barely hurt and their lawyer got \$100,000 for a minor whiplash. I can't help but wonder why they are in my office. I advise them to run, not walk, to that lawyer – and let me know who it is because I want him or her for my case if I get injured.

The bottom line is that your case is ultimately worth what six people in the county where the injury occurred says it is. Getting that number means taking your case to trial. Insurance companies and an experienced trial lawyer generally have an estimate of the range of a potential jury verdict. A good trial lawyer gets your case settled in the upper end of the range or beyond. When you, your lawyer, and the insurance company can't agree on a fair figure, the jury decides.

4 // FREQUENTLY ASKED QUESTIONS

Q: Who decides whether to settle or go to trial?

A: It is always your decision whether to accept or reject a settlement offer. You won't make that decision in a vacuum. We will solidly evaluate your case and advise you on the potential risks and rewards of going through with trial. After being provided an opinion from an experienced trial lawyer of the potential jury award and the costs of going through with trial, you and your family can make the best decision. If we think that you shouldn't try your case, we'll tell you why.

Q: Should I speak to the insurance adjuster before speaking with a lawyer?

A: You should only speak with an insurance adjuster for the limited purpose of setting up a claim. *You do not need to give a recorded statement.* In fact, we strongly advise against your doing so. It should be sufficient to give them your contact information, advise that you have been in an accident and that their insured is at fault. Let them conduct their investigation, speak with their own insured and get the police report to establish fault. If they insist on getting a complete version of the story from you, let them know that you are willing to do so – after speaking with a lawyer. The kind, concerned insurance adjuster is gathering information to defeat or minimize the value of your serious injury claim. Don't be fooled. Just because they tell you they are accepting liability doesn't mean that they are going to fully compensate you and make things right.

Q: Can my lawyer lend me money till the case is over?

A: It is unethical for a lawyer to lend money – period. In cases of severe injury that prevent you from working for an extended period of time, there are companies that provide law loans. The interest is very high and for that reason we strongly discourage borrowing money against your case. A lawyer may advance the costs of your case, such as getting medical records and paying for expert opinions. A lawyer can't help you with your living expenses and medical bills. If the lawyer gives you an advance on a future settlement it is a loan and it is unethical.

Q: Who pays for the costs of the case?

A: You are ultimately responsible to pay for any costs in your case such as investigation and medical or other expert reports and testimony. We may advance these costs and deduct them from any settlement or jury award. In very rare instances you will be asked to share in the risk of advancing costs for trial. I am a lawyer, not a bank.

Q: What about bankruptcy?

A: You might be considering bankruptcy if you have a large amount of medical bills and no ability to pay. The proceeds of your personal injury case are considered assets in a bankruptcy. This can have a dramatic effect on your injury case. Please discuss this with your lawyer before declaring bankruptcy. A good lawyer can usually keep the bill collector wolves at bay until your case is over. Far too many people seek bankruptcy protection when the amount of medical bills and debts don't merit this drastic remedy. Unfortunately there are many unscrupulous bankruptcy attorneys (vultures really) too willing and eager to file bankruptcy cases when they ought to be advising their clients to seek credit counseling.

Some insurance claims adjusters will send you a letter or call you and tell you that you don't need a lawyer. They might tell you that your claim will be settled faster, you get to keep all of the recovery rather than pay a percentage to a lawyer, and that you can always hire a lawyer later. Remember, these people are not on your side. Their goal is to settle your case as cheaply as possible.

You should always discuss your case with a personal injury lawyer before agreeing to anything. If you haven't been able to get answers to your questions by reading this book and your case is the type we accept, we will be happy to answer your questions in a free consultation. Ethical lawyers will tell you up front if they think that there is a benefit to hiring them. You should have an idea from a professional what the value of your case is compared to others.

Delaying settlement until the full extent of your injuries, damages and losses is known may in your best interest. It might seem attractive to accept a quick settlement of a few thousand dollars. Beware – when you settle and release your claims, if it turns out you are more badly hurt than you thought, you don't get another bite of the apple. The bottom line is, you should speak with a lawyer before speaking with an adjuster.

5 // COMMON MISCONCEPTIONS & MYTHS ABOUT PERSONAL INJURY CLAIMS

These are some of the things you may have heard from family, friends and neighbors. I have heard them repeated to me by potential clients time and again.

1. Insurance companies make it a practice to treat people fairly.
2. If you are fair with the insurance company, it will be fair with you.
3. Colorado juries are always fair and always render verdicts that fairly compensate victims of accident.
4. If you are in an accident and the insurance company asks for a recorded statement, you have to give it to them or they will refuse your claim and refuse to settle.
5. Your medical bills and other expenses will be paid by the insurance company of the negligent driver as they are incurred.
6. When the insurance company makes their “best” or “highest” offer, it’s fair and they will never go higher.
7. Lawyers who advertise heavily on TV and in the Yellow Pages have greater skills or resources than firms that do not.
8. All lawyers who advertise heavily will actually go to court and try your case if they agree to handle your case.

9. Law firms that advertise heavily are actually staffed with trial lawyers.
10. All lawyers who advertise that they handle personal injury cases have the same skills, abilities, tools and experience to handle your case.
11. The Colorado jury system is a lottery.
12. It is possible to determine the extent and severity of injuries by examining the amount of damage to the vehicle.
13. If a person does not feel immediate pain at the scene of a collision, he or she is uninjured.
14. Emergency rooms always correctly diagnose and treat injuries.

6 // WHAT YOU SHOULD DO IMMEDIATELY AFTER A WRECK

1. Stop! Colorado law requires a driver resulting in possible personal injury, death, or property damage to stop at the scene or as close as possible.
2. Be calm. If you feel you have been seriously injured, stay put. Try not to show anger, make accusations or admit fault yourself. Only discuss what happened with the police.
3. Call the police. Colorado law requires that the driver of a vehicle involved in an accident involving personal injury or property damage contact the police as quickly as possible.
4. Call a family member or friend. You need someone to come help you at the scene of the collision. You need someone you trust to observe the scene and do things that you might not think of.
5. Get detailed information. Get the other driver's name, address, phone numbers, make and model of car, driver's license number, name of the owner of the car if different from the driver, and insurance policy info. If the person who hit you is driving a company car or truck get the name, address, and phone of his or her employer. If you or family member or friend is able, get the name, address, and phone numbers of other individuals involved and witnesses to the accident.

6. Don't discuss details with anyone but the police. Do not discuss details with any insurance adjuster—yours included. Often, people make the statement to the other driver or the police that, "I am okay," or "I'm not hurt." Usually, people say this even though they may be in pain and have no idea what the extent or nature of their injuries might be. Sometimes they say it because the person who hit them seems nice and they don't want him or her to feel bad. What they really mean is they are not catastrophically injured or dying.
7. Unfortunately, the insurance company, and the wrongdoer, will use your statement against you when valuing your claim and in court. Jurors can be terribly biased against people who make injury claims and conclude, based on your statement, that you weren't really hurt. Countless victims of accidents who said they were okay at the scene end up with permanent physical injuries that require surgery, or a brain injury. Unless you are a doctor, and even then, you can't possibly know how badly injured you are or are not. When asked, tell the truth... you don't know.
8. Get photographs. These can be very useful later on. Use your cell phone and get a lot of pictures. If you don't have a cell phone that can take pictures, keep a disposable camera in your car. Take pictures of the accident scene and any traffic control devices such as stop or yield signs etc. Make sure you photograph any skidmarks. If you can do it safely, take photos of all the vehicles from many angles. If you are physically unable, or at the hospital, this is another opportunity for a family member or friend to help you.
9. Get medical attention. If there is any possibility that you might be injured, get help. Even if you don't go to the hospital in an ambulance, get checked out thoroughly by your doctor, or go to the emergency room or urgent care clinic. Make sure

you list all of your complaints, no matter how minor. When the adrenaline is flowing after a collision, injury victims often do not initially feel pain and do not realize that they are hurt until later. This is why you should go to the hospital before you go anywhere else. Delays in medical treatment will be used by the insurance company and their lawyers to argue that you must not have been hurt badly.

10. Report the collision to the other driver's insurance company. Don't assume that the other driver will report the collision to his or her insurance company. You should put them on notice immediately so that they can examine the facts of the collision. *Do not give a recorded statement. Do not discuss what if any injuries you think you may have. Never sign a release.* If they tell you that you must do any of these things or you can't make a claim – they are lying. If they attempt to ask a lot of questions, advise them that you will be happy to answer them – after you have spoken with a lawyer. Remember, no matter how sweet the voice of the insurance claim adjuster, they can and will use the information you give them against you later.

7 // QUESTIONS TO ASK THE INSURANCE COMPANY THAT WANTS YOU TO “GIVE A BRIEF STATEMENT AND SIGN SOME FORMS SO WE CAN PROCESS YOUR CLAIM”

Helpful hint: *If you are expecting a “yes” to any of the following questions don’t hold your breath! The insurance companies’ information street is one-way and it only leads to them.*

If I give you a recorded statement, will you give me a copy of the statement you already got from the person who caused this accident - your insured?

Will you give me copies of any statements you’ve taken from any witnesses?

Will you tell me how much insurance the person who hit me, your insured, has?

Will you put it in writing that the accident was not my fault?

If I sign this medical release, will you immediately provide me a copy of everything you get?

If I sign any medical releases, will you promise not to put my personal health information on a shared insurance company injury “index” for all insurers to see?

Will you give me a copy of any injury “index” information that you have already gotten on me?

If I sign any medical release, will you promise only to seek records relevant to my accident-related injuries and not go fishing through my entire medical history?

Will you give me a copy of the financial information that you may have already gotten on me?

Will you tell me how much money you have set aside in “reserve” to satisfy my claim?

8 // HOW TO SETTLE YOUR PROPERTY DAMAGE CLAIM

Most of my clients handle their property damage and losses without my assistance. As a courtesy to our clients, we never charge a fee for helping our clients with settling their property damage claims. Property damage claims are not limited to the damage of your car but to anything in the car that was damaged or ruined. The insurance companies in nearly every case try to take advantage and pay less than what they owe or what is fair. This information below will help guide you through this process and hopefully minimize your frustration.

Rental Cars and Trucks

The accident wasn't your fault, the other driver was ticketed, and yet the wrongdoer's insurer is dragging their heels and refusing to accept liability until they finish their investigation. The result – they won't pay for a rental car. We understand this can be maddening. You have two options at this point: get a rental car under your own policy or pay out of pocket and get reimbursed by the wrongdoer's insurer later.

You are entitled to rent and get reimbursement for a vehicle comparable to the one that was damaged or needs replacement. Likewise, the insurance company should provide something similar to the vehicle that was damaged. If you were driving an SUV or a pickup, you may rent or the insurance company should furnish an SUV or a truck. It is not acceptable or reasonable to put you into a compact car that doesn't suit your needs.

You can keep the rental until your vehicle is repaired or until you get payment for your total loss. However, you have an obligation to “mitigate your damages.” That is, you must do what you can to get your car repaired or settle on the totaled value as soon as possible. Sometimes circumstances occur that create delays. In that case, the insurer usually agrees to reasonably extend your time in the rental.

Totaled Cars and Trucks

Your car or truck is “totaled.” This happens in two circumstances. The first is when the cost to repair is close to or greater than the fair market value of the car. Sometimes this can occur even without extensive damage, such as when your car is older. The second instance is when your car or truck simply can’t be repaired safely.

In the first instance, you may decide to keep your car for salvage value and continue driving the car. Folks with older reliable cars with cosmetic damage may decide to go that route. You will get to keep the difference between the fair market value and salvage value.

How is fair market value determined?

This is a negotiation that you must be prepared for. When properly prepared, you can stop the insurance company from taking advantage of you. Fair market value is determined by the value of your vehicle, pre-accident, in the area where you live. The insurance company may try to tell you your vehicle is worth less than one in similar condition, year and mileage, by showing you one from a different state. If they play that game, tell them to go purchase the car just like yours from (insert state here) and have it delivered to you. They will decline every time. There are several ways to get at fair value and the internet is a great

resource. You can check *autotrader.com* and Kelley Blue Book (*kbb.com*) or check out the NADA consumer guides available at most bookstores or from a helpful car dealership. Your starting point for negotiations is the full retail value of your vehicle. If you purchased your car at a dealership or would only replace it with one bought from a dealership, then retail is what the insurance company should pay. They may try to get you to accept private party value. This may or may not be acceptable, depending on your particular circumstances. Always push for retail. Be advised that trade-in value is the same as wholesale and this is never appropriate.

What if I owe more than my vehicle is worth?

You are either entitled to the cost of getting your car fixed or fair market value. You are not entitled to replacement value. This might seem unfair but that is the law in Colorado and most states. If you owe more than your car is worth, hopefully you purchased GAP insurance. GAP will cover the difference between fair market value and what is owed. For example, your car has a \$7,000 fair market value and you still owe \$10,000. GAP will pay the \$3,000 difference. If you don't have GAP, you will owe the finance company the difference. You might be able to get a car dealership to help you finance this "negative equity" into another car deal.

A few more words to the wise: if you don't have GAP built into your loan, have it added to your auto policy. It is cheap insurance that you shouldn't be without.

Repairs

You can have your vehicle repaired where you choose. You do not have to use the other driver's "approved" repair shop. These shops often work at a discount for the insurance company,

which is how they achieve their “approved” status. This isn’t necessarily bad but you should do some homework to make sure it’s a decent shop. Check out the shop with car dealerships. If retailers refer to the shop then that is a good indicator that they do quality repairs. What if the repair shop wants to utilize used parts? They can do this as long as they are the same “like and kind.” This means they must be the same or similar quality to what you had in your car before. You should ask what used parts they might use in the repair, then make certain that they are at least as good as the original parts. You do not need to pick the shop with the lowest estimate. However, the shop you choose should have an estimate that is more or less in line with others. If repairs exceed the estimate or once your vehicle is taken apart the damage is more extensive than thought, the repair shop will usually deal directly with the insurance company to get approval.

Storage Charges

Get your car, totaled or not, out of storage as soon as possible. Storage fees can be steep and you can’t let your vehicle sit waiting for the wrongdoer’s insurer to assume responsibility. Find out if the driver’s insurer or a repair shop will allow the vehicle to be stored without additional storage charges until arrangements to repair or total the vehicle have been made. As I stated earlier, you have a duty to mitigate your damages. If you allow your vehicle to sit and accumulate huge storage fees, you might get stuck with the bill.

Other Property Damage

Take pictures of your damaged personal items in the car. Contact the adjuster(s) and advise them that you have done so and offer to have them come and inspect the damaged personal items at once. Get the name and contact information of the tow truck

driver or person(s) at the storage yard to witness the extent of the damaged property. Remove your valuables from the car so they don't get stolen. The insurance companies will not accept responsibility for criminal acts. Get estimates to repair or replace the damaged items or produce the original receipts.

Be a tough negotiator when getting compensated. You aren't necessarily stuck with whatever the insurance company offers you. Even if my firm doesn't represent you, we are always willing to provide helpful advice. Let us know if we can help.

9 // HOW TO FIND A QUALIFIED PERSONAL INJURY LAWYER

Finding the right lawyer to represent you is an important and difficult task. The advertising on TV and in the Yellow Pages is dismal. The ads all say basically the same thing. “Hire Me! We’re aggressive! We care!” One competing ad seems to shout louder than the other for your attention. Buying a slick commercial, something any lawyer can do, does not mean the lawyer is competent.

In May, 2008, a Colorado Springs jury awarded a woman \$145,000 in damages from a local Denver lawyer who calls himself “The Strong Arm.” She claimed that she was misled or cheated by TV commercials where the Strong Arm promised big settlements. The Strong Arm’s television ads tout such slogans as “In a wreck, get a check!” She claimed that she was pressured to accept a settlement of \$25,000. The jury found the Strong Arm liable for negligence and misrepresentation.

Don’t be a victim of slippery legal advertising. Lawyer advertising is out of control. Read more about what the ads really mean and what you can do to pick the right lawyer in my book, *The Truth about Colorado Legal Advertising*.

Personal injury claims are a highly specialized area of law. I have seen cases botched by lawyers, typically general practitioners or those who focus on another area of law, like family law or criminal law. They take the case because the phone rang and rather than refer the potential client out to an experienced injury

lawyer, they figure they can handle it and make good money. Think about this. If you went to a doctor needing back surgery, which doctor would you choose – family doctor, dermatologist, proctologist or spine surgeon? Would you choose a doctor that lists all of these specialties or just a spine surgeon? (If you chose a proctologist for back surgery please stop reading and pass this book along to someone who can make good use of it!) The answer is obvious right? So should it be when selecting a lawyer. Buyer beware if you hire a lawyer whose advertisement lists 18 “specialties.”

The insurance companies defending accident cases know which lawyers go to court and try injury cases and those who do not. It is almost always in your best interest to settle your claim and avoid the risk of trial. So it stands to reason that a settlement offer is likely to be higher if you choose a lawyer that the insurance company knows will try the case if necessary. Insurers know the “settlement lawyers” and big firm “settlement mills” that make their money by handling a large volume of cases rather than maximizing the value of a few. If this is important information to the insurance companies it should be for you too. Even if you do not become my client or do not meet my firm’s qualifications for representation, I hope that you will use the following tips.

Tips For Finding A Good Lawyer

1. Get a referral from a lawyer you know. If you don’t know any lawyers and if you need an attorney in an area of practice that we don’t handle, call us. I will help you find the right lawyer for your case.
2. The Yellow Pages can be helpful. Be aware that not all lawyers advertise in the yellow pages. Most of my firm’s cases come from attorney referrals and from satisfied former clients. Watch out for ads that claim too many specialties and the

potential for “jack of all trades” lawyers. Full page ads are very expensive and may generate a lot of cases for the firms who pay for them. Ask questions to find out if the lawyers in that firm are buried in too many cases or if an army of paralegals does most of the work. Your case deserves priority with a lawyer who is intimately familiar with the facts. Don’t become a file in the pile.

3. Interview several lawyers. Ask them for the names of other attorneys who handle cases like yours. If they don’t know or won’t tell, this is a warning signal. Ask the lawyer if he or she has a book like this one or a website with similar information so you can learn more about his or her background, experience and the manner in which your case will be handled.
4. Be careful of lawyers who pressure you to sign a fee agreement or send a courier to you within hours of your call to them. This is unbelievable. If you are in the hospital and contacted by a “runner” who listens to police radio and runs to accident scenes and hospitals to encourage you or a family member to sign a contract, this is prohibited. This unethical conduct can and should get the lawyer disbarred. If you are contacted by an uninvited “runner” in the hospital or your home within 30 days of the accident, please call the Colorado Supreme Court – Attorney Regulation Counsel at 303-893-8121 and report the conduct.
5. Beware of any lawyer who tries to direct you to certain doctors for your treatment. This isn’t always bad but does take on the appearance of lawyer-directed medical care. Not all lawyer referrals for medical care are bad. A lawyer may know specialists in fields such as orthopedics, physiatry, or pain medicine that can not only help your case but, more importantly, help you get better. However, if the lawyer has a list of chiropractors she routinely sends clients to, *run away*.

10 // WHAT QUALIFICATIONS SHOULD YOUR LAWYER HAVE?

Experience. Longer is usually better. But you should ask questions that might give you clues about the quality of the experience. Does the lawyer have 15 years of experience or does the lawyer have 1 year of experience 15 times? A lawyer should grow and develop, and learn how to handle cases better, more efficiently, and more successfully. He or she should want to be the best lawyer he or she can be—not just the most successful. Ask about their trial track record. Ask if he or she has a greater number of verdicts in excess of the insurance companies' best offers and any seven-figure verdicts. The disclaimer "past success is no guarantee of future results" is true. However, a track record of beating the best offer is a good indicator.

CTLA Membership. Your lawyer should be a member of the Colorado Trial Lawyers Association. Although this is no guarantee of competence, this is an active group of lawyers who work hard and share their experiences to improve themselves. Ask if the lawyer contributes and is active in the group regularly, whether by publication, lecture or participation in sub-groups like the Auto Litigators. If the answer is yes, at minimum he or she does more than just "talk the talk."

Communication skills. How will this lawyer keep you informed about the status of your case? At our firm, we communicate with our clients regularly by phone and email. I have a Blackberry and frequently return emails or text clients with answers to questions long after dark or before sunrise. Does the firm have

a communication policy? I make it my business to return all calls within 2 hours. Will the lawyer (and if you choose a big firm based on the TV personality- which lawyer) or a paralegal be the one actually working on your case? Make sure you understand who is actually representing you, and with whom you will be communicating.

Publications. Has the lawyer written any books or manuscripts for lawyers and clients? A lawyer who has taken the time to write a book and get it published is an indicator of respect that the lawyer has in the legal community. Likewise a lawyer who takes the time to write a book for consumers of legal services demonstrates his respect for potential clients and a desire for serving the community at large.

Peer review. Peer review is a voluntary process whereby the attorney submits the names of colleagues, including defense lawyers and judges, and their qualifications as part of the process. The peer reviewer then contacts these individuals confidentially and determines a rating of the lawyer. There are several organizations that conduct peer reviews. Martindale-Hubbell® and the National Board of Trial Advocacy are two organizations respected by lawyers. There are many others out there that appear to be peer review groups but in actuality are simply groups to which any lawyer with a checkbook can buy membership. The fact that a lawyer has or has not submitted himself or herself to peer review should not be a sole factor in your decision-making process.

Clean discipline and malpractice history. If the lawyer has been disciplined for unethical conduct or sued for below-standard client care, this is something you should know. Ask. Check discipline history by going to *www.coloradosupremecourt.com*. There you can conduct a quick online search for attorney discipline history.

11 // SOME OF THE THINGS AN EXPERIENCED PERSONAL INJURY LAWYER DOES FOR YOU IN A CASE

Many of the tasks that need to be performed in an injury case are the same regardless of whether the case is worth ten thousand dollars or one hundred thousand dollars. Keep in mind that each case is different and this list is not exclusive. It is reasonable to ask why you are agreeing to pay a lawyer a percentage of your recovery. Having some knowledge of what we do will help you to understand how we earn our fee.

We will conduct an initial interview. If your case meets our firm's qualifications, a thorough and complete interview is scheduled to determine the facts of your case. Of course, like nearly all injury firms, this consultation is free. We will discuss with you what, if any, claims you have and how we would handle them. If we agree that our personalities and case objectives are a mutually good fit, we will enter into an agreement to represent you.

We put all insurance companies that might provide coverage on notice that we represent you. In addition, if there is any chance that a government entity is involved, we provide notice under the Colorado Governmental Immunity Act. Failure to give timely notice of your claim under the Act will forever bar any claims you might have. This is a requirement that is often missed by lawyers who do not exclusively practice personal injury law.

We request and begin to gather documentation of your claim, including any accident reports, medical records, and bills.

Some cases require additional investigation by experts. These experts may be necessary to prove the wrongdoer's fault or to fully calculate your economic or money losses. Typical examples might include accident reconstructionists and economists. If you have substantial injuries resulting in permanent impairment, an expert may perform a functional capacity exam to measure your loss of function.

Most people resolve their property damage claims on their own. However, we are happy to assist you in any way we can and never charge a fee for this service.

We do our best to make sure that your medical bills get paid promptly by any available insurance source. Some folks are under the mistaken impression that the wrongdoers' liability insurance company will pay for medical bills as they occur. With exceedingly rare exception, an insurance company will not make any payments in advance of a final settlement. Occasionally, the victim or wrongdoer will have a medpay policy in addition to a liability policy. The medpay policy is usually much smaller, perhaps five or ten thousand dollars, and will pay for medical expenses only. We do not take any fee for payments received from a medpay policy.

We will work with your employer to prepare a report demonstrating your wage loss from your time out of work.

We will take photographs of the damage to your car and/or the collision scene.

We will interview fact witnesses in the event they are needed to prove your claim.

We will analyze the facts and perform any necessary legal research. Some cases require creative legal theories in order to get compensation. Our deep knowledge of injury law allows us to excel in this area.

Communicate! You may have heard a friend or acquaintance complain that the firm that represented them in their injury case did a poor job of keeping them informed. This is typically true of large “settlement mills” that advertise on TV and have large staffs. Clients get bounced from one staffer to another and are often not sure which attorney is handling their case. As a result, they don’t get their questions answered or their calls returned. We only handle a select few cases and take great pride in our customer service. You can rest assured that your questions and concerns will be promptly addressed.

We will maintain contact with your doctors’ offices to make sure your medical records and bills are up to date. Once you have reached a point in your treatment where you are as good as you are going to get (maximum medical improvement), we may request a narrative report from your doctor spelling out your future medical needs and costs, permanent injuries and impairments, and effect of your injuries on your employability and your daily life.

We will compile the results of our investigation, medical bills and records, narrative reports, and personal statements and present a demand to the insurance company or responsible party. We make sure we have your input and authority for the demand and explain to you why we feel the demand is appropriate.

We pledge to give you an honest appraisal of your case including any pimples and warts (facts or defenses that are detrimental to the value of your claim).

We negotiate to attempt to settle your case for full and fair value. Negotiation skills are critical. After we have obtained what we feel is the maximum offer that the insurance company is going to make, we discuss with you whether it would be advisable to accept or to tell the insurance company to pound sand. Some insurers always make lowball offers and maintain that offer up to trial. We do not believe in having our clients humiliated by making a settlement demand when it would be pointless to do so. All this does is allow the insurance company more time to prepare defenses for trial. In that instance we believe it is best to skip attempting to settle a case without filing suit and go directly to court proceedings.

Doctors, hospitals, health insurers, and government agencies such as Medicare or Medicaid may have a lien on your case. They operate just like a mortgage lien on a house. When the case is settled (like a house being sold) they must be paid. There are exceptions and we pursue all of them as aggressively as we can.

If your case settles we will prepare all necessary paperwork and make sure your bills are paid out of the settlement.

Although the vast majority of cases settle, when it appears that your case will not settle or the insurance company is not treating you fairly, we will file a lawsuit. We will not delay or wait until the statute of limitations runs. A lawsuit can be especially stressful for someone dealing with permanent injuries or ongoing treatment. Even if we feel certain that you would get greater compensation by filing a lawsuit, if we believe that the stress and ordeal of a suit would be worse for your health we will tell you so.

We pledge always to give you honest answers to your difficult questions. Some lawyers hedge on giving totally honest answers and assessments for fear that their clients will fire them and seek

another lawyer. Once I was contacted by the elderly mother of a middle-aged client who was upset by my frank assessment of her daughter's case. She asked me what happened to lawyers providing comfort and a positive outlook on the case. I told her that many lawyers express opinions on cases that are not based in reality. I have seen firsthand what happens when the results fall short of unrealistic expectations. I have successfully sued another lawyer who gave a rosy opinion to a woman in order to get the victim as a client. Not only could he not settle the case for what he claimed, he failed to file suit before the statute of limitations ran, forever barring her from making a claim. I believe that you are ultimately better off having honest answers and a realistic assessment of your case.

12 // WHAT HAPPENS WHEN A LAWSUIT IS FILED

We make every attempt to settle your case for fair and full value without filing a lawsuit. However, with increasing frequency, insurance companies refuse to accept responsibility for the negligence of their insured. In many instances, attempting to settle before filing suit is a waste of time. Sometimes the best way to approach settlement is only after a lawsuit has been filed so that if the case can't be settled, you have your trial date. This breaks the insurance company's cycle of delay, deny and defend. Dragging out the settlement process is in their interest—not yours. They will take this time to investigate you and your doctors. They hope that you will tire of the process and accept a low offer. They keep asking for more and more information before they can make an offer. They will declare war on you and your lawyer. A good lawyer will break this cycle. We will be prepared.

The following steps happen when a lawsuit is filed.

A lawsuit begins by filing a *Complaint*. This document or pleading is a short plain statement, putting the defendant on notice of the nature of the claim. The person making the claim is called the plaintiff. In Colorado there is no third party claim or direct action against the wrongdoer's insurance company. What does that mean? It means, for example, that you sue or name as the defendant the person who caused the collision or the business where you slipped and fell. As much as you'd like to, you can't sue the negligent party's insurer. An exception to

this rule is when the person who hit you is uninsured. In that instance you can sue your insurance company if it refuses to settle your uninsured claim. The Complaint gets filed in the county where the incident occurred or in the county where the defendant resides. After the Complaint is filed it is “served” on the defendant by private process server or sheriff.

After the Complaint is served, the defendant has twenty days (20) to file an *Answer*. The defendant must either admit or deny the allegations in the Complaint. In addition, any defenses to the Complaint must be alleged as well. Some defenses include comparative negligence, assumption of risk, and sudden emergency. Often the defense files every conceivable defense no matter how frivolous or lacking a basis in fact. It can be incredibly frustrating dealing with these defenses and unfortunately, courts rarely punish or sanction defense lawyers for filing frivolous defenses.

After the Answer has been filed and the case gets set for trial, *discovery* begins. What is discovery? The discovery process involves discovering or investigating the facts that support the claims in the Complaint and defenses in the Answer. The three basic avenues of discovery are interrogatories, request for production of documents and depositions.

Interrogatories are written questions seeking to get more information. When you file a lawsuit, you are agreeing to give the keys to your skeleton closet to the other side. Many of the questions asked by the insurance company lawyers are invasive, irrelevant and harassing. Sometimes these questions must be answered, no matter how irrelevant and harassing they might seem. The intent is to get you to tire of fighting for your rights and accept a less favorable settlement. A seasoned trial lawyer will know whether to answer these questions or object and require the insurance defense team to file motions with the court

to compel answers. The maximum number of written questions is usually limited to thirty (30). Samples of interrogatories can be viewed on our website: www.coloradoinjuryfirm.com.

Plaintiffs and defendants usually submit requests for production of documents. Plaintiffs typically request a complete copy of the insurance claims file along with any photographs or transcripts of recorded statements that might be in possession of the defense team. The defense team will seek extensive information from you. They will be permitted access to all relevant medical records. In addition, they will attempt to get all of your medical records going back as far as ten years or more from before the accident. Depending on the nature of your claims, they may request that you sign releases for copies of your tax returns, medical records, employment files, educational records, insurance records and more. Are they allowed to get all of that? Aggressively litigating a case means objecting to producing irrelevant records and releases and asking the court for a protective order if necessary. Similarly, if the defendant refuses to produce relevant or discoverable documents, it means asking the court to compel the defendant to provide them. Make sure you hire a lawyer who does more than pay lip service to being “aggressive.”

Deposition is the most important part of the discovery process. This is a recorded statement under oath where the parties are asked questions about the case. This is the defense lawyer and insurance company’s opportunity to see what kind of witness you will make in court. Credibility with the jury is king, so giving complete honest answers to the questions and being likeable is essential. Since the procedure will be recorded by a court reporter and put into a transcript, you will be stuck with your answers. When taking the deposition of the defendant, we do our best to get the defendant to take responsibility for his or her actions and destroy his or her defenses. When it comes time

for deposition, we make sure you are fully prepared. We will do at least one mock deposition with you so that you will know how to approach the questions, and understand the tricks or tools the insurance defense team may use to get you to damage your case.

Your Colorado personal injury case will require *experts* to prove your claims. The primary experts will be your medical doctors. They will be called on to opine on your injury causation, diagnoses, and treatment. In many cases, they will be asked to testify regarding permanency, limitations or impairments, and anticipated future medical expenses. Sometimes additional experts might be required, such as accident reconstructionists and economists. The defendants may retain their own experts as well. Many defense accident reconstructionists will rely on junk science or outright lies when offering their opinions on how your accident occurred and the speeds involved. If allowed by a permissive judge, they will say that the forces involved couldn't have injured you. The most potent defense weapon is the defense doctor. These highly paid hired guns will review all of your medical records and perhaps examine you. Their so-called independent medical evaluation or IME is anything but. Most of the time these exams are little more than depositions where the doctor plays "gotcha." Many of these "doctors" earn hundreds of thousands of dollars per year giving the insurance defense team what they want... a defense medical exam. Getting these doctor's financial records is often the best tool the plaintiff's lawyer has to demonstrate their bias for the jury. When a large percentage of the doctor's income comes from working insurance defense, these hired guns will say anything to please those buttering their bread. Hippocratic Oath? R.I.P. It doesn't apply to defense medical exams.

Most Colorado courts order that the parties attend some type of *alternative dispute resolution* before trial. Most commonly,

once discovery is completed the case goes to mediation. This is a settlement conference conducted by a retired judge or experienced attorney agreed to by the parties. A mediation is not a trial and you will not be required to testify. The mediator will review the claims and defenses, demands and offers, and meet with the parties to attempt to settle the case. Most cases do settle at mediation or shortly thereafter. It is the rare case that actually settles on the courthouse steps. However, many cases do settle at the 11th hour – the week before trial.

When a case doesn't settle, it goes to *trial*. From the beginning we prepare every case for trial. This includes deciding as soon as possible what experts will be needed to testify and deciding, organizing, and preparing exhibits. Exhibits might include photographs, medical illustrations or other things that will help the jury decide your case is a winner and that you are entitled to a substantial award to compensate you for the harm done to you. Several written motions to the court called "motions in limine" may be filed to either get the court to rule what information will come in or will be kept out. A good trial lawyer will either secure by stipulation (agreement) or file a motion to prevent the insurance defense team from using tactics to "dirty" the plaintiff like making statements about greedy plaintiffs and jackpot justice. The steps of the trial are basically as follows: jury selection, opening statements, plaintiff's case and presentation of evidence, defendant's case and presentation of evidence, closing arguments, jury deliberation and verdict. When we take your case to trial, we will be absolutely prepared.

13 // SEVEN COSTLY MISTAKES THAT CAN RUIN YOU COLORADO ACCIDENT CASE

The following are what I consider to be the 7 most costly mistakes that can ruin your Colorado accident case. With the exception of failing to call the cops, these costly mistakes apply to all injury cases. This is based on my years of experience in handling these cases, litigating hundreds of cases, and experience and conversations with defense lawyers, judges and jurors.

1. Failing to obtain medical care quickly

Many accident victims think they can “shake it off” when they get clobbered by a careless driver or get up from a slip and fall. This is especially true in a more minor impact where there isn’t a lot of damage to the vehicles. Between the adrenaline pumping in their veins, the drama, surprise, and wreckage, they do not focus on their injuries. They aren’t dying or covered in blood so they honestly feel that they are or will be “OK.” Men hate to admit that they have been hurt. This is a big mistake.

You should be seen by a health care provider as soon as possible after an accident. Many serious injuries, especially to the structures of the back and neck such as facet joints and discs, might not be apparent for many hours, and sometimes days, after a collision. You need doctors to begin documenting your injuries or pain complaints right away. If you are experiencing dizziness, nausea, confusion, memory loss, or vision problems, you might have a brain injury. Seek help from a professional, experienced in treating accident trauma, as soon as possible.

Coloradoans pride themselves on being tough. It's not the Wild West anymore but most of us have some of the cowboy "buck up" attitude, quietly taking pain and getting back on the horse. Many wait until they can't take the pain any longer before finally getting medical care. Insurance companies, their claims adjusters, and defense lawyers will do their best (or worst) to make you out to be a liar and a fraud to a jury. They will argue that if you were really hurt you would have gotten medical attention right away. Unfortunately, many jurors are strongly biased against injury victims and will use this argument as a reason to minimize any damages award.

Failing to get help right away, or waiting days or weeks, will make it nearly impossible to convince a jury that you have a serious injury. Your health is the most important thing you possess. Get help! If you have a substantial injury not apparent to you, it's critical that it be diagnosed and treated as soon as possible.

Get medical attention before you go to a lawyer. Obviously your health is more important than any legal claim. It can be the kiss of death for a jury to hear that an injured person's first act following an accident was to go to his or her lawyer rather than a doctor. If the jury isn't already thinking, "Which came first, the injury or the lawyer?" you can be sure the defense lawyer will plant that seed. Medical referrals by a lawyer can hurt your case. It is reasonable and appropriate for your lawyer to offer suggestions for a doctor with a particular expertise. However, some large injury law firms and settlement mills refer every client to a particular doctor, surgeon, or chiropractor. Not good! Beware the attorney who pressures you to see a particular doctor. Ask what the business relationship is between the lawyer and the particular doctor. Defense lawyers will call attention to any "lawyer-directed medical care" as well as the number and frequency of referrals between the law firm and doctor. When

the jury concludes that the relationship between your lawyer and doctor doesn't pass the smell test, they may ignore your legitimate injury claim.

2. Failing to call the cops

There is never a good reason not to call the police when you have been in an accident. More importantly, in Colorado it is against the law not to call the police when a collision involves injuries.

Sometimes the negligent party that caused the crash will plead with the victim not to call the police. They will profess their fault for causing the accident, tell you how sorry they are and that they have plenty of insurance. They might throw in some additional reasons to get your sympathy to convince you simply to exchange information and go your separate ways. No matter how tempted you might be to help them out of whatever jam or consequences result from their careless driving – don't do it. Consider the possibility that the wrongdoer gives you false information. Or when it comes time to make a claim, they've lied to their insurance company about how the collision occurred. Also, it is not unusual for the at-fault driver to deny negligence and assert groundless defenses, especially after the insurance defense lawyer gets a hold of them. By having the wreck properly investigated by a police officer, you can discourage this kind of behavior and give your lawyer an expert witness in the form of a police officer to help destroy frivolous defenses.

What about a collision that occurs on "accident alert"? When the weather is foul in Colorado we go on accident alert. The police direct folks who aren't injured in accidents during "accident alerts" to exchange information and go on their way. I have represented many folks who don't get a report, thinking they are okay, only to be in agony and in the emergency room hours

after a crash. If you decide simply to exchange information make certain you get ALL of their information: license plate number, driver's license number, home address, insurance information including policy number and effective date, home phone, work phone, cell phone. Overkill? Not when you try to make a claim later only to realize you don't have enough information to get the ball rolling. If the person that hit you doesn't want to give you this information, it's a big red flag that he or she doesn't intend to take responsibility. Call the cops and let them know and insist on having someone respond. Most everyone has a camera on his or her cell phone. Take pictures of the other drivers, their car, their insurance card, their driver's license – anything that could possibly be used to find them later.

An accident report prepared by the police is a critical tool your lawyer will use to begin preparing your case. I'll say it again; there is never a good reason not to call the police.

3. Hiding prior accidents from your lawyer or doctor

Your lawyer needs to know everything about your case in order to succeed. This includes facts that hurt as well as facts that help. If your lawyer knows the bad facts that you feel might hurt your case, he or she can determine how to deal with them and present them in the most favorable light– or at least minimize the damage.

You must tell your lawyer if you have been in prior car accidents. It is a virtual guarantee that the insurance company will know. Few people are aware that the insurance companies maintain huge databases of information that they share with each other regarding prior accidents and injuries. Your lawyer does not have this luxury and must depend on your word. If you fail to tell your lawyer or worse, misrepresent your history, and your lawyer relays false information to the insurance

company or defense lawyer, yours and your lawyer's credibility is shot. Credibility is king. Without it, the insurance company will devalue your claim for settlement purposes because it is virtually guaranteed that a jury will discount the damages of someone they feel is dishonest.

This holds true for your treating doctors as well. Lawyers and juries need to rely on medical testimony that your injuries were caused by this collision. Don't withhold information from your treating doctors because you think it is unimportant, irrelevant, or won't come up later. It is a favorite tactic of defense lawyers to cross-examine claimants and their doctors about prior accidents not mentioned in the patient's medical history. Several things are likely to happen: the doctor's opinion on the collision causing your injuries will be ignored, the doctor will appear foolish or misled, and you will appear dishonest.

It is worth stating again and underlining for emphasis. *Credibility is king*. Any decent trial lawyer is an honest person and will not misrepresent anything to defense lawyers, judges, or juries. More importantly, a decent trial lawyer, upon discovering that you have misled or lied to him or her, will not represent you any further. Doctors and lawyers can do their best to help you if you are absolutely truthful about your accident and your history.

4. Hiding or misrepresenting your medical history, prior injuries or other health problems

You must be honest with your treating physicians and lawyer about your medical history. Being up-front and honest about your injuries prior to the accident is crucial. Everything that was stated in #3 is applicable here. Give a complete and accurate medical history to your treating physician. Most importantly, he or she should have a complete picture of your health history to treat you properly. Again, your doctor is going to be called

upon to provide accurate diagnoses and causation to prove your case. Bring an accurate history that's typed, written or burned onto a CD to your treating medical provider's office so he or she can put it in your file. This will help to destroy any defense argument that you aren't honest. In addition, your doctor's opinions gain credibility.

Most doctors, especially busy surgeons, are more concerned with treating your injuries than in helping you prove your case. Here's a wrinkle on the issue of being honest about your history. Some doctors keep lousy medical records or leave out medical history information that you may have told them. You might say, "My doctor is wonderful and would never make such a mistake!" If you think your doctor is great, she probably is. But sometimes even great doctors keep not-so-great records. The result for proving your injuries were caused by your accident is the same. I have yet to see a doctor admit in front of a jury that he or she missed an important piece of a patient's medical history and have rarely seen a doctor admit to poor record-keeping. Many doctors (the ones that never make a mistake) would rather leave the impression with the jury that their patient was not completely honest and that they are as aggrieved as the jury that certain information wasn't forthcoming. A trial lawyer is then placed in the unenviable position of attempting to get his own expert witness to allow that he or she may be mistaken about the history. The result? The doctor admits imperfection, in which case the strength of his or her opinions is diminished or doesn't admit imperfection and you appear incredible. Avoid this no-win situation; bring a complete history.

Being honest includes being accurate on the medical office intake forms as well. Defense lawyers, in the legal equivalent of death by a thousand cuts, point out inaccuracies here and there. When inaccuracies, innocent or not, start to add up – your credibility suffers. Some intake forms leave a little to be desired.

For instance, a form may ask for prior accidents and not prior injuries. You may have prior injuries to the same part of your body but haven't had any prior accidents. You fill out the form truthfully. Your effort to be completely honest and accurate results in what appears to be an attempt to hide your prior injury. You want the focus of your case to be your legitimate accident-related injuries. The more you have to explain, the more difficult it is for the jury to find in your favor. Bring a complete copy of your medical history that you can leave with the doctor's office.

Be truthful with your doctor and your lawyer about your medical history. If we find that you haven't been truthful with us about your case, we will drop you as a client. Don't get situational amnesia. Having prior injuries doesn't mean that you are not entitled to a full recovery for the harm done to you. Assuming your claim goes to court, the defense will have complete copies of your medical records for the past 5 or 10 years. Your lawyer needs to know about your past injuries so they can be effectively dealt with.

5. Exaggerating your injuries

Pain and suffering. In a case involving substantial injuries, this can be the biggest element of damages. Complaining, whining, or pretending you are hurt worse than you really are, is a serious mistake. An injury victim who is less than completely truthful and honest is unlikely to fool the insurance company and certainly will not fool a jury. A favorite of specially-retained defense doctors is to claim that injured claimants are magnifying symptoms. Dealing with these hired gun doctors who often twist facts and use junk science to bolster the defense is one of the most difficult tasks your attorney may face. Many of these defense doctors earn hundreds of thousands of dollars per year providing medical-legal opinions for the defense. In

addition, they are *not* bound by the Hippocratic Oath. Present them with a genuine symptom magnification case and they will be off to the races. They will make sure that the jury knows you are exaggerating your symptoms for “secondary gain” – i.e. you are lying to get money.

Although rare, insurance companies do hire private investigators to follow claimants around with a video camera. Take for example Mr. X, who claims that his back injury prevents him from lifting and playing with his infant children. Life is not a dress rehearsal and this can be devastating for a parent. However, Mr. X is captured on video at the grocery store lifting large bags of dog food in and out of his cart without difficulty. His case, although he has legitimate injuries and pain and suffering, is likely destroyed. Why? His credibility for all of his claims is at best questionable and more likely than not zero.

Most accomplished, ethical personal injury trial lawyers will not represent someone whom they feel is less than truthful and honest. Bottom line, do not pretend or exaggerate the extent of your injuries with your lawyer or your treating physicians.

6. Failing to return to work when able

The reality is that most injured people return to work sooner than they should because they have bills to pay. However, if your doctor has advised you to stay out of work then you should do so. Injury victims who stay out of work when they have not been told by their doctor to do so, will have an uphill battle proving they should be compensated for their time off. If you feel that you cannot work but you haven't talked about it with your doctor, you must have this conversation. Make sure you explain to the doctor what your job requires and why you feel unable to work. If the doctor agrees that you should be off work, insist on a note. Whether or not you need it for your employer,

you will likely need it for your case. Sometimes the doctor will allow you to return to work with restrictions. In some instances employers won't allow folks to work with the restrictions. Make sure you let your doctor know if this situation arises. If the doctor disagrees with you, then you should do your best to work. If you return to work and just can't do it or strongly feel that your doctor is wrong, get a second opinion.

Injury victims who disagree with their doctor's opinion on their capabilities are in a tough position. Insurance companies, of course, and juries in the vast majority of cases, will agree with the doctor. Stay out of work without clear indication from your doctor that you can't work, and you will most likely be unable to recover lost wages.

7. Failing to keep records, receipts and a journal

We will collect your medical records and bills and, when appropriate, submit them to the appropriate insurance company with your settlement demands. We will do everything we can to make sure that the list is complete. However, it is important that you keep copies of your bills. Keep track of the name, address, phone, and specialty of all medical providers. Also, make sure you keep receipts for any injury-related expenses such as prescriptions. It's a good idea to record your mileage to and from medical offices as well. Whether we or another lawyer represents you, we want to make sure that nothing falls through the cracks. You should too.

Sometimes it is difficult to figure out from the medical records alone all of the health professionals who saw you. We communicate regularly and openly with our clients. You should make sure you and your lawyer communicate regularly and compare lists of doctors and bills. A lawsuit can be summarized by describing it as a series of deadlines with penalties attached.

Judges can dismiss claims for failing to disclose all of your doctors, records, and bills by certain deadlines. You, your lawyer, and your lawyer's malpractice carrier don't want this to happen.

In addition to putting all your records and receipts in a dedicated folder, you should keep a detailed journal. A spiral notebook works best. For at least several weeks following your accident, record how you are feeling and how your injuries affect every aspect of your life on a daily basis. Resolution of your claims can take many months or even years. As time goes by, folks sometimes forget the extent of their pain, suffering, and limitations their injuries have placed on them. For example, Mrs. X has a shoulder injured in a t-bone car accident. After a year and half of conservative care, she finally gets shoulder surgery to repair her torn rotator cuff and reduce her pain. Fortunately for her, she has a good result and has little pain and minimal limitations after surgery. When her case finally gets to trial two and a half years after the collision, she has forgotten how she couldn't use her arm to wash her hair, sleep on her side, or lift both her infant children. Had she kept a journal, she would be able to remind herself of the pain and limitations – and better present the harm done to her to the jury.

Journals kept at the insistence of a lawyer, and addressed to him or her, are protected by privilege. They can be invaluable for you to refresh your memory and for your attorney to truly understand how your injuries have affected you. Keep #5 in mind when making entries and don't exaggerate.

14 // WHY YOU SHOULD HIRE US

Fewer Cases Equals More Time for Clients

We're different! We don't have a high volume of cases from "As seen on TV" advertising or Yellow Pages ads. We don't accept every type of case. We only take cases that meet our criteria. This firm is not a "personal injury mill" that takes everything that comes in the door, shuffles you from one paralegal to another, allows paralegals to negotiate with the insurance companies, and spins wheels as you get bounced from one attorney to another. Sadly, this is what occurs at some of those firms you see advertising on TV with meaningless boasting of heritages of justice and the like.

Taking fewer cases allows us to focus like a laser on your case and your needs. We are able to devote the full attention to your case that it deserves. We care deeply for our clients' welfare. We take pride in our work and we believe that the results speak for themselves. We provide our clients easy access to us whether by phone, cell, or email. There is no such thing as a stupid question.

- Many of our cases are referred from other attorneys.
- We pride ourselves on our honesty, integrity, and legal excellence.
- We handle cases in all Colorado state and federal courts.

- We provide sole practitioner care, attention and big firm resources.
- “View with alarm, point with pride.” Although most cases settle, preparing every injury claim from the beginning for trial achieves the best settlements.
- We tell it like it is because life is not a dress rehearsal.

Some firms tell you what you want to hear to get your case. At the resolution of your claim when the result falls short and your expectations aren't met, you end up dissatisfied and justifiably angry. I am tired of hearing about other lawyers and firms that make promises they can't keep. I think this does injury victims and the public a grave disservice. Honest advice and frank opinions about your claim or lawsuit are what you need to hear. Beyond garden-variety emotional distress, anxiety, and depression after getting injured, getting a bogus appraisal from a hungry lawyer so that you feel better does not serve you well in the long run. Dealing with matters in a straightforward fashion helps you cope with things as they are and allows you to focus on the most important aspect of your case – getting better. This is where individuals who are truly attorneys and counselors at law excel. If I feel that you have a case that cannot be won or a settlement offer that you should accept I will tell you. If I think you would be better served handling your own claim, I will tell you. If the right thing to do is to litigate your case aggressively and take it to trial, I will tell you. Together, we will be prepared. Together we will help you get your life back. Together we will make things right. Working closely together, we will determine the best strategy for your case.

15 // CAN YOU SETTLE YOUR CASE YOURSELF?

Many small injury cases are best handled by the client. Although insurance industry studies have demonstrated that people represented by lawyers get more money for their claims, we will not accept cases with little to no property damage and minor connective tissue (soft tissue) injuries that resolve in a few weeks. Why not? We only take cases where we feel that we will benefit you. Beware of lawyers and law firms that are willing to take these cases. Assuming your case settles, will the settlement be higher with a knowledgeable lawyer than on your own? Probably yes. However, in a small injury case after deducting attorney fees and costs and paying your medical bills, you may be left with little to nothing from a settlement. That's not fair and it's not why we do what we do. You are likely to come out better in a minor accident/minor injury case settling your own case and not having to pay any attorney fees.

Cases that we decline may involve one or more of the following facts:

1. Low speed impacts with little to no visible damage to the car.
2. A long delay in treatment between the date of the collision and your first medical visit.
3. Medical expenses and out-of-pocket losses less than \$3000.

4. Cases involving exacerbation of significant pre-existing injuries.
5. Claimants who have made many similar recent claims.

Insurance companies don't pay a lot for these cases. The sad reality is that they are likely to make a lousy settlement offer for cases with a mix of these factors. Their low ball offer, possibly less than your medical bills, forces you either to accept the unfair offer or go to trial. Insurers call these MIST cases, which stands for minor impact soft tissue. They know that taking one of these cases presents a significant investment of time and expense for the lawyer and his client and no guarantees of success. Sadly for most lawyers and their clients, the cost-benefit analysis of going to trial on a MIST case doesn't usually make sense. Substantial victories in these cases are rare. Representing yourself in small claims court might be the way to go. There are always exceptions and you should speak with an experienced lawyer and ask if your case might be an exception and, if so, why.

If we turn down your case we would be happy to act as a resource if you have any questions, or refer you to a good lawyer who will handle small cases.

16 // WHAT CASES DO WE ACCEPT?

We represent accident victims in the following areas: all automobile cases, including those which might involve trucks, motorcycles, bicycles, and pedestrians; premises liability (commonly known as slip or trip and fall) which also involves any dangerous condition or activity on someone else's property; and, in limited instances, product liability. Our clients are not liars, whiners, or frauds. We work with our clients to achieve the best possible outcome after an accident.

I hope you find this book useful. If you would like additional copies for family or friends, please call us at 303-300-5060 and let us know where to send them. Or you may request a copy through our website *www.thecoloradoaccidentbook.com*

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The Ultimate Guide to
COLORADO
ACCIDENT CASES

D.J. Banovitz has been representing accident victims against insurance companies for many years. He wrote this informative and easy-to-understand consumer legal book to explain what a personal injury case is, the parts of a lawsuit, and the different types of insurance. The book offers advice on what to do immediately after a wreck, details “seven costly mistakes” that can ruin a personal injury case in Colorado, and offers practical tips to avoid them.

This book should be required reading for drivers and passengers in Colorado; everyone who travels by car should understand personal injury law before an accident occurs. Further, anyone in the unfortunate position of dealing with a personal injury case in Colorado could certainly benefit from the wealth of knowledge in these pages. After reading this book, you should consult an attorney for legal advice.



Originally from Chicago, D.J. Banovitz graduated from Colorado State University and the John Marshall Law School in Chicago. He exclusively practices plaintiff’s personal injury law and has litigated hundreds of cases in the Denver metro area. Watch for his next book, *Legal Advertising Exposed: A Consumer’s Guide to Finding the Right Lawyer*.

\$16.95

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WORD ASSOCIATION
PUBLISHERS

www.wordassociation.com
1.800.827.7903

ISBN 978-1-59571-461-9



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51695 >

