

# PERSONAL INJURY ACCIDENT BOOKLET

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## I. Ten Things to Consider When Choosing an Attorney

When you or a loved one has suffered an injury, hiring an attorney is one of the most important steps you will take toward seeking compensation from those who are responsible for your injuries. This can be a daunting and complicated process if you have never before hired an attorney and do not know how it all works. It may be helpful to consider the following aspects before making this important decision:

### 1. Communication.

When working with an injury attorney, communication is crucial for several reasons. You want to feel comfortable knowing that your attorney is a good communicator because that is precisely what you are hiring him/her to do, i.e., communicate and advocate your interest to insurance professionals, opposing counsel, a judge and jury. Your attorney will argue the facts of your case to obtain an outcome in your favor. Choose an attorney who is willing to spend time speaking with you to learn about your case inside and out.

### 2. Cost.

Understand and obtain, in writing, all fees you will incur by hiring a particular attorney, including fees your attorney will take if your case wins.

### 3. Experience and Background.

Visit the State Bar of Texas website (<http://www.texasbar.com>) and look up the names of the attorneys you are considering hiring. You will find information such as when he/she became eligible to practice law in Texas, their State Bar of Texas number, schools attended and graduation dates, contact information, which courts they are admitted to practice in, and any disciplinary actions reported by the attorney. Keep in mind that the number of years of experience the attorney has may be less important than the number of years the attorney has specialized in personal injury law. Ask the attorney what types of cases he/she has taken and won and/or obtained a settlement.

### 4. Expertise.

All personal injury attorneys do not handle every type of injury case. For example, birth injury cases, slip and fall cases, car accident lawsuits, trucking accidents, and boating/lake accidents, just to name a few, are all different types of cases that the attorney may have experience handling. Some attorneys may handle only one type of injury case on a regular basis, and if so, make certain that it is indeed the same type of case you have.

## **5. Attorney-Client Relationship Dynamic.**

Make sure you feel confident and comfortable with the attorney's working style when it comes to your input and decision making about your case. You are hiring him/her and, therefore, you should have control over your legal matters while trusting that your attorney will control the legal aspects of the case. After all, you are hiring the attorney because he/she has the legal knowledge that you do not.

## **6. Professional Network.**

Ask about your potential attorney's professional network of experts. Many, but not all, personal injury cases involve testimony of expert witnesses. Your attorney might call as witnesses one or more doctors who specialize in the area of injuries you sustained as a result of the accident. Your attorney may also enlist experts in various other fields such as trucking standards, accident reconstruction specialists and long-term treatment and costs of your injuries.

## **7. Compare and Consider.**

You will want to consider a variety of factors when hiring an attorney and it should not be a quickly made decision. You may wish to undertake two or three consultations with different personal injury attorneys to determine who would be best suited for your case. However, if you believe an attorney is a good match for you and your case and that all other decision-making criteria are met to your satisfaction, the first attorney you consult with may very well be the right choice.

## **8. Specialization.**

It is important that you understand what type of case you have so that you can hire an attorney who either specializes in that type of law, or has substantial experience and has obtained successful results on behalf of his/her former clients.

## **9. Technology.**

In today's professional fields, technology can equal power. It enhances the efforts of the attorney and support staff to get things done efficiently, effectively, and thoroughly. Be sure to ask a potential attorney what technologies they employ during the course of handling a personal injury case.

## **10. Support Staff**

Attorneys and law firms employ several types of administrative and legal support staff that allow their law practices to function efficiently and professionally. Ask your prospective

attorney about associate attorneys, paralegals, legal secretaries and receptionists you may interface with over the course of your case. It is likely you will interact with these experienced professionals as often as you do with your attorney directly. However, you may only receive legal advice from the attorney and/or any associate attorneys working on your case, as non-attorneys cannot give you legal advice or any opinions they may have about the progress or outcome of your case.

## II. STATEMENT OF A CLIENT'S RIGHTS

- i) If you ever have any questions about these rights, or about the way your case is being handled by your attorney, do not hesitate to express your concerns to your attorney. He or she should be readily available to represent your best interests and keep you informed about your case.
- ii) An attorney may not refuse to represent you on the basis of race, creed, color, sex, national origin or disability.
- iii) You are entitled to an attorney who: is capable of handling your case; shows you courtesy and consideration at all times; represents you zealously; preserves your confidences and secrets that are revealed in the course of the relationship.
- iv) You are entitled to a written retainer agreement which must set out, in plain language, the nature of the relationship between you and the attorney and the details of the fee arrangement. At your request, and before you sign the agreement, you are entitled to have your attorney clarify in writing any of its terms, or include additional provisions.
- v) You are entitled to fully understand the proposed rates and retainer fee before you sign a retainer agreement, as in any other contract.
- vi) You may refuse to enter into any fee arrangement that you find unsatisfactory.
- vii) Your attorney may not request a retainer fee that is nonrefundable. That is, should you discharge your attorney, or should your attorney withdraw from the case before the retainer is used up, your attorney is entitled to be paid for the time spent on your case and any expenses incurred to through that date, but must return the balance of the retainer to you.
- viii) You are entitled to know the approximate number of attorneys and other legal staff members who will be working on your case at any given time and what you will be charged for the services of each.
- ix) You are entitled to know in advance how you will be asked to pay legal fees and expenses, and how the retainer, if any, will be spent.
- x) At your request, and after your attorney has had a reasonable opportunity to investigate your case, you are entitled to be given an estimate of approximate future costs of your case.
- xi) You are entitled to receive a written itemized bill on a regular basis at least every 60 days.

- xii)** You are expected to review the itemized bills sent by counsel, and to raise any objections or errors in a timely manner. Time spent in discussion or explanation of bills should not be charged to you.
- xiii)** You are expected to be truthful in all discussions with your attorney and to provide all relevant information and documentation to enable your attorney to competently prepare your case.
- xiv)** You are entitled to be kept informed of the status of your case, and to be provided with copies of documents prepared on your behalf or received from the court or the adversary party.
- xv)** You have the right to be present at court hearings unless a judge orders otherwise.
- xvi)** You should be engaged in the ultimate decision on the objectives to be pursued in your case, and to make the final decision regarding the settlement of your case.
- xvii)** Your attorney's written retainer agreement must specify under what circumstances he or she might seek to withdraw as your attorney for nonpayment of legal fees. Should your attorney seek to do so, or should you discharge your attorney for any reason, you have the right to obtain the release of your file to you or another attorney of your choosing. If an action is pending, the court may give your attorney a "charging lien," which entitles your attorney to payment for services already rendered at the end of the case out of the proceeds of your judgment. If no action is pending, and your withdrawing attorney retains possession of the file, the attorney must return it to you within 30 days of withdrawal, but may then commence proceedings against you to recover any unpaid fee.
- xviii)** You are under no legal obligation to sign a judgment or promissory note, or to agree to a lien or mortgage on your home to cover legal fees. Your attorney's written retainer agreement must specify whether, and under what circumstances, such security may be requested. In no event may such security interest be obtained by your attorney without prior court approval and notice to your adversary.
- xix)** You are entitled to have your attorney's best efforts exerted on your behalf, but no particular results can be guaranteed.
- xx)** If at any time you believe that your attorney has engaged in unethical conduct, you may report the matter to the clerk of the State Bar of Texas and/or the Appellate Division of the Supreme Court, which oversees attorney discipline.

**xxi)** In the event of a fee dispute, you have the right to seek arbitration, the results of which are binding. Your attorney should provide you with the necessary information regarding arbitration in the event of a fee dispute, or upon your request.



### **III. What To Do Immediately After an Accident**

Just after an accident or other event which seriously injures you or a loved one you may not know what to do or where to turn for help, especially when you have been injured by the negligence or wrongdoing of another person, or in many instances, the manufacturer of defective equipment or other products.

Immediately following a serious injury, you should first seek medical attention. Even if your injuries are not readily apparent to you or your family, you should see a doctor for a full evaluation, because many injuries are not immediately obvious, but can become more so over the course of the next few days. For example, many soft tissue injuries or brain injuries may not produce symptoms for days, weeks or even months following the injury. A doctor can provide you with the necessary tests and diagnosis for proper treatment of your injuries. If you or another person are able, you should also take photographs of your injuries, as well as your vehicle and other personal property that might have been damaged in the accident. If possible, the police department should be contacted to make a report of the scene of a vehicular accident. If you were injured in an accident involving a dangerous stair step or spilled food or drink in which you slipped and fell, you will want to attempt to take the names of any witnesses to the accident as well as photographs of the conditions which caused the accident.

The next step, after you have received the appropriate medical attention, is seeking the representation of an experienced, knowledgeable personal injury attorney. You can schedule a free, confidential consultation in which the attorney will ask you questions about your accident and injuries, and will then advise you about whether or not you have a valid personal injury claim. It is of paramount importance that you hire an attorney before you speak to your insurance company representatives, and especially before you speak to or interact with the insurance company representatives or attorneys of the person or company that is responsible for the accident that caused your injuries.

Once you have hired an attorney to represent you, he/she will thoroughly investigate your accident and begin the process of collecting evidence to be used in proving your injuries were a direct result of someone else's negligence or wrongdoing. Your attorney will also communicate with your insurance company representatives, the other party's insurance company representatives, and their attorney. Once you have secured the representation of your attorney, you will not need to, nor should you, communicate with any of the insurance representatives or other attorneys. Your focus will now be taking care of follow up medical treatments, if required, and providing your attorney with any other information he/she may need as your claim progresses.

#### IV. The Personal Injury Lawsuit Process

After an accident in which you or a loved one are injured, and you have sought medical attention and have hired an attorney to handle your insurance claim, you may be on your way to becoming a plaintiff in a personal injury lawsuit if the insurance company has refused to make a reasonable offer of settlement on your injury claim.

**The Petition:** In this situation, your attorney will prepare and file a lawsuit on your behalf as the plaintiff, and naming the responsible party or parties and their insurance companies as defendants in a legal document called "Plaintiff's Original Petition". A Glossary of Personal Injury Claims Terminology is included in Chapter VII at Page 16 of this booklet.

**The Answer:** After the Petition is served on the defendants, giving them proper legal notice of your lawsuit against them, they will likely hire attorneys to represent them, and will then file a legal document called "Defendant's Original Answer" with the court's clerk and will also serve a copy of the Answer on your attorney. The Answer responds to the claims made in the Petition and to some extent indicates what issues that will be litigated.

**Written Discovery:** During this stage of the lawsuit, a process called "Discovery" will begin. Your attorney will prepare a series of documents which may include "Interrogatories", which are questions to the adverse parties, seeking information about insurance policy amounts and coverage, and other issues relating to the accident; "Requests for Production", which is a list of informational items requested such as copies of insurance policies and other documents, photographs, business records, etc. that your attorney will inspect and utilized as evidence in your case; and "Requests for Admissions", which is a series of statements of fact concerning the issues of your case, to which the adverse party must "admit to" or "deny".

During this time, the other parties' attorneys will likely prepare the same type of documents and send them to your attorney. You will work very closely with your attorney and his/her support staff to answer the Defendant's Interrogatories and provide copies of all of the documents requested in the Defendants' Requests for Production document. The Interrogatories you will be answering may include such detailed questions about your personal history, your employment history, your medical history, what injuries you claim in the lawsuit, a list of your bills, who has paid your bills and other kinds of detailed questions. Each party will have 30 days in which to provide the other party with responses, unless the Plaintiff's attorney serves the Discovery documents at the same time as the Petition, in which case the Defendant's will have 50 days to respond to the documents.

**Depositions:** After both parties have responded to all Discovery on both sides of the case, "Depositions" may begin to be scheduled. Depositions are a meeting between a "Witness", which would include you as Plaintiff, the Defendant and his/her/their company employees, insurance company employees, etc., the witness's attorney, the Plaintiff's attorney and the Defendant's attorney. Each witness testifies under oath. Depositions are usually

videographically and/or stenographically recorded. The Court Reporter recording the deposition testimony will then prepare a written transcript of every word of the Deposition. The answers and statements to questions asked by both Plaintiff's and Defendant's attorneys to all witnesses at each deposition can then be used at trial because it is testimony given under oath, just as a witness on "the stand" would give during a hearing.

There are several purposes for the depositions. One is to find out what a person would say at trial. Another purpose is to find out information that was not covered in the Interrogatories. A third purpose of depositions is to size up the person in terms of how they will be perceived by the jury, in other words, will the jury find favor with a witness, or not?

**Defense Medical Examination:** After depositions, the Defendants may request your attorney to send you to a doctor of their choice for a defense medical examination. This doctor is someone hired by the Defendants' insurance company or its attorney, to examine you, write a report, and testify at trial. This doctor is not on your side and is not hired to provide you with medical treatment, only to give his opinion as an "Expert Witness". His or her task is to find things that will help the insurance company. Your attorney will always be by your side at Depositions, and he/she will prepare you for your examination with the Defendant's Expert Witness doctor (s).

**Expert Witnesses:** After the defense medical examination, your attorney and the Defendants' attorney may need to take depositions of the various doctors and other "Expert Witnesses" involved in the case. This is done if there is some question about exactly what the doctor would testify to at trial or an engineer or accident reconstruction expert, as to their professional opinions about your injury claims. This is not always done, but is a step that happens frequently in more complex litigation of injury claims.

**Offer of Settlement:** After the discovery process, your attorney and the Defendants' attorney will each reassess the case on behalf of their respective clients in view of all of the information gathered during Discovery. Your attorney may reevaluate the monetary amount of your claim in the lawsuit; and the Defendants' attorney may do the same. The Defendants' attorney may then send a written offer of settlement to your attorney, outlining their proposed monetary settlement for payment of your injuries, medical bills, long-term treatment, pain and suffering, and other elements raised in your lawsuit. At this point, there may be direct negotiations between the Defendants' attorney and your attorney.

**Mediation:** If a satisfactory settlement is not reached by the parties, the attorneys will either agree to, or the judge will order, a Mediation. A Mediation is a conference with the Plaintiff, Plaintiff's attorney, and the Defendants' and their attorney, and a neutral third party Mediator, who is often an attorney or other legal professional is trained to, and specializes in, listening to both parties' arguments and reviewing relevant evidence, to help the parties reach an agreed settlement that is acceptable to both. The mediator cannot force anyone to do anything or make

any binding “orders” on either party, unlike a judge can in court. Many cases settle during medication, thus avoiding the need and expenses of a trial.

**Trial Preparation:** At this point, if your case is not settled, your attorney, and the Defendants’ attorney, will each begin preparation of the case for a trial in front of a judge and jury. Your attorney will prepare you for trial by going through your testimony. You will go over the questions that your attorney will ask you at trial and the probable questions the Defendants’ attorney ask you on “Cross Examination”. Your attorney and his/her staff will also prepare “Exhibits” for the trial, using photographs, charts and lists of expenses you have incurred, as well as graphics depicting your injuries. Your attorney will also be preparing other witnesses who will testify on your behalf, and will issue “Subpoenas” to these witnesses, which are legal orders to appear and give testimony under oath until such time as they are dismissed by your attorney or the judge.

**Jury Voir Dire:** At the trial, the proceedings follow a relatively strict order. First, the attorneys will go through a process known as “*voir dire*”, which basically means each side’s attorney will briefly examine the potential witness to determine whether or not they are deemed likely to speak and act truthfully when hearing the evidence at trial. During *voir dire*, a group of potential jurors is seated near the front of the courtroom and then the judge asks them questions to see if there is some reason why they cannot sit through the trial. Then attorneys for both sides are allowed to ask questions of the jury.

**Trial:** Once the jury members are selected to the satisfaction of both Plaintiff’s and Defendants’ attorneys and the judge, the trial will proceed with opening statements. This is when the attorneys for each side can give the jury an outline of what they expect to happen at the trial, and what they expect to prove on behalf of their clients’ cases. Next comes the testimony part of the trial, where you and other witnesses testify under oath, and the deposition transcripts of doctors or unavailable witnesses are given to the jury to consider as evidence. The Plaintiff’s attorney will present your case first, and once your attorney “rests” your case, the Defendants’ attorney will present their case. Each witness, including you, can be subject to both “direct examination” and “cross examination”. After the testimony, attorneys for each side get to give “closing arguments” to tell the jury their view of the evidence and what the jury should do on their verdict.

**Jury Charge and Deliberation:** The jury will be instructed, or “charged” by the judge before they enter the jury room to deliberate the verdict. The Jury Charge is a written document containing specific questions that the jury must answer about such issues as who is at fault, what percentage of the fault is attributed to the parties, and how much money should be awarded for various portions of your claim. Once the jury reaches a verdict, the judge will reconvene the trial, and the jury will again sit in the courtroom, while the judge reads the verdict in open court. The judge will issue an “Order” accordingly, and both Plaintiff and Defendant will be bound by the judge’s order.

**Settlement During Trial:** Sometimes during the trial process, the Defendants' attorney will make another offer of settlement to the Plaintiff, and if that offer is found to be acceptable, the Plaintiff's attorney will work with the Defendants' attorney in preparing a "Settlement Agreement" for both parties to sign, and it will be binding on both parties, just as an order of the court would be.

**Award and Order:** In the end, should Plaintiff be awarded monetary damages, or should the parties reach a settlement, the funds to be paid to Plaintiff will be received by Plaintiff's attorney on his/her behalf, and all expenses and attorney's fees will then be deducted in the manner in which the Attorney-Client Agreement for Services directs, and the balance of the awarded money will be issued to the Plaintiff with an itemized billing statement of all deductions. It may take two to three weeks for the final disbursement of Plaintiff's portion of the awarded money to be completed by your attorney's law firm accounting office.

## **V. How "ERISA" May Reduce Your Claim Recovery**

The Employee Retirement Income Security Act of 1974, known as "ERISA", is a federal law that may allow your insurance company, or your employer's health plan, to recover its costs on your claim, from a settlement or trial verdict award you may receive as a result of a personal injury lawsuit. This is known as "subrogation", and is considered to be a complex area of law. Potential subrogation interests should be discussed with your personal injury attorney after his/her review of any subrogation clauses in your insurance policy or your employer's health plan provisions.

## **VI. Information Your Attorney Will Need From You**

When you or a loved one have been injured in any type of accident it is important to keep extensive documentation of the incident and your injuries. Your personal injury attorney will interact with insurance companies and defense attorneys on your behalf, and in order to make a proper claim for all the benefits you are entitled to, this documentation is necessary.

Make sure that you gather, and keep in a safe place, the following types of information that your attorney will need to review:

- Your health insurance policy
- Your car insurance policy
- Any insurance information you obtained from the other party to the accident
- Photographs of your damaged vehicle and other damaged personal property
- Photographs of your injuries
- The police or accident report
- Your notes, and any witness statements taken after the accident concerning the events of the accident
- Your notes, or those of your family, concerning your physical and emotional pain and suffering
- Estimates for repairs to your vehicle
- Medical reports and bills, both paid and unpaid
- Estimated lost wages
- Pharmaceutical medication prescriptions, receipts and empty bottles
- Over-the-counter medication receipts and empty bottles
- Receipts for any medical devices or special goods you have purchased at the direction of your doctors or to facilitate your recovery from your injuries

If you are unable to collect these documents, your attorney may be able to gather the information. Your attorney may request other documents and information from you as you receive new medical reports and bills, and updated lost wage records. Keep these incoming documents organized so that you can present them to your attorney on a timely basis. This will allow your claim and/or lawsuit to include all of your damages and will result in a more complete recovery for your injuries and expenses.

## VII. Glossary of Personal Injury Claims Terminology

### A

**Accident and health insurance:** Insurance under which benefits are payable in case of disease, accidental injury, or accidental death. Also called health insurance, personal health insurance, sickness and accident insurance.

**Accident:** An unforeseen and unintentional act identifiable in time and place.

**Accidental bodily injury:** A bodily injury which is not intentionally self-inflicted.

**Accidental death benefit:** A form of insurance that provides payment if death of the insured results from an accident, subject to the conditions of the specific policy. Accidental death insurance is often combined with dismemberment insurance in a form called Accidental Death & Dismemberment (AD&D).

**Accidental direct physical loss (ADPL):** Property insurance that covers an insured against essentially all perils except those specifically excluded.

**Accumulation account:** An account to which funds are added and from which risk charges are deducted. The balance earns interest.

**Acquired brain injury:** An acquired brain injury is one that is not congenital, meaning that it occurred at a specific time after birth. Acquired brain injury may be the result of physical trauma or various medical conditions.

**Act of God:** An occurrence which results from natural causes without any human intervention and could not have been prevented by reasonable care or foresight (e.g., flood, lightning, earthquake, hurricane).

**Affidavit:** A written and signed statement of facts created under oath.

**Aggregate Limit:** The maximum amount that could be paid under the coverage regardless of the number of people injured or the number of items damaged.

**Anoxic brain injury:** An anoxic brain injury is when a brain does not receive adequate oxygen, usually resulting from a serious accident where heavy bleeding occurs.

**Answer:** A written response to the accusations or charges in the complaint of the plaintiff.

**Aphasia:** Aphasia is a language disorder which is caused by injury to the brain, specifically the cerebral cortex. This disorder causes a person to have difficulty understanding or verbally communicating spoken language.



**Appeal:** A procedure to send a case to a higher court for further examination and review after a lower court's decision was made.

**Appearance:** Participating in court proceedings in person or through an attorney.

**Ataxia:** Ataxia is a disorder where a person has difficulty with muscle coordination, which is caused by injury to the cerebellum.

**Axonal Diffuse injury:** An individual who suffers from a contusion may also experience a diffuse axonal injury, which happens when certain nerves in the brain tissue are damaged. Injury to these axon nerves may cause the victim to fall into a vegetative state and can cause death.

## B

**Bacteria:** Tiny, one-celled microorganisms found in the environment. Bacteria multiply rapidly in food under the right conditions, and some bacteria can cause foodborne illness. Helpful bacteria can be used to make yogurt, vinegar and some cheeses.

**Bodily Injury Liability:** Protects the insured as the owner or driver of a vehicle for all sums, up to the policy limits, which the insured becomes legally obligated to pay because of bodily injury to an injured third party. This coverage also pays defense costs against unwarranted legal actions. Bodily Injury Liability limits are usually split with the first figure limiting payment to a single person per accident, and the second limiting payment in total for all persons injured.

**Brain stem:** The brain stem controls many important functions of the body including sexual functions and physical growth. The brain stem can be found at the base of the brain.

**Brief:** A printed or written document prepared by attorneys on each side of a dispute that usually includes the facts and legal arguments the attorneys wish to establish.

## C

**Carbon Monoxide Poisoning:** When a person is exposed to this odorless and colorless chemical may suffer from brain damage due to the brain's lack of oxygen and in severe cases may die.

**Catastrophic injury:** A catastrophic injury is an extremely serious injury that may result in permanent disability, long lasting medical conditions, and a shortened life expectancy. It typically affects at least one system of the body and is very painful.

**Cerebellum:** This part of the human brain controls the movement of arms and legs, balance, body position, and posture is positioned under the cerebrum.

**Cerebral hemisphere:** The cerebral hemisphere is either the right or left side of the cerebrum.

**Cerebrum:** This is the largest part of the human brain. It controls behavior, emotions, language, vision, and other important functions of the body.

**Closed head injury:** A closed head brain injury is when there is trauma to the brain that does not result in a skull fracture.

**Coma:** A coma is a period of unconsciousness which may occur following a traumatic brain injury.

**Common Law:** Laws and rules established based on earlier judicial decisions.

**Comparative Negligence:** The amount of balanced fault of each of the groups that contributed to the injury.

**Complaint:** The original, written claim filed in action which begins the lawsuit. The plaintiff usually files a complaint.

**Comprehensive Coverage:** (Other than Collision) is sometimes referred to as "Fire and Theft". This is, essentially, loss to your vehicle caused by other than collision. This includes coverage against perils such as hitting an animal, vandalism, riots, floods, wind and hail, as well as fire and theft, and glass breakage.

**Contrecoup:** A contrecoup is a contusion that results when the head is forcefully shaken and the brain comes into contact with the skull. This condition has been seen in cases of head trauma and Shaken Baby Syndrome.

**Contusion:** A contusion is when brain tissue becomes swollen and bruised. Blood vessels may break, causing the blood to mix with the swollen tissue.

**Costs:** The amount of money the losing party pays to the winning party after a judgment is made.

**Counterclaim:** A claim brought by a defendant against the plaintiff for a certain amount of money.

**Cross-Claim:** A claim brought by a defendant against another defendant, or a claim brought by a plaintiff against another plaintiff.

**Cross-contamination:** The transfer of harmful bacteria from one food to another. Harmful bacteria can not only be transferred from food to food, but also from hands to food.

## D

**Damages:** The financial reward awarded to the winning party in a lawsuit.

**Date of Loss:** The date upon which the accident or incident occurred.

**Defendant:** The party being sued or accused of wrongdoing in a lawsuit.

**Depressed skull fracture:** A skull fracture where one or more parts of the skull break and come into contact with the brain.

**Direct Loss:** The immediate reduction in value arising from damage to property.

## E

**Escherichia coli 0157:H7:** Strain of enteropathic E. coli found in ground beef, raw milk, chicken.

**Evidence:** Materials or facts that prove a claim or defense in a lawsuit.

## F

**Fault:** An error or omission that causes injury legal blameworthiness and responsibility in each area of law.

**Foodborne Illness:** Sickness that results in a variety of various discomforts that occur from the consumption of food containing organisms or pathogens in the form of bacteria, viruses or parasites. The food is typically infected because it has been improperly stored, prepared, or mishandled in some manner.

## H

**Hazard:** Anything that increases the chance of an accident. (e.g. icy pavement or fog would be applicable).

**Hematoma:** A hematoma is a blood clot in or around the brain.

## J

**Judgment:** The result or final decision of the court at the end of a lawsuit.

## L

**Liability:** This means that a person (or group of people) is legally responsible, or liable, for the injury or damage suffered by another person (or group of people).

## M

**Mercury poisoning:** Exposure to Mercury, a colorless and odorless chemical, can lead to Mercury poisoning causing brain damage, respiratory problems, shaking, and memory loss.

## N

**Neglect:** Failure to provide a sufficient act or restraint that is necessary.

**Negligence:** Failure to provide reasonable care or protection for others against risk of harm.

## O

**Open head injury:** An open head brain injury, also known as a penetrating head injury, is an occurrence where a foreign object breaks through the skull and punctures the brain.

## P

**Pesticides:** These chemicals are used to kill weeds and insects, and may cause a variety of physical ailments, including brain damage.

**Plaintiff:** The party that is suing or bringing accusations in a lawsuit.

**Pleadings:** The official claim, complaint, accusation, appeal, answer, or reply of each party.

## R

**Respondeat Superior:** A legal rule that holds an employer responsible for the actions of employees.

## S

**Salmonellosis:** Infection with Salmonella species. Found in meat, poultry, egg or milk products.

**Skull fracture:** A skull fracture is a break or split in the skull, as the result of trauma to the head.

**Solvents:** These are dangerous chemicals that can be found in paint and glue that when inhaled, may cause a variety of medical conditions including brain damage.

**Staphylococcus:** Toxin produced by certain strains of *Staphylococcus aureus*; often found in custard or cream-filled baked goods, ham, poultry, eggs, potato salad, cream sauces, sandwich fillings.

**Statutory:** Rules created by a law.

## T

**Target risk:** (1) A large risk that attracts unusually keen competition among insurers, agents or brokers, or, (2) A large, hazardous risk for which insurance is difficult to place.

**Temporary insurance agreement:** A separate contract included with a life insurance application providing coverage to eligible proposed insureds during underwriting, which ends when the application is issued or declined.

**Term insurance:** A type of life insurance policy that provides protection for a specified time period; most do not have cash value.

**Term:** Generally, the period of time for which a policy or bond is issued.

**Theft:** The willful taking of one person's property by another, wrongfully. To recover indemnity, an intent permanently to deprive the owner of his/her property need not be established for there to be a theft under the policy.

**Third party (under a liability insurance policy):** A person, not a party to the insurance contract, who has an alleged or actual claim for injury or damage against the person insured under the policy.

**Total disability:** Frequently defined as the inability to perform any of the duties of one's occupation.

**Toxoplasma gondii:** Parasitic infection caused by contamination from rat, rodent or bird feces; litter boxes.

**TPA:** third party administrator.

**Traumatic brain injury:** A traumatic brain injury is caused by trauma to the head, affecting one or more areas of the brain. This includes injuries from your head hitting an object or an object penetrating your skull.

**Trust agreement:** A supplemental settlement agreement which distributes the proceeds in a special way, much as a regular fiduciary trust does. Insurance companies cannot enter into trust agreements.

**Trustee:** A person appointed to manage the property of another.

**Twisting:** The practice of inducing a policy owner in one company to lapse, forfeit, or surrender a policy for the purpose of taking out a policy in another company. It is a crime in all states and is typically classified as a misdemeanor.

## U

**UL:** Underwriters Laboratories, Inc.

**Umbrella policy:** A liability insurance policy that takes over where basic liability insurance policies leave off. An umbrella policy usually has a liability limit of \$1 million or more, which is added on top of the limit for any other policy, such as a home owners policy that covers liability.

**Underlying limits:** The limits of liability of the policy(ies) underlying an umbrella or excess policy.

**Underwriter:** In short, one who underwrites. An underwriter decides whether to accept or reject applications based on the insurer's written standards, and their own experienced judgment. An agent is often referred to as a "field underwriter."

**Underwriting:** A systematic process for evaluating risks. It involves evaluating, selecting, classifying and rating each risk, and establishing the standards of coverage and amount of protection to be offered to each acceptable risk.

**Unearned premium:** That portion of the premium which has not yet been earned and which is consequently owed to the policyholder if the policy is canceled.

**Unfair trade practices:** Practices that constitute unfair methods of competition or unfair or deceptive acts or practices. They include misrepresentation, twisting, rebating, deceptive or false advertising, inequitable claim settlement, and unfair discrimination.

**Uniform simultaneous death act:** The act which states that, when an insured and beneficiary die at the same time, it is presumed that the former (the insured) survived the latter.

**Universal life:** A life policy that has flexible premiums and death benefits. Premiums are paid into an interest-bearing account from which maintenance fees, if any, and costs of insurance are deducted.

**Use and occupancy insurance:** Protection against actual loss sustained, including loss of net profits and such fixed charges and expenses as must continue during enforced disruption of manufacturing and business operations caused by fire or other contingencies insured against.

## V

**Valued policy:** A form of policy in which the amount of indemnity to be paid in case of loss is fixed by the terms of the policy itself and does not depend on adjustment. This should not be confused with a stated value policy.

**Variable annuity:** Similar to a traditional fixed annuity. Retirement payments will be made periodically to the annuitants, usually over the remaining years of their lives. Under the variable annuity, there is no guarantee of the dollar amount of the payments. Payments will fluctuate up and down in accordance with the value of an account invested primarily in common stocks.

**Variable life insurance:** A policy in which the death benefit and cash surrender values vary according to the investment experience of a separate investment account.

**Verdict:** The jury's final decision of innocence or guilt.

**Viatical settlement:** A settlement that enables a person facing terminal illness to sell a life insurance policy for cash to a third party (i.e., a viatical settlement company), who then becomes the beneficiary of the policy upon the death of the policyholder.

**Vicarious liability:** Under certain circumstances, a person is liable for the actions of (or damage done by) someone else. For example, if the owner of an automobile gives permission to a friend to drive an automobile, and the friend negligently causes an accident, the owner can be held liable.

**VIN:** vehicle identification number.

## W

**Waiver of premium provision:** A provision in a life insurance policy wherein the coverage continues without further premium payments (premiums coming due are waived) if the insured becomes disabled as defined in the policy.

**Waiver:** The voluntary surrender of a known right.

**War clause:** A clause in an insurance contract relieving the insurer of liability, or reducing its liability, for specified loss caused by war.

**Warranty:** A statement made by the applicant which becomes a condition of issuance of the contract. Strictly speaking, a false warranty voids the policy even if it is not material. In practice, U.S. courts are inclined to be lenient towards a policyholder who has made a false warranty which does not materially affect the risk, but British courts still insist upon the truth of warranties.

**Whole life:** A traditional type of life policy (not universal or variable) which provides coverage for the "whole life" of the insured, rather than for a specific term period. The proceeds are paid at the insured's death or at the age specified in the policy, usually age 100 or more, when the insured survives that long.

**Workers' compensation:** The benefits (weekly payments for medical and hospital bills) which an employer is bound by law to provide for his/her employees who are injured on the job, regardless of fault. Every state in the U.S.A. now has a workers' compensation law. These laws vary in detail, but the general intent is the same, namely to make sure that an employee, who is disabled through his/her work, shall not become a public charge.