Maryland Automobile Accident Claims Tips

Complimentary Free Copy

By Marc J. Atas

www.ataslaw.com

matas@ataslaw.com

410-752-4878

6 East Mulberry Street Suite 744

Baltimore Maryland 21202

Maryland Automobile Claims Tips

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What can a lawyer do for me in an automobile accident case?

1) Collect all of the necessary data

Contact an attorney immediately—even before you contact an insurance company– if you are injured in an automobile accident and feel that you are not at fault. Once you contact the attorney, he/she will take an interview from you to determine the full extent of the injury that you have received as a result of an accident and also to determine who is at fault in a particular accident. My office does not charge a fee for the consultation that assesses these two issues.

2) Find a qualified doctor

Initially, if you have been injured and have not received medical treatment, an attorney can help you find the appropriate medical care. Often, specialists like orthopedic surgeons or neurologists have long waiting lists that cause patients to wait months before receiving care. Attorneys can help greatly with this lag time, as they are frequently able to get specialist appointments for their clients in a relatively short period of time, allowing for adequate medical treatment in a much timelier manner.

Individuals who are injured in automobile accidents often find, however, that doctors do not like to get involved in litigation because they do not like going to court. In order to prove to an insurance company and/or a jury that you were in fact injured, a doctor must provide detailed reports connecting the injuries to the accident. A lot of physicians refuse to dictate reports deemed acceptable by the insurance companies, thus it is important to select a doctor who is at least willing to dictate a report after each visit. Each document provided by the medical facility is extremely important in your automobile accident case, as insurance companies base the amount of money that they are willing to offer you upon the documentation available. Visiting a family physician who is unwilling to write a dictated medical report or who scribbles an illegible note on his office chart may result in a smaller settlement than would come from consulting a doctor who is willing to write a fully dictated report clearly outlining the injuries and necessary treatment. Therefore, how well the doctor documents your injuries can be extremely important, as inadequate documentation can lead to less money for the same injury.

3) Help Collect PIP benefits

A lot of insurance policies have coverage called personal injury protection coverage (PIP), which provides coverage for medical expenses and lost wages up to $2,500.00 or more. This amount is paid no matter who is at fault. If you collect under this particular portion of your policy, your insurance company cannot cancel you or raise your rates. If it is later determined that the other person is at fault, the money you've collected is not reimbursed to the insurance company but instead becomes additional money you can use to pay your medical expenses, so that you do not have to later pay for them out of your settlement.

PIP is paid by the insurance company which covers the vehicle that you were in at the time of the accident or if you were a pedestrian, the vehicle that may have struck you. If your medical expenses or lost wages exceeds $2,500.00, PIP will not pay anything over the $2,500.00 limit. PIP is typically paid directly to the medical provider, so that if the medical expenses exceed $2,500.00 and are paid to the doctor, then there will be no PIP benefits available for lost wages.

4) What is a PIP waiver?

A PIP waiver means you cannot collect PIP benefits and occurs in several ways. When the owner of the vehicle you were in at the time of the accident does not purchase PIP coverage from his insurance company, then PIP is waived for the owner of the vehicle as well as anyone who lives with the owner at the time of the accident and is a relative of the owner and over the age of 15. A PIP waiver can apply even though the vehicle you were in has PIP coverage if you live in a household where anyone in that household that you are related to has a vehicle and has waived PIP coverage, then it is waived for anyone in the household when they are involved in an accident even though that vehicle was not involved in the accident. For instance, if you are involved in an accident in your friend's vehicle that has PIP coverage, but you own a vehicle and you have waived PIP under that particular policy or if you live with your parents and they have waived PIP coverage under their policy, then you would not be able to make a PIP claim under the policy for the vehicle involved in the accident, even though that vehicle had PIP coverage. Anyone else who was in the vehicle at the time of the accident who had not waived PIP coverage anywhere else would be able to make a claim for PIP.

5) Fix your car and obtain a rental car quickly

Your attorney will also report your claim to the individual-at-fault's insurance company. If the at-fault party admits fault from the very beginning, your attorney can then make arrangements for your car to be looked at by the other insurance company and for them to provide a rental vehicle. If the other party disputes the liability in the case, however, your attorney can provide the necessary information to convince the insurance company that their insured was at fault and that you were negligence free. Often insurance companies will offer to pay directly for a rental car so that no out of pocket money has to be laid out by the injured party for a rental. Your attorney can be instrumental in minimizing inconvenience to you by getting the insurance company to act in a timely manner to get you a rental car and/or car repairs as quickly as possible. Attorneys are also often familiar with reputable body shops that can repair your car with competence and care.

If the accident was not your fault, then you may get your vehicle repairs paid for either by the insurance company for the person who caused the particular accident or you may be able to get the vehicle repairs paid for under your own insurance policy. If the person, who caused the accident, admits fault quickly then it is always best to get the vehicle fixed under their insurance policy. Once the vehicle is in the shop to be repaired, normally the insurance company will authorize a rental car until the car is fixed. If the person at fault does not admit that they are at fault quickly, then you can get the vehicle fixed under your collision coverage of your policy, subject to a deductible. If your insurance company pays under the collision portion of your policy they will then attempt to get their money back from the person at fault in the accident and will also get you back your deductible.

6) Prevent your insurance company from raising your rates or canceling your policy

If your property damage is fixed under the collision portion of your own policy, then your insurance company may raise your rate or may cancel you, unless they are able to get their money back from the person who was at fault in this particular accident. The insurance company cannot cancel you or raise your rates if you collect PIP benefits no matter who is at fault. If your vehicle is fixed or your claim is settled under the uninsured portion of your policy then your rates will not go up.

7) Help resolve disputes quickly

If there is a dispute as to the liability, your attorney can also contact and make arrangements to get recorded statements from your witnesses, and can provide that information to both insurance companies. Your attorney may also be able to locate other witnesses and may also be able to obtain the police report to contact the police officer for additional information that may be helpful.

8) Obtain medical records promptly

Subsequently, your attorney will obtain all of your medical records and medical bills in order to properly evaluate your claim. Your attorney will then send your medical bills and reports to the insurance company so that they may properly evaluate your claim. This medical documentation is extremely

important as insurance companies handle millions of claims and their total evaluation of a claim is based upon the documentation they have in their file. Good documentation will result in good settlements. Little or no documentation will result in little or no settlement. An attorney will make sure that you receive the proper documentation from your medical provider and will send the proper questions to the doctor if any of the documentation is lacking, to meet insurance company requirements and to adequately settle your claim. It is extremely important to obtain all medical records and all medical bills in your claim. The more documentation that you provide to the insurance company, the more likely it is that you will get a larger settlement. The attorney will also be helpful in obtaining any information regarding any lost wages that you have. The attorney will contact your employer directly.

9) Get the insurance company to rule in your favor

Sometimes insurance adjusters are lazy and unsupportive of their own insured. An attorney can also be helpful in getting your insurance company to help you investigate your claim and can help you stay on top of your own insurance company by feeding them useful information to get them to back you up in a claim. You do not want your insurance company to pay the claim of the other party if you are not at fault because that can affect your insurance rates and ultimately result in a cancellation of your policy. An attorney can be helpful in convincing an insurance company that your position is the correct position and that you are in the right. An attorney may also be helpful in getting your insurance company to spend the necessary time and money to hire experts in order to prove your version of the case.

10) Help with recorded statements and filtering information to the insurance companies

An attorney can be extremely helpful in dealing with the other insurance company. When you speak with the other insurance company, for example, they may ask you to give a recorded statement. Attorneys know to advise you that any statement you give an insurance company can be used against you later in court. It is extremely difficult for people to attest to the same event in exactly the same way each time, so each time you give a recorded statement to someone, it will likely vary from any other statement you've given. This can result in an adverse verdict against you in court, then, because the jury will feel you have changed your story. It is always a bad idea to give a recorded statement or even speak to the insurance company for the other side directly. Even if the statement is not recorded, the insurance adjuster is taking notes that can ultimately be used against you. On the other hand, anything an attorney says to the insurance company cannot be used against you because it is not admissible in court. In addition, an attorney knows what information should be given to an insurance company and what information should not be given to an insurance company. People unfamiliar with the process often give too much information when talking to an insurance company, resulting in an adverse decision by the insurance company. Attorneys are trained to know what is the best way to present your case in a light most favorable to your claim.

11) Submit a convincing and complete demand package

After all of your medical treatment has been completed, an attorney can then submit a demand package to the insurance company. A demand package includes a favorable description of the client and summaries of the accident itself, the liability issues involved, the injuries involved, medical treatment incurred and total medical expenses or other losses. Finally, an evaluation of the claim is submitted to the insurance company along with a demand. I have handled thousands of similar claims and I am extremely familiar with the values of these particular cases. Most clients have no idea of what their case is worth, since they have never been involved in the process before, or if they have been in the process before have only limited experiences.

12) Determine what a case is worth.

In evaluating the value of a claim, the attorney looks at many factors and considers many elements and questions surrounding the accident. Included in those factors is the type of injuries, such as whether fractures or any other physical signs of visible signs of injury exist versus complaints with no visible signs of injury. Questions and considerations include:

Is there a permanent injury?

Who is the client and what kind of witness will the client make?

Where did the accident happen is important since some counties are known to give more generous verdicts than other counties?

Whether there was significant damage to the vehicles involved since judges and juries are more likely to believe injuries in serious looking accidents than they are in minor property damage cases.

What judge do you have?

How long did the treatment last, which doctors performed the treatment, and were there any objective findings in the x-rays or MRI's that would point to proof of injuries?

Is there is any scarring and/or bruising

What is the age and sex of the client?

Whether the client has had any other accidents, as the courts look very closely at cases where a client has filed more than one claim and tend to give less credence to people who have filed many claims

Is the fault clear or disputed?

Lawyers who have been practicing for a long period of time and have tried many cases know how to give weight to each one of these factors. You can see that each case is different and there is no way for a lawyer to tell you the first day of an accident what the case is worth. The lawyer's opinion of the value of the case can change as more information is gathered over a period of time and any lawyer who promises you that he knows the value of your case based upon your initial interview, will most likely not be able to deliver on any promise he makes.

13) Recover money even if the person who causes the accident does not have insurance

If the person who caused the accident doesn't have insurance, then you can collect under the uninsured motorist portion of your policy. Under the uninsured motorist portion of your policy, your insurance company will step into the shoes of the person who was at fault as if they had insurance coverage with your insurance company and will pay everything that you are entitled to receive through the uninsured motorist portion as if they insured the person who was at fault. When benefits are claimed under the uninsured motorist coverage, your own insurance company cannot cancel you or surcharge you or raise your rates.

14) Recover benefits from several sources in a motor vehicle accident

There are many different benefits that you can collect in a motor vehicle accident. The first benefit you can collect is personal injury protection benefits which will pay medical expenses and lost wages up to $2,500.00. Personal injury protection benefits are paid under the insurance policy of the vehicle that you were in. In addition, you can collect for the damage to your car, as well as for the cost of a rental car. Finally, you can collect from the person that is at fault medical expenses for the past, present and future, lost wages for the past, present and future, an additional amount for pain and suffering, and damages for loss of consortium which means any loss to your marriage. These benefits are in addition to any benefits paid by your personal injury protection carrier.

15) Settle your claim promptly

Times vary on how long it takes to settle an automobile accident claim, although it can be divided into two categories. Category one would be cases that are quickly accepted by the insurance company and typically these cases involve the client going to the doctor and completing their treatment. Then, usually thirty to forty-five days after the client has completed the treatment the case can be settled. Category two are the cases that cannot be settled. In category two there are also two types of cases. Cases worth less than $30,000.00 usually involve filing suit in the District Court. These cases can take anywhere between three to six months after your treatment is completed. Cases that have to be filed in the Circuit Court which are typically worth more than $30,000.00 usually take anywhere from one to three years.

What information do I need to obtain at the accident scene if I am involved in an automobile accident?

Your name

Driver of car you were in

Address

Insurance Company Agent

Phone Policy No.:

Address Insured

Claim No.

Adjuster Phone

Make Model Color Year

Tag No. State Drivable Yes No

Damage Location of Car

PIP Amount Collision DED Rental Yes No

Defendant Driver Phone

Address Drivers License No.

Insurance Company Agent

Phone Policy No.

Address Adjuster

Phone

Claim No. Insured

Defendant Owner Phone

Address

Make Model Color Year

Tag No. State Driveable Yes No

Damage

Police Department District

Officer Phone

Complaint No. Tickets

To Whom Charged With

Fire Department Ambulance

Witness Location

Address Phone (H)

(W)

Witness Location

Address Phone (H)

(W)

How much do car accident lawyers charge?

There is no standard fee that a car accident lawyer can charge his client It is against the law, for lawyers to collude and agree that every lawyer in a State would charge the same fee for the same service. Under Maryland law while there is no minimum fee for a car accident case or automobile accident case, the Courts as well as the attorney grievance commission has made it clear that an attorney fee should not be unreasonable and seems to have defined unreasonable as any fee greater than 40% contingency fee plus expenses. The Law Office Of Marc J. Atas And Associates charges a contingency fee of one third of any settlement offer made prior to filing suit, and can charge up to forty percent of any settlement offer or verdict paid after suit has been filed.

Most people involved in a car accident cannot afford to pay an attorney by the hour to represent them in a car accident case. If the lawyer charged by the hour at the going rate of $200.00 per hour to as high as $450.00 per hour and asked for a Retainer up front (for instance $2500.00 up front), most clients would not be able to afford to pay the retainer or the cost per hour.

In order to solve the problem of the little guy fighting the big insurance company, the contingency fee arrangement has answered the question How much do car accident lawyers charge? A contingency fee means that if there is no recovery in the client's case then there will be no fee. If there is a recovery in

the client's case than the fee will be a percentage of whatever the client recovers. No money is paid by the client until the end of the case and only paid if money is won.

In addition to the contingency fee, most, if not all lawyers also expect to be reimbursed, for expenses incurred in order to prove or win your case. Many lawyers advertise or tell the clients directly that there is no fee unless they win without explaining to the client that it is their intention if the cases lost, to hold the client responsible for any expenses incurred. The attorney grievance commission of Maryland has made it clear that if the attorney intends to collect expenses from the client even if the cases lost, then the client must be told that information upfront both in writing as well as orally. Any statement that there is no fee unless client wins the case is misleading if in fact the lawyer intends to collect expenses of the cases lost. Make sure upfront, that no fee unless you win includes no repayment of fees unless you win. The no fee or expenses unless we win has always been the policy at the Law Office of Marc J. Atas and Associates.

A typical fee in a personal injury or car accident claim in Maryland is one third of whatever recovery is made for the client in their case prior to filing suit and if suit is filed than the fee becomes 40% of any money recovered. As an example, if a case is settled for $12000.00, and there are $150.00 in expenses and medical bills of $2500.00, then the fee is $4000.00, and the client will receive $5350.00 after payment of the attorney fee, expenses and the medical bills. The percentage is taken from the gross settlement and not a percentage after expenses and medical bills are deducted.

Every law firm in addition to the contingency fee charge for expenses. Expenses typically cover the cost of filing suit and any other court costs, as well as the cost to take a deposition. Depositions are taken in the case in order to find out what the witnesses are going to say when the case goes to court. Depositions are taken in a lawyer's office in front of a court reporter who charges for their time in order to take down everything the witnesses sang and prepare a transcript.

In cases that are actually going to court it is often required that doctors' and other medical experts that provided medical treatment in your case as well as any experts that are providing any expert opinion in the case are going to have to be paid in order to give their testimony. Often these experts testify by way of a video deposition. Video deposition costs include the court reporter, a videographer, as well as any expert fees for witnesses that you are calling to testify as experts. If you intend to use an expert in court it's less costly to take the video deposition of the expert. The cost involves the person typing the transcript which is the court reporter, the person videotaping the deposition which is the videographer, and finally the cost of the expert witness. A typical Doctor deposition can cost between $3500.00 and $10,000.00. If you bring the medical expert into court while you may save the cost of the videographer and the court reporter, the expert will require more money up front because the witness has to appear in court and will have to block out their entire day for your case, instead of fitting you in at the end of the day at his office. A video deposition taken in the expert's office can involve one or two hours of your experts' time. Whereas when the expert actually comes the court, they typically have to block out either a half or their entire day and charge you accordingly. So that while a doctor may charge $300 an hour to testify at a video deposition and the bill for the expert may run $1200 or $1500 including the doctors' preparation, if the doctor comes to court then the fee would be more likely be five or $10,000 after they block off their entire day.

Not all cases involve bringing the doctor in as an expert to testify and in those particular cases the expense of bringing in a doctor is avoided.

In an auto accident or car accident claim that is of a serious nature, it is often necessary to have at least one if not two or three medical experts to testify in your case. While the attorney may advance those costs as the client likely doesn't have the money, the ultimate responsibility for those costs are the clients since the money will be deducted from any settlement or jury or court verdict in the client's case.

Examples of other expenses that are incurred by the lawyer and can be involved in a personal injury claim would include hiring a private investigator in order to conduct an investigation with all the witnesses, hiring a private process server to serve the defendant as well as serving all the witnesses so that they appear in court.

Other possible expenses in a car accident claim include accident reconstruction experts, economists, vocational rehabilitation experts, a life care planner.

Some law firms charge for photocopy charges, stamps, fed-ex costs, and personal injury protection fees. These seem like they should be more like the cost of doing business rather than expenses charged to the client but many firms do charge for these expenses. The Law Office of Marc J. Atas and Associates never charges for these expenses.

As you can see there are many costs involved in filing a personal injury car accident or auto accident claim. If lawyers were not willing to take your case on a contingency fee, then most clients would not be able to pursue their car accident claim because they could not afford it. In order to solve the cost issue, the contingency fee was set up so that the lawyer would advance all the costs in the case, do all the work in the case and wait until the end of the case in order to get paid.

What determines who is responsible in an auto accident?

Once the initial interview is taken, the first responsibility of the lawyer for the injured party in a car or auto accident case is to determine who is at fault. Until the Insurance company agrees that their customer (insured) is a fault they are not going to pay the claim. Until the Insurance company for the at fault vehicle accepts the claim, they will not make any payments. Unless you want to proceed against your own insurance company, then the other insurance company must be convinced they are at fault and therefore own the accident.

Sometimes insurance adjusters are lazy and unsupportive of their own insured. An attorney can also be helpful in getting your insurance company to help you investigate your claim and can help you stay on top of your own insurance company by feeding them useful information to get them to back you up in a claim. You do not want your insurance company to pay the claim of the other party if you are not at fault because that can affect your insurance rates and ultimately result in a cancellation of your policy. An attorney can be helpful in convincing an insurance company that your position is the correct position and that you are in the right. An attorney may also be helpful in getting your insurance company to spend the necessary time and money to hire experts in order to prove your version of the case.

An attorney can be extremely helpful in dealing with the other insurance company. When you speak with the other insurance company, for example, they may ask you to give a recorded statement. Attorneys know to advise you that any statement you give an insurance company can be used against

you later in court. It is extremely difficult for people to attest to the same event in exactly the same way each time, so each time you give a recorded statement to someone, it will likely vary from any other statement you've given. This can result in an adverse verdict against you in court, then, because the jury will feel you have changed your story. It is always a bad idea to give a recorded statement or even speak to the insurance company for the other side directly. Even if the statement is not recorded, the insurance adjuster is taking notes that can ultimately be used against you. On the other hand, anything an attorney says to the insurance company cannot be used against you because it is not admissible in court. In addition, an attorney knows what information should be given to an insurance company and what information should not be given to an insurance company. People unfamiliar with the process often give too much information when talking to an insurance company, resulting in an adverse decision by the insurance company. Attorneys are trained to know what is the best way to present your case in a light most favorable to your claim.

Figuring out who is at fault in a traffic accident is a matter of deciding who was careless. And for vehicle accidents, there is a set of official written rules telling people how they are supposed to drive and providing guidelines by which liability may be measured. These rules of the road are the traffic laws everyone must learn to pass the driver's license test. Complete rules are contained in each state's Vehicle Code, and they apply not only to automobiles but also to motorcycles, bicycles and pedestrians.

While there are thousands of traffic laws that deal with drivers' obligations to each other, there are some basic traffic rules which repeatedly appear relevant in determining liability.

Negligence is doing something that a person using reasonable care would not do, or not doing something that a person using reasonable care would do. Reasonable care means that caution, attention or skill a reasonable person would use under similar circumstances.

A reasonable person changes conduct according to the circumstances and the danger that is known or would be appreciated by a reasonable person. Therefore, if the foreseeable danger increases, a reasonable person acts more carefully.

The violation of a statute, which is a cause of plaintiff's injuries or damages, is evidence of negligence.

Striking a stopped car or a moving car in the rear

If you change lanes and hit another car in the lane you are changing into

If you run a red light and collide with a vehicle that has a green light

If you run a stop sign and collide with a vehicle that did not have a stop sign

If you fail to yield the right of way at a yield sign and collide with a vehicle that did not have a yield sign

If you make a left turn, in front of traffic going in the opposite direction

If you pull from a park position and hit another vehicle on the boulevard

If you pull out of a parking lot or side street and collide with a car on the boulevard

If you stop at a red light and make a right turn on red or go straight after you stop while the light is still red and collide with a vehicle that has a green light

If you stop at the stop sign and then proceed and collide with a vehicle that did not have a stop sign

Crossing the center line

There are also rules of the road that do not necessarily make a party at fault.

Speeding- just because someone was speeding does not give you the right to cut them off

Vehicles that came out of nowhere- Lawyers hear this all the time. But this is ridiculous, vehicles do not come from nowhere. You just did not see them.

A person making a left- hand turn at an intersection waits until the light turns red and then in order to clear the intersection makes a left turn on a red light and is struck by a car whose light just turned green. The person with the green light could be at fault because the car at the intersection had the right to clear the intersection and the car at the green light should have waited before they cleared the intersection before they proceeded.

In some states, not buckling up can negate or reduce any potential compensation for damages, on the basis that people suffer more severe and expensive injuries when they're not wearing seat belts. In other states, this is not the rule. In Maryland for example, the primary seat belt law went into effect October 1, 1997 and the non-use of a seat belt is not admissible evidence in injury cases

What happens if the cause of the accident is not clear?

It is sometimes difficult to say that one particular act caused an accident. If you can show that the other driver made several minor driving errors or committed several minor traffic violations, then you can argue that the combination of those actions caused the accident. Almost half the states have some form of no-fault auto insurance, also called personal injury protection. Often there is a dispute about how the accident happened. Both sides tell the story in such a way that if their story were true, then they would not be at fault. Most of the time when there are conflicting stories, it is not likely that both parties are correct in their assessment about what happened. While some people do lie in order to avoid being responsible for the other person's damage, more often than not the parties just remember the facts differently. It is not unusual to have cases were each side differs in what happened and each side has independent witnesses who also differ as to what happened in a case. For these situations, that is why

they have courts to try and resolve the situation. At trial a good lawyer, can through direct and cross examination, explore the:

(1) the witness's behavior on the stand and way of testifying;

(2) the witness's opportunity to see or hear the things about which testimony was given;

(3) the accuracy of the witness's memory;

(4) did the witness have a motive not to tell the truth?;

(5) does the witness have an interest in the outcome of the case?;

(6) was the witness's testimony consistent?;

(7) was the witness's testimony supported or contradicted by other evidence?; and

(8) whether and the extent to which the witness's testimony in the court differed from the statements made by the witness on any previous occasion.

What if the accident was partially or totally my fault?

If the accident was partially or totally your fault, then you cannot win in a motor vehicle case unless you can prove last clear chance.

A plaintiff cannot recover if the plaintiff's negligence is a cause of the injury.

Contributory negligence

The defendant has the burden of proving by a preponderance of the evidence that the plaintiff's negligence was a cause of the plaintiff's injury.If the other driver can prove that any action you took violated a traffic law and was a cause even if not the sole cause of the accident then you cannot prevail in the state of maryland. Maryland is one of three states that accepts contributory negigence as an absolute defense in an auto accident case. So if the other driver is theoretically 99% att fault and you are only one percent at fault in the state of Maryland you lose.Bottom line in order to prevail in a car accident case yopu must be negligence free.

Assumption of Risk

The other defense in a car accident case is assumption of risk.A plaintiff cannot recover if the plaintiff has assumed the risk of the injury. A person assumes the risk of an injury if that person knows and understands the risk of an existing danger or reasonably should have known and understood the risk of an existing danger, and voluntarily chooses to encounter the risk. An example of this is when you get in a car as a passenger where you know the driver of the car is intoxicated. Once you allow that person to drive, you know they are impaired, thsat there is a greater risk when you travel in a car with a driver

who is impaired and if that person later has an accident yiou have agreed to assume that risk and therefore you cannot sue them.

LAST CLEAR CHANCE

The only rebuttal to the defense of contributory negligence is last clear chance. A plaintiff who was contributorily negligent may nevertheless recover if the plaintiff was in a dangerous situation and thereafter the defendant had a fresh opportunity of which defendant was aware to avoid injury to the plaintiff and failed to do so.an example of this would be if defendant was making a left hand turn in front of plaintiff who is speeding and going straight. Both cars have a green light. Both cars are violating the rules of the road. However after the car that is turning left realizes the car ging straight is speeding, he then has a fresh opportunity to stop turning but decides to continue turning left and the vehicles collde.

What if I believe the accident was partly my fault?

You are probably not in the best position to assess how or why the accident happened. Defective equipment in your vehicle, a malfunctioning traffic signal, or another driver's intoxication are among many possible causes of an accident, which your attorney can investigate and evaluate. Accepting blame and apologizing to another driver may be used as evidence against you at trial. Leave it to a judge or jury to decide who is at fault.

Can I still Win My case if my memory of the accident now conflicts with things I might have said at the time of the accident?

It's very common for people to say things at the time of an incident that they later realize were inaccurate. Sometimes, a witness may misstate what you said about how the incident took place. You might have a hard time explaining how it is that you now remember things differently than you did at the time of the incident, but if you consult with an attorney, he or she will have experience handling such a situation, and can help find support for your side of the story.

I was in a car accident and the airbags did not deploy. Do I have a case against the automobile manufacturer?

That depends, as there are several factors that dictate whether an air bag will deploy in a collision. 65 to 90 percent of vehicles on the road in the U.S. have some degree of electronic data recorder (EDR). Contents of your EDR should be downloaded and preserved. If the circumstances of your accident were such that the airbags should have deployed, you very well may have a product liability claim against the manufacturer. A suit against an automobile manufacturer or airbag company can be extremely expensive to pursue. These companies aggressively defend these claims. Unless your case involves serious permanent injuries or death, most lawyers cannot afford to pursue these claims as the costs to win will exceed the recovery.

What benefits can I collect in a motor vehicle accident?

There are many different benefits that you can collect in a motor vehicle accident. The first benefit you can collect is personal injury protection benefits which will pay medical expenses and lost wages up to $2,500.00. Personal injury protection benefits are paid under the insurance policy of the vehicle that you were in.

In addition, you can collect for the damage to your car, as well as for the cost of a rental car. Finally, you can collect from the person that is at fault medical expenses for the past, present and future, lost wages for the past, present and future, an additional amount for pain and suffering, and damages for loss of consortium which means any loss to your marriage. These benefits are in addition to any benefits paid by your personal injury protection carrier. In affect you can be paid twice for medical expenses and lost wages.

We will now discuss in greater detail all of these benefits.

What Is PIP?

PIP stands for Personal Injury Protection and is insurance coverage which is paid by the insurance company for the vehicle that you were in at the time of the accident or if you were a pedestrian the vehicle that may have struck you. PIP pays medical expenses and/or lost wages up to $2,500.00 unless in your policy PIP benefits exceed $2,500.00. These benefits are paid no matter who is at fault, as long as your policy carries the coverage. If your medical expenses or lost wages exceeds $2,500.00 PIP will not pay anything over the $2,500.00 limit.

PIP is typically paid directly to the medical provider, so that if the medical expenses exceed $2,500.00 and are paid to the doctor, then there will be no PIP benefits available for lost wages. If you need to collect your lost wages immediately, then inform your Baltimore auto accident attorney that you would like the PIP benefits to be used for your lost wages first, instead of paying the doctors first.

If you collect under this particular portion of your policy, your insurance company cannot cancel you or raise your rates. If it is later determined that the other person is at fault, the money you've collected is not reimbursed to the insurance company but instead becomes additional money you can use to pay your medical expenses, so that you do not have to later pay for them out of your settlement.

What is a PIP waiver?

A PIP waiver means you cannot collect PIP benefits and occurs in several ways. When the owner of the vehicle you were in at the time of the accident does not purchase PIP coverage from his insurance company, then PIP is waived for the owner of the vehicle as well as anyone who lives with the owner at the time of the accident and is a relative of the owner and over the age of 15. A PIP waiver can apply even though the vehicle you were in has PIP coverage if you live in a household where anyone in that household that you are related to has a vehicle and has waived PIP coverage, then it is waived for anyone in the household when they are involved in an accident even though that vehicle was not

involved in the accident. For instance, if you are involved in an accident in your friend's vehicle that has PIP coverage, but you own a vehicle and you have waived PIP under that particular policy or if you live with your parents and they have waived PIP coverage under their policy, then you would not be able to make a PIP claim under the policy for the vehicle involved in the accident, even though that vehicle had PIP coverage. Anyone else who was in the vehicle at the time of the accident who had not waived PIP coverage anywhere else would be able to make a claim for PIP.

Property Damage coverage

5) Fix your car and obtain a rental car quickly

Your attorney will also report your claim to the individual-at-fault's insurance company. If the at-fault party admits fault from the very beginning, your attorney can then make arrangements for your car to be looked at by the other insurance company and for them to provide a rental vehicle. If the other party disputes the liability in the case, however, your attorney can provide the necessary information to convince the insurance company that their insured was at fault and that you were negligence free. Often insurance companies will offer to pay directly for a rental car so that no out of pocket money has to be laid out by the injured party for a rental. Your attorney can be instrumental in minimizing inconvenience to you by getting the insurance company to act in a timely manner to get you a rental car and/or car repairs as quickly as possible. Attorneys are also often familiar with reputable body shops that can repair your car with competence and care.

If the accident was not your fault, then you may get your vehicle repairs paid for either by the insurance company for the person who caused the particular accident or you may be able to get the vehicle repairs paid for under your own insurance policy. If the person, who caused the accident, admits fault quickly then it is always best to get the vehicle fixed under their insurance policy. Once the vehicle is in the shop to be repaired, normally the insurance company will authorize a rental car until the car is fixed. If the person at fault does not admit that they are at fault quickly, then you can get the vehicle fixed under your collision coverage of your policy, subject to a deductible. If your insurance company pays under the collision portion of your policy they will then attempt to get their money back from the person at fault in the accident and will also get you back your deductible.

Rental Car

What type of rental car am I entitled to and for how long am I entitled to a rental car?

The simple answer is under Maryland law you are entitled to a replacement vehicle (rental car) while your vehicle is being repaired comparable to the vehicle you had at the time of the accident. It is not acceptable to provide a compact car when you were driving an SUV at the time of the accident. When your car is involved in a Maryland automobile accident and is not drivable you are entitled to be reimbursed for the cost of a rental car immediately and your right to a rental car shall continue until your car has been repaired. Most insurance companies provide a rental car because they are able to provide them at a reduced rate. The length of time for the rental car depends upon the reasonable period of time it will require to fix the vehicle. If it takes time to order parts than that time is included in

the period for using a rental car. If your car is drivable then the parts should be ordered in advance by the shop and once the parts have been obtained then the car should be left with the shop for repairs. Issues often arise when the shop provides faulty work or the delay in repairs is due to the fault of the shop. When the delay in repairs is due solely because of the fault of the shop as when the vehicle takes twice as long to repair because the shop has poorly trained workers or too much work and not enough help, then the insurance company may no longer be responsible for the delay and at that point a remedy should be expected from the shop.

It has long been the assumption, as reflected in the applicable Maryland Civil Pattern Jury Instruction, that "[t]he measure of damages for loss of use is the reasonable rental value of comparable property." Maryland Civil Pattern Jury Instruction 10:21(d) (emphasis supplied). As a NewYork intermediate appellate court said nearly a hundred years ago, "The practice has obtained in these damaged vehicle cases of allowing the cost of the actual hire of another vehicle similar to that damaged; and this custom has prevailed, we think, largely because the measure of damage is rarely objected to." Naughton Mulgrew Motor Car Co. v. Westchester Fish Co., 173 N.Y.S. 437, 438 (N.Y. App. Div. 1918).

That practice is supported by Maryland's case law. Specifically, the requirement that the rental vehicle be "comparable" stems from the general rule that "the measure of damages for injury to personal property, which has not been totally destroyed, 'is the cost of repairing the property together with the value of the use of the property during the time it would take to repair it.'" Hopper, McGraw Co., Inc. v. Kelly, 145 Md. 161, 167 (1924) (parentheses omitted), quoting Washington, Baltimore and Annapolis Railway Co. v. William A. Fingles, Inc., 135 Md. 574, 579-80 (1920), in turn quoting 17 Corpus Juris, page 877.

In Weishaar v. Canestrale, 241 Md. 676 (1966), the plaintiff, immediately after the accident, ordered a replacement for his truck that had been "destroyed" in the accident. Id. at 684. "Because the body had to be specially fabricated for his use, delivery was not accomplished until five weeks later, during which time, in order to continue his business, he was obliged to hire a truck." Id. During those five weeks, the plaintiff paid $875 to rent a truck. The defendant contended that the plaintiff was not entitled to recover those expenses. The Court of Appeals disagreed. See id. at 684-86. Quoting a comment to § 927 of the First Restatement of Torts (1939), the Court said that "'damages can properly include an amount for expenses in procuring a necessary substitute or for the value of the use of a substitute until a replacement of the subject matter can be made.'" Id., 241 Md. at 684.

One of the cases which the Court cited in its discussion was the Fourth Circuit's decision in Chesapeake & Ohio Railway Co. v. Elk Refining Co., 186 F.2d 30 (4th Cir. 1950), in which the court said: "We think that the expense to which the refining company was put in hiring another tractor-trailer unit to take the place of that which had been damaged until the tractor could be repaired and another trailer obtained should have been allowed as an element of damages." Id. at 32.

Courts in other jurisdictions have held that the loss of the use of a motor vehicle is measured by the reasonable rental cost of a comparable motor vehicle. See Lenz Construction Co. v. Cameron, 674 P.2d 1101, 1103 (Mont. 1984) (the "general measure of loss-of-use damages" is "the reasonable rental value of a comparable machine for the period of time necessary for replacement, regardless of whether another machine is actually rented"); Husebo v. Ambrosia, Ltd., 283 N.W.2d 45, 47 (Neb. 1979) ("the correct measure" of "the reasonable value of the use of the motor vehicle injured while it is being repaired with ordinary diligence" is "that amount which does not exceed either the fair rental value of a

vehicle of like or similar nature and performance for a reasonable length of time, or the amount actually paid, whichever is the least"); Roberts v. Pilot Freight Carriers, Inc., 160 S.E.2d 712, 718 (N.C. 1968) He is not entitled to recover the rental cost of a more valuable vehicle. The Court of Appeals said in Washington, Baltimore and Annapolis Railway Co. v. William A. Fingles, Inc., supra, 135 Md. at 581:

If there had been evidence that the automobile hired by the plaintiff was more valuable than the car that was damaged, or that the rental value of the hired car was greater than the rental value of the damaged car, or that the rate paid by plaintiff for the use of the hired car was unreasonable or excessive, there would have been more ground for complaint. (Emphasis in original.) In the same sense, the plaintiff here is rightfully entitled to complain if the vehicle with which he is provided is less valuable than the SUV that was damaged, or if the rental value of the hired car is less than the rental value of the SUV.

In fact, the plaintiff is not required actually to rent a vehicle in order to recover the reasonable rental cost. See King v. American Family Mutual Insurance Co., 501 N.W.2d 24 (Wis. 1993); Cress v. Scott, 868 P.2d 648 (N.M. 1994); Holmes v. Raffo, 374 P.2d 536, 540-42 (Wash. 1962); Camaraza v. Bellavia Buick Corp., 523 A.2d 669, 671-72 (N.J. Super. Ct. App. Div. 1987); Warren v. Heartland Automotive Services, Inc., 144 P.3d 73, 78-79 (Kan. Ct. App. 2006); Meakin v. Dreier, 209 So.2d 252 (Fla. Dist. Ct. App. 1968); Naughton Mulgrew Motor Car Co. v. Westchester Fish Co., supra, 173 N.Y.S. at 438-40. As the Supreme Court of Washington said in this regard:If we were to hold that a plaintiff who has lost the use of his pleasure automobile, which itself does not have a market rental value or pecuniary value to a business, but which does have a usable value to the plaintiff, cannot be compensated because he has not hired a substitute automobile, we would be placing upon recovery a condition of financial ability to hire another automobile to take the place of the injured automobile. The law cannot condone such a condition. He would be denied compensation for his inconvenience resulting from the defendant's wrongful act. Holmes v. Raffo, supra, 374 P.2d at 542.

Barnes v. United Railways Co., 140 Md. 14, 116 Atl. 855 (1922) is cited in support of the proposition that when a motor vehicle is totally destroyed, and there is a recovery for its full value, there can be no recovery for loss of use. There was dictum to that effect in Barnes and, generally speaking, it is a correct statement of the law but there is a well recognized exception, which, while we seem not to have had occasion to consider it in the past, is, nevertheless, applicable in the case at bar. In the comment to § 927 of the Restatement, Torts (1939) it is said that "damages can properly include an amount for expenses in procuring a necessary substitute or for the value of the use of a substitute until a replacement of the subject matter can be made * * *."

Guido, et al. v. Hudson Transit Lines, 178 F.2d 740 (3rd Cir.1950), in the words of Judge Goodrich, who wrote the court's opinion, "is an almost perfect moot court case," and, we might add, singularly apposite to the instant case. The plaintiff there, because of post-war shortages, was not able to buy a new truck for two years. There was no attack upon the reasonableness of plaintiff's conduct nor the accuracy of his testimony. The same is true in respect of Canestrale. We think the language of Judge Goodrich, which we quote below, states the proper rule to be applied in the case at bar:

"The rule is well established that the measure of damages for the conversion or destruction of a chattel is the market value of the chattel at the time and place of the conversion or destruction. While this is sometimes 685*685 stated as though it were a rule applicable to vehicles it is a general rule applicable

to all kinds of chattels. The justification for it is that this provides a convenient rule of thumb and, in case the article is readily replaceable on the open market, compensates the owner for his loss.

How Does The Insurance Company Determine My vehicle is a Total Loss?

When your vehicle is involved in a serious accident, you may find out that the insurance company has decided to declare your vehicle a total loss. Whether an Insurance Company declares a vehicle a total loss is governed by Maryland law and is not arbitrarily left up to the Insurance Company. A vehicle is a total loss according to Maryland Law if [(9) “Total loss” means the condition of a motor vehicle for which:(a) The cost of repairs equals or exceeds:(i) The actual cash value of the motor vehicle as calculated in accordance with Regulation .04 of this chapter; or(ii) A percentage of the actual cash value of the motor vehicle established by the insurer and calculated in accordance with Regulation .04 of this chapter; or(b) The total cost to repair the motor vehicle, plus the estimated cost of potential repairs from hidden damage, plus any anticipated rental coverage, may equal or exceed:(i) The actual cash value of the motor vehicle as calculated in accordance with Regulation .04 of this chapter; or(ii) A percentage of the actual cash value of the motor vehicle established by the insurer and calculated in accordance with Regulation .04 of this chapter.

The process seems arbitrary when dealing with the Insurance Company on the issue of the value for the total loss of your vehicle. However, it should not be arbitrary and there is a specific procedure and formula spelled out in the Code of Maryland Regulations. Rather than following the requirements of the State regulation the Insurance Companies have been hiring outside vendors who allegedly go on the internet and find similar vehicles for sale. Often if you follow up on their paperwork you realize that few if any of the alleged vehicles are actually for sale. In addition, state regulations do not recognize the insurance company outside vendor method of evaluating total losses.

The Code of Maryland Regulation Maryland Insurance administration section:31.15.12.02B9 defines when a vehicle is a total loss:

(9) “Total loss” means the condition of a motor vehicle for which:

(a) The cost of repairs equals or exceeds:

(i) The actual cash value of the motor vehicle as calculated in accordance with Regulation .04 of this chapter; or

(ii) A percentage of the actual cash value of the motor vehicle established by the insurer and calculated in accordance with Regulation .04 of this chapter; or

(b) The total cost to repair the motor vehicle, plus the estimated cost of potential repairs from hidden damage, plus any anticipated rental coverage, may equal or exceed:

(i) The actual cash value of the motor vehicle as calculated in accordance with Regulation .04 of this chapter; or

(ii) A percentage of the actual cash value of the motor vehicle established by the insurer and calculated in accordance with Regulation .04 of this chapter.

In laymen's terms a vehicle is a total loss when the value of the vehicle is less than the cost to repair the vehicle.

Code of Maryland Regulation Maryland Insurance administration section:31.15.12.03 thru 31.15.12.07 provide regulations on how to determine the value of a total loss and Insurance Companies must follow these regulations or be subject to penalties from the Insurance Commissioner. 1. An offer on a total loss must be made within 10 days of an Insurance company accepting liability. 2. The insurer's minimum offer, subject to applicable deductions, shall be: A. The total of: (1) The retail value for a substantially similar motor vehicle from a nationally recognized valuation manual or from a computerized data base that produces statistically valid fair market values for a substantially similar vehicle as defined in Regulation .02B(7) of this regulation; and (2) Regardless of whether the claimant retains salvage rights, the applicable taxes and transfer fees pursuant to COMAR 11.11.05; or B. The total of: (1) A quotation for a substantially similar motor vehicle obtained by or on behalf of the insurer from a qualified dealer at a location reasonably convenient to the claimant; and (2) Regardless of whether the claimant retains salvage rights, the applicable taxes and transfer fees pursuant to COMAR 11.11.05.

Insurance companies regularly violate this provision by refusing to use Kelly Blue Book or NADA evaluations or failing to at least take these into consideration when valuing a total loss. They say they are complying by using an outside service that represents a computerized data base that produces statistically valid fair market values for a substantially similar vehicle, however it does not appear to be a data base but a system that compares values by making calls. Further rarely is a quotation from a qualified dealer at a location reasonably convenient to the claimant.

Once a total loss offer is made the Insurance company must provide you the basis for the offer including any deductions made for the condition of the vehicle and mileage deductions.

You as the Owner of the vehicle have a right to reject the Total loss offer and make a counter offer based upon the following factors: (a) Dealer quotations for a substantially similar motor vehicle; (b) Advertisements for a substantially similar motor vehicle; or (c) Any other source of valuation for a substantially similar motor vehicle.

If an insurer rejects a claimant's counteroffer for the total loss made pursuant to §A(2) of this regulation, the insurer shall, within 5 business days, send to the claimant a written explanation in clear and understandable language of why the information relied on by the claimant in the counteroffer does not provide a more accurate valuation than the information relied on by the insurer in its offer.

If you are not happy with the Insurance Company offer for your total loss claim than you should contact dealers in your area for a written estimate asking them what they would sell a car just like yours was before the accident if they had one on their lot. If the dealer has a similar car in similar condition and mileage on their lot, then that would be the best evidence of total loss value. Finally, if all else fails, you can look in the newspaper or on the internet for vehicles similar to yours in mileage and conditions and present them to The Insurance Company.

.03 Duties of Insurer Following Determination of Total Loss of Motor Vehicle.

The deadlines set by §§B—D of this regulation do not apply to a claim for damage that results in the total loss of a motor vehicle if:

(1) There is a good faith dispute as to the obligation of the insurer under the contract; or

(2) There are factors beyond the control of the insurer that prevent the insurer from complying with the deadlines set by §§B—D of this regulation, including a vehicle that is limited in production, specialty in nature, or older than 10 model years at the time of the total loss.

First-Party Claimants—In General. Except as provided in §C of this regulation, within 10 business days after an insurer determines that a motor vehicle of a first-party claimant is a total loss, the insurer shall:

(1) Make an offer of a cash settlement pursuant to Regulation .04 of this chapter; or

(2) If authorized by the policy, replace the motor vehicle pursuant to Regulation .07 of this chapter.

First-Party Claimants—Unrecovered Theft Loss. In the case of an unrecovered theft loss of the motor vehicle of a first-party claimant, an insurer shall make an offer for the total loss within the later of:

(1) 30 days after receipt of notification of a claim; or

(2) The time provided in the policy.

Third-Party Claimants. Within 10 days after an insurer determines that a motor vehicle of a third-party is a total loss, the insurer shall make an offer of a cash settlement pursuant to Regulation .04 of this chapter.

Code of Maryland Regulation Maryland Insurance administration section:31.15.12.04

.04 Cash Settlement.

If an insurer elects to make a cash settlement for the total loss of a motor vehicle pursuant to Regulation .03 of this chapter, the insurer’s minimum offer, subject to applicable deductions, shall be:

The total of:

(1) The retail value for a substantially similar motor vehicle from a nationally recognized valuation manual or from a computerized data base that produces statistically valid fair market values for a substantially similar vehicle as defined in Regulation .02B(7) of this regulation; and

(2) Regardless of whether the claimant retains salvage rights, the applicable taxes and transfer fees pursuant to COMAR 11.11.05; or

The total of:

(1) A quotation for a substantially similar motor vehicle obtained by or on behalf of the insurer from a qualified dealer at a location reasonably convenient to the claimant; and

(2) Regardless of whether the claimant retains salvage rights, the applicable taxes and transfer fees pursuant to COMAR 11.11.05.

Code of Maryland Regulation Maryland Insurance administration section:31.15.12.05

Code of Maryland Regulation 31.15.12.02B7

(7) “Substantially similar motor vehicle” means a motor vehicle that, in comparison to a damaged motor vehicle:

(a) Is the same make and model as the damaged motor vehicle;

(b) Is the same year as, or a more recent year than, the damaged motor vehicle;

(c) Contains at least the same major options as the damaged motor vehicle;

(d) Is in a condition substantially similar to or better than the condition of the damaged motor vehicle immediately before the damage occurred; and

(e) Has mileage that is within the greater of 4,000 miles or 10 percent of the mileage on the damaged motor vehicle at the time that the damage occurred unless the vehicle is limited in production, specialty in nature, or older than 10 model years at the time of total loss.

.05 Contents of Settlement Offer.

In General. A settlement offer made by an insurer pursuant to Regulation .04 of this chapter shall:

(1) State the amount being offered;

(2) Inform the claimant that, on request from the claimant, the insurer shall provide the claimant in writing:

(a) A copy of the settlement offer;

(b) The method used to arrive at the value of the motor vehicle, including identification of any books, manuals, or databases used;

(c) A detailed explanation of the insurer’s calculation of the motor vehicle’s total loss value, including the calculation of any value added to the motor vehicle by options;

(d) A list of all deductions that will be made from the value of the motor vehicle; and

(e) A copy of the inspection guidelines relied on by the insurer to determine the condition of the vehicle at the time of the loss; and

(3) Inform the claimant that the claimant may, in writing, reject the settlement offer and make a counteroffer in accordance with Regulation .06 of this chapter.

If a claimant makes a request under §A(2) of this regulation, the insurer shall provide a response within 7 business days of the date of the request.

Code of Maryland Regulation Maryland Insurance administration section:31.15.12.06

.06 Response by Claimant to Settlement Offer.

In General. After receipt of a settlement offer, a claimant may:

(1) Accept the offer; or

(2) In writing, reject the offer and make a counteroffer based on:

(a) Dealer quotations for a substantially similar motor vehicle;

(b) Advertisements for a substantially similar motor vehicle; or

(c) Any other source of valuation for a substantially similar motor vehicle.

Duty of Insurer. If an insurer rejects a claimant's counteroffer made pursuant to §A(2) of this regulation, the insurer shall, within 5 business days, send to the claimant a written explanation in clear and understandable language of why the information relied on by the claimant in the counteroffer does not provide a more accurate valuation than the information relied on by the insurer in its offer.

Code of Maryland Regulation Maryland Insurance administration section:31.15.12.07

Do I have to accept The Insurance Company offer to total loss my vehicle?

Normally, if a car has significant damage, a car owner is happy when the insurance company declares their vehicle a total loss. After a significant accident, many owners no longer have an interest in fixing their vehicles and are afraid to drive the vehicle after it has had so many repairs. Many owners want to force the insurance company to total loss their vehicle, so they can start over with a different vehicle. A vehicle is a total loss under Maryland law when "Has been damaged by collision, fire, flood, accident, trespass, or other occurrence to the extent that the cost to repair the vehicle for legal operation on a highway exceeds 75% of the fair market value of the vehicle prior to sustaining the damage. As an example, if your car is worth $10,000.00 prior to the accident and the appraiser says it will cost $8000.00 to fix the car, then the car is a total loss and the insurance company must pay you the fair market value of the car $10,000.00 even though the damage could be fixed for $8,000.00.

Other vehicle owners may want their vehicle fixed because they do cannot afford to purchase another vehicle or they owe more money on the vehicle than what the fair market value of the car is and therefore buying another car is not an option. In those circumstances, it may be possible to get the insurance company to fix the car rather than declare it a total loss. It may seem like common sense that an insurance company would rather fix the car for the estimate that is less than the total loss value since they would save money, however when the damage to the car exceeds 75% of the fair market value of

the vehicle prior to sustaining the damage, then Maryland law requires them to pay the total loss value of the car unless you can convince the Insurance Company that your situation fits within one of the exceptions to the legal requirement. When the vehicle damage estimate includes cosmetic damage as defined by the law, the cosmetic damage must be excluded from the cost of repairs used to determine whether a vehicle is a total loss. Other costs that can be excluded to determine whether a vehicle is a total loss include taxes on the parts and labor.

Cosmetic damage repairs are repairs done solely for the sake of appearance, decorative or ornamental, superficial, non- substantive and if left unrepaired, would not impact the functionality, nor render the vehicle unsafe or unable to operate on public roadways.

Cosmetic damage shall not include any repair required to enable a vehicle to pass a safety inspection under Subtitle 14 of this Title.

Cosmetic damage repairs are those required solely for:

Vehicle refinishing labor and materials;

External trim molding and fascia;

Molded, non-metal bumper covers;

Grilles;

Entertainment systems;

Audiovisual, telephone, and mapping equipment;

Emblems, stripes and decals;

(7) Hubcaps and wheel covers;

Interior carpet;

Upholstery, excluding driver seat; and

Interior door trim panels.

Except as set forth in 13(1) of this regulation, the cost for cosmetic damage repairs shall only include the cost of parts and materials and may not include the cost of labor.

The cost for cosmetic damage repair may not be included in the cost to repair the vehicle when determining the calculation for a salvage vehicle, as set forth in Transportation Article, §13-506(c)(4), Annotated Code of Maryland.

For purposes of determining the calculation for a salvage vehicle, any tax on the parts or labor may not be included.

Comar regulation Title 11 DEPARTMENT OF TRANSPORTATION

Subtitle 15 MOTOR VEHICLE ADMINISTRATION—VEHICLE REGISTRATION 15, 34 Salvage Vehicle Calculation- provides that an Insurance Company must use the following method: For purposes of determining the calculation for a salvage vehicle, fair market value is the valuation shown in a national publication of used car values or from a computerized database that produces statistically valid fair market values and does not include costs for titling, registration, and applicable taxes.

MD Code, Transportation, § 11-152

Salvage vehicles-Salvage defined

"Salvage" means any vehicle that:

Has been damaged by collision, fire, flood, accident, trespass, or other occurrence to the extent that the cost to repair the vehicle for legal operation on a highway exceeds 75% of the fair market value of the vehicle prior to sustaining the damage, as determined under § 13-506(c)(4)'of this article;

Has been acquired by an insurance company as a result of a claim settlement; or

Has been acquired by an automotive dismantler and recycler:

As an abandoned vehicle, as defined under § 25-201 of this article; or

For rebuilding or for use as parts only.

Owner retaining possession of vehicle

(b) For purposes of this section, a vehicle has not been acquired by an insurance company if an owner retains possession of the vehicle upon settlement of a claim concerning the vehicle by the insurance company.

Title 11 DEPARTMENT OF TRANSPORTATION

Subtitle 15 MOTOR VEHICLE ADMINISTRATION—VEHICLE REGISTRATION

11.15, 34 Salvage Vehicle Calculation

Authority: Transportation Article, §§12-104(b) and 13-506, Annotated Code of Maryland

.01 Scope.

This chapter is to establish the requirements and guidelines for determining what type of repairs can be deducted from the salvage vehicle calculation for the purpose of a title brand, as set forth in Transportation Article, §13-506, Annotated Code of Maryland.

.02 Cosmetic Damage.

Cosmetic damage repairs are repairs done solely for the sake of appearance, decorative or ornamental, superficial, non-

substantive and if left unrepaired, would not impact the functionality, nor render the vehicle unsafe or unable to operate on public roadways.

Cosmetic damage shall not include any repair required to enable a vehicle to pass a safety inspection under Subtitle 14 of this Title.

Cosmetic damage repairs are those required solely for:

Vehicle refinishing labor and materials;

External trim molding and fascia;

Molded, non-metal bumper covers;

Grilles;

Entertainment systems;

Audiovisual, telephone, and mapping equipment;

Emblems, stripes and decals;

(7) Hubcaps and wheel covers;

Interior carpet;

Upholstery, excluding driver seat; and

Interior door trim panels.

Except as set forth in 13(1) of this regulation, the cost for cosmetic damage repairs shall only include the cost of parts and materials and may not include the cost of labor.

The cost for cosmetic damage repair may not be included in the cost to repair the vehicle when determining the calculation for a salvage vehicle, as set forth in Transportation Article, §13-506(c)(4), Annotated Code of Maryland.

For purposes of determining the calculation for a salvage vehicle, any tax on the parts or labor may not be included.

For purposes of determining the calculation for a salvage vehicle, fair market value is the valuation shown in a national publication of used car values or from a computerized database that produces statistically valid fair market values and does not include costs for titling, registration, and applicable taxes.

Can I Make a diminished value claim?

What is a diminished value claim?

If your car is in a serious accident, which requires substantial repairs, and despite those repairs, the car is worth less after successful repairs, than the car was worth before the accident took place you may be entitled to make a diminished value claim. Obvious examples include frame damage done to a new car. A purchaser of a used car is not willing to pay as much for a used car with previous frame damage even if repaired as they would for the same used car with no prior accident history. While it seems logical that this would be true for all cars that have previously been in an accident, the diminished value claim is the exception rather than the rule.

Will the Insurance Company automatically offer the diminished value claim as part of the offer for your property damage?

The simple answer is no! An insurance company will never bring up the issue of diminished value unless asked. More likely even if suggested, they will deny the remedy applies. However more insurance companies now have a specific unit that now deals exclusively with diminished value claims. For the Insurance companies that do not have a diminished value claim unit, it can be difficult to negotiate the diminished value claim.

How do you prove a diminished value claim?

The best way to prove a diminished value claim is to hire an automobile appraiser who has an expertise in evaluating diminished value claims. The insurance company has appraisers who do these estimates for the insurance company and you should have an appraiser that does the same thing for your side. Just like any other injury this is not an agreed upon science and each side is likely to have a different opinion. The insurance company opinion is likely to be favorable to the insurance company so you need an appraiser likely to be favorable to your position.

When should I make a diminished value claim?

Hiring an expert can be costly ($350.00 or more), so you need to make sure the claim is not frivolous. Factors favorable to a successful diminished value claim include:

The newer the car the more likely prior damage will affect the future value of the car

The more extensive the damage

Body damage vs. frame or mechanical damage

Make of car

The most relevant Maryland case on diminished value claims is William Kruvant v. Christopher Dickerman ,18 Md App 1, 305 A.2d 227(1973)

The measure of damages applied to a motor vehicle which has not been entirely destroyed has been clearly enunciated. In Taylor v. King, 241 Md. 50, 54-55, 213 A.2d 504, 507 (1965), the Court of Appeals said:

"… the rule in Maryland with respect to the measure of damages for injury to a motor vehicle, which has not been entirely destroyed, is the reasonable cost of the repairs necessary to restore it to substantially the same condition that it was in before the injury, provided the cost of repairs is less than the diminution in market value due to the injury. And when the cost of restoring a motor 3*3 vehicle to substantially the same condition is greater than the diminution in market value, the measure of damages is the difference between its market value immediately before and immediately after the injury." (Footnote omitted.)

The appellee contends that certain language in Fred Frederick Motors v. Krause, 12 Md. App. 62, 277 A.2d 464 (1971), has determined the issue and has placed the burden 7*7 of proving both the cost of repairs and the value of the vehicle immediately before and after the collision on the plaintiff. We do not agree. In Krause, this Court recognized that the language of the Taylor requirement, that the repairs restore the automobile to "substantially the same condition" that it was in before the injury, neither defined nor described fully that condition. The Court noted that the phrase was susceptible to two interpretations: either the car could be restored to its previous physical appearance and mechanical function, or it could be restored to its market value before the injury. In an effort to clarify Taylor, the Court said,

"Therefore, if the plaintiff can prove that after repairs his vehicle has a diminished market value from being injured, then he can recover in addition to the cost of repairs the diminution in market value, provided the two together do not exceed the diminution in value prior to the repairs." 12 Md. App. at 66-67, 277 A.2d at 467. (Emphasis added.)

While the Krause rule does require the owner of the damaged vehicle to prove diminuted market value after repairs, it contains no such requirement with respect to proof that the cost of repairs coupled with the diminution in market value does not exceed the diminution in value prior to the repairs. Indeed, in our view, for the reasons set forth above, when a plaintiff has established a prima facie case by proving his damage, according to one acceptable measure of damage, it becomes the obligation of the defendant to offer evidence that the damage would be less under a different acceptable measure of damage.

With respect to appellant's claim for damages for the diminution in the value of the vehicle after repairs, one further issue should be resolved for the guidance of the lower court. Maryland Rule 1085. The question concerns the qualification of the expert witness offered by the appellants to testify on the diminished value after repairs.

In Pennsylvania Thresherman and Farmers' Mutual Casualty Insurance Co. v. Messenger, 181 Md. 295, 302, 29 A.2d 653, 656 (1943), the Court of Appeals said:

"It is a general rule of evidence, … applied by the courts of this country, that anyone familiar with the value of property is competent to testify as to its value. If a person shows that he has sufficient personal knowledge of motor vehicles to make relevant his opinion regarding the value of the motor vehicle in

question, the credibility and 9*9 weight of his testimony are for the consideration of the jury. Alabama Power Co. v. Armour & Co., 207 Ala. 15, 92 So. 111."

In the instant case, Mr. Samuel Ladden, the owner and operator of the automobile repair shop at which appellants' car was repaired, qualified as an expert in the repair of automobiles and testified as to the cost of repairs. The appellants then attempted to qualify him as an expert to testify on the value of the vehicle after repairs. Mr. Ladden testified that in addition to having been in the repair business for some 21 years, he also was a licensed used car salesman and had run a used car lot for 13 years. He said that at the time of the trial he had about 20 cars for sale, including a number of Porsches and Volkswagens, a number of Chevrolets "ranging from 1956 through 1969," a 1971 Dodge Coronet and "a couple of MGs." He stated that 10*10 incidental to the type of work he did, he had become involved in the inspection and appraisal of certain types of unique and classic automobiles and that he had himself purchased and resold such cars on a number of occasions and had assisted his customers in obtaining such automobiles. He indicated that he thought he was familiar with the market values of used motor vehicles in his locality. On cross-examination, Mr. Ladden was asked when he had last had a 1960 Mercedes Benz 220 SE coupe on his lot for sale. He replied, "I have never had one on my lot for sale, and they are very, very rare." Immediately thereafter, Judge Couch sustained appellee's objection to the witness's qualification as an expert to testify to the diminution in the value of appellants' vehicle after repairs.

We feel that Mr. Ladden was qualified to offer his opinion as to the value of the vehicle after repairs. His testimony established that the 1960 Mercedes Benz 220 SE coupe was a rare and unique automobile; that he had knowledge of and acquaintance with the class of unique and classic automobiles and their values generally in the locality; and that, having repaired the vehicle in question, he had intimate knowledge of the condition of the specific automobile to be valued. The fact that he himself had neither purchased nor sold a 1960 Mercedes Benz 220 SE coupe properly affects the weight accorded his opinion, but it does not affect his competency as an expert and should not have disqualified him. Smith v. Armstrong, 121 Mont. 377, 198 P.2d 795 (1948); Leider v. Pitock, 15 N.J. Super. 592, 83 A.2d 796, 797 (1951); Wigmore on Evidence, § 714 at 46, § 716 at 54 (Chadbourn Rev.); Jones on Evidence, § 14:50 at 730 (6th ed. 1972). Nor should his failure to indicate knowledge of comparable sales bar his testimony. First National Realty Corp. v. State Roads Comm'n., 255 Md. 605, 613-14, 258 A.2d 419, 423-24 (1960); Turner v. State Roads Comm'n., 213 Md. 428, 433, 132 A.2d 455, 457 (1957). In our view, the experience and knowledge of Mr. Ladden was such that he was entitled to testify. We have no doubt that his opinion would aid the trier of fact. Consolidated Mechanical Contractors Inc. v. Ball, 263 Md. 328, 338, 283 A.2d 154, 158 (1971); Sun Cab Co. 11*11 v. Walston, 15 Md. App. 113, 141-43, 289 A.2d 804, 820-21 (1972), aff'd, 267 Md. 559, 298 A.2d 391 (1973).

In Fisher v. City Dairy Co., 137 Md. 601, 113 Atl. 95 (1921), where suit was also brought to recover damages for injury to an automobile, the Court reiterated the rule stated in the Fingles case, as the applicable law, and specifically rejected an instruction which informed the jury "that the true measure of plaintiffs' damages in this case," where, as the Court pointed out, the automobile was not destroyed by the collision, and the car was capable of being repaired, at a reasonable cost, was "the 54*54 difference between the value of the plaintiffs' automobile immediately preceding the accident complained of and its value immediately thereafter."

And in Mullan v. Hacker, 187 Md. 261, 49 A.2d 640 (1946), where the action concerned the recovery of damages to an automobile garage as a result of an excavation on adjoining property, it was said that the measure of damages was the cost of repairing the garage if it could be restored to the condition it was in before the injury without cost disproportionate to the injury and that when the cost of restoration is greater than the diminution in market value, the measure of damages is the difference between the value of the property before and after its injury. The rule is as applicable to personal property as it is to real property. See Superior Construction Co. v. Elmo, 204 Md. 1, 102 A.2d 739 (1954).

TAYLOR .v. KING 241 Md. 50 ,213 A.2d 504(1965) The various statements in Martin, Fingles, Fisher and Mullan make it clear that the rule in Maryland[1] with respect to the measure of damages for injury to a motor vehicle, which has not been entirely destroyed, is the reasonable cost of the 55*55repairs necessary to restore it to substantially the same condition that it was in before the injury, provided the cost of repairs is less than the diminution in market value due to the injury. And when the cost of restoring a motor vehicle to substantially the same condition is greater than the diminution in market value, the measure of damages is the difference between its market value immediately before and immediately after the injury. In addition, the measure of damages may include a reasonable allowance for loss of use of the vehicle.

If I don't feel Injured after an auto accident, should I see a Doctor?

Both you and your passengers should consider seeing a doctor after an accident. The doctor may recognize injuries, sometimes serious, that are not apparent to you. The charges for a doctor visit and medical treatment may be covered by your insurance. It is not recommended that you settle claims from an accident until a doctor has seen you and advised you about the extent of your injuries.

MEDICAL TREATMENT

2) Find a qualified doctor

Initially, if you have been injured and have not received medical treatment, an attorney can help you find the appropriate medical care. Often, specialists like orthopedic surgeons or neurologists have long waiting lists that cause patients to wait months before receiving care. Attorneys can help greatly with this lag time, as they are frequently able to get specialist appointments for their clients in a relatively short period of time, allowing for adequate medical treatment in a much timelier manner.

Individuals who are injured in automobile accidents often find, however, that doctors do not like to get involved in litigation because they do not like going to court. In order to prove to an insurance company and/or a jury that you were in fact injured, a doctor must provide detailed reports connecting the injuries to the accident. A lot of physicians refuse to dictate reports deemed acceptable by the insurance companies, thus it is important to select a doctor who is at least willing to dictate a report

after each visit. Each document provided by the medical facility is extremely important in your automobile accident case, as insurance companies base the amount of money that they are willing to offer you upon the documentation available. Visiting a family physician who is unwilling to write a dictated medical report or who scribbles an illegible note on his office chart may result in a smaller settlement than would come from consulting a doctor who is willing to write a fully dictated report clearly outlining the injuries and necessary treatment. Therefore, how well the doctor documents your injuries can be extremely important, as inadequate documentation can lead to less money for the same injury.

8) Obtain medical records promptly

Subsequently, your attorney will obtain all of your medical records and medical bills in order to properly evaluate your claim. Your attorney will then send your medical bills and reports to the insurance company so that they may properly evaluate your claim. This medical documentation is extremely important as insurance companies handle millions of claims. Their evaluation of a claim is based upon the documentation they have in their file.Good documentation will result in good settlements. Little or no documentation will result in little or no settlement. An attorney will make sure that you receive the proper documentation from your medical provider and will send the proper questions to the doctor if any of the documentation is lacking, to meet insurance company requirements and to adequately settle your claim. It is extremely important to obtain all medical records and all medical bills in your claim. The more documentation that you provide to the insurance company, the more likely it is that you will get a larger settlement. The attorney will also be helpful in obtaining any information regarding any lost wages that you have. The attorney will contact your employer directly.

Should I release my medical records to the Insurance Adjuster?

No. Medical record releases should only be signed under limited circumstances and after consulting with a qualified personal injury lawyer. If your medical information gets into the insurance adjuster's hands, it could potentially hurt your case.

Medical Expenses

Incurred medical expenses are recoverable. Walston v. Dobbins, 10 Md. App. 490, 271 A.2d 367 (1970) (x-ray specialist). Future medical expenses likewise are recoverable. DiLeo v. Nugent, 88 Md. App. 59, 592 A.2d 1126, cert. granted, 325 Md. 18, 599 A.2d 90 (1991).

Expert testimony is required to prove the necessity and reasonableness of the expenses. Wolf v. Levitt & Sons, Inc., 267 Md. 623, 298 A.2d 374 (1973). While the Maryland cases have not analyzed the "reasonableness" requirement in any detail, it is an offshoot of the "avoidable consequences" rule requiring the plaintiff to minimize his or her loss by undertaking "reasonable" actions. United R.R. & Elec. Co. v. Dean, 117 Md. 686, 84 A. 75 (1912). However, the plaintiff may, without any particularly rational reason, elect care in a distant and more expensive hospital rather than a local one, and he or she is not required to avail himself or herself of free public service in order to minimize his or her

particular expense. For example, a Christian Scientist might "reasonably" refuse services that others would accept. See Dobbs, Remedies (Hornbook Series, West Publishing Co., 1973) at pp. 579-80. The "avoidable consequences" rule applies to post-accident circumstances. Rogers v. Frush, 257 Md. 233, 262 A.2d 549 (1970). See also Jones v. Malinowski, 299 Md. 257, 473 A.2d 429 (1984) (restricting the rule on the facts of that case).

An expert is required in proving future medical expenses. Mt. Royal Cab Co., Inc. v. Dolan, 166 Md. 581, 171 A. 854 (1934). Evidence of a greater than 50 percent chance that a future consequence will occur is required. Pierce v. Johns-Manville Sales Corp., 296 Md. 656, 464 A.2d 1020 (1983).

Defendant's act, followed immediately by plaintiff's injury, plus medical testimony of possibility is enough for a jury to find proximate causation even where defendant's expert says the injury was not a result of the act. Neeld Constr. Co. v. Mason, 157 Md. 571, 146 A. 748 (1929).

A husband is allowed to recover the value of his own services as nurse to his wife, i.e., what would have been the reasonable cost of a hired nurse. Green v. T. A. Schoemaker & Co., 111 Md. 69, 76, 73 A. 688, 691 (1909). Proof is required, however, of the reasonable cost of the services and that the services were performed. Carroll v. U.S., 625 F. Supp. 1 (D. Md. 1982).

Medical expenses for minors, during their minority, may only be recoverable by the parents who pay such expenses. Medical expenses for minors incurred during their minority may also be recovered under the doctrine of necessaries by the minor who shows that the parents are unable or unwilling to pay such expenses. Johns Hopkins Hosp. v. Pepper, 346 Md. 679, 697 A.2d 1358 (1997). (This may be important in cases where the parents' claim is barred by limitations but the minor's claim remains viable.)

Transportation Costs

Transportation costs shown to be reasonable and necessary in connection with medical treatment, such as travel to and from physicians' offices and hospitals, are recoverable. Nicholson v. Blanchette, 239 Md. 168, 179, 210 A.2d 732, 738 (1965); Leizear v. Butler, 226 Md. 171, 174-75, 172 A.2d 518, 519 (1961).

Lost wages in the past and in the future

A plaintiff may recover damages for the loss of earnings or earning capacity in the past and for such reduction in earning capacity which, with reasonable probability, may be expected in the future. Adams v. Benson, 208 Md. 261, 117 A.2d 881 (1955); Lumber Terminals, Inc. v. Nowakowski, 36 Md. App. 82, 373 A.2d 282 (1977). Instructions permitting recovery must be given in the face of evidence of permanent injury and pain causing absence from work. Sipe v. Auffort, 17 Md. App. 195, 300 A.2d 427

(1973). “Earnings” include fringe benefits. Great Coastal Express, Inc. v. Schruefer, 34 Md. App. 706, 369 A.2d 118, cert. denied, 280 Md. 730, (1977), appeal after remand, 39 Md. App. 88, 383 A.2d 74 (1978).

Types of losses recoverable

Loss of time and loss of earnings or wages to time of trial.

Loss or diminution of earning capacity, if any, to time of trial.

Loss of future earning capacity if shown with reasonable probability.

Monias v. Endal, 330 Md. 274, 623 A.2d 656 (1993); Adams v. Benson, 208 Md. 261, 117 A.2d 881 (1955). MPJI-Cv No. 10:2. Such compensation has been awarded even in the case of an infant with no work history. Muenstermann v. U.S., 787 F. Supp. 499 (D. Md. 1992). Plaintiff need not establish a prior record of earnings. Lewin Realty v. Brooks, 138 Md. App. 244, 771 A.2d 446 (2001). Plaintiff may recover even if his or her business is operating at a loss. Anderson v. Litzenberg, 115 Md. App. 549, 694 A.2d 150 (1997).

Future Income Loss

Future income loss can be reduced to present value by the defense.An award for loss of future earnings may be reduced to present value.Walston v. Sun Cab Co., 267 Md. 559, 298 A.2d 391 (1973); Lumber Terminals v. Nowakowski, 36 Md. App. 82, 373 A.2d 282 (1977); Baublitz v. Henz, 73 Md. App. 538, 535 A.2d 497 (1988). In Lewin Realty III v. Brooks, 138 Md. App. 244, 771 A.2d 446 (2004). We decline to adopt the position that a plaintiff must produce evidence of present value at the risk of having his claim for lost future earning capacity taken from the jury. We also are not persuaded that it makes sense to place the burden on the trial court to explain, not only that such an award must be reduced to present value, but also the means by which to do so … Having the trial court instruct the jury about discount rates and other economic variables not in evidence and not stipulated to inject the court unnecessarily and improperly into the fact-finding province of the jury.

Lewin Realty III, 138 Md. App. at 297, 771 A.2d at 477. The court concluded that when plaintiff seeks damages for lost future earning capacity and ordinary laypeople cannot reduce an award to present value, the defendant bears the burden of producing valuation evidence.

When the proper evidentiary foundation has been laid, the defendant will be entitled to an instruction telling the jury to reduce any such award to present value. The plaintiff has the burden of producing economic evidence about which he seeks to have the trial court instruct the jury. In deciding whether the claim for future lost earning capacity is of a simple and straightforward nature, the trial court should consider factors such as the length of time over which the lost benefits are being claimed, the nature of the benefits, and the variables affecting the benefits over time.Lewin Realty III, 138 Md. App. at 298, 771 A.2d at 477.

In the past, the defense has been permitted to offer evidence of the cost of an annuity on the issue of compensation for future lost wages. Baltimore Transit Co. v. Worth, 188 Md. 119, 52 A.2d 249 (1947).

Diminished Earning Capacity

Lost profits and lost earning capacity

Lost "profits" may be recovered, but are restricted to sales less expenses. Reighard v. Downs, 261 Md. 26, 273 A.2d 109 (1971), appeal after remand, 265 Md. 344, 289 A.2d 299 (1972). These profits may be proven by opinion evidence if reasonably certain. Certain-Teed Prods. Corp. v. Goslee Roofing & Sheet Metal, Inc., 26 Md. App. 452, 476-79, 339 A.2d 302, 316-18 (1975).

Plaintiff may recover for lost earning capacity. Brooks v. Fairman, 253 Md. 471, 252 A.2d 865 (1969); Lumber Terminals, Inc. v. Nowakowski, 36 Md. App. 82, 373 A.2d 282 (1977); Giant Food, Inc. v. Scherry, 51 Md. App. 586, 444 A.2d 483 (1982). Instruction given, Levin v. Arrabal, 11 Md. App. 89, 272 A.2d 818 (1971). When a plaintiff's life expectancy has been reduced by the tort, damages for loss of future earnings include wages that would have been earned from the date of plaintiff's premature death until the date of probable retirement, based upon the pre-injury life expectancy. Monias v. Endal, 330 Md. 274, 623 A.2d 656 (1993).

General rule

Generally, damages for the impairment of earning capacity begin where actual loss of time and wages or income ends. Impairment of earning capacity is the difference between capacity to work and to earn money before and after an injury. It can be partial and temporary, or partial and permanent, or total and temporary, or total and permanent. Future losses of earnings are the result of a diminishment or impairment of future earning capacity. Adams v. Benson, 208 Md. 261, 117 A.2d 881 (1955); Anderson v. Litzenberg, 115 Md. App. 549, 694 A.2d 150 (1997). It should be noted that in Adams, a former math teacher, now a housewife, who suffered a permanently disabling injury, incurred a loss of earning capacity regardless of whether she ever intended to return to work. Adams v. Benson, 208 Md. 261, 117 A.2d 881 (1955); see also Muenstermann v. U.S., 787 F. Supp. 499 (D. Md. 1992). But see Waltring v. James, 136 Md. 406, 111 A. 125 (1920); Coca Cola Bottling Works, Inc. v. Catron, 186 Md. 156, 46 A.2d 303 (1946); Smith v. Blue Ridge Transp. Co., 172 Md. 42, 191 A. 66 (1937); Ihrie v. Anthony, 205 Md. 296, 107 A.2d 104 (1954).

Diminishment of earning capacity is generally to be arrived at by comparing what the injured party was capable of earning at or before the time of the injury with what he or she was capable of earning after it occurred. Actual earnings are merely some evidence of earning capacity, and damages for decreased earning capacity should be determined by deducting plaintiff's earning ability after the injury from his or her earning ability immediately prior to the injury. Delph v. Ammons, 239 Md. 662, 663, 212 A.2d 504, 507 (1965); Adams v. Benson, 208 Md. 261, 272-73, 117 A.2d 881, 886 (1955).

The degree of proof that is required to support a claim for loss of future earning capacity is a reasonable probability of decreased future earning capacity that is not so uncertain as to be speculative. There must be evidence of both the physical impairment causing a loss of earning capacity as well as the value of the lost capacity. Kujawa v. Baltimore Transit Co., 224 Md. 195, 167 A.2d 96 (1961); Annot. 89 A.L.R.2D 1166; Johnson-Bey v. Reiger, 32 Md. App. 299, 360 A.2d 457 (1976);. Evidence of rates and wages paid

to those in the same vocation in which the plaintiff engages would be admissible. Anderson v. Litzenberg, 115 Md. App. 549, 694 A.2d 150 (1997). Evidence is required demonstrating a greater than 50 percent chance that a future consequence will occur. Pierce v. Johns-Manville Sales Corp., 296 Md. 656, 464 A.2d 1020 (1983). The mere possibility of a future economic loss is not sufficient. Bankert v. U.S., 937 F. Supp. 1169 (D. Md. 1996) (case involved a four-year-old child.)

The permanency of the plaintiff's injuries, while not necessary to show loss of past earning capacity, must be established in order to recover for impairment of future earning capacity. Bender v. Popp, 246 Md. 65, 227 A.2d 237 (1967); Ihrie v. Anthony, 205 Md. 296, 107 A.2d 104 (1954).

In proving loss of earning capacity, it is usually helpful to support the claim by the use of testimony from the examining and treating physicians, regardless of the complexity of the medical question involved. The rule expressed in Shivers v. Carnaggio, 223 Md. 585, 165 A.2d 898 (1960), permits a physician, who in addition to his or her medical knowledge is familiar with and understands the activities and occupation of the patient, to express an opinion as to the extent to which the anatomical disability would cause personal or economic disability. See also Straughan v. Tsouvalos, 246 Md. 242, 254, 228 A.2d 300, 308 (1967).

Testimony of an actuary or economist

If the impairment of earning capacity is permanent, then the claim of diminished earning capacity in the future may be supported by the testimony of actuaries or economists who, based on tables, may testify as to the work life expectancy of the plaintiff. The life expectancy to be considered, unlike an award for future pain and suffering, is the plaintiff's work life expectancy prior to the injury. See Baltimore Transit Co. v. Worth, 188 Md. 119, 52 A.2d 249 (1947); Lumber Terminals, Inc. v. Nowakowski, 36 Md. App. 82, 373 A.2d 282 (1977); Plant v. Simmons Co., 321 F. Supp. 735 (D. Md. 1970); 16 AM. JUR. POF 701 (1965); 22 AM. JUR.2D Damages 316.

Income tax consequences

In personal injury actions, the jury must be instructed, upon request, as to the federal and state income tax exclusion of personal injury awards. Blanchfield v. Dennis, 292 Md. 319, 438 A.2d 1330 (1982). The court in Blanchfield left open the question of whether an economist must take taxes into account in the calculations. If he or she does so, the tax on investment income should also be considered in reducing to present value.

Loss of desired vocation and enjoyment of living

The right to recover damages for loss of enjoyment of life in general, and for disappointment or frustration due to being disabled from practicing one's chosen vocation in particular, was recognized in McAlister v. Carl, 233 Md. 446, 197 A.2d 140 (1964), though recovery was denied under the particular circumstances of that case.

Self-employed persons, partners, business and professional persons.

These people may recover damages for their lost time and the diminution of their earning capacity, the same as any person who has been injured through the fault of another. The cost of hiring a substitute to do the work plaintiff would have done, had he or she not been injured, may be considered. Delph v. Ammons, 239 Md. 662, 668, 212 A.2d 504, 507 (1965); Annot. 37 A.L.R.2D 364. Other elements of loss include wages and salaries paid to others in the community to render similar services. 22 AM. JUR.2D Damages 97 (1965). In the case of a self-employed partner, this would include amounts plaintiff regularly withdrew from the business as earnings for his or her services in the business. Annot. 82 A.L.R.2D 679.

Respecting loss of profits, evidence of plaintiff's lost time and impaired earning capacity may be admitted if those profits depended upon the personal elements supplied by plaintiff, and not on the investment of capital or the labor of others. Goldman v. Johnson Motor Lines, 192 Md. 24, 63 A.2d 622 (1949); 22 AM. JUR.2D Damages 99. Loss of profits is not, as such, a separate item of damages in a personal injury case. Such a loss is used as an aid in determining impairment of earning capacity. Anderson v. Litzenberg, 115 Md. App. 549, 694 A.2d 150 (1997)

When a business is either unprofitable or less profitable than what plaintiff could earn as a wage earner, the better method is to prove earning capacity by evidence of what he or she could earn as a wage earner in his or her given occupation, rather than to rely on the past profit record in his or her own business. Locke, Inc. v. Sonnenleiter, 208 Md. 443, 118 A.2d 509 (1955). A claim may be made for lost earning capacity even though the plaintiff's current enterprise has no history of making money. Anderson v. Litzenberg, 115 Md. App. 549, 694 A.2d 150 (1997).

Persons paid commissions

In determining loss of time and impairment of earning capacity of one whose income is derived primarily from commissions or sales, the loss must be established by evidence of the average net earnings for a reasonable period prior to the injury and, if available, average net earnings after the injury.

Lost Services

Minor child

A parent is entitled to recover for the loss of services of a child resulting from the negligent injuring of the latter by another, as long as such loss can be proven. Hudson v. Hudson, 226 Md. 521, 174 A.2d 339 (1961

Parent

A minor child may recover for the loss of parental services in a wrongful death action. Yet recovery has almost universally been denied in situations where negligent injury may have caused irreparable damage short of death. Monias v. Endal, 330 Md. 274, 623 A.2d 656 (1993); Gaver v. Harrant, 316 Md.

17, 557 A.2d 210 (1989). See PROSSER, LAW OF TORTS, 4TH ED., pp. 896-97; Hill v. Sibley Mem'l Hosp., 108 F. Supp. 739 (D. D.C. 1952); Pleasant v. Washington Sand & Gravel Co., Inc., 104 App. D. C. 374, 262 F.2d 471 (1958); Halberg v. Young, 41 Hawaii 634 (1957).

NON-ECONOMIC DAMAGES

"Non-economic damages" are defined as pain, suffering, inconven-ience, physical impairment, disfigurement, loss of consortium, or other non-pecuniary injury. Specifically excluded are punitive damages injured person may recover any damages that are the natural, proximate and direct result of the injury.20

Under Maryland law, the following factors should be considered in awarding non-economic damages for bodily injury:

The personal injuries sustained and their extent and duration;

The effect such injuries have on the overall physical and mental health and well-being of the plaintiff;

The physical pain and mental injury suffered in the past, and that which with reasonable probability may be expected to be experienced in the future; and

The disfigurement and humiliation or embarrassment associated with such disfigurement.

To determine non-economic damages, the jury should compare the health and condition of the plaintiff before the injury to his or her subsequent condition. Additionally, the jury should consider the permanence of the injury and any effect which disables the plaintiff from undertaking and enjoying normal employment, occupation and pursuits.

Recovery for the physical and mental suffering caused by physical injuries and disfigurement is permitted. Recovery for mental suffering or nervous shock without physical impact is also permitted if the victim is within the zone of danger and suffers a "physical injury, " or if there is "some clearly apparent and substantial physical injury, as manifested by an external condition or by symptoms clearly indicative of a resultant patho-logical, physiological, or mental state."27

In Hunt v. Mercy Medical Center, 121 Md. App. 516, 710 A.2d 362 (1998), a case involving emotional distress arising out of a cancer misdiag-nosis, the court clarified the meaning of the "substantial physical injury" rule enunciated in Bowman v. Williams, 164 Md. 397, 404, 165 A.182, 184 (1933).

The doctrinally correct position is that an emotional injury (such as mental anguish or emotional distress) may come within the ambit of the [Bowman] 'physical injury' rule by virtue of its outward manifestations. The only limitation on recovery for an emotional injury imposed to guard against feigned claims, is that the injury must be 'capable of objective determination.

Mental and emotional injuries such as fright are only compensable if there are "objective" manifestations of such injury. To date, however, Maryland courts have been inconsistent in ruling on what constitutes an "objective" manifestation of emotional injury. See New Summit Assocs. v. Nistle, 73 Md. App. 351, 533 A.2d 1350 (1987) (recovery for nervous shock, nausea, diarrhea, and inability to sleep

based solely on plaintiff's own testimony) But see Roebuck v. Steuart, 76 Md. App. 298, 544 A.2d 808 (1988) (insufficient evidence of mental anguish); Bagwell v. Peninsula Reg. Med. Ctr., 106 Md. App. 470, 665 A.2d 297 (1995) (deposition evidence that plaintiff was in "total shock," became severely depressed, had diffi-culty sleeping, became introverted, lost his appetite and was embarrassed to go out in public was insufficient to establish mental anguish).

As Bagwell demonstrated, the evidence must contain more than mere conclusory statements and it must be detailed enough for jury to quantify the injury. A plaintiff must demonstrate "specific manifestations of emotional distress" i.e. fatigue, sleeplessness, and constipation. In Matthews v. Amberwood Assocs. Ltd. Partnership, Inc. , 351 Md. 554, 719 A.2d 119, 132-134 (1998), the Court reviewed the proof required for the granting of damages for emotional distress. The sufficiency of evidence of emotional distress lies in the details: the duration of the constipation, the types of activities with which the fatigue interfered, the incessant nature of the sleeplessness – the information necessary for the jury to quantify the level of damages. If the victim is the sole source of all evidence, he is less likely to succeed. Hunt, .supra, 121 Md. App. at 531, 710 A.2d at 369. The most helpful source is a witness, e.g. the victims' companion. But see New Summit Assocs. v. Nistle, 73 Md. App. 351, 362-363, 533 A.2d 1350 (1987) (permitting recovery for mental injury resulting in diarrhea, nausea, and inability to sleep, apparently without expert testimony, although without discussing the need for such).

While separate damages are not allowed for the shortening of life expectancy,28 evidence of a life shortened by negligence may be considered by the jury as part of mental pain and suffering.29

Recovery for mental suffering is permitted where the physical injury causes the injured party disappointment or frustration in having to abandon a chosen vocation or loss of capacity to enjoy avocation pursuits such as swimming, horse- back riding, or long motor trips."

A decedent's estate may recover for pre-impact fright in a survival action. Beynon v. Montgomery Cablevision Ltd. Partnership, 351 Md. 460, 718 A.2d 1161 (1998). When the decedent experiences "great fear and apprehension of imminent death before the fatal physical impact, the dece-dent's estate may recover for emotional distress that is capable of "objective determination." Id., 351 Md. at 464, 718 A.2d at 1163. The proof of pre-impact fright does not require direct evidence, but rather "evidence from which a reasonable inference could be drawn that the decedent experienced fear or fright." Id., 351 Md. at 508, 718 A.2d at 1185. In Beynon, the decedent was 192 feet away from the defendant's tractor-trailer when he became aware of, and then reacted to, the impending danger of crashing into its rear. The Court considered 72 feet of skid marks from the victim's car as evidence from which a reasonable inference could be drawn that the victim experienced pre-impact fright. Later that year, the Court decided Smallwood v. Bradford, 352 Md. 8, 720 A.2d 586 (1998). In Smallwood, the defendant's car drifted into the decedent's lane at fifty-five miles per hour. An eyewitness observed the victim accelerate and try to speed up onto the right side of the road to avoid the oncoming car. The court held that "the decedent's fright could be objectively determined by reference to the defensive actions the decedent took as a result of his apprehension of impending death and by the physical impact of the collision itself. If anything, the evidence in this case is stronger than that in Beynon." [Emphasis supplied]. Id., 352 Md. at 19, 720 A.2d at 592.

Spouse-loss Of Consortium

Deems v. Western Maryland Railway Company, 247 Md. 95, 231 A.2d 514 (1967). The court introduced the concept of a joint action by both spouses for injury to the marital relationship. Because the loss of consortium would appear to be closely tied to the loss of services, There can be a recovery by either spouse for the loss of her husband's services.

Disfigurement

Physical suffering caused by disfigurement is compensable. White v. Parks, 154 Md. 195, 140 A. 70 (1928). 7. Emotional distress

In negligence cases, physical injuries resulting from fright without impact are compensable if the victim was within the zone of danger. See Resavage v. Davies, 199 Md. 479, 86 A.2d 879 (1952), and 22 MD. L. REV. 48 (1962).

lost capacity to enjoy life

Lost capacity to enjoy the usual or familiar things of life such as swimming, horse-back riding or long motor trips is compensable. McAlister v. Carl, 233 Md. 446, 197 A.2d 140 (1964).

Loss of enjoyment of life on account of change of occupation may or may not be compensable. In McAlister v. Carl, supra, the Court of Appeals decided that the plaintiff's loss of opportunity to be a physical education instructor was too speculative, but gave an example of a surgical intern whose loss of opportunity to operate should be compensable. How close the plaintiff is to the attainment of the goal was regarded as an important factor.

Prenatal injuries

A viable child injured while en ventre sa mere may recover for the injuries sustained by the child, whether born alive or not. Odham v. Sherman, 234 Md. 179, 198 A.2d 71 (1964); Damasiewicz v. Gorsuch, 197 Md. 417, 79 A.2d 550 (1951). Maryland also recognizes a cause of action for the wrongful death of a live-born child, even if the child sustained the actionable injuries prior to viability. Group Health Ass'n, Inc. v. Blumenthal, 295 Md. 104, 453 A.2d 1198 (1983).

An injured pregnant woman may, as part of her injury claim, recover for loss of a fetus. Smith v. Borello, 370 Md. 227, 804 A.2d 1151 (2002).

Preimpact fright

Plaintiff may recover for mental suffering from the moment he or she sees the danger until the time of impact if physical injury results from the impact. Beynon v. Montgomery Cablevision Ltd. P'ship, 351 Md. 460, 718 A.2d 1161 (1998).

The Statutory Limitation ("Cap") On Noneconomic Damages

In General

Awards for noneconomic damages in personal injury actions arising for injuries suffered in Maryland on or after July 1, 1986, and before October 1, 1994, are limited to $ 500,000. Cts. & Jud. Proc. § 11-108; In wrongful death actions in which there are two or more claimants or beneficiaries, the "cap" cannot exceed 150 percent of the per-person limitation. In addition, the statute makes a distinction between primary and secondary claimants in a wrongful death action and the amounts to be allocated to them should the jury return a verdict in excess of the "cap." Cts. & Jud. Proc. § 11-108(d)(2)(ii).

Application of the Cap to Specific Causes of Action

Household services & consortium

The cap does not apply to claims for loss of household services (part of the loss of consortium claim) which can be performed by hired help because such losses are economic losses. Edmonds v. Murphy, 83 Md. App. 133, 573 A.2d 853 (1990), aff'd, 325 Md. 342, 601 A.2d 102 (1992); U.S. v. Searle, 322 Md. 1, 584 A.2d 1263 (1991). The Court of Appeals has ruled that the loss of consortium claim is derivative of the injured person's claim and consequently is subject to the single cap which applies to the injured person's claim. Oaks v. Connors, 339 Md. 24, 660 A.2d 423 (1995). Cases arising after October 1, 1994, however, apparently will not have separate "caps" for loss of consortium and personal injury. Cts. & Jud. Proc. § 11-108(b). But see ACandS, Inc. v. Asner, 104 Md. App. 608, 657 A.2d 379 (1995), rev'd on other grounds, 344 Md. 155, 686 A.2d 250 (1996) (loss of consortium claim and loss of solatium are separate causes of action and consequently, subject to separate caps).

For purposes of this "cap" limit, claims for loss of consortium are consid-ered "derivative." Thus, an injured person's personal injury claim and the related claim for consortium filed jointly with the spouse are a "single" cause of action and subject to a single and not multiple caps.3I Although no reported case has yet addressed this issue, it seems logical that where a case involves both a survival action claim and a corresponding wrongful death claim, two separate caps would apply to the two separate claims even though both arguably arise from a single injury. The personal injury cap would apply to the survival claim brought by the estate for conscious pain and suffering and the other non-economic damages permitted following the decedent's fatal injury and prior to death. The wrongful death cap would apply to the claims of the "primary" and "secondary" claimants under the recently amended Wrongful Death Act for their solatium loss. See section 17.18 in this chapter and the attached chart captioned "Maryland 's Non-Economic Cap."

Injuries outside of Maryland

In Black v. Leatherwood Motor Coach Corp., 92 Md. App. 27, 606 A.2d 295 (1992), the Court of Special Appeals ruled that the "cap" did not apply to a cause of action for damages arising out of a bus accident in New Jersey because the "cap" statute is substantive and not procedural in nature.

Intentional tort- The statutory cap on noneconomic damages does not apply to inten-tional torts, whether or not for personal injury, since the cap was created to combat spiraling costs of liability insurance, which does not generally include coverage for intentional torts, and the legislative history did

not reveal an intention to protect individuals from the economic consequences of intentional misconduct. Cole v. Sullivan, 110 Md. App. 79, 676 A.2d 85 (1996).

Punitive damages

The "cap" does not apply to punitive damages. Cts. & Jud. Proc. § 11-108(a)(2).

Collateral Source Rule

1. Generally

The "collateral source rule" provides that benefits received by the plaintiff from a source wholly independent of and collateral to the wrongdoer will not diminish the damages otherwise recoverable from the wrongdoer.

Payment by a collateral source to plaintiff for items of damage cannot be set up by the wrongdoer in mitigation or reduction of damages. Haischer v. CSX Transp., 381 Md. 119, 848 A.2d 620 (2004) (receipt of Railroad Retirement benefits not admissible). Gillespie-Linton v. Miles, 58 Md. App. 484, 473 A.2d 947 (1984); Leizear v. Butler, 226 Md. 171, 172 A.2d 518 (1961) (salary received while off work). Gratuitously furnished medical care and treatment may nevertheless be a permissible item of damages recoverable from a tortfeasor, and a plaintiff may recover the value of such services. Plank v. Summers, 203 Md. 552, 102 A.2d 262 (1954

A plaintiff's damages for lost earnings are not to be reduced because of payments of wages by employer during disability. Gillespie-Linton v. Miles, 58 Md. App. 484, 473 A.2d 947 (1984).

Private insurance benefits (e.g., Blue Cross-Blue Shield) do not diminish the damages recoverable by a plaintiff who was wholly or partly indemnified for hospital or medical care by insurance effected and paid for by him Blocker v. Sterling, 251 Md. 55, 58, 246 A.2d 226, 228-29 (1968).

While the collateral source rule is almost universally applied, there is an exception to this general rule. In medical malpractice cases, the collateral source rule has been modified by statute to permit the reduction of awards to the extent that a claimant has or will be paid under the insurance for all or part of the damages assessed. See Cts. & Jud. Proc. § 3-2A-05(h).

Litigation Expenses

General rule: Expenses of litigation, including legal fees, are not ordinarily recoverable in the absence of special statutory authorization, contractual provision, or special circumstances. Caffrey v. Liquor Control, 370 Md. 272, 805 A.2d 268 (2002)

The Form of the Verdict

In any state court action for personal injury in which the cause of action arises after July 1, 1986 and for wrongful death in which the cause of action arises after Oct. 1, 1994, the award shall be itemized to list specifically:

past medical expenses;

future medical expenses;

past loss of earnings;

future loss of earnings;

noneconomic damages; and

other damages.

The court may order that all of the future economic damages portion of the award be paid in the form of periodic payments. Cts. & Jud. Proc. § 11-109.

Reduction in Damages

Plaintiff may be barred from recovery of damages flowing from acts of the plaintiff that significantly contribute to an injury. Hopkins v. Silber, 114 Md. App. 319, 785 A.2d 806 (2001). Plaintiff's conduct that aggravates an injury may mitigate damages. Id. at 334, 785 A.2d at 814. Plaintiff may be denied recovery for any damages that could have been avoided by reasonable conduct on the part of the plaintiff. Jones v. Malinowski, 299 Md. 257, 269, 473 A.2d 429, 435 (1984).

Plaintiff further may have damages reduced if he or she failed to use all reasonable steps to minimize the loss caused by the defendant. Schlossberg v. Epstein, 73 Md. App. 415, 534 A.2d 1003 (1988).

The "susceptible" plaintiff

Tortfeasors must take the plaintiff as he or she is. The plaintiff's peculiar susceptibility to severe or unexpected consequences does not excuse a tortfeasor, nor reduce the damages. Harris v. Jones, supra; Coca-Cola Bottling Works, Inc. v. Catron, 186 Md. 156, 46 A.2d 303 (1946); Baltimore Passenger Ry. Co. v. Kemp, 61 Md. 74 (1883).

Settle car accident claim without lawyer

Clients often wonder, can I settle car accident claim without lawyer? If I get a lawyer, then I will have to pay him one third of my settlement. If I settle the case myself then I get the whole amount. Even If I get less than the lawyer would get me I still clear more because I do not have to pay him his one third. While this seems like a reasonable conclusion, the purpose of this article is to point out the fallacy and reasoning that leads a person to try and settle their case without an attorney.

When you hire an attorney to represent yourself or a family member in an auto accident claim, that particular attorney hopefully has handled thousands of similar claims. Based upon that experience your attorney should know how to put a proper value on your claim. Attorneys learn how to evaluate claims by previously dealing with the same insurance companies and insurance adjusters to see what value they put on the claim. They can develop a rapport with the claims office. The claims office will develop a familiarity with the lawyer and know his strengths and weaknesses. If the lawyer has tried cases against them before, they will be aware of his ability to obtain from juries more than the insurance company wants to pay. No adjuster wants to be embarrassed when a jury awards more than the case could have been settled for. Lawyer can learn the value of the claim by actually trying cases. There is no better way to find out the real value of a case than actually trying a case in front of a judge or jury. The more experience the lawyer has, the more different situations he is handled, the more likely it is that he will have handled cases just like yours. These experiences enable the lawyer to determine what the high and low figures are that an insurance, is willing to offer in a case just like yours.

If an injured party tries to handle the case on their own, this is probably the only case they've ever had, or if they've had one or two other cases that is not a sufficient sample in which to evaluate a claim. There are many factors that go in the value of the claim. Unless you handle thousands of claims, a person would not be aware of all the nuances that go into evaluating the claim.

When dealing with the insurance company without a lawyer, the insurance adjuster knows you don't have a lawyer obviously. They also believe you are not likely to obtain a lawyer. The adjuster knows that you don't know how to evaluate the claim and would likely be willing to accept less than full value for the case. Because claimant does not have a lawyer, the insurance adjuster is more likely than not they're going to deduct off the top one third from their offer knowing that you don't have a lawyer in figuring that you'll most likely take just about anything. Even if assure them you will not want to take just anything, the insurance company knows that you cannot file suit in the case on your own and that you have to get an attorney to file suit. If you're dealing with them directly, the insurance adjuster will get the impression that you're not the type of person who is willing to pay to have an attorney and therefore probably offer you a low- ball settlement. The only hammer that a claimant has against an insurance company in an automobile accident claim is the threat that if the offer is not sufficient, the claimant will not take the offer and that suit will be filed and the value of the case will be left up to a judge or jury. Insurance committees don't like judges and juries placing values on a case because they then lose control over how much money is paid. An insurance company has an idea of what the usual high and low value of the case is, but once the case goes to trial anything can happen. A jury can award 10 times the actual value of the case or a jury can award nothing. Insurance companies don't like to deal with those possibilities and are more interested in framing a settlement that's within the parameters they've set. Nothing is more embarrassing to an insurance adjuster than having made a low- ball offer to a claimant and then having the case go to a jury and having the jury award four times what the case could of settled, based on the demands of were made by the lawyer at the time of settlement discussions took place.

If you do not have a lawyer, then the insurance company knows that you will likely not be filing suit and that they can basically settle the case for whatever they want as you have no other way to make them pay any more.

The insurance company adjusters have special training on how to deal with people who are unrepresented by an attorney. The insurance adjuster that you deal with more likely than not is a person specially pick to work with people who are unrepresented and who knows how to say the right things to that type of person that does not hire an attorney so that they can get this case settled without the person ever considering getting a lawyer

The next thing that insurance companies fear is that an unrepresented claimant will get an attorney. If the adjuster is unable to settle the case with the person who does not have a lawyer, then the adjuster knows that person may go to an attorney and then the value of the case will be much greater than it was when they were dealing directly with the claimant. If you intend on settling your case without getting an attorney you lose this leverage.

Insurance companies often try and settle cases with claimants directly immediately because a lawyer knows how to build the value into a case, whereas the client does not. They do this because they know that if an attorney gets involved the value of the case, will increase because a lawyer knows how to build the value of the case whereas the unrepresented client does not. You would not build your own house so why do you assume you know how to build a case.

In order to obtain a settlement offer from the insurance company, it is necessary that a person is actually injured in the accident. However, being injured alone is not enough to actually get more than a nominal amount of money from an insurance company. In order to get the actual value of the case, it is necessary that you go to a qualified doctor who renders reports on a timely basis, who sends the bills the insurance company requires, who documents the treatment that you have and who is willing to treat you in a timely basis. A good lawyer will be able to find a doctor who will cooperate in your case. Without an attorney is often difficult to find doctors who want to do accident work because most doctors don't want to get involved in litigation. Even if the doctors in willing to get involved most of the doctors don't know how to write reports and how to submit reports on a timely basis and how to put bills in the proper format that the insurance company will accept.

Even if you have the appropriate doctor, the insurance company will attempt to argue that the accident somehow was your totally or partially your fault. Insurance companies are notorious for doing this in order to try and convince you that your case is either worth nothing or worth very little. Unless your lawyer explains the law to the insurance adjuster and why the laws on your side, the insurance company will try and use the law against you.

The art of negotiation is truly an art and is perfected by having done it over a long period of time in a large amount of cases. If the only time you've ever negotiated a case is the case that you presently have, then you surely have not perfected the art of negotiating a personal injury claim and because of that you are very likely to get a very low settlement offer. Insurance adjusters negotiate claims every day and because of that have developed their own expertise in negotiating claim. If your negotiating with an experienced insurance adjuster than there is a high probability that they will be able to take advantage of you. The insurance company will tell you things, and you will not know whether in fact the assertions that they make are true or not because you have no experience in dealing in this particular situation. If I came to your job and told you how to do your job and I knew nothing about your job you would just sit there and laugh. That is the same thing the insurance adjusters are doing when you call to try and settle your case. They know you know nothing about their job and based upon that they are going to do

whatever they can to take advantage of you because they know there's nothing you can do about it because you do not have the ability to either hire an attorney or file suit in your case.

How does a Baltimore personal injury lawyer value a personal injury or auto accident case?

Clients frequently ask in an initial interview "what is the value of my case?" I explain, it's impossible for a Baltimore personal injury lawyer to tell you what the value of your case is until further into the process. There are so many factors that are involved in a Baltimore personal injury lawyer evaluating a personal injury or car accident case. Many of those factors are still unknown at the beginning of the case. Any Baltimore personal injury lawyer that tells you that he can value your case in your initial meeting or over the phone before he's met you is basically lying to you because there really is no way to put a value in the case until all of the information is in. All of the necessary information is not usually available to your Baltimore personal injury lawyer until your treatment is complete and all of your medical bills, medical reports lost wages, police report and damage estimate and pictures are available.

Clients will say, 'Well as a Baltimore personal injury lawyer you've handle cases like mine a hundreds of times surely you can tell me what it's worth. However, every case is different. Every case has a different set of facts and law that apply. A Baltimore personal injury lawyer would be acting unfairly if a Baltimore personal injury lawyer made up some value just to appease a new client. A Baltimore personal injury lawyer should treat each case separately and not lump it together with every other case he has ever handled. A Baltimore personal injury lawyer will treat your case as if it is the only case he has. A Baltimore personal injury lawyer will make sure your case gets all of the attention and work necessary so that you receive all of the money you deserve.

What are the factors that make this a complicated process? Factors a Baltimore personal injury lawyer need to consider include: 1) who is the client? Is the client male or female? How far did client go in school? Does client have a criminal record? Anything in your back round that appears to reflect on you in a negative way, will affect the value of the case. Whenever you're asking a judge or jury for money, a Baltimore personal injury lawyer must present your case in such a way that the jury likes you. Juries only reward people they like. If the jury doesn't like you will be less likely to award you anything. If the jury likes you, then they're going to take care of you.

It's important, when you testify to make a good presentation and a good first impression. A Baltimore personal injury victim should dress well, answer questions cooperatively, not give the other lawyer hard time, not get into an argument with anybody, and not refuse to answer any questions, because when you do any of the above, you can negatively affect the value of the case. In litigation cases where you give a deposition, do not violate any of the above rules even though you are not in court yet. If you give the other lawyer a hard time, then the lawyer will discount the value of your case, hoping to take you in front of a jury that he believes will not like you. Again, if the jury does not like you, likely it will award little or no money. So, it's extremely important at all times that you put on your best face, that you give a good deposition. Anytime you have any interaction with the other side, including giving a statement to the insurance company or at a deposition, or a pretrial conference, a client should dress appropriately and appear as a knowledgeable person who's aware of the facts and who in front of the jury's will make a good impression.

The second factor that a Baltimore personal injury lawyer always consider when evaluating a case for settlement is, 'what type of injuries do you have?' Did you have any broken bones? Did you have any cuts? Did you have any bruises? Did you have any other visible signs of injuries? Did you have any x-rays that showed a broken bone? Did you get an MRI that showed a herniated disc or were all of those tests normal. Are there any physical signs of injuries like cuts, bruises, blood, or broken bones? To a Baltimore personal injury lawyer those cases are worth more than if you have any physical signs of injuries like cuts, bruises, blood, or broken bones. It's a lot easier for a Baltimore personal injury lawyer to prove that you were actually injured.

Unfortunately, in a personal injury or car accident trial, juries tend to be very skeptical of the people that are making claims. The job of a Baltimore personal injury lawyer is to overcome that skepticism with overwhelming evidence indicating that you are injured. So objective signs of injury, meaning where we can actually prove that you were injured from a document or from a MRI or test or pictures showing the injury, is a lot more effective than you just complaining, 'my neck or back hurts.'

Most personal injury or car accident cases are neck or back injuries where there are no objective meaning actual signs of injury like an x-ray showing an injury or a broken bone. In order to prove these injuries a Baltimore personal injury lawyer has to rely on the medical records. Sometime the examination by the doctor can show objective signs of injury like a muscle spasm, or a limited range of motion meaning you can't bend as far.

Juries are more skeptical in cases where all of the tests are normal except the personal injury victim or car accident victim is complaining it hurts and they are unable to do a certain activity. These are known as subjective complaints because you cannot prove them with some test. Subjective complaints only as opposed to objective testing showing actual injuries, effect the value of the case.

The length of treatment can affect the value of the case. Normally, the longer your treatment lasts, the more your case should be worth because when we're asking for pain and suffering if your pain and suffering only lasted a week then obviously that case should not be worth as much as when your treatment and therefore pain lasted for three months.

On the other hand, if the accident appears relatively minor and there is not a lot of damage to your car, all the medical tests are normal and all you're doing is complaining about your neck and back, your treatment has lasted for four years and you missed three months of work, that will significantly reduce the value of your case because it will be easy for a good defense attorney to portray your case as exaggeration. While length of treatment is important if you have a fractured bone or surgery, it is less important if you have a minor injury

The next factor that can affect the value of the case is how much damage there is to your car. Why is that? The insurance industry has become very good at arguing that the amount of damage to your car directly reflects on whether someone's injured or not. Their argument is, 'Hey, judge look at these pictures. Hey jury look at these pictures. There's hardly any damage here. I only see a scratch. There's a small dent here. But this person received $10,000 in medical treatment and treated for six months. This doesn't seem consistent with the damage to the car in this particular case.' They argue no one can be injured in an accident with so little damage to the car. That argument can be very persuasive and therefore affects the value of your case.

The only way for a Baltimore personal injury lawyer to combat the property damage argument is to explain the following to the judge or jury: When a car dents or better yet crumbles from an impact, the person is less likely to be injured because all of the energy created by the impact of the two cars has been used to damage the car. The car accepts all of the energy and dissipates the energy by damaging the car. In an accident with little or no damage, since the energy was not used up to damage the car, the energy is transferred to the people in the car which results in injuries to the people rather than the car. That's why cars are not made like tanks. Car manufacturers can make cars that would have less damage in a car accident, but that would increase injuries, not prevent them. The job of a Baltimore personal injury lawyer is to explain this to a judge and jury. If successful, you get a fair verdict. But more often than not those pictures with little or no damage are very persuasive.

The next factor that affects the value of your case is, where did the accident take place. Why does that matter? Well judges and juries are very different depending on where they're from. In Maryland, judges and juries, let's say in Baltimore City and Prince George's County, tend to be a lot more liberal than some of the juries in the Western Maryland or on the Eastern shore. You're just dealing with different people either as judges or juries. Their feelings on the value of money or people filing claims can vary compared to people who live in the city. While one jury may think a thousand dollars is a lot of money another juror may think that that ten thousand dollars is nothing. It typically runs by county or areas of the state. If your accident happened in Baltimore city or Prince Georges County, a Baltimore personal injury lawyer knows with the same injuries, same property damage, and everything is the same except where it happened the case will be worth more money in those two jurisdictions then it would be worth in the rest of the State of Maryland. I'm sure that's true in every state. Where the accident happened matters

It also matters who's hearing the case. Certain judges give more money than other judges. Certain juries give more money than other juries. A Baltimore personal injury lawyer knows what judge is hearing your case of a certain day will affect the value of the case.

The next factor that can affect the value of the case is whether you ever had another claim before. If you've never had another claim that's extremely helpful. Juries tend to not like personal injury claims and auto accident claims. A Baltimore personal injury lawyer knows that when trying a case before a judge or jury, there's a presumption that the client is not really injured in the case. The job of a Baltimore personal injury lawyer is to overcome that presumption and prove that we're the exception, this person is not faking it, that they were actually injured in the accident.

What significantly affects that perception is prior injuries. If you never made a prior injury claim before the judge or jury is more likely to believe you were injured in the accident, than if you had 10 other claims. Once you start having more than one or two claims, judges and juries start wondering what's going on. Juries think, 'I've never been involved in a claim. Why is this person had 10 claims? Either juries think you are a bad driver and they'll blame the accident on you even when you're not at fault or the jury will conclude every time you're in an accident you run to the doctor. Jurors wonder, you know, I've was in an accident once, and I never ran to the doctor. Why does this person keep having repeated accidents and then run to the doctor and always try to get money out of the case. The more accidents you have even though they're not your fault the more likely that is to affect the value of the case.

The next factor that affects the value of the case is whether you have a criminal record. While client's reaction is always, what does that have to do with this case it shouldn't matter, in real life it often

matters plenty. While, all the jury should look at is what happened in the case, that isn't the way human nature works. If client has a conviction for armed robbery, murder or any other crime jurors are less likely to feel sorry for that person and award them substantial money than if the person has no prior criminal record.

The age of the client can affect the value the case. The sex of the client can affect the value of the case. Whether someone's very attractive can affect the value of the case. Juries look at all of these factors.

Are there pictures of scarring, bruising or blood? Pictures affect the value of the case. If you have an ugly scar obviously, the case is worth a lot more than if there's nothing there. If you have pictures from around the time of the accident that showed bruising, scarring, blood, car totaled, etc., those things are going to affect the value of the case. Just reading about those issues without actually seeing pictures will severely affect the value of the case. The old saying that a picture is worth a thousand words is proven in valuing a personal injury claim Those pictures can be worth two, or three times what the case would normally be worth just because you have those pictures, because they can have an impact on the jury.

Whether you missed any time from work is important. If it's a serious accident and you missed a lot of time from work, that supports your story. Sometimes, if you didn't miss work and you have a serious accident that may make you look more credible because you did your best to go back. However, the defense lawyer may argue, 'Well if you are hurt so badly why were you working?'

The next factor that affects the value of the case is whether your testimony is consistent with the medical records. If it is, great. If it isn't, then that's going to affect the value of the case. Your Baltimore personal injury lawyer has the job of looking at all of medical records as they are accumulated to make sure that your medical history both before the accident and as a result of the accident is consistent. If there are discrepancies or inconsistencies these will be pointed out to a judge and jury and be presented as your effort to exaggerate or make up your injuries.

Other factors that are considered in evaluating your claim are medical expenses in the past and projecting into the future, your lost wages in the past and the future, how it affected your marriage if you're married, also known as the loss of consortium claim in Maryland, and finally pain and suffering. The jury or judge can award for any of those or none of those. If you've had medical treatment but they don't like the doctors you went to or if juries think the treatment was excessive or if you didn't keep your appointments meaning you were supposed to go to therapy three times a week but you only went once every other week, that's going to affect the value of your case.

As a Baltimore personal injury lawyer, I have to look at all those factors in order to evaluate the case. Once a Baltimore personal injury lawyer considers all of those factors as well as others, the Baltimore personal injury lawyer will put a value on the case based upon the Baltimore personal injury lawyer experiences. Meaning, while this may be your first accident it's obviously not the Baltimore personal injury lawyer first experience. A good Baltimore personal injury lawyer has been doing this for at least 35 years. While a Baltimore personal injury lawyer has not tried every one of those 35 years' worth of the cases, a Baltimore personal injury lawyer tried many of them. And when a Baltimore personal injury lawyer tried some of those cases, a Baltimore personal injury lawyer will know after they're over what kind of results received. A Baltimore personal injury lawyer, then will get a chance to talk to the jury and find out what affected their decisions.

A Baltimore personal injury lawyer has settled thousands of cases over the years, and a Baltimore personal injury lawyer will know what insurance companies pay for and what they won't pay for. So that based upon trial experience and experience in settling cases a Baltimore personal injury lawyer know what they can get out of the case and what they can't get out of a case. A Baltimore personal injury lawyer knows what the insurance companies look at, what the adjusters look at, and therefore the Baltimore personal injury lawyer has to look at those same factors.

After considering all of these factors, a Baltimore personal injury lawyer will then have a plan. A Baltimore personal injury lawyer will then submit a demand to the insurance company with a demand letter with an explanation of all of these factors that justify the demand. And then the parties will negotiate. If the parties can't reach a figure that seems fair to a Baltimore personal injury lawyer, the Baltimore personal injury lawyer will take the unsatisfactory figure back to the client and ultimately seek a client's decision as to whether that offer's acceptable or not. If it's not acceptable than the case will be tried in front of either a judge or jury. Then the judge or jury will decide what the value of the case is.

Submit a convincing and complete demand package

After all of your medical treatment has been completed, an attorney can then submit a demand package to the insurance company. A demand package includes a favorable description of the client and summaries of the accident itself, the liability issues involved, the injuries involved, medical treatment incurred and total medical expenses or other losses. Finally, an evaluation of the claim is submitted to the insurance company along with a demand. I have handled thousands of similar claims and I am extremely familiar with the values of these particular cases. Most clients have no idea of what their case is worth, since they have never been involved in the process before, or if they have been in the process before have only limited experiences.

What does a typical demand letter look like in an automobile accident claim to an insurance company claim?

The purpose of this letter is to enable you to properly evaluate the claim of Joe Victim. Mr. Victim is fifty-one years old. He has been happily married to Sarah Victim for 10 years.

Before the accident happened, Joe Victim was employed by General Mills where he worked for the last two or three years as a truck driver and unloader. At the time of the accident Mr. Victim was making $12.90 an hour and was working forty hours a week. His average weekly salary was $521.53. He also had health insurance benefits as well as pension, life insurance, sick leave and vacation benefits at General Mills. As a result of the accident, he will never be able to return to truck driving which he has done most of his adult life.

Liability in this case is excellent. Mr. Victim was southbound on Liberty Road and the defendant, Mr. Fault, was northbound on Liberty Road. Mr. Fault crossed the center line and struck the victim's vehicle

head-on. An accident reconstruction was done by Police Officer Eckstein, a Baltimore County police accident and reconstruction expert, which is very thorough and places fault on your client. Apparently, this conclusion is not contradicted by any of the experts you have retained to investigate liability.

As a result of the accident, the truck which Mr. Victim was driving in was totaled and sustained at least $33,000.00 in property damages. Most of the impact to the truck was to the front. I have enclosed copies of the pictures of the damage caused to both vehicles involved in the accident. Looking at the pictures, it is hard to believe that anyone could have survived this particular collision.

With regard to medical treatment, Mr. Victim was initially flown to Shock Trauma by helicopter where he was admitted on 4/16/04. He remained at Shock Trauma until 5/10/04 when he was discharged to a rehab hospital.

Upon physical examination at the hospital, he was on a ventilator. Neurologically, his GCS was 3. He was sedated and paralyzed at the scene. There was a three- centimeter laceration over his right temporal region. He did have abrasions over his abdomen. Examination of his left leg showed a left lower extremity deformity with abrasions. X-rays taken upon admission showed a pelvic fracture, a left intertrochanteric fracture and a patella fracture. A cat scan of the head showed a right temporal subarachnoid bleed and

On 5/20/05 Dr. Clifford Chong along with Dr. Free and Dr. O'Leary did an open reduction and internal fixation of the left patella in order to fix the left patella fracture and an open reduction and internal fixation of the left intertrochanteric hip fracture with intramedullary device, as well as an intramedullary nailing, a left femoral shaft fracture and an open reduction and internal fixation of the pubic symphysis.

He was then admitted into the intensive care unit at Shock Trauma and taken to the neurotrauma unit. The patient was weaned off the ventilator without any problems. On June 1, he was admitted to the traumatic brain injury rehabilitation unit after he was discharged from cognitive therapy.

Upon discharge from the hospital he was prescribed with the following medications, Lovenox, Zantac, Atrovert nebulizers, Albuterol Nebulizer, Colace, Morphine #4 every two hours, Tylenol, Oxycodone and Dulcolax. His discharge diagnosis was a closed head injury with intracranial bleed, right temporal subarachnoid bleed, multiple orthopedic fractures, including left mid-shaft femur fracture, left in trochanteric fracture – processes below the neck of the femur, right wrist fracture dislocation, and open book pelvic fracture. He was ultimately discharged from the hospital on 5/10/05 and referred to a rehabilitation hospital in Virginia.

Upon discharge from University of Maryland Shock Trauma, he then immediately transported by ambulance to Rehabilitation Hospital in Virginia on 5/10/05.

The patient was admitted to Rehab Hospital to deal with the following problems, traumatic brain injury with diffuse axonal injury, as well as bi-frontal contusions, left femoral and intertrochanteric fractures, as well as a left patella fracture. Mr. Victim continued at the Rehab Hospital from 5/10/05 until 6/11/05 at which time he was discharged by Dr. Short. Upon discharge, his final diagnosis continued to be traumatic brain injury with diffuse axonal injury, left femur and intertrochanteric fracture, left toe fracture, right forearm fracture, penicillin allergy and confused state. Medications at the time of discharge included Diovan, Motrin, Nexium, Thiamine, Multi-Vitamins, Senokot, Colace, Darvocet, Coumadin. In addition, patient needed to continue receiving on -going therapy three to five times a

week, including physical therapy, occupational therapy, speech therapy and cognitive aspects. By the time of discharge the patient had progressed to supervision for dressing, supervision for transfers, ambulation with supervision within 150 feet with a platform rolling walker. The doctor also wanted his family physician to monitor his coumadin.

On the patient's follow-up visit of 5/27/05 at University of Maryland, he was examined by Dr. Seder and Dr. Chong at which time the stitches were removed from the distal radius and the cast was also removed and he was placed in a moveable splint and he was to start some range of motion therapy.

He was next seen by the doctors on 6/17/05 on an outpatient basis at the University of Maryland. At that time, he was seven weeks post fracture and surgery and he was to do resistive exercises, as well as physical and occupational therapy.

He was subsequently admitted to the outpatient rehabilitation at Sinai Hospital on 6/18/05 and he was discharged from that program on 9/17/05. Treatment consisted of occupational therapy, speech pathology and the physical therapy. During his stay at Sinai he worked on his memory, auditory processing including talking about many things at one time and trying to work independently. During occupational therapy, he worked on strengthening his left hand and arm. It was felt when he was discharged from Sinai that he would need additional therapy for his hand and arm, which was to be done in Dundalk. It was further recommended that he follow up with a psychiatric counselor. It is not clear at the time whether he was going to be able to go back to work mentally, although the doctors felt it would be eighteen months to two years after the accident before a final determination could be made on that issue.

A neuropsychological evaluation was done by Dr. Julie Fish, a neuro-psychologist at Sinai Hospital in order to evaluate the extent and depth of the cognitive deficit following his traumatic brain injury. She notes that since the injury Mr. Victim with regard to his head has noticed a number of problems, including short term memory deficits, is likely to forget where he has placed items, has trouble keeping track of appointments, quickly forgets if he has done certain tasks – like locking a door or putting his credit card back in his wallet and he is slow in his performance of tasks, such as washing dishes. He feels more scared, uptight and angry then he previously was and his auditory comprehension is decreased.

With regard to the Dr. Fish's recommendations, the results of the current neuropsych evaluation identified the following; he now has a borderline verbal IQ, low average performance IQ, borderline full scale IQ, borderline verbal comprehension, low average perceptual organization, deficient processing speed, somewhat decreased novel problem solving skills, low average attention concentration, borderline immediate auditory memory, borderline delayed auditory memory, average delayed auditory recognition, borderline visual immediate memory and low average delayed visual memory. He also appeared moderately depressed. All of these conditions were connected to the head injury sustained in this accident.

Dr. Fish reached the conclusion that many of Mr. Victim's cognitive skills appear lower than his estimated level of premorbid functioning. For instance, his verbal IQ, full scale IQ, verbal comprehension, immediate and delayed auditory memory, immediate visual memory, novel problem solving and possibly his attention concentration all appear at least mildly declined. Given his comprehensive deficits Mr. Victim is likely to have more difficulty functioning in the home, community and work setting as compared to his prior level of functioning. If he does pursue return to work, he will

need a great deal of assistance to identify job tasks that match his current capabilities. Further, he is likely to have significant problems learning and retaining the information required for a new job. Further, Mr. Victim is also quite depressed which is likely to negatively affect his test performance. It is strongly recommended that he receive psychiatric treatment to address his depression, including very poor self-esteem, anger, adjustment to changes in life since this traumatic brain injury, disinhibition and alcohol use.

He was last seen by Dr. Chong at University on 3/24/06 at which time it was found that he had reached maximum medical improvement with regard to his orthopedic issues. Dr. Chong mentioned that he did not believe he would be able to return back to the type of work he was doing before and that he should be referred for functional capacity evaluation and possible vocational rehabilitation. Dr. Chong was unclear at this point as to whether he would need any other surgery in the future. He did also suggest that he be referred to a pain clinic for pain management.

Mr. Victim's present complaints include the following, he is unable to run, stoop, bend or kneel, he cannot sit for long periods without getting stiff and so he has to stand up, he has problems getting up if he falls. He must walk with the use of a cane most of the time, especially when walking long distances. He cannot tie his shoes and needs assistance with both his shoes and his socks, as well as buttons. He cannot clip his own toenails or wash his feet. He doesn't believe he can lift over ten pounds. When he wakes up in the morning he is very stiff and it takes him approximately 30 minutes to get dressed. In order to take a

shower he has to use a shower chair for safety. When going to the store, he has problems with sales transactions and making change. He has problems doing his own banking and balancing his checkbook and paying his bills. Joe was a very proud person prior to the accident and always had a good credit rating and was very proud of the fact that he had always paid his bills on time. He now has difficulty shopping, walking long distances and carrying bags. He is unwilling to drive anywhere other than in the neighborhood and most likely will not drive further than three miles at any one time. His wife takes him to the doctors. He cannot lie on his left side. Prior to the accident, he was able to do activities such as remodeling his bathroom, finishing his attic, and building and staining a deck. He painted the house, performed the yard work and general home maintenance. Now, as a result of the accident, he cannot do any of those activities. He has a lot of difficulty with stairs. He is having problems participating sexually with his wife. He is unable to camp, hike, ride a bike, play softball and billiards and swim. He cannot take his dog for as long of a walk as he used to do. He cannot play his guitar anymore. He used to bowl in a league and he is unable to do anymore. When his father died, he was unable to fly out to California to see him and he was unable to attend his funeral.

With regard to scaring, Joe has a two-inch scar on his head, a six-and-a-half-inch scar on his pelvis, a nine and half inch scar on his hip, a two-inch scar on his leg, a seven-inch scar on his right knee, a five- inch scar below the knee and a five-inch scar on his hand.

Current medicationZoloft – 15 milligrams, 1 per day, antidepre Itemization of Medical Expenses

ITEMIZATION OF MEDICALS TO DATE

Sinai Hospital 6/16 to 6/30/05 $2,772.54

7/1 to 10/25/05 $17,280.08

University of Maryland

Shock Trauma 4/16 to 5/10/05 $108,773.58

UMMS 5/27/05 $634.04

6/2/05 $233.11

6/17/5 $142.08

UMMS Diagnostic Radiology 7/14/05 $330.60

12/16/05 $185.65

12/22/05 $409.30

CRNA University of MD 4/20 to 5/1/05 $17,042.00

Advanced Radiology 11/20/05 $80.00

11/15/05 $26.00

10/14/05 $40.00

Dr. Diaa Hail 6/23/05 $175.00

8/2/05 $125.00

9/1/05 $125.00

10/6/05 $125.00

11/3/05 $125.00

1/6/05 $125.00

Eye Institute 5/20/05 $295.00

Transcare Harford County 5/10/54 $1,123.00

5/27/05 $720.00

6/2/05 $2,104.00

Total Medicals
$309.307.47

Workers' Compensation Lien

Erie Insurance Company as of 4/15/05 $271.000.00

Total medicals and liens
$580,307.47

VALUE OF CASE

Workers' Compensation Lien $271,000.00

Medical in past $309.307.47

Future medical costs 25,000.00

Pain and Suffering – cap case $635,000.00

Lost wages in past –

52 weeks thru 4/16/05 $27,119.56

Lost wages in future	$402,480.00

Not taking into consideration cost of living raises and merit raises and lost benefits

Miscellaneous expenses	$3,095.03
Total value of case	$1,647,941.90

How long for car accident claim to settle?

Clients often ask how long does it take for a car accident claim to be settled. In fact, typically that's one of the first questions that clients ask in the initial interview. I give clients the same answer each time. "It depends." If the insurance company accepts responsibility immediately, and the if client's injuries are relatively minor and if I receive all the medical bills in a relatively short period of time and if the insurance company is reasonable in negotiations and calls me back when I call, then the case can settle usually within 30 days after the clients' treatment has completed. However, there's a lot if's in this particular sentence and for that reason while some cases can settle within two months of the accident other cases can take years before the case is resolved by the courts.

When hiring a lawyer, clients should ask at least two questions not just the one above. How long will take for the accident claim to settle and how will I know that I'm getting the most amount of money I can possibly get. Insurance companies are aware that most clients are more interested in how quickly the case settles and rather than how much money they receive. Clients who only care about How long for car accident claim to settle? More often than not received less than what the case is worth. In the alternative clients who receive a full and adequate recovery are less interested in how quickly the cases are resolved and are more interested in the amount of money they receive.

When hiring an attorney, while, how long for car accident claim to settle? Should certainly be a factor, it should not be the only factor. If the lawyer is doing his job by reporting the accident immediately, getting your car fixed in a timely basis, getting you a rental car immediately, obtaining your medicals when available and forwarding your medical bills and lost wages to the insurance company shortly after you've completed your treatment than the lawyers doing all he can to move your case along. If within a relatively short period after submitting your medicals and lost wages to the insurance company the lawyer is calling the insurance company in order to try and settle the case than the lawyers is doing his job. If the lawyer follows up with you after he receives the final offer and offers his opinion on whether to accept the offer and then agrees to file suit in your case if the offer is unacceptable, then the lawyer is doing his job. If after you discuss with your lawyer the pros and cons of accepting settlement versus filing suit you decide to file suit and the lawyer immediately files suit and obtains a trial date, then the lawyers is doing his job. While that may mean that your case may take a year or two to get resolved that is not the fault of the lawyer as he is done what he supposed to do and the insurance company is being unreasonable.

If the lawyer does not report the accident right away, does not get your car fixed or rental car authorized without an explanation, does not return your calls or only allows you to talk to secretary, then you can assume your case will not be dealt with in a timely basis and your case is not a priority for this lawyer. If no demand has been made of the insurance company within 45 days of when you completed your treatment, then your lawyer is probably the cause for the delay. If after you reject an offer, the lawyer has not filed suit within 30 days, then the lawyer is causing a delay. If the lawyer has not served the defendant in your suit within 60 days and has no explanation, then your lawyer may be causing a delay. If your lawyer has to ask for a postponement, when your case comes up for trial, he may be the one not giving priority to your case.

If all you care about is how quickly your case is settled and the money is secondary, you should let your lawyer know up front so that he can dispose of your case as quickly as possible even though it is likely that you will not get the last dollar that may be available in your case. Every client is different and has different needs and has different expectations. These expectations should be made clear to the lawyer up front so that the client can be happy with the services that the lawyer provides. If after discussing your desires with your lawyer he refuses to comply with your wishes then you may want to find another lawyer.

Times vary on how long it takes to settle an automobile accident claim, although it can be divided into two categories. Category one would be cases that are quickly accepted by the insurance company and typically these cases involve the client going to the doctor and completing their treatment. Then usually thirty to forty-five days after the client has completed the treatment the case can be settled.

Category two are the cases that cannot be settled. In category two there are also two types of cases. Cases that are small and worth less than $30,000.00 usually involve filing suit in the District Court. These cases can take anywhere between three to six months after your treatment is completed. Cases that have to be filed in the Circuit Court which are typically worth more than $30,000.00 usually take anywhere from one to three years.

If I file a personal injury claim do I have to go to court?

If another driver's insurance company agrees to pay what your attorney believes your case is worth, and you wish to settle for that amount, then your case will not go to court. This is what happens in most situations. Some cases do require a formal trial proceeding, however, in either situation, hiring a law firm with experience in handling personal injury cases is critical.

What happens when the case cannot settle?

After the demand package has been submitted to the insurance company, negotiations will take place between the attorney and the insurance carrier. After negotiations, it is hopeful that a reasonable settlement offer will be obtained. At that point, the settlement offer is conveyed to the client. The client is not bound by a settlement offer made by the insurance company. Ultimately, the decision on settlement is up to the client and not up to the insurance company and/or lawyer. It is important that the client listens to the lawyer with regard to any advice he gives concerning a settlement offer, whether favorable or not. Sometimes the insurance company makes offers that seem unacceptable to the attorney, however, it is the obligation of the attorney to at least present that offer to the client. The

attorney will then present the pros and cons of all offers to the client and will give his opinion whether the client should accept or reject the offer. After the attorney's presentation, the client has the ultimate decision as to whether the offer is acceptable or not. Despite having this power of the final say, clients need to remember why they hire an attorney in the first place. Because attorneys have substantial experience in handling these should give substantial weight to the recommendations of their attorney. The attorney will then make his recommendations with regard to those offers as well, however, ultimately the client can make a decision on whether they want to accept the money or not.

If it turns out that the case cannot be settled, the attorney can be extremely helpful in pursuing the rest of a claim. The next part of the process, filing the claim in court, is done so that a judge and/or jury can determine the value of the claim. Attorneys are trained in preparing the necessary pleadings that need to filed in court. Cases less than $30,000 can be filed in the District Court.

The initial claim that is filed in court is either a Statement of Claim, which is filed in the District Court of Maryland, or a Complaint and Election for Jury Trial, which is filed in the Circuit Court. Any claim up to $30,000.00 can be filed in the District Court.

What does a typical complaint look like that is filed in an automobile claim?

COUNT I

For that on or about July 9, 2005 the Plaintiff, Fred Victim was traveling southbound on Fayette Street near its intersection with Hanover Street when he was struck in the rear by a motor vehicle operated by the Defendant, Michelle Brooks, agent servant and employee of the owner of the vehicle, Defendant, Stacey Johnson.

That as a result of said collision the Plaintiff, Fred Victim, was painfully and permanently injured about the head, body and limbs, suffered shock to his nervous system, incurred hospital and medical expenses, lost time from work and was otherwise injured.

The Plaintiff, Fred Victim, alleges that the Defendants were negligent in that they failed to yield the right of way, failed to obey a traffic control device, traveled at an excessive rate of speed, failed to allow enough stopping distance between their vehicle and the vehicle in front of them, and the Defendant were otherwise negligent.

The Plaintiff, Fred Victim, alleges that all of his injuries, damages and losses were caused directly by the negligence of the Defendants without any negligence on the part of the Plaintiff thereunto contributing.

WHEREFORE, the Plaintiff, Fred Victim, claims Seven Thousand Five Hundred Dollars ($7,500.00) damages.

COUNT II

The Plaintiff, John Sweeney, incorporates by reference all the allegations in Count I as though fully restated and further alleges.

That at the time of the accident the vehicle which the Plaintiff, Fred Victim, was driving was owned by the Plaintiff, John Sweeney, and as a result of said accident the vehicle suffered property damage.

The Plaintiff, John Sweeney, alleges that all of his injuries, damages and losses were caused directly by the negligence of the Defendants without any negligence on the part of the Plaintiff thereunto contributing.

WHEREFORE, the Plaintiff, John Sweeney claims Two Thousand Five Hundred Dollars ($2,500.00) damages.

Suit can be filed either in the district court or the Circuit court.

If the amount you are suing for is less than $30,000.00 then you can file suit in the district court. There are no jury trials in the District Court. If the Plaintiff wants a jury trial, then he should file suit in the Circuit Court and must ask for at least $15,000.00. If the defendant wants a jury trial and the Plaintiff has filed suit in the District Court, then the defendant can ask for a jury trial as long as the amount asked for exceeds $15,000.00.

What Happens after suit is filed?

District Court is a fast and efficient way to resolve claims in that cases can typically be resolved within six to nine months, sometimes even quicker. After the District Court case is filed, it is then necessary to serve the person who will now be known as the Defendant with the suit papers. The case will not go to trial until the Defendant has been properly served. If the Defendant can be served on the first attempt, the case will come up for trial promptly. If the Defendant is difficult to serve, the case can sometimes take a much longer period of time because the trial date will not be set until the Defendant has been served. Once the Defendant is properly served in the District Court, the attorney will file an answer and the parties will exchange fifteen questions that are known as Interrogatories. Included in these fifteen questions are questions concerning date of birth, social security number, place of employment for the last five or ten years, prior health history, medical treatment due to the accident, prior accidents and facts regarding the accidents, and any witnesses that may be called. (see below interrogatories filed in a typical circuit court case with the only difference being that you can only ask 15 questions in the District Court and 30 questions in the Circuit Court.) After Answers to Interrogatories are exchanged the case will be scheduled for trial.

If the amount in controversy is over $15,000.00, then you have the right to have a jury trial. Jury trials are heard in the Circuit Court. If you do not want to have a jury trial, however if the amount you are suing for is greater than $30,000.00, your case must be heard in the Circuit Court. Circuit Court cases typically take anyway from one to three years and they are obviously a longer process because the amount of controversy is much larger the cases tend to take longer.

The process is the same in the Circuit Court, as in the District Court. The initial complaint is filed in the Circuit Court to get the case started and is called a Complaint and if you want a jury trial it will include an Election for Jury Trial. That complaint must be served upon the Defendant and once the Defendant is served and files an answer the case is at issue.

Typically, a scheduling order is then sent out and the trial date is usually one year from that date, unless the case is extremely complicated then the case will be more spaced apart. If the Defendant has filed an Answer, then Interrogatories are typically exchanged and Interrogatories are questions exchanged between the parties and in the Circuit Court there are thirty questions. Below is a typical set of Interrogatories filed by the Defendant

State your full name, home address, date of birth, marital status and social security number.

By whom were you employed and what were your duties and wages at the time of the occurrence?

State the reason for termination of any employment during the last five (5) years.

Name the eyewitnesses to all or part of the occurr-ence.

Name all persons who were in or on your motor vehicle.

Name all persons who were at or near the scene.

Attach hereto a copy of any signed statement made by the Defendant or agent.

If a report was made by you or by an employee of yours in the ordinary course of business with respect to the occurrence, state the name and address of the person who made the report, the date thereof and in whose custody, it is.

Give a detailed and full statement of the facts as to how you contend that the occurrence took place.

If you contend that Plaintiff acted in such manner as to cause or contribute to the occurrence, give a detailed and full statement of the facts upon which you rely.

If you contend that a person not a party to this action acted in such manner as to cause or contribute to the occurrence, give a detailed and full statement of the facts upon which you rely.

Attach to your answers copies of all written reports made to you by any experts whom you propose to call as witnesses.

State the itinerary of your vehicle, including the time and place of the beginning of the trip, the time and duration of each stop, the place of destination, and the expected time of arrival.

Were you the owner of the vehicle operated by you at the time of the occurrence? If not, state the name and address of the owner, whether you had the permission of the owner to operate the vehicle, and the purpose for which you were operating the vehicle.

Name all persons who investigated the cause and circumstances of the occurrence for you.

Name all persons who arrived at the scene within one (l) hours after the occurrence.

Name all persons who investigated Plaintiff's injuries and damages for you.

Name any person, not heretofore mentioned, having personal knowledge of facts material to this case.

Name those persons who have given you signed statements concerning the occurrence.

State whether you have within your possession or control photographs, plats or diagrams of the scene, or objects connected with said occurrence.

State what part of your vehicle was damaged and, if it was repaired, the name and address of the person who performed such repairs, the dates of such work and the cost thereof. If such vehicle is unrepaired, state the address and the hours at which it may be seen.

State the make, model, size and date of your motor vehicle and the date on which it was first placed in use by you.

State nature and weight of the load which your motor vehicle was carrying and mileage covered by it.

State when your vehicle was last repaired, prior to the date of accident, the nature, dates and costs of said repairs, and the names and addresses of the person making repairs.

State whether you consumed any alcoholic beverages within eight (8) hours prior to said occurrence, the places where such alcoholic beverages were obtained, and the nature and amount thereof.

State whether you have within your control, or have knowledge of any transcripts of testimony in any proceeding arising out of the occurrence. If so, state the date, the subject matter, the name and business address of the person recording said testimony and the name and address of the person who has present possession of each said transcript of testimony.

When was your vehicle last inspected and by whom?

Aside from minor traffic violations, has the Defendant ever been convicted of any offense under the criminal law of any State arising out of the operation of a motor vehicle or otherwise? If so, state the following:

(a) The date, the Court, the time and circumstances surrounding such conviction.

Outline in detail the work schedule, physical and other activities for the Defendant(s) for the twenty-four (24) hour period immediately preceding the occurrence.

State with precision the type and amount of insurance coverage available to satisfy part or all of a judgment that might be entered in this action, or to indemnify or reimburse for payments made to satisfy the judgment, giving the policy number, name of insurance company, the agent, the named insured, and coverage limits

Interrogatories are exchanged between the parties and answers are given.

Then depositions may be taken. A deposition is when a statement is taken in front of a court reporter by the other attorney and will typically be taken at the other attorney's office or can be taken at your attorney's office. Depositions can be taken by all parties, witnesses, medical providers or any other relevant witnesses including police officers or other experts like an accident reconstruction specialist, etc. A deposition can typically last for several hours and your attorney will prepare you for the deposition prior to going to the deposition so that you know the questions to be prepared for. Deposition questions may be the same questions that you are typically asked in court, as well as other questions involving your background. Depositions are an opportunity for the defense lawyer to get to know you and may ask you questions about your prior work history for your entire life, your entire health history, your entire accident history, your entire personal life and then a question regarding the accident itself. See questions that I have suggested in the District Court questions listed prior to this, as well as questions asked in Interrogatories.

A deposition is the defense attorney's opportunity to get to meet you and decide what kind of witness you are going to make, It is important that you dress well as the deposition and that you make a good impression. It is extremely important that you not argue with the other lawyer at the deposition, that you keep your answers short, that you only answer the question that was asked and that you not volunteer any information that is not asked. If the other lawyer asks you a question, that involves a yes or no answer, then answer yes or no.

You should never ask the other lawyer why he is asking certain questions. If the other lawyer asks you a question that is objectionable your attorney will make the necessary objection. If your attorney does not object, then you must answer the question. Even if your attorney does object, most of the time you have to answer the question, because there is no judge to rule on any objection, since this is done in the other lawyers' office. Those objections will ultimately be ruled on by the court at trial, as to whether the information that you gave was admissible or not. If the court feels that the questions were inappropriate, then any answers that you gave will not be allowed to be used by the other side. The only time you may refuse to answer a question is when your lawyer instructs you not to answer the question, otherwise you must answer the question, no matter how irrelevant it seems to you.

When the lawyer asks, you question it may be relevant or it may not be relevant. The basic standard is whether the question is relevant and may lead to relevant material. Questions that may seem irrelevant to you, may seem extremely relevant to the lawyers involved in the case and may lead to information that is relevant to your particular case. When the other lawyer asks the question, he doesn't know whether the information you are going to give is relevant or not. While it may not seem relevant to you, that you have had other accidents, it may be relevant to the other side, if it turns out that prior accidents involved similar parts of the body and that you had continued to complain about those parts of your body and your treatment was completed and you had complained about them prior to this particular accident, there is no way for the other lawyer to know without asking those questions.

At a typical deposition, your own attorney will not ask you any questions, because he ask you those questions without putting it on the record. Anything you say at the deposition can be used in the courtroom to impeach your credibility later.

In addition to Interrogatories and depositions the other side may file a Request for Production of Documents. In this request, it will typically ask for medical records, employment records and any other relevant documents including tax returns and loss wage information. These documents must be provided.

After the discovery process has been completed the case will then be scheduled for trial and prior to trial there may be a settlement conference, as well as an arbitration. Arbitration and settlement conferences are typically used by the court to try and settle cases prior to trial. After the settlement conference the case is usually scheduled shortly there-after.

On your trial date in District Court your case will be scheduled along with five or ten other cases. Your case is a public trial, meaning anyone is entitled to view its proceedings. At least several people will be in attendance to hear your case, as other individuals will be waiting for their cases to be called.

The main difference between a District Court trial and a Circuit Court trial is that usually Circuit Court trials involve a jury and the medicals records are usually not admissible unless the doctor comes in to testify. At a typical Circuit Court trial the lawyers will submit a voir dire to the Judge in advance in order to help the Judge pick a jury. The jury panel will then be brought in and will be asked a series of questions. The lawyers will then along with their clients be able to pick a jury.

In a Circuit Court civil trial, juries consist of six people and each party gets a certain amount of strikes in order to pick a jury. After the jury is picked, then opening arguments are given and each lawyer starting with the Plaintiff's side gives their opening statement which outlines each side's theory of the case, as well as a brief outline of the injuries involved.

After opening arguments, the Plaintiff will then present his side of the case. First, the Plaintiff will testify and be cross-examined by the defense attorney. Then after the Plaintiff testifies, he will then present any witnesses on the issue of liability, as well as any witnesses on the issue of damages. At this point, any medical providers will be called as witnesses.

At the end of your case the Defendant's attorney will make a motion to dismiss your claim. If the Judge feels that you have presented a prima fascia case, meaning it is more likely than not that the accident happened the way you say it happened, then your case will go forward. If the Judge feels that there is sufficient evidence at that time to find you at fault as a matter of law, then your case will be dismissed. If the motion to dismiss is denied, the Defendant will present his side of the case. The Defendant will testify and present any witnesses as well as any medical experts that the Defendant any have. Your attorney will then have the right to cross-examine those witnesses. At the end of the case both sides will have a chance to argue through their attorneys their version of the case and the damages involved. The Judge will then render a verdict.

At the end of the Defendant's case motions to dismiss is renewed and if those are not granted then, in a District Court Case or a Circuit Court case without a jury, the judge will decide the case. In a Circuit court case with a jury, the jury will decide the case.

After the court makes a ruling on the motion, then the lawyers and the Judge will then give the jury a set of instructions on the law of the particular case. This is the only opportunity the jury gets in order to hear what the law is with regard to your case, so that they can use that law, as well as the evidence that they have heard in order to make a determination in your case. Instructions in the case typically last approximately a half hour and then both lawyers give their closing arguments.

After closing arguments, the case is then presented to the jury. The jury then deliberates on your case until they reach a verdict. Typically, the jury has to make a decision on two issues, first issue is who is at fault and the second issue will be what, if any, injuries were sustained and what, if any verdict is therefore rendered. A typical verdict sheet will look as follows:

Was the Defendant negligent?

Was the Plaintiff contributory negligent?

Was the Plaintiff injured?

What amount do you award, if any for medical expenses?

What amount do you award, if any for lost wages?

What amount do you award, if any for pain and suffering?

Questions Asked at trial?

When you are called to testify, you will be asked a series of questions. Below are typical questions that I ask as part of your trial. You should know the answers to these questions when preparing to testify in your case.

Please state your name, address, age, marital status, amount of children (if any), years of schooling, place of employment, duration of employment at said place and type of work.

After asking these general background questions, I will then follow this basic train of thought:

I direct your attention to the date of the accident, where were you going on that particular day, where were coming from, what time you left, what route you took, how fast were you going, what lane you were in, what the traffic, weather and road conditions were like, what the speed limit was, how many passengers you had, number of surrounding vehicles, the time, the time you had to be where you were going, whether lateness was a factor, if you were in a hurry, if your radio was on, if anything was blocking your vision, or if there were any obstructions in the road.

After relaying this general background, you will be asked how the accident happened, at which time you will give your version as to how the accident happened. After you explain how the accident happened, I will ask you the following questions:

Were there any traffic control devices involved? What color was the light? Who had the stop sign or other traffic control device? What did the traffic control devices or signs say? What did the other driver do? How fast was he going? What did the other driver look like? What did the other car look like? What lane were you in at the time of the accident? Where was the point of impact? What efforts did you make to avoid the accident? What efforts did the other driver make to avoid the accident? Were there any other witnesses to the accident? Did the other driver have any passengers? Were there any other cars involved?

After describing how the accident happened we would then get into the injuries part of the case. Potential questions include:

What happened to you inside the vehicle when the accident happened? Did any part of your body strike the inside of the vehicle? When did you first notice that you were hurt in the accident? What part of your body was injured as a result of the accident? Explain the exact problem you were having with each part of your body when you first noticed you were hurt. Did you tell anyone you were injured at the scene? Did you speak to the police officer? What did you tell the police officer? Did you speak with the other party? What did you tell the other party? Was anyone else injured in the accident? What did they tell you? Was the other party injured in the accident? Describe the damage to your car. What medical treatment– if any– did you receive? Did you go to the emergency room? How did you get to the emergency room? Did you go to the emergency room right away or did you wait until the next day? If you went the next day, how did you feel that night? If you went to the emergency room the same day, how did you feel while you were in the ambulance? How did you feel while you were waiting in the emergency room at the hospital? What did they do for you at the hospital? What recommendations– if any– did they make at the hospital? Did they recommend that you follow up with any other treatment? Did they do any tests for you at the hospital? If so, describe those tests. Did they take any x-rays? Did they prescribe any medication? After you left the hospital, where did you go, how did you feel and did you receive any follow up medical treatment? How did you feel between the time you went to the emergency room and the time you went for your follow up medical treatment? What do you typically do when you are not injured? How did this affect your ability to do those things after you were injured? Where did you go for follow up treatment? What did they do for you at the doctor's office? Did they prescribe any treatment or give you any medication? Where did you get your prescriptions filled? Did they give you any medical devices? Did you wear those medical devices? What did the doctor's examination consist of? How long was the doctor's examination? Did you receive any physical therapy? Can you describe the types of physical therapy you had, how long each physical therapy treatment lasted and whether the physical therapy helped or not? Did you receive any surgery? Can you describe the surgery? Did the surgery help? How long was your medical treatment? Did you make a full recovery? Are you still having any present complaints? If so, what are those present complaints? Did you miss any time from work? If so, how much? How much money do you make when you work a full week? How much money did you lose as a result of the accident? Were you able to go back to your regular job after your medical treatment was completed? Did you incur any medical expenses? How much were those medical expenses? How did you accident affect your ability to work? Were you able to work? What is it about your job that you could not do as a result of your accident? How did the accident affect your normal home life? What activities at home were you not able to do that you normally did? Did you get any help to with those activities? If so who helped you? Describe the pain that you were in. Describe the problem that you were having with each part of your body. Describe the limitations that you had with each part of your body and how it affected your ability to do your normal activities as well as your work activities. If you are having any permanent complaints please describe those and describe any permanent limitations.

These are the typical questions asked in a District Court case and these questions may also be asked in a Circuit Court case. After your attorney asks you questions on direct examination, the defense attorney will then ask you questions on cross-examination. The job of a good defense attorney is to try and confuse you on how the accident happened and convince the court that you were either 100 % at fault or at least partially at fault. As was previously explained, in Maryland if you are even 1% at fault, you cannot recover as a Plaintiff. As part of his tactics, a good defense attorney will try to convince the judge or jury that you at least contributed partially if not totally to the fault in the accident. The defense attorney will try to get you to admit that you were either speeding, or not paying attention or otherwise distracted. He will make an effort to get you to admit that you in some way violated one of the rules of the road. The defense will go through similar questions that your attorney asked, however, it will be done in a different manner. Defense attorneys are allowed to ask leading questions that suggest the answer inside the question. The defense attorney will put words in your mouth and try to get you to agree with questions he asks that are in the form of statements or admissions. Examples of these suggestive questions designed to catch you off-guard include:

Were you looking directly at the light at the time of the accident? Were you not looking at your speed at the time of the accident? Do you really know how fast you were going at the time of the accident? Weren't you talking to the passengers in the vehicle at the time of the accident, therefore, not paying attention? Wasn't the sun in your eyes?

In many of the cases filed in the District Court who is at fault is not necessarily the predominant issue, but rather the value of the case. In those cases, the defense attorney will focus his questions on your injuries to try and minimize what, if any, injuries you received and whether your medical treatment was necessary or not. The defense attorney will ask questions about prior injuries to try and make it look like an injury you are now having is from something other than this particular accident. He will also try to make it look like you have filed so many claims, that there is no reason to believe that you were actually injured in this particular accident and that you file a claim every time you are in an accident, whether injured or not. He will ask you about past medical history to try and show that the problems you are having are due to your past medical history and not from this particular accident. The defense attorney may ask you why you called your lawyer before you received any medical treatment and may ask you what doctor who saw and why you did not go to your family doctor and may also ask how you were referred to a specific doctor. Below is a list of typical questions by the defense when liability is agreed upon the only issue is damages.

Have you been involved in any other accidents? If so, when, what parts of your body did you injure? Where did you receive your medical treatment? Did you have any continuing problems after you completed your treatment? Were you having any problems with those parts of your body prior to this particular accident? Have you had any other medical problems and who treated you for those problems? What caused those medical problems? Were you having any problems with those areas of your body prior to this particular accident? Have you filed any other claims before? If so, what parts of your body were injured? When were those claims, what treatment did you receive for those claims and

did you recover any money for those claims? With regard to the accident you are suing for, what doctor treated you and who referred you to that doctor? When did you see that doctor? Why did you choose that particular doctor? What treatment did you receive? How long was each treatment? Why is there a gap in your treatment? Why did you miss your appointments? Did you get your prescriptions filled and if not, why not? Did you keep all of your medical appointments and if not, why not? How long did your treatment last? Did the treatment help? If the treatment didn't help, why did you keep going? Do you have a criminal record?

Facebook posts

It is important that we raise with you the dangers of social networking sites such as Facebook and My Space. Social networking sites are fun and a great way to keep in touch with family and friends. However, these sites have the potential to do great harm to your lawsuit if precautions are not taken. Although the courts are not entirely consistent on this issue, it is possible, and indeed you should take as a given, that the defendants will have the opportunity to review every single page of your social networking sites. To that end, please take the following precautions:

Make sure that nothing is posted to your site that discusses your injuries. That means that you should post nothing about this topic, and you should instantly delete anything your "friends" may post on this subject.

Make sure there are no photographs (posted by you or friends) of you doing physical events that depict what you cannot do because of your physical limitations—this may include gymnastics, dancing, golf, swimming, etc.

Make sure you know everybody who is your "friend." Do not accept "friend" invitations from people whom you do not know. Some of our younger clients have literally hundreds of "friends," and it is important that every person be vetted and confirmed.

Review your "friend" list now. If you are not 100 percent confident that you know who every single person is, block that person as a friend. It is possible, indeed probable, that somebody posing as a "friend" who is actually an agent of the defendant will try to get onto your page in order to obtain incriminating evidence that can harm your chances of a successful recovery at trial.

Depositions—giving your story to the other side before trial.

After Interrogatories are exchanged between the parties and answers are given, depositions may be taken by your Baltimore Car Accident Lawyer. In a deposition, your Baltimore Car Accident Lawyer or the other attorney discusses the circumstances of the case and takes a statement from any party involved, either at his/her office or at your attorney's office in front of a court reporter. Depositions can be taken from all parties, witnesses, medical providers or other relevant witnesses including police officers or other experts like an accident reconstruction specialist, etc.

A deposition will typically last for several hours, but your attorney will prepare you prior to the questioning so that you know what to expect. Deposition questions may be the same questions that you are typically asked in court, as well as other questions involving your background. Depositions are an opportunity for the defense lawyer to get to know you and he/she may ask you questions concerning your entire work history, health history, accident history and personal life, to be followed by a question regarding the accident itself. See questions suggested in the District Court questions list, as well as questions asked in Interrogatories for examples.

Dos and don'ts for depositions

As the deposition is the defense attorney's opportunity to meet you and decide what kind of witness you are going to make, it is important to dress well and make a good impression. At the deposition, it is also essential that you keep your answers short, answer only the question that was asked, do not volunteer any information that was not asked and do not argue with the other lawyer. If the other lawyer asks you a question that involves a "yes" or "no" answer, answer yes or no. Never ask the other lawyer why he is asking certain questions. If the other lawyer asks you a question that is objectionable, your attorney will make the necessary objection; however, most of the time you will have to answer the question anyway since the deposition is done in the other lawyer's office, outside of the courtroom.

Any objections or the acceptability of any questions will be ruled on later by the court during your trial. If the court feels that the questions were inappropriate, any answers you gave to those "objectionable" questions will not be allowed to be used by the other side. The only time you may refuse to answer a question is when your lawyer instructs you not to answer the question; otherwise, you must answer the question, no matter how irrelevant it may seem. If your attorney does not object, you must answer the question.

Understanding motives

When the lawyer is asking you a question, keep in mind the question itself may seem irrelevant, but the question's importance lies in whether the question is relevant and could lead to relevant material. Questions that may seem irrelevant to you may seem pertinent to the lawyers involved in the case and may lead to information that relates to your particular case. When the other lawyer asks the question, he/she doesn't know whether the information you are going to give is relevant or not. For example, while it may seem irrelevant to you that you have had other accidents in the past, this fact may be highly relevant to the other side if it turns out that the prior accident(s) involved similar parts of your body or led to long-standing physical complaints that were around before the most recent accident in question. Without asking, the other attorney does not know what information will later become relevant to him and his case.

At a typical deposition, your Baltimore Car Accident Lawyer will not ask you any questions, because he/she asks you those questions without putting it on the record. Anything you say at the deposition can be used in the courtroom to impeach your credibility later.

In addition to Interrogatories and depositions, the other side may file a Request for Production of Documents. This request will typically ask for medical records, employment records and any other relevant documents, such as tax returns or lost wage information. These documents must be provided. After the discovery process has been completed, the case will then be scheduled for trial. Prior to trial there may be a settlement conference, as well as an arbitration. Your Baltimore Car Accident Lawyer will be there. Arbitration and settlement conferences are typically used by the court to try and settle cases before they reach the courtroom. The case is usually scheduled shortly after the settlement conference has been completed.

Independent Medical Evaluations

In a personal injury or a worker's compensation claim insurance companies typically set up the plaintiff or claimant for an evaluation to be done by the insurance company doctor. Insurance companies call this an independent medical evaluation; however, in fact this is actually an insurance company medical evaluation. The insurance companies very carefully pick what doctors they want to use to perform set evaluations.

Most of these doctors are not in fact independent and have frequently done work for that insurance company and typically only do work for insurance companies in general and do not do work for plaintiffs. Typically, these doctors solicit business from the insurance companies offering to do medical evaluations for them, knowing that the insurance company will not send the doctor business again unless the reports are favorable to the insurance companies.

Please note that when you see the doctor for the insurance company you are not seeing the doctor for the purpose of treatment or to obtain any help finding any possible explanation for your medical problems or any solution. The only purpose for this evaluation is to allow the insurance company to obtain information that will enable them to either terminate their obligation to pay your medical bills or questions your injuries in general prior to going to trial.

Insurance companies typically schedule independent medical evaluations when they are skeptical of the injury that the claimant or plaintiff is claiming, when they feel that that property damage of the car in the accident is not consistent with the medical treatment that been provided to date, when they want to get the injured party back to work, when they would like any medical treated provided so far to be terminated, when questioning the reasonableness or necessity of any medical bills or treatment, or when they are contesting the causal relationship between the accident and the medical treatment, and/or injury.

Further, insurance company independent medical evaluations are done in workers' compensation claims in order to question whether any permanent injury has been sustained as a result of an accident.

Please make sure that when an insurance company medical evaluation is set up that you keep the appointment. Failure to keep the appointment can result in suspension of your workers' compensation benefits or refusal of the insurance company to pay your medical bills and can also result in you being responsible for the doctors' fee for your failure to appear.

Although, most doctors are honest, the fact that they have been selected by the insurance company to perform this exam because they have been given favorable results in the past. Some doctors are very conservative in their nature and are generally biased by people who are injured in automobile accidents or work related injury.

Please make sure that when you go to an independent medical evaluation that you are honest, polite and cooperative with the doctor. If you try to lie or fake your injuries or exaggerate your injuries during the exam the doctor will certainly recognize this and will certainly mention it in his report so do not be invasive in the medical examination and/or the questions that the doctor asked and always try to make eye contact with the doctor. Although it is not likely that the doctor will attempt to help you in your particular case, even if you are cooperative it is more likely that he may be unhelpful if the doctor doesn't like you and less likely to believe anything that you tell him.

Prior to going to an independent medical evaluation, please be prepared. The doctor is going to ask you questions regarding your medical history including any prior injuries that you had, any other medical treatment that you had and where, please be able to give him a detailed history of medical treatment that you have had, any testing that you had and any results of those tests. Let the doctor know what parts of the body you have injured, your symptoms, when your injuries cause you pain, any movements or activities that aggravate your injuries and any medication you take to make your injuries feel better, what activities, if any are limited or affected.

When answering a doctors' questions, please make sure you answer each question carefully after each thought, if any of those questions appear unclear or confusing, please don't be afraid to ask the doctor to rephrase the question. Do not give long or elaborate answers to any of the doctors' questions. If the questions can be answered with a yes or no do so, and if it can be answered in a short matter do so also, but please be honest and polite. When telling the doctors what your complaints are, please describe each area and when you have problems with it. Even if you were not hurting at the time of your evaluation, if you would hurt earlier in the day or hurt only at certain times, please let the doctor know what causes your pain to be flared up.

Do not under any circumstances exaggerate your injuries; doctors do have ways of testing you without you knowing to prove that you are making up your complaints. On the other hand, do not under estimate your pain and don't be the type of person that doesn't like to complain. These doctor visits are set up exclusively for you to tell the doctor what complains you have. Please behave consistently during your entire exam from the minute you park your car in the parking lot to the minute you leave the parking lot for the final ride out. Doctors who do independent medical evaluations are trained to observe the patient in the parking lot, in the exam room and the waiting room.

What if the person who caused the accident does not have insurance?

If the person who caused the accident doesn't have insurance, then you can collect under the uninsured motorist portion of your policy. Under the uninsured motorist portion of your policy, your insurance company will step into the shoes of the person who was at fault as if they had insurance coverage with your insurance company and will pay everything that you are entitled to receive through the uninsured motorist portion as if they insured the person who was at fault.

Uninsured motorist claim

The injured insured has three alternatives when pursuing a claim involving an uninsured motorist:

He or she may sue the at fault party in tort, obtain a judgment and then enforce the judgment against the UM insurer.

The injured insured may sue the UM insurer and, as part of his or her case, prove that the at fault party's negligence proximately caused his or her injuries.

The injured insured may combine the tort and contract claims in a single action.

In essence, to recover UM benefits the insured must fulfill each of the following:

The person must be an insured

The person must be entitled to recover damages from the owner or operator of an uninsured motor vehicle.

The person must be entitled to recover the damages because of bodily injury or death (or property damage).

The bodily injury or death (or property damage) must be sustained in or be the result of a motor vehicle accident arising out of the ownership, maintenance, or use of the uninsured motor vehicle.

The person must not be excluded or otherwise precluded from recovery.

Coverage is extended to the named insured, the named insured's resident spouse, the named insured's resident family members, persons driving or riding in the insured vehicle, persons getting in or out of the insured vehicle, and persons who have derivative claims because of injuries to other insureds.

Proving that a vehicle has no insurance can be difficult, and basically akin to proving a negative. The claimant's burden, is to prove that it is more likely that the vehicle had no insurance. To satisfy this burden usually requires testimony from the at fault party that he or she did not maintain insurance on the vehicle is certainly sufficient, or testimony of that nature from a spouse or other close relative. Testimony from an insurance agent showing that the insurance policy had been canceled before the accident would also be compelling, and evidence from other sources, such as insurance adjusters and the Motor Vehicle Administration, may be sufficient.

The second definition of "uninsured motor vehicle" in the Maryland UM Endorsement addresses the situation where the tortfeasor's (at fault party) vehicle has insurance from another state but that

insurance does not meet the statutory minimum limits. Thus, a vehicle insured in a state other than Maryland having liability limits less than Maryland's statutory minimum coverage requirement is considered an "uninsured motor vehicle" even though it has insurance. Assume that the vehicle has liability limits of $ 10,000/$ 20,000/$ 10,000. If the injured claimant has UM limits of $ 30,000/$ 60.000/$ 25,000 (the Maryland statutory minimum), the tortfeasor's vehicle is an "uninsured motor vehicle." In that situation, the claimant is entitled to collect an additional $ 20,000 from the UM insurer for his or her bodily injury ($ 30,000 UM limit – $ 10,000 liability limit = $ 20,000 collectible UM available).

If the tortfeasor's liability limit equals or exceeds Maryland's statutory minimum limit ($ 30,000/$ 60,000/$ 25,000), that vehicle can still be an "uninsured motor vehicle" if the claimant's UM limit is greater than the tortfeasor's limit. Hence, if the claimant has UM coverage of $ 30,000/$ 60,000/$ 25,000, the tortfeasor's vehicle is not an "uninsured motor vehicle" On the other hand, if the claimant has UM coverage of $ 50,000/$ 100,000/$ 25,000, the tortfeasor's vehicle is an "uninsured motor vehicle"

Suppose a tortfeasor, has liability limits of $ 50,000/$ 100,000, and injures five people. The five persons divided the $ 100,000 five ways, with each receiving $ 20,000. One of the injured persons has an insurance policy that provides UM coverage of $ 30,000/$ 60,000. Under the law, that claimant should be able to collect $ 10,000 in UM benefits because the tortfeasor's vehicle qualifies as an "uninsured motor vehicle"

This type of claim encompasses what are commonly called phantom vehicles or hit-and-run vehicles. "Hit-and-run" is somewhat of a misnomer: the vehicle need not "hit" anything. That is, physical contact with the phantom vehicle is not necessary.

Liability insurers often deny coverage to their insureds, or putative insureds, based on a policy provision such as an intentional act exclusion or a non-permissive use exclusion. A disclaimer of coverage is not, however, the functional equivalent of a denial of coverage. A disclaimer exists when there is insurance, but the insurer can escape its obligation because the insured has breached some policy provision, most notably the notification and cooperation clauses. In contrast, when an insurer denies coverage, it is asserting that coverage never existed. The definition does not state that the liability insurer must rightfully deny (or disclaim) coverage. For instance, suppose the liability insurer incorrectly denies coverage based on non-permissive use. This should not matter, and the claimant should not have to prove that the liability insurer denied coverage properly. All the claimant should have to prove is that the denial occurred. And this is easily done, with the denial (or disclaimer) letter as the prime piece of evidence. Should the UM insurer dispute the validity of the liability insurer's denial (or disclaimer), the UM insurer can bring a declaratory judgment action to litigate the matter. This can be done before or after the UM insurer has paid UM benefits to the claimant. In such a situation, the passenger would be left to seeking UM benefits from his or her own personal policy.

An issue that occasionally arises on is whether an insured motor vehicle is converted into an " uninsured motor vehicle" because the owner or operator is protected by a tort immunity. This issue has been considered by the court of appeals on two occasions. A motor vehicle does not become an " uninsured motor vehicle" because the owner or operator is cloaked with immunity is evidently limited

to instances involving parental immunity. Recently, the Maryland court of appeals held that a vehicle whose operator and owner were protected by sovereign immunity, qualified as an “uninsured motor vehicle” Popa, was killed when his vehicle was struck by a speeding Maryland state police car. At the time of the accident, the Maryland State police and the State of Maryland had only $50,000 of liability insurance and were immune under the Maryland Tort Claims Act above that insurance. At the time of the accident, Jonathan was insured under a motor vehicle policy issued by West American that provided $ 300,000 of UM coverage.

One of the exceptions to the definition of ”uninsured motor vehicle” contained in the Maryland UM Endorsement is where the putative ”uninsured motor vehicle” is owned by the named insured or the named insured’s resident spouse or relatives. The court of special appeals has enforced this exception, based on the “owned-but-uninsured” exclusion allowed by the UM statute

The Maryland UM Endorsement also excludes from its definition of “uninsured motor vehicle” a vehicle which furnished or made available for the regular use of the named insured or the named insured’s1 resident spouse or relatives. In Young v. Allstate Ins. Co., the court of special appeals ruled that such a regular use exclusion as it applied to a clause 1 insured was invalid and unenforceable.

Another exception to the definition of ”uninsured motor vehicle” contained in the Maryland UM Endorsement is a vehicle that is ”owned or operated by a self-insurer under any applicable motor vehicle law.

The Maryland UM Endorsement therefore excludes from its definition of “uninsured motor vehicle” any vehicle “operated on rails or crawler treads.” Vehicles falling into this category include street cars, trains, tractors, bulldozers, tanks, etc.

When both the negligence of an uninsured motorist and the negligence of an insured motorist jointly cause an injury, the claimant must recover, first, from the liability policy covering the insured vehicle. Then, if the limit of available liability coverage is less than the limit of the claimant’s UM coverage, the claimant can seek indemnification from the UM insurer. If the claimant’s UM coverage is less than or equal to the available liability insurance, then the claimant is not entitled to recover any UM benefits

Uninsured motorist coverage extends to intentional torts. Section 19-501(c) defines “motor vehicle accident” as “an occurrence involving a motor vehicle that results in damage to property or injury to a person” and “does not include an occurrence that is caused intentionally by or at the direction of the insured.” This broad definition encompasses intentional torts. From the language of the statute, it is clear that when an insured is injured because of someone else’s intentional conduct, the injuring act is an accident. However, if the insured intentionally caused his or her own injury, there is no accident.

Motor vehicle liability policies often limit the insurer’s indemnity obligation to liability “arising out of the ownership, maintenance, or use” of a motor vehicle. “Ownership” is fairly self-explanatory. “Maintenance,” refers to “any activity designed to preserve or repair a motor vehicle.” “Use” means “all proper uses of a motor vehicle.” It is not necessary for a motor vehicle to have proximately caused the injury. In McNeill v. Maryland Insurance Guaranty Association, the Maryland Court of Special Appeals reiterated this notion. There, McNeill was injured when the battery of the car he was standing next to exploded. In determining that the incident arise out of the ownership, maintenance or use of the motor

vehicle, the court stated that “ownership, maintenance or use clauses do not limit recovery solely to injuries that are caused by direct physical contact with the insured vehicle; nor is it necessary that the damages be directly sustained or inflicted by the operation of the motor vehicle.” As McNeill demonstrated, the “arising out of the ownership, maintenance or use” provision is broad. Under certain circumstances, it may include intentional torts. Clearly, when an insured is assaulted, and the motor vehicle acts as the instrument of the assault, the insured’s injuries arise out of the ownership, maintenance or use of a motor vehicle.

However, a non-vehicular assault requires that the insured demonstrate a close connection between the vehicle and the intentional tort. This requirement was demonstrated in Harris v. Nationwide Mutual Insurance Co. There, Harris was injured when a man in a car attempted to steal her purse. The purse thief drove his or her car next to Harris, grabbed her purse and sped off. Harris’s arm, however, became entangled in the purse’s strap and she was dragged to the ground as the purse thief’s car accelerated away. Since the purse thief was never caught or identified, Harris made an uninsured motorist claim against Nationwide, which denied coverage.

After deciding that “Harris’s injuries did not arise out of the ownership or maintenance of the purse’s thief’s vehicle, the court held that Harris’s injuries were directly related to the use of the ”uninsured motor vehicle.” In contrast to the purse snatching in Harris, there are a variety of assaults that incidentally or tangentially involve motor vehicles. The most notable include drive-by shootings, fights following collisions, and car-jackings. In these situations, “the injuries generally do not arise out of the ownership, maintenance or use of the “uninsured motor vehicle.” The general view is that the “uninsured motor vehicle” must be intrinsically involved in the intentional act in order for the injuries to arise out of the ownership, maintenance of use of an “uninsured motor vehicle.” Incidental involvement is insufficient. Whether the “uninsured motor vehicle” is intrinsically or incidentally involved must be determined on a case-by-case basis.”

Maryland’s UM statute explicitly permits two specific exclusions from coverage:

The ”owned-but-uninsured” exclusion

The ”named-driver” exclusion

No other exclusions are expressly permitted. The Maryland Court of Appeals has consistently held that “where the Legislature has required specified coverages in a particular category of insurance, and has provided for certain exceptions or exclusions to the required coverages, additional exclusions are generally not permitted.” Despite this principle, the Court of Special Appeals has upheld the validity of the “owned-but otherwise-insured” exclusion. The Maryland Court of Appeals held in West American Insurance Co. v. Popa, that “exclusions not recognized by the UM statute were invalid above and below the statutory minimum coverage mandated by the UM statute. ”From the insurer’s standpoint, the exclusion limits its potential exposure by preventing the extension of uninsured motorist coverage to a second or third vehicle when the insured has paid a premium based on his or her owning only one vehicle. The individuals excluded from liability, collision, personal injury protection (PIP) and UM coverage are: the named excluded driver, the owner of the vehicle, the owner’s family members, and the named excluded driver’s family members. Nonresident relative passengers, however, are only

excluded from PIP and UM coverage if such coverage is available under another motor vehicle insurance policy The “owned-but-otherwise-insured” exclusion “precludes coverage when an insured is injured while an operator or passenger in a vehicle that is owned by him (or her) or a family member but insured by another motor vehicle insurer.”

The final definition of “uninsured motor vehicle” is the situation where the tortfeasor’s insurer is insolvent.

Will my insurance Company rates go up if I collect under the collision portion, uninsured portion, or PIP portion of my policy?

If your property damage is fixed under the collision portion of your own policy, then your insurance company may raise your rate or may cancel you, unless they are able to get their money back from the person who was at fault in this particular accident. The insurance company cannot cancel you or raise your rates if you collect PIP benefits no matter who is at fault.

If the person who caused the accident doesn’t have insurance, then you can collect under the uninsured motorist portion of your policy. Under the uninsured motorist portion of your policy, your insurance company will step into the shoes of the person who was at fault as if they had insurance coverage with your insurance company and will pay everything that you are entitled to receive through the uninsured motorist portion as if they insured the person who was at fault. When benefits are claimed under the uninsured motorist coverage, your own insurance company cannot cancel you or surcharge you or raise your rates.

Car Accident Claim Vs. UBER and LYFT

While presenting a Baltimore car accident claim against a Taxi Cab Company like diamond cab or yellow cab has always been time consuming and often difficult, claims against Uber and Lyft drivers has been much easier to pursue. Insurance coverage available for Uber and Lyft is far greater than for taxi cabs. Maryland car accident law requires better insurance coverage for passengers in an at fault Uber or Lyft vehicle. Maryland car accident law requires better insurance coverage for drivers and passengers struck by an at fault Uber or Lyft vehicle. Maryland car accident law requires better insurance coverage for pedestrians struck by an at fault Uber or Lyft vehicle. Maryland car accident law requires better insurance coverage for passengers in an Uber or Lyft vehicle that is struck by an at fault uninsured motor vehicle.

Maryland car accident law requires every vehicle in the State of Maryland to have at least $30,000.00 worth of liability coverage except taxi-cabs only have to have $25,000.00 worth of liability coverage. Uber has one million dollars of liability coverage usually through James River Insurance company while the Uber driver is logged in either to pick up a passenger or in route to drop off a passenger. The liability

Insurance drops down to $50,000.00 if they are logged in at UBER and available to receive requests but has not accepted a request or is transporting a passenger.

Taxi cabs are exempt from the requirements of personal injury protection coverage that pays no matter who is at fault $2500.00. Uber and LYFT vehicles must have $2500.00 PIP coverage The Maryland PIP and UM statutes authorize specific exclusions and this isn't one of them. See Maryland Code (1995-97, 2011 Repl. Vol.), §§ 19-505(c) and 19-509(f) of the Insurance Article. The Maryland PIP endorsement to the form Personal Auto Policy prepared by the Insurance Services Organization do not include exclusions from coverage for situations in which the vehicle is being used to transport persons or property for a fee. See Andrew Janquitto, Maryland Motor Vehicle Insurance 1033-40 (3rd ed. 2011).

Taxi cabs are exempt from the requirements of uninsured motorist coverage which normally provides protection for the passengers in a car that is hit by an uninsured at fault owner or driver. Uber and LYFT vehicles have $1,000,000.00 of uninsured motorist coverage while the Uber or Lyft driver is logged in either to pick up a passenger or in route to drop off a passenger. The Uninsured motorist insurance drops down to $50,000.00 if they are logged in at UBER or Lyft and available to receive requests but has not accepted a request or is transporting a passenger. The Maryland Uninsured motorist endorsement to the form Personal Auto Policy prepared by the Insurance Services Organization do not include exclusions from coverage for situations in which the vehicle is being used to transport persons or property for a fee. See Andrew Janquitto, Maryland Motor Vehicle Insurance 1033-40 (3rd ed. 2011).

Most Automobile insurance policies have an exclusion in their policy for vehicles being used for ridesharing. Therefore, without the additional insurance from Lyft or Uber, the primary insurance on the vehicle which covers the vehicles at all times including when the person is not ridesharing would normally refuse to pay because of the exclusion. While the exclusion in the policy is likely unenforceable under Maryland Car Accident law, this would not stop insurance companies from cancelling policies once they found out the driver was doing ridesharing. In order to avoid that problem, Uber and Lyft made a business decision to provide the secondary coverage.

I don't think Uber's exclusion is valid either. Under Md. Code, Pub. Utilities § 10-101, a driver is providing "transportation network services" when he or she is logged onto the network. So, if the driver here was still logged into the Uber app, the requirements of Md. Code, Pub. Utilities § 10-405 are triggered, regardless of whether he was about to log out. Md. Code, Pub. Utilities § 10-405(c) states that "[t]he insurance maintained by a transportation network company shall provide the coverage required under subsection (a) of this section from the first dollar of a claim and provide for the duty to defend the claim in the event the insurance maintained by an operator under subsection (a) of this section has coverage that has been canceled or has lapsed or is otherwise not in force."

If Progressive's exclusion is deemed valid somehow (perhaps because they may offer a ride share endorsement that provides this coverage for a higher premium?), then the operator didn't have the required coverage in force and Uber should become primary.

The problem often arises that while Uber and Lyft know the primary insurance will refuse to provide coverage, they still make the driver pursue his primary insurance first and get a denial of coverage. This seems unfair since Uber and Lyft know they will deny the claim and this may ultimately result in their Driver losing his primary Insurance

About 10 years ago there was an appellate decision about invalid insurance exclusion- pizza exclusion case Salomon v. Progressive Classic Insurance Co., 379 Md. 301 (2004). which the court said was invalid and the insurance company had to pay. The Uber exclusion falls into that category. It involved an exclusion from motor vehicle liability coverage, not PIP or UM coverage. The Court of Appeals held that a so-called "pizza exclusion" — which purportedly allowed the insurer to deny coverage if the insured was transporting property for compensation — was invalid up to Maryland's minimum financial responsibility limits because it had not been authorized by the General Assembly.

The Court did not have to decide whether the exclusion would also be invalid above Maryland's minimum financial responsibility limits, because the Progressive policy at issue in the case only carried the minimum limits. Id. at 304 n.1.Later, in Wilson v. Nationwide Mutual Insurance Co., 395 Md. 524 (2006), the Court held that another exclusion — the "fellow employee" exclusion — was indeed valid above the minimum financial responsibility limits. The policy at issue in the case explicitly provided that the exclusion was invalid up to the minimum limits. See id. at 529.So,

At this time, an "Uber" exclusion would be unenforceable up the minimum financial responsibility limits. The insurers will contend that it is valid above those limits on the authority of Wilson v. Nationwide. Whether the argument that I just stated would be accepted will have to await future case law. That said, Uber — which obviously does business in many jurisdictions other than Maryland — has recognized the problem of exclusions in the insurance policies of its drivers' vehicles, and thus it obtained the blanket policy from James River Insurance Company.

Does My Lawyer Have to Pay Medical Bills or My Health Insurance Company?

Does my lawyer have to pay my medical and hospital bills or my health insurance company from my accident case?

You may also want to read Rule 1.15(d) of the Rules of Professional Responsibility, which requires an attorney to safeguard property in which the client or a third party has an interest. If the rule applies to your case, you may be hearing from the attorney grievance commission if you comply with the client's request.

Check MLRPC 1.15 and the annotations thereto. AGC v. Mungin, 439 Md. 290, 96 A.3d 122 (2014) is on point, stating that a lawyer violates that rule if, among other things, the lawyer fails to pay a client's debt from settlement funds. The word "debt" is far broader than "lien" or "subrogation claim". Tell client that if you obey her wishes, your license is in jeopardy. Interpleader is the proper procedure

You would indeed be "on the hook" if you remit the funds to your client without paying Rawlings or the plan. The FEHBA plan's subrogation claim comes from the health insurance contract. See 5 C.F.R. § 890.106. Moreover, the subrogation claim is governed by federal law, and not state law. Id., subsection (m).

"[I]t is one of the familiar rules of equity that a contract to convey a specific object even before it is acquired will make the contractor a trustee as soon as he gets a title to the thing." Barnes v. Alexander, 232 U.S. 117, 121 (1914). Therefore, your client's contractual promise to reimburse the health insurer

from the tort recovery creates an equitable lien on the recovery to the extent of the insurer's valid subrogation claim. See Sereboff v. Mid Atlantic Medical Services, Inc., 547 U.S. 356, 363-68 (2006).

If you dishonor the lien, then you will be personally liable to the plan. See Hoffman v. Liberty Mutual Insurance Co., 232 Md. 51, 56-57 (1963). You would also be in ethical trouble. See Maryland Rule of Professional Conduct 1.15(d) & (e). Therefore, tell the client that absolutely cannot remit the funds to her in disregard of the Rawlings's and the plan's claims.

Besides, as others have stated, if the client breaches the subrogation contract, the health insurer may dispense with suing the client or you, and may instead simply electronically retract all of the payments that it made to the health care providers in the case, or put your client's future health benefits in "retention" until it recoups the amount that it claims to be owed. But neither one of those things will happen, because you will not remit the funds to the client.

A client should always be advised, if possible, what he or she will "net" from an offered settlement.

There has been some language in recent Court of Appeals decisions which said that an attorney must pay a client's "debts" out of a tort recovery, including amounts owed to health care providers. See, e.g., Attorney Grievance Commission v. Mungin, 439 Md. 290, 308 (2014); Attorney Grievance Commission v. Roberts, 394 Md. 137, 163-64 (2006). But the language in those cases must be read in context. In those cases, the attorney was supposed to pay the health care providers out of the recovery because the client had instructed or authorized the lawyer to do so. The attorney then did not do so or unduly delayed in doing so. Obviously, that behavior is a problem, particularly if the lawyer converts for his own use the money that the client had instructed him to pay to the health care providers.

But that is a different situation from one in which there is no lien or letter of protection for a particular health care provider, and the client instructs the lawyer not to pay the health care provider.

What does Medicare have to do with my case?

If you are presently on Medicare or will be eligible for Medicare within the next 30 months please advise my office immediately. Failure to do so could delay your settlement by as much as six months. Because you are Medicare eligible, I need to advise you of additional procedures required by Medicare before you can receive your settlement money. These procedures apply whether Medicare paid any of your bills or not. Failure by my office to follow these procedures could jeopardize your rights to Medicare in the future. When any person who is eligible for Medicare is injured in an accident, federal law requires Medicare be notified whether you have submitted bills to Medicare or not. The reason Medicare must be notified is not only so that they can be reimbursed for bills that are from the accident that Medicare has paid, but in addition Medicare wants to make sure they do not pay any accident related medicals in the future. Federal law requires that Medicare be reimbursed up front for any related medical payments they may have made before any money from settlement can be disbursed to you or your lawyer. This means that Medicare must be reimbursed before the client receives their portion of the settlement and Medicare must be reimbursed before the attorney receives any fee for winning the case. This letter will outline the process required under Federal Law for Medicare reimbursement so that you understand the timetable in which your settlement money will be disbursed, and so that you can assist us in getting through this process as quickly as possible. Federal Law requires you as well as your lawyer and the

insurance company to complete this process before any money may be released. Federal law does not allow the injured party to excuse the lawyer from completing the requirements, nor does federal law allow the attorney to release the funds before the process is complete if the injured party agrees to be responsible for money owed to Medicare.

The case must be reported to Medicare. We do not have to wait until your case settles to begin this first step. The sooner we are aware of your Medicare status, the sooner we can begin this process and ultimately the sooner your settlement money will be able to be disbursed.

Once the case has been reported to Medicare, Medicare will send out a Rights and Responsibilities Letter to both you and your attorney. When you receive this letter, please notify our office.

65 Days from the date that the Rights and Responsibilities Letter is received, Medicare is supposed to send out a Conditional Payment Letter. It frequently takes Medicare longer than 65 days to send out this letter. This letter will contain the medical payments that Medicare believes they need to be reimbursed for.

If the Conditional Payment Letter is incorrect, then we must resolve the incorrect charges with Medicare. This process can take anywhere between 3 to 6 months depending on the nature and amount of incorrect charges that are on the Conditional Payment Letter.

If the Conditional Payment Letter is correct, then our office will notify Medicare of the settlement and they will send a Final Demand Letter. The Final Demand Letter will be sent approximately 60 Days from the date Medicare is notified of the settlement. If the Final Demand Letter is correct, then payment will be sent to Medicare for reimbursement and your settlement can be disbursed.

If the Final Demand Letter is incorrect, then we must resolve the incorrect charges with Medicare, and again this process can take anywhere between 3 to 6 months depending on the nature and amount of incorrect charges contained on the Final Demand Letter.

Depending on the circumstances of your particular case, and any incorrect charges in which Medicare wants to be paid back for, the process to reimburse Medicare can take anywhere between 3 and 12 months after your case has been settled. This process is required by Medicare, and failure to obey these Laws can result in penalties to the attorney and termination or delay of Health Insurance benefits from Medicare. In short, there is no way around this process and all we can do is provide Medicare with the required information as quickly as possible and patiently wait until they give us permission to disburse the settlement. If there are any questions regarding this letter, please do not hesitate to contact me at the office.

Medicare Set Aside in Auto accident cases

The issue of whether Medicare was going to pay for expenses related to workers' compensation cases or third party liability cases (auto or Car accident case) has been out there since 1981. The answer to this question was quickly answered in the workers' compensation arena by Medicare with the requirements that Medicare must be considered by all parties in a worker's compensation case before a case is settled and the medicals are closed.

All parties include the claimant, the insurance carrier, the claimants' attorney and the Maryland workers' compensation commission. Failure to do so can result in a denial of Medicare benefits to their Medicare recipient. In addition, failure to do so can result in Medicare holding all parties responsible for repayment to Medicare for past benefits Medicare has paid that are related to the workers' compensation case. To the insurance carrier the fallout would result in additional costs after a case has been settled. For the claimant, Medicare could demand a refund and reimbursement for medicals previously paid by Medicare or denial of future benefits. For the claimant's lawyer Medicare may demand reimbursements for medicals previously paid that were not reimbursed as well as malpractice suits from clients who are sued by Medicare or denied benefits by Medicare. In response to these issues the Maryland Workers Compensation board has taken the lead by requiring that all full and final settlement agreements that close the medicals take Medicare into consideration and failure to do so will result in denial of the settlement approval. The Maryland Workers Compensation Commission Requires that all settlements have the following language in the body of the settlement." Employer and Insurer also agree to reimburse Medicare for any provisional or conditional payments made by Medicare that are ultimately determined to be the responsibility of the employer and insurer, up to the date of approval by the Commission of this agreement." Therefore because of this language even if Medicare has not been reimbursed for medicals paid by Medicare which are related to the work- related accident prior to the accident the responsibility remains with the workers' compensation insurance carrier to reimburse Medicare even after the settlement is approved. While a prudent workers' compensation insurance carrier and claimant and claimant attorney would make, sure Medicare is not billed for these expenses and if they pay them make sure they are reimbursed, the workers compensation commission has made it clear that the workers compensation insurance carrier is the party that will ultimately be responsible for medicals paid by Medicare prior to the date the settlement is approved.

With regard to future medical expenses the workers' compensation commission has been requiring a medical set aside or a letter from a physician certifying that the claimant will not need not need medical treatment in the future that would be causally related to the work related accident. Medical set asides are typically prepared by a company that specializes in evaluating the need for future medical care based upon regulation and guidance provided by Medicare. While Medicare will only review medical set asides that reach a certain threshold because of the inability to review every workers' compensation claim, they still expect the parties to follow the same guidelines that would be followed as if the case was going to be reviewed by Medicare.

Medicare's answer to the issue of whether Medicare was going to pay for expenses related to third party liability cases while clear by statute has been unclear or non-existent in the enforcement arena. While Congress legislated the same scrutiny as was required in workers' compensation cases, Medicare has been slow in practice to require the same level of scrutiny and had set up no system for review with regard to the issue of future medical needs in a third- party liability situation. While Medicare requires that it be reimbursed out of the proceeds of a third- party settlement when Medicare makes payments for a third- party claim, this requirement until recently seemed to only be enforced with regard to medical expenses incurred and paid prior to the time the case was settled. Medicare has continued to process medical claims as if there never were a recovery made for future medical care. On very rare occasions, they would deny medical claims submitted by providers.

Once the case was settled, Medicare would be contacted, Medicare would provide a lien amount for medical expenses paid by Medicare that would have to be repaid and there has been no requirement or discussion from Medicare as to what was to happen with medical expenses in the future.

It seems likely that congress intended the same level of scrutiny by Medicare in the third- party liability area with regard to future medical expenses as has actually taken place in the workers compensation arena. The statute that required the scrutiny applied to both. It must have since they are both referred to in the same sentence.

The Medicare Set-aside (MSP) is a series of statutory provisions enacted in 1981 as part of the Omnibus Reconciliation Act with the goal of reducing federal health care costs. The MSP provides that if a primary payer exists, Medicare only pays for medical treatment relating to an injury to the extent that the primary payer does not pay. CFR Title 42, Part 411, Subpart B, Section 411.20 (2) provides "[s]ection 1862(b)(2)(A)(ii) of the Act precludes Medicare payments for services to the extent that payment has been made or can reasonably be expected to be made promptly under any of the following" (i) Workers' compensation; (ii) Liability insurance; (iii) No-fault insurance.

The intent of the statute has been interpreted as being ambiguous because it only applies to" Medicare payments for services to the extent that payment has been made or can reasonably be expected to be made". The regulations with regard to workers' compensation claims requires a provision for future medical expenses so why would the intent be any different for a third- party claim. Arguments to date likely centered on the following. In a worker's compensation claim the law is clear, a worker's compensation insurance carrier is legally responsible for future causally related medical expenses. In a third- party liability case, while future medical expenses are usually included as a possible measure of damages, there is no law that requires the trier of fact to award such benefits. Most settlements or jury verdicts are for a lump sum and usually do not itemize what they were intended to cover.

But with regard to third party liability claims all Medicare's requirements with regard to future medical treatment considerations are about to change. Last week, the Centers for Medicare and Medicaid Services (CMS) released a "CMS Manual System" "One-Time Notification" regarding Liability Medicare Set Asides and enforcement of the Medicare Secondary Payer statute (MSP). Starting October 1, 2017, Medicare and their contractors will reject medical claims submitted post-resolution of a liability settlement on the basis those claims "should be paid from a Liability Medicare Set Aside (LMSA)". The commentary cites the basis for rejection of the claims as enforcement of the MSP statute [1]. It is also important to note that the alert mentions that "Liability and No-Fault MSP claims that do not have a MSA will continue to be processed under current MSP claims processing instructions".
At the heart of the announcement is the following text of CMS's position regarding liability settlements and enforcement of the MSP: "Pursuant to 42 U.S.C. §1395y(b)(2) and §1862(b)(2)(A)(ii) of the Social Security Act, Medicare is precluded from making payment when payment "has been made or can reasonably be expected to be made under a workers' compensation plan, an automobile or liability insurance policy or plan (including a self-insured plan), or under no-fault insurance." Medicare does not make claims payment for future medical expenses associated with a settlement, judgment, award, or other payment because payment "has been made" for such items or services through use of LMSA or NFMSA funds. However, Liability and No-Fault MSP claims that do not have a MSA will continue to be processed under current MSP claims processing instructions."
This latest commentary indicates an imminent change in the near future in regards to enforcement of

the MSP. CMS is subtly sending the message that LMSAs are going to be a necessary mechanism in order to avoid denial of medical claims post-resolution. CMS Manual System Pub 100-20 One-Time Notification Transmittal 1787

Department of Health & Human Services (DHHS)

Centers for Medicare & Medicaid Services (CMS)

Date: February 3, 2017

I I Change Request 9893 SUBJECT: New Common Working File (CWF) Medicare Secondary Payer (MSP) Type for Liability Medicare Set-Aside Arrangements (LMSAs) and No-Fault Medicare Set-Aside Arrangements (NFMSAs)

EFFECTIVE DATE: July 1, 2017 – MCS, VMS, FISS and CWF Analysis and Design; October 1, 2017

– MCS, VMS, FISS and CWF Coding and Testing

*Unless otherwise specified, the effective date is the date of service.

IMPLEMENTATION DATE: July 3, 2017 – MCS, VMS, FISS and CWF Analysis and Design;

October 2, 2017 – MCS, VMS, FISS and CWF Coding and Testing A. Background: To comply with the Government Accountability Office final report entitled MSP Additional Steps are Needed to Improve Program Effectiveness for Non Group Health Plans (GAO-12-333), the Centers for Medicare & Medicaid Services (CMS) will establish two new set-aide processes: Liability Medicare Set-aside Arrangement (LMSA) and a No-Fault Medicare Set-aside Arrangement (NFMSA). An LMSA or NFMSA is an allocation of funds from a liability or an auto/no-fault related settlement, judgment, award, or other payment that is used to pay for an individual's future medical and/or future prescription drug treatment expenses that would otherwise be reimbursable by Medicare. This CR: 1) addresses the policies, procedures, and system updates required to create and utilize an LMSA and NFMSA MSP record, similar to a Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) MSP record and 2) instructs the A/B MACs and shared systems when to deny payment for items or services that should be paid from an LMSA or NFMSA fund. B. Policy: Pursuant to 42 U.S.C. §1395y(b)(2) and §1862(b)(2)(A)(ii) of the Social Security Act, Medicare is precluded from making payment when payment "has been made or can reasonably be expected to be made under a workers' compensation plan, an automobile or liability insurance policy or plan (including a self-insured plan), or under no-fault insurance." Medicare does not make claims payment for future medical expenses associated with a settlement, judgment, award, or other payment because payment "has been made" for such items or services through use of LMSA or NFMSA funds. However, Liability and No-Fault MSP claims that do not have a MSA will continue to be processed under current MSP claims processing instructions.
CR 9893 addresses (1) the policies, procedures, and system updates required to create and utilize an LMSA and an NFMSA MSP record, similar to a Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) MSP record, and (2) instructs the MACs and shared systems when to deny payment for items or services that should be paid from an LMSA or an NFMSA fund. Pursuant to 42 U.S.C. Sections 1395y(b)(2) and 1862(b)(2)(A)(ii) of the Social Security Act, Medicare is precluded from making payment when payment "has been made or can reasonably be expected to be made under a workers' compensation plan, an automobile or liability insurance policy or plan (including a self-insured plan), or

under no-fault insurance." Medicare does not make claims payment for future medical expenses associated with a settlement, judgment, award, or other payment because payment "has been made" for such items or services through use of LMSA or NFMSA funds. However, Liability and No-Fault MSP claims that do not have a Medicare Set-Aside Arrangement (MSA) will continue to be processed under current MSP claims processing instructions. Key Points of CR9893 Medicare will not pay for those services related to the diagnosis code (or related within the family of diagnosis codes) associated with the open LMSA or NFMSA MSP record when the claim's date of service is on or after the MSP effective date and on or before the MSP termination date. Your MAC will deny such claims using Claim Adjustment Reason Code (CARC) 201 and Group Code "PR" will be used when denying claims based on the open LMSA or NFMSA MSP auxiliary record. In addition to CARC 201 and Group Code PR, when denying a claim based upon the existence of an open LMSA or NFMSA MSP record, your MAC will include the following Remittance Advice Remark Codes (RARCs) as appropriate to the situation: • N723—Patient must use Liability Set Aside (LSA) funds to pay for the medical service or item. • N724—Patient must use No-Fault Set-Aside (NFSA) funds to pay for the medical service or item. Where appropriate, MACs may override and make payment for claim lines or claims on which: • Auto/no-fault insurance set-asides diagnosis codes do not apply, or • Liability insurance set-asides diagnosis codes do not apply, or are not related, or MLN Matters® Number: MM9893 Related Change Request Number: 9893 Page 3 of 3 • When the LMSA and NFMSA benefits are exhausted/terminated per CARC or RARC and payment information found on the incoming claim as cited in CR9009. Prior to the 2017 rule change the only guidance we had was The May 2011 "Stalcup Handout "DEPARTMENT OF HEALTH & HUMAN SERVICES Centers for Medicare & Medicaid Services Division of Financial Management and Fee for Service Opportunity VI 1301 Young Street Room 833 Dallas, Texas 75202 Phone (214) 767-6441 Fax (214) 767-4440 May 25, 2011

This specific handout was prepared as a service to the public and is not intended to grant rights or impose obligations. It may contain certain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. Readers are encouraged to review the specific statutes, regulations and other interpretive materials for a full and accurate statement of their contents. It is intended to provide consolidated guidance to those attorneys, insurers, etc., working liability, no-fault and general third party liability cases for any Medicare beneficiary residing in Oklahoma, Texas, New Mexico, Louisiana and Arkansas and is not to be considered a CMS official statement of policy.

If the Medicare beneficiary involved in your case is not a resident of one of these states, please contact the appropriate Centers for Medicare & Medicaid Services' (CMS) Medicare Secondary Payer Regional Office (MSP RO). If you do not have that information please contact Sally Stalcup (contact information below) for that information.

Medicare's interests must be protected; however, CMS does not mandate a specific mechanism to protect those interests. The law does not require a "set-aside" in any situation. The law requires that the Medicare Trust Funds be protected from payment for future services whether it is a Workers' Compensation or liability case. There is no distinction in the law.

Set-aside is our method of choice and the agency feels it provides the best protection for the program and the Medicare beneficiary.

Section 1862(b)(2)(A)(ii) of the Social Security, Act [42 USC 1395 y(b)(2)], precludes Medicare payment for services to the extent that payment has been made or can reasonably be expected to be made promptly under liability insurance. This also governs Workers' Compensation. 42 CFR 411.50 defines the term "liability insurance". Anytime a settlement, judgment or award provides funds for future medical services, it can reasonably be expected that those monies are available to pay for future services related to what was claimed and/or released in the settlement, judgment, or award. Thus, Medicare should not be billed for future services until those funds are exhausted by payments to providers for services that would otherwise be covered and reimbursable by Medicare. If the settlement, judgment, award is not funded there is no reasonable expectation that third party funds are available to pay for those services. The new provisions for Liability Insurance (including Self-Insurance), No-Fault Insurance, and Workers' Compensation found at 42 U.S.C. 1395y(b)(8) add reporting rules and do not eliminate any existing statutory provisions or regulations. The new provisions do not eliminate CMS' existing processes if a Medicare beneficiary (or his/her representative) wishes to obtain interim conditional payment amount information prior to a settlement, judgment, award, or other payment. The new provisions do NOT require a set-aside when there is a recovery for future medicals, in fact this legislation does not address that subject. This legislation is unofficially known as "Mandatory Insurer Reporting" because it does just and only that. It specifies the entity mandated to report a settlement/judgment/award/recovery to Medicare and addresses specifics of that issue.

There is no formal CMS review process in the liability arena as there is for Worker' Compensation. However, CMS does expect the funds to be exhausted on otherwise Medicare covered and otherwise reimbursable services related to what was claimed and/or released before Medicare is ever billed. CMS review is decided on a case by case basis.

The fact that a settlement/judgment/award does not specify payment for future medical services does not mean that they are not funded. The fact that the agreement designates the entire amount for pain and suffering does not mean that future medicals are not funded. The only situation in which Medicare recognizes allocations of liability payments to nonmedical losses is when payment is based on a court of competent jurisdiction's order after their review on the merits of the case. A review of the merits of the case is a review of the facts of the case to determine whether there are future medicals – not to determine the proper allocation of funds. If the court of competent jurisdiction has reviewed the facts of the case and determined that there are no future medical services Medicare will accept the Court's designation.

While it is Medicare's position that counsel should know whether or not their recovery provides for future medicals, simply recovers policy limits, etc., we are frequently asked how one would 'know'. Consider the following examples as a guide for determining whether or not settlement funds must be used to protect Medicare's interest on any Medicare covered otherwise reimbursable, case related, future medical services. Does the case involve a catastrophic injury or illness? Is there a Life Care Plan or similar document? Does the case involve any aspect of Workers' Compensation? This list is by no means all inclusive.

We use the phrase "case related" because we consider more than just services related to the actual injury/illness which is the basis of the case. Because the law precludes Medicare payment for services to the extent that payment has been made or can reasonably be expected to be made promptly under liability insurance, Medicare's right of recovery, and the prohibition from billing Medicare for future

services, extends to all those services related to what was claimed and/or released in the settlement, judgment, or award. Medicare's payment for those same past services is recoverable and payment for those future services is precluded by Section 1862(b)(2)(A)(ii) of the Social Security Act.

"Otherwise covered" means that the funds must be used to pay for only that services Medicare would cover so there is a savings to the Medicare trust funds. For example, Medicare does not pay for bathroom grab bars, handicapped vans, garage door openers or spas so use of the funds for those items is inappropriate. We include the designation of "otherwise reimbursable" because Medicare does not pay for services that are not medically necessary even if the specific service is designated as a covered service and Medicare does not pay primary when Group Health Plan insurance has been determined to be the primary payer. At this time, the CMS is not soliciting cases solely because of the language provided in a general release. CMS does not review or sign off on counsel's determination of the amount to be held to protect the Trust Fund in most cases. We do however urge counsel to consider this issue when settling a case and recommend that their determination as to whether or not their east provided recovery funds for future medicals be documented in their records. Should they determine that future services are funded, those dollars must be used to pay for future otherwise Medicare covered case related services. CMS does not review or sign off on counsel's determination of whether or not there is recovery for future medical services and thus the need to protect the Medicare Trust Funds and only in limited cases do they review or sign off on counsel's determination of the amount to be held to protect the Trust Funds.
There is no formal CMS review process in the liability arena as there is for Worker' Compensation, however Regional Offices do review a number of submitted set-aside proposals. On occasions, when the recovery is large enough, or other unusual facts exist within the case, this CMS Regional Office will review the settlement and help make a determination on the amount to be available for future services. We are still asked for written confirmation that a Medicare set-aside is, or is not, required. As we have already covered the "set-aside" aspect of that request we only need to state that IF there was/is funding for otherwise covered and reimbursable future medical services related to what was claimed/released, the Medicare Trust Funds must be protected. If there was/is no such funding, there is no expectation of funds with which to protect the Trust Funds. Each attorney is going to have to decide, based on the specific facts of each of their cases, whether or not there is funding for future medicals and if so, a need to protect the Trust Funds. They must decide whether or not there is funding for future medicals. If the answer for plaintiff's counsel is yes, they should to see to it that those funds are used to pay for otherwise Medicare covered services related to what is claimed/released in the settlement judgment award. If the answer for defense counsel or the insurer, is yes they should make sure their records contain documentation of their notification to plaintiff's counsel and the Medicare beneficiary that the settlement does fund future medicals which obligates them to protect the Medicare Trust Funds. It will also be part of their report to Medicare in compliance with Section 111, Mandatory Insurer Reporting requirements.

Medicare educates about laws/statutes/policies so that individuals can make the best decision possible based on their situation. This is not new or isolated to the MSP provisions. Probably the best example I can give is the 2008 final rule adopting payment and policy changes for inpatient hospital services paid under the Inpatient Prospective Payment System. That final rule also adopted a number of important changes and clarifications to the physician self-referral rules sometimes known as the Stark provisions. The physician self-referral law prohibits physicians from referring Medicare and Medicaid patients to

certain entities with which the physician or a member of their immediate family has a financial relationship. Exceptions apply. Requests for determinations as to whether or not the physician met the exception criteria, or whether or not their situation was covered by this prohibition poured in. CMS/Medicare did not and continues to make no such determinations. It is the responsibility of the provider to know the specifics of their situation and determine their appropriate course of action.

Sally Stalcup MSP Regional Coordinator CMS Medicare Fee for Service Branch Division of Financial Management and Fee for Service Operations 1301 Young Street, Room 833 Dallas, Texas 75202 (214) 767-6415 (214) 767-4440 fax The next guidance given on this topic was the September 2011 CMS HQ Memo. On 9/29/11, CMS issued a memorandum indicating there is no need for a liability Medicare set aside and that its interests would be satisfied if certain conditions (outlined below) were met. In the first memo coming from CMS HQ regarding Liability Medicare Set Asides, Charlotte Benson, Acting Director Financial Services Group for CMS, gives us an exception to the need to create a set aside in liability cases. According to the memo, a liability Medicare set aside isn't necessary when the Medicare beneficiary's treating physician certifies in writing that all of the care related to the claimed injury has been completed as of the date of the settlement. The memo says:
"Where the beneficiary's treating physician certifies in writing that treatment for the alleged injury related to the liability insurance (including self-insurance) "settlement" has been completed as of the date of the "settlement", and that future medical items and/or services for that injury will not be required, Medicare considers its interest, with respect to future medicals for that particular "settlement", satisfied. If the beneficiary receives additional "settlements" related to the underlying injury or illness, he/she must obtain a separate physician certification for those additional "settlements. When the treating physician makes such a certification, there is no need for the beneficiary to submit the certification or a proposed LMSA amount for review. CMS will not provide the settling parties with confirmation that Medicare's interest with respect to future medicals for that "settlement" has been satisfied. Instead, the beneficiary and/or their representative are encouraged to maintain the physician's certification." The memo is very important for a number of reasons. First, it is the first official memorandum from the CMS central office in Baltimore to substantively address liability Medicare set asides. Second, it provides a mechanism, if the case facts fit the criteria, to avoid the necessity of creating a liability Medicare set aside. It is a limited exception as the treating doctor must attest in writing that all of the treatment for the released injuries was completed at the time of settlement. Third, it avoids the need to request CMS review of a proposed "zero" liability Medicare set aside and the parties just need to retain a copy of the doctor's letter/certification. Fourth, and most importantly, it reinforces the negative in that if you don't fall within this exception then a liability Medicare set aside should be considered.

The next guidance came from the ANPRM. In an apparent attempt to create regulations governing liability set asides, on May 3 of 2012, the Office of Management and Budget received advanced notice of proposed rulemaking (ANPRM) entitled "Medicare Secondary Payer and 'Future Medicals' (CMS-6047-ANPRM)" from CMS. On June 14th, 2012 the contents of the proposal were released by CMS Proposed General Rule

"If an individual or Medicare beneficiary obtains a 'settlement' and has received, reasonably anticipates receiving, or should have reasonably anticipated receiving Medicare covered and otherwise reimbursable items and services after the date of 'settlement,' he or she is required to satisfy

Medicare's interest with respect to 'future medicals' related to his or her 'settlement' using any one of the following options outlined later in this ANPRM."

The notice outlined seven options to comply with the general rule. As of the writing of this article, no further action has occurred with respect to the proposal for proposed rulemaking.

There are situations where there is not an attestation by a treating physician where future medicals aren't funded. A Connecticut case, Sterrett v. Klebart, is illustrative of this point. In Sterrett, the court stated that "the settlement payment to Sterrett does not address any future medical expenses that may be covered by Medicare and the facts of this case mandate the conclusion that the defendants and their carriers lack liability with regard to any such expenses." The court found that the settlement represented a "substantial compromise" considering the potential verdict range. The settlement was a compromise due to the nature of the injuries and defenses according to the court. Further, the court understood that even though Sterrett would incur medical bills payable by Medicare, the settlement didn't compensate for such future medical benefits. Instead, the limited settlement funds it found were payable for the plaintiff's non-economic damages with a small portion to be used for non-Medicare covered economic damages. For those reasons, the court held that no set aside was required and found that the parties had reasonably considered the interests of Medicare in the settlement of the case. Many personal injury cases fit within these parameters and the argument can be made that future medicals haven't been funded.

Arguably, every personal injury case resolves for a compromised amount. What happens when there are significant damages with a limited recovery? What if the plaintiff has pre-existing conditions? What if there are small policy limits? What if the liability is questionable? In our opinion, all of these issues must be taken into account before arriving at a final MSA amount.

All of the cases cited above which existed before 2017, provide good guidance for how this situation will be handled in the future.

While congress wants Medicare to refuse to pay for future medical expenses related to a third party claim just like it presently does refuse in workers' compensation claims, clearly the situations are different in many different ways. Problem (1) The carriers are experienced in the area of Worker's Compensation Medicare set asides (WCMSAs). Since 2001, insurance companies have been using Worker's Compensation Medicare Set Aside agreements (WCMSA) as a tool to resolve cases involving a Medicare beneficiary with a future medical component [1]. Trying to use a WCMSA in a liability claim is like putting a square peg in a round hole. There is a fundamental difference between worker's compensation claims and liability claims. The primary issue with WCMSA's is they fully fund future Medicare allowable expenses related to an industrial accident since the carrier is liable for all future medical costs. Whereas, most liability cases resolve for a compromised amount due to issues such as pre-existing conditions, liability, causation, caps on damages and limited coverage. The common result in liability settlements involving Medicare beneficiaries is a disagreement between the parties as to what should be done for MSP compliance once the liability claim resolves, as well as how much, if any, of the settlement proceeds should be set aside. This disagreement causes delays in the settlement and ends up costing all parties involved.
Problem (2) At present, CMS does not have a formal process to review and approve liability MSAs as they do in workers' compensation cases. CMS review of proposed LMSAs is determined on a case-by-case basis by the appropriate regional office. For example, both the California and Atlanta Regional

offices routinely refuse to review LMSAs submitted for formal approval. In years' past, Medicare would respond with a letter saying, "due to resource constraints, CMS is not providing a review of this proposed liability Medicare set aside arrangement." This form letter would go on to say "this does not constitute a release or a safe harbor from any obligations under any Federal law, including the MSP statute." (Emphasis added). In bold print the letter would warn, "All parties must ensure that Medicare is secondary to any other entity responsible for payment of medical items and services related to the liability settlement, judgment or award." Currently, most regional offices have discontinued sending response letters to LMSAs. They simply will not bother to respond at all. Nevertheless, CMS does expect the funds to be set aside and spent on Medicare covered services before Medicare is ever billed, regardless of whether the MSA is reviewed/approved by CMS. Problem (3) There is a tremendous amount of misinformation in the marketplace about Liability MSAs. some insurance carriers are convinced that failure to address Medicare's future interests on liability case exposes them to future liability if not properly addressed. There is a small contingent of MSA vendors who have convinced the insurance industry that if you do not do an MSA when resolving a liability claim, then CMS can levy serious fines, penalties, or bring legal action against them. The most common argument by these MSA vendors is that CMS can impose a lien post-settlement; therefore, retroactively exposing the carrier for not properly extinguishing all the liens. This argument is completely without merit. Since there are no regulations or statutes empowering Medicare to take any punitive action at all against a carrier for LMSAs, insurance carriers should be more concerned with conditional payments and reporting requirements. Problem (4) On the other side of the spectrum, many plaintiff attorneys believe that they do not need to do anything with respect to protecting Medicare's future interests. The plaintiff's bar rightfully takes the position that one never has to do an MSA. While there is currently no regulation or law that mandates a liability- Medicare set aside, it does not mean there will be no consequences when a plaintiff attempts to shift the burden to Medicare for future injury-related care. It is very clear from Medicare's public statements that the agency believes that set-asides are the best method to protect the program from paying for injury-related care when future medicals are funded by a settlement [2]. That does not mean it is the only way to demonstrate that Medicare's interests were taken into account when a case involving a Medicare beneficiary is settled, it simply means it is one way.

The real issue, when a case involving a Medicare beneficiary is settled, boils down to the risk taken by the plaintiff in terms of coverage of their future injury-related care by Medicare. This is not a defense issue; it is a plaintiff issue. The plaintiff, if he/she does nothing without legal justification, could face a situation where Medicare denies future injury-related care since nothing was set aside. The plaintiff needs to understand this risk before settling their case. Since the settlement will be reported to Medicare under the Mandatory Insurer Reporting laws (Section 111 reporting), Medicare will be on notice of the settlement and the injury related ICD codes. That could trigger a denial of

Action Steps-CMS has stated the MSA issue is the plaintiff's responsibility and the role of the defendant is to report current Medicare beneficiaries under Section 111 reporting [3]. The reality is that the defendant has no exposure for failure to address the MSA issue. However, plaintiff's counsel has legal malpractice risks if they fail to properly advise the client regarding the set aside issue when they are currently eligible to receive Medicare beneficiary benefits.

What is the SOL for Medicare Conditional Payments? MEDICARE COMPLIANCE

What is the statute of limitations for Medicare to institute an action for repayment of conditional payments used to be a question with more than one answer.

The plaintiff's bar and Medicare enrollees argued that the shorter three (3) year statute of limitations was the correct standard for claims arising out of tort. That statute provides

"every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues…"28 U.S.C. § 2415(b).

When President Obama signed the Strengthening Medicare and Repaying Taxpayers Act ("SMART") on January 10, 2013 he answered this question in favor of Medicare beneficiaries. Additionally, unlike some of the other components of the "SMART" Act this section is self-enacting and does not need rule promulgation or post a proposed rulemaking in the Federal Register for this to be effective. By operation of statute this new time limit became effective six (6) months after signing. Therefore, all cases that settle after July 10, 2013 will be controlled by the three (3) year statute of limitations. The "SMART" Act reads in pertinent part:

"(a) In General.–Section 1862(b)(2)(B)(iii) of the Social Security Act (42 U.S.C. 1395y(b)(2)(B)(iii)) is amended by adding at the end the following new sentence: `An action may not be brought by the United States under this clause with respect to payment owed unless the complaint is filed not later than 3 years after the date of the receipt of notice of a settlement, judgment, award, or other payment made…'"Pub. L. No. 112-242, § 205(a) (2013)

In the recent case U.S. v. Stricker, Lexis 15204 (11th Cir. July 26, 2013) the court provides an excellent analysis of the above competing statutes of limitation and confirms that the "SMART" Act has resolved the controversy for settlements after July 10, 2013.

Discovering Insurance policy limits prior to trial

Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 10-1102 (2014)

10-1102. Prelitigation discovery of insurance coverage.

After a claimant files a written tort claim concerning a vehicle accident and provides the documentation described in § 10-1103 or § 10-1104 of this subtitle to an insurer, the claimant may obtain from the insurer documentation of the applicable limits of coverage in any insurance agreement under which the insurer may be liable to:

(1) Satisfy all or part of the claim; or

(2) Indemnify or reimburse for payments made to satisfy the claim.

Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 10-1103 (2014)

10-1103. Prerequisites for receiving documentation

(a) Scope. — This section does not apply to a claim described under § 10-1104 of this subtitle.

(b) In general. — A claimant may obtain the documentation described in § 10-1102 of this subtitle if the claimant provides in writing to the insurer:

(1) The date of the vehicle accident;

(2) The name and last known address of the alleged tortfeasor;

(3) A copy of the vehicle accident report, if available;

(4) The insurer's claim number, if available;

(5) The claimant's health care bills and documentation of the claimant's loss of income, if any, resulting from the vehicle accident; and

(6) The records of health care treatment for the claimant's injuries caused by the vehicle accident.

(c) Threshhold amount for required disclosure. — If the amount of the health care bills and loss of income documented by the claimant under this section is at least $ 12,500, the insurer shall disclose in writing the applicable limits of coverage in each written agreement under which the insurer may be liable.

Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 10-1104 (2014)

10-1104. Prerequisites for receiving documentation — Estate of individual or beneficiary on death of individual

(a) Applicability. — This section applies to a claim by the estate of an individual or a beneficiary of the individual resulting from the death of the individual in a vehicle accident.

(b) Information required prior to obtaining documentation. — A claimant may obtain the documentation described in § 10-1102 of this subtitle if the claimant provides in writing to the insurer:

(1) The date of the vehicle accident;

(2) The name and last known address of the alleged tortfeasor;

(3) A copy of the vehicle accident report, if available;

(4) The insurer's claim number, if available;

(5) A copy of the decedent's death certificate issued in the State or another jurisdiction;

(6) A copy of the letters of administration issued to appoint the personal representative of the decedent's estate in the State or a substantially similar document issued by another jurisdiction;

(7) The name of each beneficiary of the decedent, if known;

(8) The relationship to the decedent of each known beneficiary of the decedent;

(9) The amount of economic damages, if any, claimed by each known beneficiary of the decedent, including any amount claimed based on future loss of earnings of the decedent;

(10) The health care bills for health care treatment, if any, of the decedent resulting from the vehicle accident;

(11) The records of health care treatment for injuries to the decedent caused by the vehicle accident; and

(12) Documentation of the decedent's past loss of income, if any, resulting from the vehicle accident.

Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 10-1105 (2014)

10-1105. Providing disclosure; effect of disclosure

(a) Insurer to provide documentation within 30 days of request. — An insurer shall provide in writing the documentation described under § 10-1102 of this subtitle within 30 days after the date of a request in accordance with § 10-1103 or § 10-1104 of this subtitle, regardless of whether the insurer contests the applicability of coverage to a claim.

(b) No liability for disclosure. — An insurer, and the employees and agents of an insurer, may not be civilly or criminally liable for the disclosure of documentation required under this subtitle.

(c) Effect of disclosure. — Disclosure of the documentation under this subtitle does not constitute:

(1) An admission that a claim is subject to the applicable agreement between the insurer and the alleged tortfeasor; or

(2) A waiver of any term or condition of the applicable agreement between the insurer and the alleged tortfeasor or any right of the insurer, including any potential defense concerning coverage or liability.

(d) Effect of disclosure — Admissibility as evidence. — Documentation disclosed under this subtitle is not admissible as evidence at trial by reason of its disclosure under this subtitle.

Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 10-1101 (2014)

10-1101. Definitions

(a) In general. — In this subtitle the following words have the meanings indicated.

(b) Beneficiary. — "Beneficiary" means an individual who may bring an action for wrongful death under Title 3, Subtitle 9 of this article.

(c) Claimant. — "Claimant" means:

(1) A person who alleges damages as a result of a vehicle accident or an attorney who represents the person; or

(2) A personal representative of the estate of a decedent who died as a result of a vehicle accident or an attorney who represents the personal representative of the estate of the decedent.

(d) Insurer. — "Insurer" includes a property and casualty insurer, a self-insurance plan, or any person required to provide indemnification for a claim for wrongful death, personal injury, or property damage.

(e) Vehicle. — "Vehicle" has the meaning stated in § 11-176 of the Transportation Article.

Admissibility of Traffic Court Finding in a Civil Case.

If the defendant pleads guilty in traffic court, the guilty plea is admissible in a subsequent civil case. See Miller v. Hall, 161 Md. 111 (1931). It is admissible as an admission. See Crane v. Dunn 382 Md. 83 (2004) for a full discussion

If the defendant simply paid the traffic ticket by mailing a check, that action (and the fact that a traffic citation was issued by the officer) is not admissible in a subsequent civil case. Briggeman v. Albert, 322 Md. 133 (1991). The action of mailing the check is equivalent to plea of "no contest," which is also not admissible in a subsequent civil action. Paying a traffic ticket does not necessarily mean that the driver admits guilt; it may have been costlier for the driver to fight the ticket than to pay it.

3. If the defendant is tried in traffic court and is found guilty, the conviction is not admissible in a subsequent civil action. See Aetna Casualty & Surety Co. v. Kuhl , 296 Md. 446, 450 (1983); Brooks v. Daley, 185, 196 (1966). See also Eagan v. Calhoun, 347 Md. 72 (1997) (collecting cases). It is true that the standard of proof in traffic court is higher than that in a civil case. However, much less is at stake in traffic court. A defendant may not (and in most cases, would not) hire an attorney to fight a traffic ticket for, say, $75.00. Thus, it would not be fair to use the conviction against the defendant in a subsequent civil case in which he is being sued for say, $100,000. Also, there is no right to a jury trial in most traffic court cases. Traffic court procedures are also much more streamlined than Circuit Court procedures, and even District Court civil procedures (i.e., no discovery).