COMPLETE GUIDE

TO MANAGE YOUR

PERSONAL INJURY CASE

BY SALLY MORIN LAW

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Introduction

Managing a personal injury case is no simple task. Especially when you are suffering from serious physical injuries, juggling medical appointments, incoming bills and your normal life responsibilities.

However, we've prepared this guide to help you manage your own personal injury case yourself, or to help you preserve your legal rights while you decide on whether or not you need to hire a personal injury lawyer.

Our complete guide will take you through the first steps of the personal injury case process… all the way to the final step to getting your settlement check.

The process

Should you pursue a personal injury case

Almost all of my clients have a big concern about suing other people personally. Nobody likes to do that. Most people who contact my office say, "Hey, I've never sued anyone, I'm not the litigious type, I'm not sure I want to do this. I don't want to destroy this person or take their home." What I tell them is that you do not have to sue any particular person in order to bring a personal injury claim. Really, what you a are doing is only filing a claim against the other party's insurance policy. Yes, you are going after a multi-billion dollar corporation – not an individual person.

You are not going after any individual person's pockets, homes or any of their assets. You are simply going after their insurance coverage. In California, there

is a requirement that we carry a minimum amount of liability insurance in case of a personal injury accident. So, almost everyone has got that coverage, or there is other insurance coverage that may apply to compensate you for your injuries, loss of earnings and pain and suffering. There is the possibility of umbrella coverage or the other party may have been within the course and scope of their employment when they injured you, so their employer's insurance will apply.

Even if you end up having to file a lawsuit for your bicycle, motorcycle, pedestrian or auto accident case, you are still not necessarily pursuing the other party's personal assets. Once you file suit, the other party's insurance company will provide that party with an attorney that is paid for by the insurance company.

So, again, you are battling with the insurance company – not that individual. Further, when all is said and done, the insurance company cuts the check to you for your personal injury settlement, not the individual. Only in really egregious situations do you ever have to go after somebody's personal assets. An example would be someone running you over on your bike causing you to have $100,000.00 in medical expenses, but they only carried $15,000.00 of liability insurance despite the fact that they own 6 apartment buildings in San Francisco. Would you feel bad going after this individual? Probably not. These are the types of situations where you actually go after that person directly. However, these situations are very rare! So, the bottom line is that if you have a personal injury case, you should speak with a qualified personal injury attorney to find out your options for making a claim against the insurance company. Make sure that attorney's objective is in line with your own (getting corporate insurance money, not taking someone's personal assets.)

When to hire a personal injury attorney

You have up to 2 years after your accident to pursue your case, so you can wait until after all of your medical treatment before starting or hiring an attorney. However, I highly recommend hiring one as soon as you can after your accident. You can get an attorney now to work with you throughout your treatment,

recovery and case to guide you and make sure you are getting the best medical treatment for your injuries and for the case.

I think the advantage of working with an attorney up front is that you are sure to be “on the right track” as far as the case is concerned, and will be ready to start negotiations once you are released from all medical care. If you wait until after you are done with all your treatment to hire an attorney, keep in mind there are various problems that can come up over the course of your medical treatment. These can include:

1. Saying things or disclosing information to the 3rd party insurance carrier that may damage the case. Insurance companies can be tricky. They can approach you in a friendly manner, but only to extract crucial information from you about the case – often times well before you know or understand the gravity of your injuries. With an attorney, you can control the information in your personal injury case.

2. Saying things to your medical providers that may damage the case. A personal injury attorney can guide you in the proper language to use when communicating with your medical providers. Often without legal guidance, personal injury patients can sound very litigious and overly concerned with their legal case (more than their injuries or treatment), which bodes poorly on the case.

3. Getting treatment that may not be the most suitable or effective for healing your injuries. If you are not getting the proper and most effective treatment for your injuries, you might not be compensated for that treatment in your case.

4. Letting your medical bills go to collections or even damage your credit. Having an attorney can be very helpful in making sure your medical bills do not go to collections, as your lawyer can set up liens, payment plans or put the accounts on hold.

5. Paying medical bills unnecessarily. A lawyer can help get some of your medical bills covered with health insurance, med-pay coverage or other benefits, or they can put the bills on hold or a lien so they don't have to be paid until your case is resolved.

6. Having "gaps" in treatment. If you do not keep to a regimented treatment plan (which can be reviewed and guided by your attorney and medical providers) and have significant time periods without any treatment, this can lead the insurance carrier to discount or eliminate certain medical bills from your claim.

7. Failing to properly document or preserve evidence on certain elements of damages to build your case. Examples include failing to gather information witness statements, photos of the scene of the accident, vehicles and injuries, traffic or accident scene video footage, etc. about the facts of the case when it is fresh and relevant. Having a personal injury attorney on board early in the case can eliminate this problem.

8. Leaving the 3rd party insurance carrier "in the dark" about the case, so they don't know to set their "reserves" at the appropriate level. Most insurance carriers set a "reserve" (certain amount of money allocated to the case) for each case based upon information conveyed to them by the attorney early in the case. If the reserve is not set high enough, it can be rather difficult to get the carrier to increase that reserve. So, you want to be sure the reserve is set high as early as possible.

9. Losing track of the 3rd party (defendant). The longer you wait to pursue your case, the more time the defendant has to "disappear" or move. If this happens, it will be much more difficult, time-consuming and costly to resolve your case. Your lawyer can keep track of this person and has the resources to locate them if they go missing.

10. Missing the boat completely. There is even a possibility that other claims can be made on the policy, and if the 3rd party insurance carrier doesn't know

about your claim, the can pay other claimants all the money available in the case, leaving you with nothing. Your personal injury lawyer will notify the carrier of your claim right away to be sure you get your fair share of any available insurance proceeds.

As you can see, I think it is a much better option to get the case going now, even though you have two years to file the lawsuit to preserve your legal rights under California's two year personal injury statute of limitations. Keep in mind that starting an insurance claim is much different than filing a lawsuit, and you may be able to resolve your case at the claims stage and not even have to file a lawsuit (as long as you resolve it before the 2 year mark.)

Who to hire as your attorney

I often get this question: If I have an attorney I've used for other matters (like a tax attorney, business attorney or a family law attorney), can't they just help me with my personal injury case? Sure, if you have a very minor fender-bender case (like you had minor whiplash and only needed a few chiropractic visits), it would be fine to go it alone (without an attorney) or just use a "general" attorney that you already have a relationship with and trust to handle things. However, it is absolutely not advisable to use a general practice attorney or any type of non-specialized attorney for a real personal injury case where you have a significant injury and need to be compensated for medical expenses, loss of earnings, pain and suffering, inconvenience, loss of household services and more.

You need to hire a very focused and experienced personal injury attorney. Hire a specialist! Somebody who handles serious personal injury cases day in and day out. My office in particular has a very, very focused expertise. We are NOT one of those law firms who says, "Oh, you got a divorce, come on in." or, "Sure we'll draft up your will or negotiate a contract for your business AND then we'll do your personal injury case." We don't do that. That's just crazy and asking for trouble. Would you want to hire someone who is "pretty good" at a lot of things, or totally awesome at the ONE thing that you need them for?

Hire a focused personal injury lawyer. Take it one step even further… hire a personal injury attorney who focuses on the specific type of case that you have. For instance, if it's a motorcycle accident, make sure that attorney has a track record of successfully handling motorcycle accident cases. Don't just look for the label "personal injury lawyer" and think you've found your guy. Even personal injury attorneys try to handle way too many types of cases.

Frankly, we're not like other personal injury firms, because we don't take on all of the various types of personal injury cases. We take only traffic accident cases, that are bicycle, motorcycle, pedestrian and auto accident cases. I've honed my expertise to such a fine, finely small area that I know it inside and out. The phrase, "Jack of all trades, master of none." You don't want somebody who on a daily basis is drafting wills to do your personal injury case because they don't know all the intricacies of how to maximize value of your case. I'm sure they could handle it and "get you through it" ok, but they are not going to get you the maximum value, and you won't be able to go through the case with the confidence of knowing that you've got a honed expert on your side.

You cannot confidently rely on just having a lawyer – They need to be a honed expert. Yes, you will have a lawyer on your side, but it would be like going to a urologist to get knee surgery. It just doesn't make sense. I've had some of my colleagues who do not practice personal injury law tell me about personal injury cases that they've taken on for friends or family. They've said things like, "I should've never take this case on, because now I've messed it up and it's too late for me to give it to somebody else." Sadly, a lot of lawyers try to do favors for family and friends, but taking a case that's out of their area of expertise is not doing anyone a favor. It's causing the lawyer stress because they're having to learn things that they don't already know and practice on a daily basis. It's causing the client stress because they're not in the best hands and their case is going to suffer.

It's definitely a win-win if you hire somebody who is totally honed in on your particular type of case, but a lose-lose if you don't. If you have a serious

personal injury case, you need a serious personal injury attorney! Don't settle for anything less.

If you are currently looking for a personal injury lawyer in California we want to hear from you.

Get A Free Case Evaluation

Can you be your own personal injury attorney

I do know there are many people out there (especially in California) who are intelligent, capable, proactive people who may be tempted to handle their personal injury case on their own without the help of an injury lawyer. However, this can be a very tricky, laborious and stressful undertaking. I do NOT recommend it. Seriously, if you think you are going to save money by doing this, I would urge you to reconsider, because any respectable personal injury lawyer should more than earn his or her fee AND take on all the work and stress of handling your bicycle accident, pedestrian accident, motorcycle accident or auto accident case.

Tiny (or non-injury) cases are the exception to the rule: One exception to the rule of not being your own personal injury lawyer is if you have a tiny case, like no injury or just a very minor injury. In those cases, the injured person can most likely handle it. Let's say they were in a minor car accident that gave them some pain. The went to their primary care doctor once for a check-up, and then saw the chiropractor three times. They can probably handle that type of simple traffic injury case on their own. It's a small situation, and they'll get a few hundred or thousand bucks and move on. However, there are some personal injury attorneys out there who will take on these case.

I don't do my own taxes: I similarly note that I am an intelligent, capable human being, yet I don't do my own taxes. I hire a CPA to do that because I know my CPA can save me a lot more money than if I were just to do it on my own. Again, if my taxes were as simple as entering my W2 into the EZ form, I could handle

that on my own, but because I own a business and thing are a little more complicated, I defer to a tax expert.

If you have a serious issue, you need serious help: When you have a complicated or serious issue (like a serious injury traffic accident) you naturally seek out somebody who has studied and practiced their lifetime doing what it is you need. There's a big difference between being smart and thinking you can handle something complicated yourself, and being REALLY smart and saying, "Wait. I should hire somebody else – an EXPERT – to handle this." I love working with this second type of client! They're very intelligent, they're capable and they're communicative, but they understand that a personal injury attorney is an expert at handling personal injury cases. These clients like to know what's going on in their cases, and they like to help make some of the decisions in the case, which I enjoy. I think working with clients collaboratively on their cases is just so rewarding for me and empowering for the client. They get to make decisions, but they get to make carefully thought-out, informed decisions with the help of an expert – me.

Don't mess things up for your personal injury lawyer: Another reason I don't recommend that people handle their own serious personal injury case is because they often keep going and going through the process until they realize they've sort of messed it up. Or, they hit a wall and come to the realization that "Oops, this is actually way harder than I thought it was going to be, now I'm going to hand it over to a personal injury lawyer."

I (and probably many personal injury attorneys) don't like to take on these cases, because there are a lot of steps that you need to follow early on in the case to build the strongest case possible and poise yourself for a solid result with the insurance company. Self-represented people usually disclose too much information to the insurance company, say the wrong things, don't provide the right documentation, get the wrong medical treatment and don't build the case as powerfully as possible. All things that can be avoided if you have a kick-ass personal injury attorney on your side.

For instance, you want to take photos, gather witness contact information, and you want to preserve evidence. (Not that your injury lawyer will be able to tell you to do this before you get into that accident, but still good to know.) You want to get the right medical care and follow a full checklist of stuff to do to strengthen the case early on. Who wants to be following this "case-building checklist" when they are in pain and trying to make time to see their doctors, spend time with family and get back to work? It's too much. Too stressful.

Don't be a "late-bloomer:" Another reason I often reject these "late-bloomer" cases is because the client failed to follow the appropriate medical and legal steps to build their case from the start and they come to me eight months down the line, or a year after the accident. I have to be "Sorry, you might have already messed this up." I don't want to be the bad guy who ends up getting a poor settlement because the work wasn't done up front. Most of the time I'll have to let those people find another lawyer who's more desperate to take that sort of thing. I think sometimes these people think they are going to "save a buck" by not hiring a personal injury attorney, but they end up with way less money and way more stress than if they had just had proper legal representation from the start.

If you have questions about a bicycle, pedestrian vs. auto, motorcycle or auto accident case anywhere in California, submit your case to find out if we can help. Don't wait another day. The more time that goes by, the more you are jeopardizing your case. I don't even care if you hire us, just find a cool personal injury attorney that you like and put him or her to work! You'll be grateful you did. Just make sure you look for a very experienced California personal injury attorney who has similar values and objectives as you. Check out my detailed article and video series on how to find the right attorney for you for more on how to do this.

Settlement vs Litigation?

Although not every personal injury case will reach a point where you'll need to decide whether to settle or litigate (file a lawsuit) you should understand the pro's and con's of both options.

You will most certainly need to decide whether it's worth it to file suit and litigate your personal injury case if the person responsible for your injury doesn't have enough insurance to fairly cover your losses. This is called a "policy limits" case.

Also, if you have negotiated with the insurance carrier, but they just won't pony up a fair settlement, you may have to decide if you have the bandwidth to take your case to the next level by filing suit.

This section of our complete guide will walk you through all aspects of making the decision of settling your case or litigating it in court.

How long does settlement take?

This depends quite a bit on how long your medical treatment lasts. We cannot move forward with negotiations on the settlement of your case until your doctor reports that your injuries have stabilized or are completely resolved. We do not want to settle your case before you are physically ready to move on from the accident. In settling your bicycle, motorcycle, pedestrian or auto accident case, you will be required by the third party's insurance company to sign a full "Release of All Claims." This means that you will waive your right to make any other claims against the person who injured you with regard to this particular accident once you have received your settlement.

Once you sign the settlement release, you can no longer recover money for damages you may suffer after the settlement. This is why it is so important to wait to settle the case until you are completely finished with your medical treatment related to the accident. For information on situations where you might want to consider settling your case before you are finished with all medical treatment (like where you have suffered a permanent injury or will require a future surgery), check out my post on how to settle your case if you have more medical treatment. In the meantime, while you are receiving all of the necessary treatment you need, your lawyer can gather all of the relevant information needed to build your case.

For our cases this is what we usually do, we can obtain some documentation in the case (like the police report, witness statements, ambulance bills and emergency room records) even when you are still in treatment. Then, once you have completed treatment, we will obtain the final documentation and draft a settlement demand packet. The demand packet is the universe of information in your case (police reports and witness statements, medical documentation, loss of earnings information, details about your pain and suffering, etc.) accompanied by a well-written letter setting out all of the details of your case.

We place a specific settlement demand dollar amount in the letter (that is approved by you) and give the insurance carrier 30 days to respond to our demand with an offer. The negotiations will go back and forth for a few weeks (or up to a couple of months.) If we reach an acceptable number, we settle the case and complete the final paperwork, which takes a few weeks (note that if your case is against a governmental entity, this can take much longer.) If we cannot reach an acceptable number through negotiating with the insurance carrier, we will file a lawsuit and proceed with litigation and possibly trial. This process can take 18 months or longer, but the exact time frame can be determined more accurately by your personal injury attorney once suit is filed.

Mediation

Many of the bicycle, pedestrian, motorcycle and auto accident cases we handle at Sally Morin Law go through a process called Mediation. Mediation is an opportunity for the parties to get together to talk settlement, but with the help of a neutral third-party (the mediator) who doesn't have a "stake" in the case. Mediation is when the parties get together to try and resolve the case without having to go through further litigation or to trial. Mediation is not like a trial Unlike a trial, no judgment or decision is rendered by a judge or jury at mediation. The mediator also does not render a decision or enter a judgment. No live witness testimony is presented and the parties do not need to take the stand. The parties just talk, hash over the details of their case, get the mediator's input on the case as a whole and get real – all in an effort to settle the case.

The role of the Mediator: The mediator has no interest in the outcome of the case one way or the other. However, the mediator, who typically has many years of experience as a personal injury trial lawyer, will give his or her opinion about the strengths and weaknesses of each side's case. The mediator will be skilled at advising the parties and their attorneys as to the likelihood of success or failure of the case should it proceed all the way to try trial. At Sally Morin Law, we typically use mediators who have had many years of experience trying cases as a personal injury attorney. It is even better if we can choose an attorney who has experience in the particular case type being presented (like bicycle accidents, pedestrian accidents, motorcycle accidents or auto accident cases.)

Mediation is like Vegas, what happens at mediation, stays at mediation. Pretty much everything that happens at mediation is considered confidential, and cannot be disclosed at trial or to a jury. Mediators work under the strictest confidence, meaning that if you give them information about your case that you don't want them to disclose to the other side, they have to abide by that wish. The reason for this is that it allows the parties to give full disclosure to the mediator without the fear that he or she will share all aspects and intricacies of their case with the other side. This helps facilitate a genuine evaluation and settlement of the case.

One thing that actually may not "stay" in Vegas (um, or at the mediation) is the last offer and last demand conveyed during mediation. Usually, the parties will keep those offers open, unless they specifically state that once the mediation is over the offer is "off the table." Alternatively, because parties "stretch" at mediation (they go higher or lower with their numbers than they may want to if the case went to trial) sometimes they want to retract their offer or demand. So, if an offer or demand is conveyed at mediation, the party who conveyed it does not have to stick with that number, but can start fresh with their numbers should the case go to trial.

The logistics are mutually agreed on by the parties on the mediator they select. The mediator is usually paid equally by both parties. (Sometimes an injury party

can negotiate for the insurance carrier to pay the mediation fee as part of the settlement agreement.) Mediation takes place in an office setting (in offices or conference rooms), not in front of a judge or jury or in a courtroom. Nothing is recorded or documented by a court reporter. In fact, everything disclosed at mediation is confidential as described above.

The typical mediation in a standard personal injury case can take anywhere from 4 hours to a full day. In some larger, more complex cases the mediation can go into multiple days. There are many different ways that a mediation can be facilitated. A typical scenario is having each party (with his or her attorney) go into a separate conference room or office, while the mediator goes between those two rooms conveying information (and settlement offers and demands) back and forth between the parties.

Sometimes mediators like to host a joint session at the beginning of the mediation, where the parties and their counsel all meet in the same room and each gives an introductory statement of the case. However, I have found the latter to be less and less common lately. Mediation can be useful in personal injury cases Mediation can be useful when the insurance adjuster doesn't see the case the same way the defense attorney sees the case. The defense attorney evaluates the case from a legal point of view, but the adjuster is the one with the checkbook. The lawyer can only make recommendations to the adjuster, but the adjuster ultimately makes the final decision on what to pay.

Mediation can also serve as a very valuable tool when the parties are having trouble getting into the same settlement range. This is when the defense significantly undervalues the case and/or the plaintiff feels that the case is worth much more than it really is. When we go through something terrible like a bad bike accident or suffer a serious injury, we personally believe there is NO amount of money that can make that terrible thing not have happened. This is true in some cases, BUT if you are using the legal system to compensate you for your loss, there actually is a real dollar amount that the thing (or your case, accident, injury) is worth. That's just how the system works. A similar unrealistic opinion of case value can be held by defendants (or their insurance carriers)

too. They just don't see what the big deal is. They do not believe the case is worth much money, so they refuse to pay a reasonable amount. This is because it didn't happen to them. Mediation is an opportunity for these unrealistic parties to get REAL, so they can resolve it without having to be dragged through more litigation.

Having a mediator (a neutral third party) is very helpful in providing the parties and their attorneys with a different angle on the case. This is very important, because if the case goes to trial, the attorneys and their clients do not make the final decision about what the case is worth, a judge or jury makes that decision. Mediation can help with "tunnel vision". Often, as personal injury attorneys, we see our own case through our eyes only and do not step outside of ourselves to see how the facts of the case would appear to someone not involved in the case (like a judge or juror.) Mediation gives us lawyers a no-risk chance to do this. The mediator offers a neutral perspective on the case, which can be enlightening.

Mediations can be helpful even if they don't settle the case. They are not always successful, but they do at a minimum help the parties understand a more realistic value of their case, the strengths and weaknesses of the case, and what they might expect if they take their case all the way to a trial. Even if the case doesn't settle at mediation, it will often settle soon thereafter, because the mediation gets the parties poised for intelligent discussion of the merits and value of the case. If it doesn't help get the case settled, at least the parties now know more about their case, so they can better prepare for trial.

When to NOT use Mediation

There really aren't many downsides of mediation. I believe it is beneficial in almost every case. Defendant refuses to negotiation at all However, if the defense simply refuses to negotiate at all, there is no sense in trying to get them to do so at mediation. Small personal injury cases Also, mediation can be expensive and not make financial sense for smaller cases. Mediation costs can get up into the range of several thousands of dollars. Some mediators in California get paid $10,000 a day! However, there are some other mediation

options for the smaller sized cases, like the Bar Association of San Francisco's Early Settlement Program. Try informal negotiations first I have also found lately that many insurance defense firm suggest mediation right away, without even trying informal negotiations with plaintiff's counsel. I believe this is premature and lazy. However, if the defense attorney has a difficult adjuster (who as I mentioned above is in charge of cutting the settlement check), it may be futile to try negotiating before that adjuster is forced into a mediation scenario.

The bottom line is that mediation can be very useful in almost all cases and is worth the time and money if you want to resolve your personal injury case quickly and without having to go to trial. If you have questions about your personal injury case or mediation in general, please contact Sally Morin Law. We are personal injury attorneys who love our awesome clients and love what we do!

Medical evaluation

In personal injury cases, an independent medical evaluation ("IME")is usually requested by the defendant's insurance company to determine causation, the extent of the medical treatment, whether the patient (plaintiff) has received maximum benefit from the treatment, and whether any permanent impairment or injury will remain after treatment. Independent medical examinations are typically requested by insurance carriers looking to get an "independent" evaluation of the injured party by a doctor who has no relationship with the patient. However, the doctors hired by the insurance companies often spend a great deal of their time doing these exams for insurance companies. Insurance carriers have a right to request an independent medical exam during litigation.

Note that the doctors hired to conduct these "independent" medical examinations are paid by the defendant's insurance carrier and have every motivation to provide reports favorable to the defendant, so they will continue to be hired by that particular carrier. (Note: That is why many personal injury attorneys refuse to use the term "IME" and refer to these examinations and Defense medical examinations.) Thus, independent medical examiners enter the examination room with the defendant's intentions in mind, which are to

bolster the insurance carrier's case and weaken the plaintiff's case by minimizing their injuries. Be warned, these doctors will often be very nice to you in person, but then will write a lengthy report about how you are exaggerating your injuries or received too much treatment for your injuries. Whatever they can do to help minimize the case and improve the defendant's position.

What should you expect in an independent medical evaluation? An IME will always include a physical examination of the injuries in question, but the doctor may also ask you detailed questions about the accident itself and your medical history. Be aware that you do not have to answer questions relating to the facts of the accident, because the insurance carrier is entitled to this through the discovery process during your deposition. They are not entitled to question you twice (once by their doctor and once at your deposition.) The exam itself could take up to two hours, depending on the extent of your injuries.

What precautions can your attorney take? There are certain precautions that a plaintiff's attorney can take to ensure that the medical evaluation is not overly broad, too intrusive, and does not violate the plaintiff's privacy rights. First, and foremost, your personal injury attorney should formally object, in writing, to any general tests conducted and to any questioning by the examiner about the accident, plaintiff's medical care and history and any preexisting injuries. Second, your attorney should absolutely object to any physical examination beyond the parts of the body which are at issue in the case. The medical evaluation should be limited to the injuries suffered as a result of the accident. A plaintiff is also not obligated to answer questions regarding their pre-incident and post-incident medical history. However, if a plaintiff does answer questions that are not relevant to the subject matter of the personal injury case, the plaintiff may invoke the physician-patient privilege.

Filing a personal injury lawsuit does not automatically waive a plaintiff's right to privacy or the right to the physician-patient privilege regarding unrelated matters to the lawsuit. You have a right to have a witness in the examination with you. If you have a good personal injury attorney, he or she should send a

representative from their office to go with you and bring an audio recorder to ensure that the evaluation is conducted properly. By informing the doctor that he is being recorded, and by stating that the examination and any questions must be limited to the injuries at controversy in the case, will help ensure that the IME doctor does not overstep his boundaries when conducting the exam.

What precautions can you take to ensure your rights are protected during the IME? If you feel uncomfortable bringing a representative from your injury attorney's office with you to the examination, or you do not have an attorney, see if you can get a friend or family member to go with you. They can take notes on exactly what time the doctor starts, what questions the doctor asks you, and what tests the doctor performs. They can even record the examination (with audio and maybe even video) with their phone. This person can later act as a witness if there is a dispute regarding the accuracy and fairness of the examination. You can also schedule an appointment with your own doctor the same day of the exam. Your doctor will be able to say what she found on the same day that you saw the IME doctor. This will be particularly helpful if you disagree with the IME doctor's findings. Always ask for a copy of the complete medical report (if you have an attorney, they will do this for you). If you feel like the report is unfair, or does not reflect an accurate depiction of your injuries, you can show it to your doctor and have them write a response to it.

Other things to remember… You want to make a favorable impression during your IME, so arrive on time and be friendly to the doctor and staff. Remember that you may be observed from the time that you arrive at the doctor's office until the time that you pull your car out of the parking lot, so make sure that you are dressed appropriately and act in a way that does not detrimentally affect your personal injury case. Aspects such as how you sat in the waiting room chair, how you got out of your car, and how you interacted with the staff or people in the waiting room are often reflected in the IME report. Be forthright about your injuries, and explain them as well as possible. Don't fake or exaggerate your injuries or any part of the examination, as the doctor will likely be able to detect this.

Final tips… We instruct our clients to NOT fill out any detailed forms provided to them by the defense doctor. You can fill out your name, date of birth and that's about it. The doctor's staff will hand you a clipboard with about 10 pages to fill out, but you are not required to do this. It is a waste of your time, stressful and NOT advised, because the defense doctor is not entitled to question you about the details of the accident and your full medical history.

Bottom line is… keep your comments/statements/responses (before and during the examination) to a minimum, and keep them only to items related directly to the injuries you are claiming in your particular personal injury case.

Deposition in a personal injury case

The technical definition of a deposition is an out-of-court statement given by a party or a witness under oath related to a legal case. The person giving his or her testimony is called the "deponent." This person is usually questioned by one (or multiple) attorneys and is required to answer all questions to the best of his ability. The deponent is sworn in under oath by a court reporter who is recording every word that is said at the deposition. The deponent is obligated to tell the truth. Depositions usually take place in an informal setting, like a law office conference room.

The Weight of the Testimony: Even though depositions may not take place in a court of law, the weight of the sworn testimony is the same as if it was given in court. Therefore, it is imperative that the deponent give the most accurate testimony possible. If he doesn't, this could come back to "bite" him if he later testifies differently in court. If a deponent says something on the witness stand at trial that differs from his deposition testimony, the lawyer questioning him at trial can pull out the written transcript of the deposition and make this inconsistency known to the judge and jury. This can really damage the witness's credibility.

The "Audition": Depositions in personal injury cases (especially bicycle, motorcycle, pedestrian and auto accident cases) are sometimes what I call "auditions." They are an opportunity to see how the key players (plaintiff,

defendant, eyewitnesses, medical experts, et.) in the case will come off to a jury, should the case get all the way to trial. Plaintiff depositions are an important vehicle for defense attorneys, so they can get a feel for how well the plaintiff (the person bringing the personal injury lawsuit) will appear to a jury. If the plaintiff is a "star" witness (meaning he or she will be very credible and likeable by the jury), the defense will usually be more motivated to settle the case. However, if the plaintiff makes a poor witness (appears to be untrustworthy and/or not a likeable witness) this strengthens the defense's case and motivates them to push towards trial.

The same goes for the deposition of the defendant (the person who is being sued and caused the accident and injury). If he is really likeable, it weakens the plaintiff's case (and plaintiff may be more motivated to settle the case). If he comes off as a jerk, the plaintiff can feel more confident about taking the case to trial.

It is Your Opportunity to Tell Your Story: As a plaintiff in a personal injury case, you should really give your deposition (but defer to the advice of your personal injury lawyer), as it is an opportunity to tell your story. You get to (even if it is a painful task) tell your story… how the accident happened, how it affected you and your life and how you are doing presently after the accident. This can not only be a healing sort of "release," but it is valuable to your case assuming you are being open, honest and real (i.e. a "star" witness.)

Prepare with your personal injury lawyer: If you have an experienced personal injury attorney, she will meet with you prior to your deposition and go over the ground rules for the process and prepare you for the somewhat stressful event. Although injury lawyers are not supposed to "coach" you about what to say at your deposition, they can guide you in the right direction, so you come off as clear, concise, accurate and truthful – all which are strengthen your testimony and your personal injury case.

Litigation

I often have clients who want to settle their cases quickly without having to get too deeply involved in their case. I understand this, as most of my clients are hardworking, busy professionals who do not have time to stress about their personal injury case. However, in some instances, it is not possible to quickly settle the case. This is either because the client has not finished all medical treatment related to the accident prior to California's two year statute of limitations, or because the insurance company simply won't make a reasonable offer. Before jumping into litigation, the client needs to know what is involved in litigating a bicycle, motorcycle, pedestrian or auto accident case. I pride myself on being a California personal injury attorney who educates and informs her clients throughout the process of their case.

File the Lawsuit: So, I explain that litigation starts by filing a lawsuit against the third party. This would entail filing the complaint with the court in the county in which the accident happened. Then, we personally serve (by way of a professional process server) the 3rd party with the summons and complaint. The 3rd party will then pass the complaint (lawsuit) along to their insurance company. The insurance company will hire an attorney to defend the 3rd party. The 3rd party (referred to as "defendant" in litigation) has 30 days from the day they were served with the complaint to file an answer to the complaint with the court.

The Discovery Process: Soon thereafter, both parties (my client will be known as the "plaintiff" in litigation) will request and exchange information in a process called "discovery." This involves numerous written questions (called "interrogatories") that are propounded by each side and answered by each side. In addition to these questions, both sides will also demand and exchange all relevant documents in the case, including any documents related to the accident, the scene of the accident, how the accident occurred, treatment for injuries, documents related to loss of earnings, etc.

After all of these questions and documents are exchanged, the parties will take each other's depositions. This is where one party is questioned by the opposing

attorney to get more information about the case. Witnesses to the accident and/or my client's injuries may also be deposed. Also, at some point, we will have to hire experts to support the case. These experts can relate to the liability for the accident, causation of the injuries or seriousness of the injuries. These experts are costly, but the other side will almost always have experts to dispute our case, so hiring costly experts is typically a necessary evil of litigation. Those experts will give their deposition testimony before trial and then will testify at trial.

Trial: Trial will likely take place about 12-18 months after the lawsuit is filed. There is no guaranteed result at trial. The decision is in the hands of the jury and they can come back with a very favorable verdict for a large sum of money for the plaintiff, or they can come back with a defense verdict which means the plaintiff receives nothing. Only a very small percentage of cases make it to trial, but many cases go through litigation before being settled.

Cost of a personal injury case

The case costs (money paid to build, maintain and resolve your case) are not paid up front by the client. These costs are advanced until a favorable resolution is reached in your case. The case costs are paid out of the settlement or judgment at the end of the case. Like legal fees with our office, you are not responsible for paying for case costs unless we obtain financial recovery in your case (unless other arrangements are made with your attorney.) Note that case costs are separate and distinct from legal fees.

Case costs: Case costs are the hard costs that need to be paid throughout the case to start the case, build the case, litigate the case and try the case (should a trial be necessary.) Examples of cases costs would be copying fees charged by hospitals to obtain copies of your medical records, postage on mailing a demand packet to the insurance carrier, the cost of hiring a private investigator to track down a key witness in your case or hiring your treating physician to testify as a medical expert at the trial in your case.

Legal Fees: Legal fees are not incurred on an hourly basis or even throughout the case like case costs are. Legal fees are earned as a percentage of the settlement or judgment in your case at the end of your case. Look to your attorney-client fee agreement for the specific fee percentages. Note that legal fees are calculated on of the gross settlement or judgment amount, so they are calculated before case costs are paid and before any medical bills are paid.

Back to case costs: In most cases, our firm can keep the case costs very reasonable. Certainly, in a case that does not require us to hire an accident reconstruction expert, private investigator or even conduct an insurance policy limits search, the costs will rarely be over a few hundred dollars (the cost of ordering medical records and billing). However, if the case goes into litigation, the costs can get much higher. The cost to file and serve a lawsuit alone will run about $750-$1,000.00. Depositions cost around $500.00 each. If the case needs to be prepared for trial, the cost of hiring expert witnesses can get to be several thousands of dollars. Of course, we will discuss larger costs with you before they are incurred.

We are very conscious about keeping the costs reasonable in your case, because the costs come out of your settlement. We do this by focusing on case costs that provide the most value to your case, rather than spend money just to "fluff" the case. Make sure you are working with an attorney who is a good money manager and uses your money wisely.

Get A Free Case Evaluation

How to build a stronger case

Never give up your social security number (unless to an attorney)

Do I have to provide the insurance company with my social security number? It is standard practice for insurance companies to ask personal injury victims for their social security number. The insurance adjusters do this very matter-of-

factly, as if it is “standard protocol” that you MUST turn over this very private piece of information to them as “part of the process.” The truth is you DO NOT HAVE TO TURN OVER YOUR SOCIAL SECURITY NUMBER to the insurance company in your personal injury case and you should NOT do so!

The insurance adjuster will inevitably give you a hard time if you refuse to turn it over and continue to convince you that it is mandatory in order for them to proceed with your case or resolve your case. We have even had insurance companies initially refuse to give us the settlement check, after we’ve negotiated with them for months and settled the case with them, unless we release our client’s social security number. This is simply a bullying tactic and should not be given into by you or your personal injury attorney. Once we advise the insurance company of the applicable law and that disclosure of the social security number is not required for the release of settlement funds, they reluctantly agree and send us the check. It is really sad that it requires such extreme measures from your personal injury lawyer just to get the settlement money.

Why do auto insurance companies want your social security number? There are several reasons that insurance companies want your social security number on file, especially if you are opening up a bodily injury claim related to a personal injury accident. Regardless of whether or not the injury is from a pedestrian, bicycle, motorcycle or auto accident case, they want this data on file, so the entire insurance industry has access to the details of your injuries for years to come. With just your social security number, an insurance adjuster is able to obtain a plethora of personal information about your life and your past, without your authorization or consent.

The information to which the insurance companies have access includes your medical, financial and criminal histories. This type of information can be very useful to an insurance adjuster or insurance company in the future should you be faced with another personal injury case and they will have access to this information before you or your injury attorney have submitted one piece of information to the carrier. The insurance industry is focused on minimizing the

value of your claim(s), so this information about prior injuries and treatment can be very valuable to them on subsequent claims and they can contort it in whatever ways fit their objective. It is best to keep them from having free reign over this information. Do not give them your social security number!

What does an insurance adjuster do with my social security number if I release it to them? Since criminal, medical and financial information can provide an insurance adjuster with insight into your personal history, it can be a useful tool that enables the adjuster to find information that will diminish the value of your bodily injury case. What is even more disturbing is your social security number allows an insurance adjuster to access a nationwide database called the Bodily Injury index, which almost every insurance company in the United States has access to.

This index contains a list of all bodily injury claims opened with insurance companies, and the specific details of those claims with the respective auto insurance companies, including information about the injuries, accident, and settlement amount. So, even if you had a really small personal injury case before, the insurance adjuster can know how much you settled it for and use that as a factor to set limits on what they will pay in your current case, even if you suffered serious injuries in the current accident.

Because your social security number is a short and unique identifying piece of information, it makes it easy for an insurance adjuster to use it to search the index and identify your past bodily injury claims and personal injury cases. Since the information contained in the Bodily Injury index includes very specific information on your prior claims, an insurance adjuster can do a “look up” in the database to see if you have ever had similar injuries to those you are claiming in your current personal injury case. Thus, providing your social security number to an insurance adjuster enables them to use your sensitive information to investigate previous claims and minimize any settlement that you might deserve in your current claim.

Even if you have had prior traffic accident injuries, it is best to allow your personal injury lawyer be the one who controls the information released to the insurance company (by only providing relevant information), rather than allow the company access to everything compiled in the Bodily Injury Index.

What can I tell an insurance company if they ask for my social security number? In short, protect yourself from releasing this sensitive information by refusing to give your social security number to any auto insurance company that requests it. Even if they tell you this disclosure is "required" to resolve your claim, you must refuse. You are not required to provide them with your social security number, despite the many reasons they will give you trying to convince you otherwise. Rather, you or your personal injury attorney may provide them with other identifying information—such as your birth date—which allows them to obtain the information necessary in order to open and process your bodily injury claim.

This will allow you to go forward with a bodily injury claim against an insurance company, while at the same time safeguard confidential and sensitive information, and ensure that such information is not used to minimize your current bodily injury claim. If you have an experienced personal injury lawyer, they should know the applicable law on this subject and help protect you from unnecessary disclosure of your private information.

Don't rely on police for information

So often I have clients come to me overly confident about their cases. They state assuredly: "Oh yes, the police came to the scene of the accident and wrote a collision report. That will have all the information we need in it." Sadly, police reports are not always thorough and are certainly not perfect. The police officers are busy and cannot gather every piece of evidence at the scene of the accident. Often they are more concerned with recording distances and skid marks in the road than collecting witness names and making sure people who saw the accident do not leave the scene.

Doing a few things while you're at the scene of the accident can save you and your lawyer a lot of time and headache in your case later on. I understand that if you are incapacitated or so badly injured that you cannot move around the scene of the accident to handle these. If that is the case, try to enlist a bystander or witness to do these things for you.

Take Pictures: If possible, use your cell phone to take pictures of the scene of the accident, the vehicles involved in the accident and all the parties involved in the accident. Also, take a shot of the other driver's license plate, just in case they try to flee the scene of the accident. I once had a case where my client was rear ended, and the other driver fled the scene of the accident, but little did he know his front license plate fell off of his car when he hit my client. The police showed up at his door 15 minutes later. Rather than hope for this kind of luck (that the license plate will fall off) it is better just take a snapshot so you have the number for sure.

Get Witness Phone Numbers: You should also get the phone numbers of any and all witnesses who are at the scene. One easy way to do this is to tell them your cell phone number and have them call you right then and there. That way, you don't even need to get your phone or dial out. You will have their number in your phone, and you can access it later when you need it for your case.

Get the other Party's Insurance Information: Getting the other parties insurance information is very important to bringing a personal injury case, as you will be making a claim on the other party's insurance policy. Without their insurance information, you cannot make a claim. If they refuse to provide this information, either call the police or if they are already on the scene have them come speak to the other party. I understand that people are often in shock after they've been an accident, but if you just remember these few things, in the event you're in an accident, you can save yourself (and your personal injury attorney) a lot of headache by getting this information at the scene of the accident.

Loss of earnings

Recovering loss of earnings for our self-employed clients who are seriously injured in a bicycle, pedestrian, motorcycle or auto accident can present certain difficulties that do not arise in cases where our clients are employees who received predictable and documented W2 income. For example, if one of our clients is an employee of a company, we simply send a form to her employer to find out how much work our client missed when she was recovering for the accident, and what her salary is in order to calculate her loss of earnings. We can also submit pay stubs and/or W2 forms to make a relatively easy claim, assuming the client received a doctor's instructions (and provides those to us in writing) to take the time off from work. Obviously, we do not have this option when establishing a self-employed client's lost earnings, and thus we have to use other means to ensure they are compensated for the losses they endured as a result of another party's negligence.

To make a valid loss of earnings claim for our self-employed clients, we must gather documentation that shows the lost profits, revenue and earnings they suffered as a result of the accident. This could include collecting receipts during quarterly periods prior to and after the accident, and subtracting the two to determine how the accident affected their business. A yearly tax return is also a method of ascertaining a self-employed client's earnings. However, it is important to keep in mind that federal and state laws limit the opposing party from discovering a plaintiff's tax return documents.

In Webb v. Standard Oil Co. (1957) 49 Cal.2d 509, 513 the California Supreme Court held that a plaintiff cannot be compelled to produce a copy of his federal or state tax return, except in cases involving tax enforcement or the prosecution of violations. The Court found that such information is privileged, and thus, not discoverable by a defendant in personal injury cases. The Court reasoning was based on the purpose behind the federal and state statutes governing tax enforcement, which is to encourage taxpayers to make full and truthful declaration in her returns without fear that her statements will be revealed or used against her for other purposes. Thus, prior to obtaining such information from our clients to calculate loss of earnings, we advise our clients

of their right to keep that information private and also assure them that we will not disclose that information to the opposing party unless they expressly consent.

Some personal injury lawyers may operate differently, but you want to be sure YOU are the one allowing disclosure of this information, not your attorney. We often have clients provide us with 1099's for the year before the accident the year after the accident, depending on whether or not the injury is permanent. Also, profit and loss statements generated by accounting software or even just a simple Excel spreadsheet can be helping in proving this loss. The problem with these self-generated documents is that they can be altered for the purposes of litigation, therefore they are less trusted by the insurance carriers and defense attorneys. That is why they ask for tax returns, because you are under an obligation to provide truthful and accurate information on your tax returns. Therefore, they are seen as more reliable. However, this is the reason the Webb Court held that such documents are not discoverable in the normal personal injury case. It is really a judgment call made by the client and attorney as to whether or not you turn these over.

If you are a self-employed individual and want to make a loss of earnings claim it is always best to seek consultation with an experienced California personal injury attorney before making the claim. You want to be sure you are doing it right.

Compensation for inability to do household work

If you are injured in a pedestrian, bicycle, motorcycle or auto accident, you can recover money for whatever household services (work you did around the house before you were seriously injured) you can no longer do because of your injuries. This is called the "loss of the ability to provide household services," which is defined by CACI 3903E (an applicable jury instruction). Examples of a few household services that fall within this category include: cleaning, cooking, washing dishes, laundry, sweeping, and grocery shopping. Also, other services that a plaintiff would have normally performed if the accident did not occur are also included within this category. This is true even if such services are unique

or not typically performed by a member of the household. Examples that fall into this category would be restoring and maintaining the cars or performing home renovation projects. Your personal injury attorney can help you recoup the loss of household services.

1. How to claim loss of the ability to provide household services in a personal injury case: In order to prove household services damages, you must prove "the reasonable value of the services plaintiff would have been reasonably certain to provide to his/her household if the injury had not occurred." CACI 3903E. The method that we use at Sally Morin Law, is ask our clients to give a list of household activities they would perform on a regular basis prior to the accident, along with how frequently they would perform each activity. It is important to include each and every task that they performed, even if you think it might not be worth anything (such as taking out the trash or restoring cars), because each activity has some sort of value as a household service. Then, we ask our clients what activities/tasks they had to stop performing after the accident, the duration they were unable to perform that activity, and to what extent they are now able (if at all) to perform each activity. By drawing a comparison of what household services you performed prior to the accident, had to stop or reduce after the accident and at what level you can currently do them helps quantify the losses in order to maximize your recovery.

2. How to prove the value of the loss of the ability to provide household services: If you have suffered a serious personal injury such that you cannot perform your typical household services, you have two options for proving the value of the household services damages. First, you can hire someone to do the particular activities that you are unable to do and save the receipts. Since plaintiffs have a duty to mitigate their damages (keep them as reasonable as possible), do not hire someone for any more than the average going rate for the particular activity for which you are hiring them. Furthermore, be sure to hire someone to perform the equivalent (in frequency and type) activities to ensure you will get reimbursed for that household service. For example, if you typically mowed the lawn every third Saturday, don't hire someone to come every Saturday to mow the lawn, as you may run into problems seeking

reimbursement for activities outside the frequency and type that you traditionally performed.

Our client often cannot afford to hire someone to perform replacement services. However, they are still entitled to get reimbursed for the household services they were unable to perform. Receipts are not necessary in order to recoup these damages—the underlying public policy rationale being that the last thing an injured person will want to do is spend more money. Thus, if a spouse, significant other, family member or friend is able to carry your weight by performing your household duties, you can still make a loss of household services claim in order to recover for the household services you were unable to perform during your recovery. There are a couple options for quantifying the value of the household services in order to calculate loss of use damages. Testimony by an expert regarding how much the service(s) customary cost are one method. This method, however, is expensive and typically only needed for professional or unique services. Furthermore, even if an expert is needed, your case must be fairly far along in the process (in the litigation phase, or close to trial).

The more simple and cost-effective method is by researching the average dollar amount for the particular activity. A good resource for this can be found on Insure.Com—which has up-to-date Indexes' that list common household tasks and associated average wages by gender, using statistics gathered by the U.S. Bureau of Labor Statistics. These indexes are referred to as "The Father's Day Index" and "The Mother's Day Index" and can be found at: http://www.insure.com/life-insurance/fathers-day-index.html or http://www.insure.com/life-insurance/the-mothers-day-index.html. Be sure that your personal injury attorney tracks what activities and household services you had to stop or limit due to your injuries so that you can be adequately compensated for this loss.

Bills, Insurance and property damage

SALLY MORIN
LAW
TRAFFIC ACCIDENT ATTORNEYS

Handling your medical bills while you have a personal injury case pending

If you have health insurance: If you have health insurance, you should provide your insurance information to all healthcare providers you see related to your personal injury case. If you still receive bills from some providers, you need to submit all billing you receive related to case to your health insurance company for payment.

If you do not have health insurance: If you do not have health insurance, or there are portions of your medical bills that are not paid by your health insurance, those bills will need to be paid out of the settlement in your case. You should be sure to either keep an organized file with these bills, or provide them to your personal injury attorney to do so.

If you have medical payments coverage on your auto or motorcycle policy: If you carry medical payments ("med-pay") coverage on your automobile policy (med-pay is coverage on your auto or motorcycle policy – which may cover you even if you were a pedestrian or on your bicycle in the accident for which you have a personal injury claim), med-pay usually pays up front (you do not have to wait until the close of your case) for some of your medical costs.

If you do not have either health insurance or med-pay coverage: However, if you do not have health insurance or med-pay coverage, there may be no immediate method to pay medical bills as they are incurred (other than cash, which you may not have.) Therefore, you will likely have some bill collectors contact you for payment of bills related to your case. If they do contact you, immediately forward their bills, correspondence and contact information to your attorney. Hopefully, your attorney (like we do in our office) will call and try to convince the medical provider or collection agency to put the collection efforts on hold until the final resolution of your case. The medical provider may put what is called a "lien" on your case and wait to be paid out of the final settlement or judgment proceeds from your case. If that is not possible, you or your lawyer should be able to work out a reduction for immediate payment or a payment plan.

Paying outstanding personal injury bills at the close of the case: At the end of our cases, we aggressively negotiate our client's medical bills (working to get discounts and reductions for them) and then we pay all outstanding bills (which we hopefully reduced) out of the settlement. We do not leave our clients with bills hanging over their heads after the case is closed. We love for our clients to walk away from the case free and clear.

Getting paid for injuries after your case is completed

One thing that can sadly come up well after someone settles their personal injury case is that they realize their injury is more serious, long-term or even permanent than the previously believed it to be when they settled their case. Typically, you, with the assistance of an experienced personal injury attorney, will not settle your case unless and until your injuries have fully resolved themselves or at least stabilized to the point that you are what is called "medically stationary" (nothing further can be done medically to improve your injuries – only time will tell what the ultimate outcome and recovery will be.)

Read here for more information on how to decide when to resolve your personal injury case when you may need more medical treatment. However, as we age and/or experience other injuries or illnesses, those older injuries that we once thought were resolved may "flare up" or come back completely. Many of us are familiar with this occurring with old sports injuries that we thought were gone, but then continue to haunt us through the years as we age.

This is one of the risks you face when you are injured in a pedestrian, bicycle, motorcycle or auto accident. That is why you want to be as sure as possible, with your medical team on board for you to be fully released from care, that your injuries have resolved. If your doctors are not 100% convinced that your injuries have or will fully heal, you and your injury attorney should request written documentation from the doctor(s) stating what their future prognosis for your injuries is and that this information can be presented to the 3rd party insurance carrier in your personal injury case to make a claim for future damages.

In all personal injury cases (regardless of whether you are represented by a personal injury lawyer) you will be required to sign a settlement release which bars you from further financial recovery from the 3rd party's insurance company or the third party personally. That is the purpose of a settlement release – to receive compensation for release of any further obligation in the case. Signing this release does not however bar you from receiving coverage from your own medical insurance in the future. This means that your medical insurance provider cannot try to seek reimbursement from you or the person who caused your injuries for any medical treatment you receive after the case settles related to those injuries.

So, a "safety net" you have is your own health insurance in the event your injuries reappear well after you have settled your injury case. Note that this net will only cover your actual medical expenses. It will not provide any further compensation for pain and suffering or any additional loss of earnings or other non-medical damages that you suffer as a result of the injury coming back. Keep in mind that once you sign a settlement release or receive a judgment at trial (even if you do so when you think you have fully recovered or will fully recover) you cannot go back and seek further compensation for that old personal injury case. For more on this, you may want to check back with the personal injury lawyer who handled your case, but it is very likely you and your attorney believed the settlement to be the most reasonable outcome at the time.

What your health insurance company is entitled to from your settlement

Background Information & Definitions As personal injury attorneys, we are always on the lookout for new developments in the law having an immediate effect on our practice. One area of personal injury law that has become particularly active in the past ten years involves reimbursement and subrogation rights of ERISA-funded health insurance plans. Under ERISA, which stands for the Employee Retirement Income Security Act, the plan itself, through the plan administrator, has a legal right to seek equitable relief to

enforce any subrogation or reimbursement provisions found in the plan documents and its terms. Essentially, these provisions allow the plan to take money out of a client's settlement as repayment for the advanced medical expenses it has paid out.

Now, the first question that probably comes to mind is this: what exactly is subrogation and reimbursement? For personal injury lawyers who work closely with our client's health insurance plans, these words and their definitions have been ingrained into our daily vocabulary. However, to the general public, they appear to be very complicated and confusing. Let's break it down. First things first, when you are seriously injured in a traffic accident, you need medical treatment. If you have health insurance, it will likely cover most if not all of your medical bills. However, if you make a personal injury claim, your health insurance company has rights to get the money they paid BACK from you. Determining exactly what those rights are can be confusing, but that is where having the right personal injury attorney makes a big difference.

Contrary to what some might believe, subrogation rights and reimbursement rights are two very different things with different effects on the overall settlement a traffic accident client receives. Subrogation "allows the carrier, once it has paid an insured's medical expenses, to recover directly from a third party responsible for the insured's injury." Empire Healthchoice Assur., Inc. v. McVeigh, 547 U.S. 677, 698 (2006). In other words, when a client (who is in a bicycle, motorcycle, pedestrian or car accident) receives a settlement from either the other party's insurance carrier or the other party directly, the plan is entitled to recover the medical expenses from that settlement.

Subrogation rights are therefore limited in that the plan may only recover the medical expenses from a settlement received from a third party (unless the plan terms specifically state otherwise). Reimbursement, on the other hand is slightly different, and really depends on the exact language found in the ERISA plan terms. In general, a reimbursement provision goes a bit farther than the plan's subrogation rights, requiring the plan to be reimbursed for the medical

expenses paid out of any monies recovered from a third party or a client's own insurance company as the result of a judgment or settlement.

The last definition that will be important to know as we move forward is something called Underinsured Motorist Coverage ("UIM"). UIM coverage is a type of coverage carried by our client through their personal automobile or motorcycle insurance, and is triggered when the at-fault party is not sufficiently insured. Typically, we run into this problem when the third party carries the California minimum policy limits, which are very low at only $15,000 per person. (Did you know that 1 in 3 drivers in California are uninsured or underinsured?) If the policy limits carried by the party causing the accident are lower than the UIM limits carried by our client, the UIM coverage will apply if the client's damages are more than the at-fault party's available limits. For more on this, see our FAQ about protecting yourself by adding adequate UIM coverage to your insurance policy.

Effect of McCutchen on an ERISA Plan's Subrogation and Reimbursement Rights
Whether or not an ERISA plan is able to enforce subrogation or reimbursement rights depends on the actual language contained in the plan documents and the plan terms. The actual terms of the ERISA plan govern, and not what is contained in the Summary Plan Description ("SPD"). The Supreme Court held in U.S. Airways Inc., v. McCutchen that "statements in a summary plan description communicate with beneficiaries about the plan, but . . . do not themselves constitute the terms of the plan." 133 S. Ct. 1537, 1543, n.1 (U.S. 2013). This is important as we find that sometimes the language contained in the plan documents differs from what is contained in the SPD, especially when it comes to subrogation and reimbursement provisions.

This was exactly the situation at hand in the most recent ruling by a United States District Court in the Western District of Pennsylvania in the McCutchen saga, decided in March of this year (the same District Court where the case began back in 2011). In that case, plaintiff was awarded $10,000 from the third party's insurance company, and $100,000 in underinsured motorist benefits under McCutchen's own automobile insurance policy. U.S. Airways, based only

on the language contained in the SPD giving the plan a right to reimbursement from both third party recovery and any recovery from one's own insurance company, argued they were entitled to reimbursement out of the $100,000 in UIM coverage. However, the actual plan documents for U.S. Airways only set forth subrogation rights against a third party recovery, and were silent as to any reimbursement rights out of monies recovered from one's own insurance company.

Ultimately, the Pennsylvania district court held in 2016 that U.S. Airways was only entitled to an equitable lien for benefits paid under the plan against the third party recovery of $10,000. The court denied U.S. Airways entitlement to an equitable lien against McCutchen's recovery from his own insurance company, protecting his $100,000 UIM award. Key Deciding Factors & Guidelines These key factors provide guidance for analyzing the applicability of provisions contained in both the plan documents and the SPD, and ultimately, in determining an ERISA plan's subrogation and reimbursement rights. First, as stated above, the Supreme Court has repeatedly held that "the terms of the ERISA plan govern." McCutchen, 133 S. Ct. at 1551. Going even further, the Supreme Court held in CIGNA Corp. v. Amara that it would be improper to enforce the terms of the SPD over the plan language as the SPD "is not itself part of the plan." 563 U.S. 421, 436 (2011).

Since Amara was decided, "courts have agreed that summary plan provisions, including stipulations not present in the plan certificate, are unenforceable." Strott v. Dimensional inv., LLC, 2015 U.S. Dist. LEXIS 36887, 21-22 (W.D. Pa. Mar. 23, 2015). Accordingly, courts analyzing ERISA provisions and their enforceability must look only to the plan documents and terms, and not to the SPD. There are limited exceptions where courts have found the SPD provisions to be controlling or incorporated into the plan documents, having legal effect. In determining whether SPD terms are enforceable, district courts look to whether the SPD provisions are expressly labeled by the plan administrator as legally enforceable, or are referred to in the plan certificate. See e.g., Strott v. Dimensional Inv., LLC, 2015 U.S. Dist. LEXIS 36887 21-22; Frey v. Herr Foods Inc. Employee Welfare Plan, 2012 U.S. Dist. LEXIS 176505, at 9 (E.D. Pa. 2012). The

SPD reimbursement provisions in McCutchen were neither referred to in the plan certificate, nor labeled as legally enforceable. Even further, the SPD expressly disclaimed that its provisions should be given preference over the terms of the plan, stating: "If there is any difference between the information in this SPD and the legal plan document, the legal plan document will govern." Even further, the plan documents themselves stated that the SPD "should not be considered a substitute for the Plan document, which governs the operation of the Plan . . . if this SPD appears to conflict with the official Plan document, the text of the official Plan document will govern."

Conclusion & Takeaways: Obviously, all ERISA plans are different and contain varying subrogation and reimbursement rights. This means evaluation of these provisions is absolutely vital in determining how a client's settlement will be affected. As has been demonstrated by the lengthy McCutchen proceedings, it is not the SPD that should be examined, but the plan documents excepting those rare situations where the SPD has been given legal enforceability or is referred to in the plan certificate. At Sally Morin Law, we request the plan documents as soon as possible to determine our clients' subrogation and reimbursement rights. This is just another way our team takes care every detail when negotiating a fair settlement for one of our awesome personal injury clients. If you have been seriously injured in a bicycle, motorcycle, pedestrian or car accident, contact us now to see if we can help.

Protecting yourself against underinsured drivers

We have had several serious personal injury cases lately where our clients have suffered significant injuries, but the person responsible for their injuries wasn't carrying enough insurance coverage to pay for all the damages. In these cases, we do our best to minimize the expenses, reduce our fees and negotiate medical cost reimbursements so that our clients can receive some amount of compensation for their pain and suffering. However, there are ways you can protect yourself from this happening to you:

Carry adequate uninsured/underinsured motorist coverage. We understand that you want to keep your insurance costs low, and that if someone else

causes you injury they should be responsible for paying your damages. However, as we have experienced recently, people who have little or no assets to protect carry only the minimum insurance required by the State ($15,000.00). That is why you should pay the few extra dollars a year to get adequate coverage for yourself. (We recommend at least $100,000 in UM coverage.)

Carry adequate health insurance. We know that times are tough, and not everyone has a job that provides health coverage. If you cannot afford traditional health insurance, we recommend that you at least add medical payments coverage to your auto or motorcycle policy. This coverage, although not as comprehensive as traditional health coverage, is rather affordable. It will pay for any out-of-pocket medical costs you incur due to an auto, motorcycle, bicycle or pedestrian accident, no matter who is at fault. This coverage will even pay for things like massage, acupuncture and chiropractic care, which many traditional insurance plans do not. Adding this coverage will not greatly increase your insurance bill, but it will increase your peace of mind and the amount and quality of care you receive in the event you are injured in an accident. (We recommend at least $5,000.00 in Med-Pay coverage.) Contact your insurance broker for more information on how to improve your insurance coverage, or we recommend insurance broker Greg Gurovich of On Market Insurance Associates:

Greg Gurovich, CISC | Principal/Broker greg@onmarketins.com Phone: 415.487.1800 ext. 202 | Toll Free: 877.567.8683 Mobile: 415.264.7917 | Fax: 415.487.1810
1857 Market Street | San Francisco, CA 94103 www.onmarketins.com License No. OC48657

Getting paid for damage to your property in a bicycle, motorcycle, pedestrian or automotive accident

If you carry comprehensive auto insurance (meaning you have full coverage for any damage to your vehicle) you can deal directly with your own auto insurance

company to receive payment for the damage to your car, even though there is a third party who caused the accident. Sometimes if you work with your own carrier they will handle your case more quickly and be more apt to treat you fairly when compensating you for any property damage. If you do not carry full or comprehensive coverage, then you will have to deal with the third-party insurance company (meaning the auto insurance company for the person who caused your accident.) This can be a little more complicated, because the third-party insurance company will often trick you into giving them recorded statements and other information about your injuries and other issues of the case, instead of just focusing on the property damage issues and paying you out quickly. You want to be sure to limit your communications with the third-party carrier to that which is strictly related to the property damage such as damage to your bike, motorcycle or car, towing expenses, storage expenses, transportation of your vehicle to a repair shop and payment for any other personal property that was damaged in the accident. Read more about the various types of insurance coverage that can cover your property damage and injury claims in auto, bicycle, motorcycle and pedestrian accident cases.

If you are injured in the accident and you don't have comprehensive auto insurance, your best bet is to contact a California personal injury attorney before you make contact with the third-party insurance carrier. Doing this will help you keep the property damage claim separate from the bodily injury claim, and thereby limit the risk of disclosing too much information about your injuries in the property damage claim where it is not relevant. If you are not injured in the accident, then you typically will not need an attorney to simply deal with the property damage claim. This is a fairly user-friendly process that can be navigated easily and quite quickly without an attorney. However, I would urge you to check the Kelly Blue Book website and scour Craigslist ads to make sure you are getting fair value for your bike, motorcycle or car in the property damage settlement. There are companies out there who will handle your property damage claims, so you can get help with this process, yet not have to bring on an attorney. Again though… if you are injured, you should really consult with a qualified bicycle, motorcycle, auto accident attorney to be sure you don't make any missteps in your case.

Get A Free Case Evaluation

Legal fees and costs

How much will legal fees be in your case

The case costs (money paid to build, maintain and resolve your case) are not paid up front by the client. These costs are advanced until a favorable resolution is reached in your case. The case costs are paid out of the settlement or judgment at the end of the case. Like legal fees with our office, you are not responsible for paying for case costs unless we obtain financial recovery in your case (unless other arrangements are made with your attorney.) Note that case costs are separate and distinct from legal fees.

Case Costs: Case costs are the hard costs that need to be paid throughout the case to start the case, build the case, litigate the case and try the case (should a trial be necessary.) Examples of cases costs would be copying fees charged by hospitals to obtain copies of your medical records, postage on mailing a demand packet to the insurance carrier, the cost of hiring a private investigator to track down a key witness in your case or hiring your treating physician to testify as a medical expert at the trial in your case.

Legal Fees: Legal fees are not incurred on an hourly basis or even throughout the case like case costs are. Legal fees are earned as a percentage of the settlement or judgment in your case at the end of your case. Look to your attorney-client fee agreement for the specific fee percentages. Note that legal fees are calculated on of the gross settlement or judgment amount, so they are calculated before case costs are paid and before any medical bills are paid.

Back to case costs: In most cases, our firm can keep the case costs very reasonable. Certainly, in a case that does not require us to hire an accident reconstruction expert, private investigator or even conduct an insurance policy

limits search, the costs will rarely be over a few hundred dollars (the cost of ordering medical records and billing). However, if the case goes into litigation, the costs can get much higher. The cost to file and serve a lawsuit alone will run about $750-$1,000.00. Depositions cost around $500.00 each. If the case needs to be prepared for trial, the cost of hiring expert witnesses can get to be several thousands of dollars.

Of course, we will discuss larger costs with you before they are incurred. We are very conscious about keeping the costs reasonable in your case, because the costs come out of your settlement. We do this by focusing on case costs that provide the most value to your case, rather than spend money just to "fluff" the case. Make sure you are working with an attorney who is a good money manager and uses your money wisely.

The fine line between spending too much and too little in a personal injury case

A money-conscious attorney should be as intelligent in handling (and keeping control of) the costs of your personal injury case as he or she is about the law involved in your case. That is not to say that the attorney should scrimp on all costs just to save a dime. There are certainly some costs that are necessary for your case and those that although not absolutely necessary, they are very valuable in helping to establish a strong case.

On the other hand, there are attorneys who will spend your money like it is going out of style. Yes, I said your money. Usually (depending on the language of the fee agreement you sign with your attorney) you are responsible for you case costs. This responsibility can vary. Some attorneys go as far as making you pay for your costs up front, most front the costs and then pay them out of the settlement or judgment in your case. The real split is whether or not those costs are paid by you or the attorney should there be no recovery in your case.

At our office, we advance all costs and take them out of the settlement or judgment at the end of the case. If there is no recovery in the case, we pay the

costs and the client owes nothing. Ok, back to those attorneys who love to spend lots of money to work up their cases. This approach might be ok if you have a multimillion dollar case. However, if you have a normal sized case, you want to be sure your attorney is paying attention to how every dollar is spent. I have got to be frank here, but I've known many attorneys who are not the most savvy money managers – both with their own money, that of their law firm and most importantly their clients' money.

The other side of the coin is that it does indeed take some financial investment to build a strong and successful personal injury case. So, you also do not want an attorney who is too cheap to pay for the necessary things for your case such as ordering your medical records and billing, paying court fees in a timely manner and even hiring a private investigator to track down that key witness that can make or break your case.

When looking for an attorney for your pedestrian, bicycle, motorcycle or auto accident case be sure to ask some questions about how they handle case costs and what their "typical" case costs look like in cases similar to yours. You might be surprised at some of the responses you get. Good luck. Go find an awesome California Personal Injury Lawyer and rock your case!

Paying taxes on your legal fees

I often receive this question from my client long after we close their case. They are typically preparing for tax time and they mention to their accountant that they received some money in a personal injury settlement. The accountant then asks them if the settlement is taxable or considered income. The client immediately feels a sinking feeling in the pit of their stomach and thinks, "Oh my god! Is Uncle Sam going to treat that settlement money like income and tax me on it?" Most accountants should know the laws around this, but many usually defer to the personal injury attorney to answer the question.

The general answer to the question of whether or not a personal injury settlement is taxable is no. However, this is only true if you sustained a physical injury in the accident and all damages are resulting from the physical injury or

injuries you. So, all money you received to pay your medical bills, compensate you for lost earnings and pain and suffering all stemming directly from the physical injury you suffered, will not be taxed. As our firm specifically handles only pedestrian, bicycle, motorcycle and auto injury cases, we can confidently tell all of our clients that their settlements are not taxable. However, if you have a different type of case (one that we do not handle at this office), like an employment case or harassment case, your settlement may be taxable. It is important to discuss these issues with your attorney and your accountant to make sure you plan accordingly.

Can you end up owing more money than you make?

A common (and very reasonable) concern people with personal injury cases have is whether or not they will be in a worse position financially if they hire an attorney to handle their injury case. Hiring a personal injury attorney can be a daunting task. Clients in personal injury cases typically have never had such a case before and have never even had to think about injury lawyers, except maybe to chuckle at a cheesy late-night ad for a “1-800-we’ll-get-you-a-million-dollars” accident attorney.

When I first talk to people making the decision about hiring an attorney for their bicycle, motorcycle, pedestrian or auto accident case, they often tell me something like: “I am afraid that if I hire an attorney I may find myself in a situation where I am out of pocket more money than I already am in this case. For example, if the medical expenses, legal fees and legal costs and of being more than the settlement or judgment, will I end up owing you money in the end?” Be sure to ask any potential personal injury attorneys you speak with what they would do if there was not enough settlement money to cover all of your damages and the legal fees and costs. Find out if that attorney is willing to work with you for a fair resolution of the case. If you have spoken with a personal injury lawyer who has explained to you that his fee will be taken out of any settlement or judgment FIRST, and then your bills and damages will be paid with what is left over, this is a red flag that this attorney may be more concerned about earning his fee than compensating you for the damages you suffered in the case.

At Sally Morin Professional Corporation we work hard to earn a reasonable fee, pay your medical providers (hopefully we can negotiate a reduced rate on your medical bills), get you money for your documented loss of earnings, reimburse you for out of pocket expenses and leave you with some amount of money to compensate you for your pain and suffering. Further, if it appears that your medical expenses and other damages greatly exceed the amount of insurance coverage carried by the other party, we will determine this as early on in the case as possible. That way, we can limit that legal fees and costs and focus our efforts on negotiating reductions of your medical bills, so that we can do our best to pay all of your medical bills and leave you with some net amount of money after all is said and done.

So, in short, we do NOT leave our clients owing any money after their cases are said and done (unless there is some egregious circumstance in the case that was not disclosed at the inception of the attorney-client relationship, but this has never – cross our fingers – happened with one of our wonderful clients.) One of the many reasons we love what we do is because we put people in a better position than they would have been without our involvement in the case.

Get A Free Case Evaluation

How we handle personal injury cases at Sally Morin Law

The process of working with Sally Morin Law

The first thing that we will do once you decide you want to hire us is send you our new client forms. We will of course send them to you electronically so that you can review and sign them quickly and easily without having to use any paper, printer ink or even a pen. Oh yeahhhh, we make it simple!

Unless you are old school, then we can send them via snail mail for you to sign with a feather-tipped plume?

New Client Forms

These new client forms will include our Attorney-Client Fee Agreement, which sets out:

- The parameters of our attorney-client relationship.
- The fee structure for how we are compensated as your personal injury attorneys.
- How case costs are handled and other details of our working relationship together.

The second form we will send you is a Medical Authorization Form, which allows your medical providers to release official copies of all your related medical records and billing to help us build your case. This form will also allow your employer to release any records we may need to prove your loss of earnings claim as well.

The third form we will send you is the Claimant Designation Form, which advises insurance companies that we are your personal injury attorneys and your legal representatives with whom they should communicate about your personal injury case. Note that although all communication will go through us, any and all settlement offers will be conveyed to you and discussed with you to help make the next move in your case.

Long Intake and Representation Letters

After we receive these forms completed and signed by you, we can then get started on your case. We will soon thereafter gather all remaining details from you about your case. We will ask you details about the facts of the accident, your injuries, medical treatment and your loss of earnings at the inception of the case, so that we do not need to continually ask you for little pieces of information throughout your case.

We try to gather as much as possible during this first long intake interview, so that we do not have to bother you when we know you are very busy recovering from your injuries. Also, right after you sign with us, we will send out letters of representation to the insurance companies involved in your case and request all medical records and billing from any medical providers with whom you are finished treating. We will have to wait on the other medical providers until you are completely finished with treatment, but we keep updated on your treatment status throughout the case, so we can be on top of ordering all of the information once it is available.

Keep Updated on Your Treatment

After we gather all the initial information and send out all opening correspondence, we will regularly follow up with you to make sure you are receiving the best medical care possible that you are recovering well from your injuries. We like to stay up to date on our clients are doing, so we can be sure to collaborate with them to build the best case possible.

Prepare the Demand Letter and Start Negotiations

Once you have completed all medical care related to the accident, we will then gather up those final records and billing so that we can build the case and draft our settlement demand letter. The settlement demand letter sets out all aspects of the case including facts of the accident, the liability aspects, the medical treatment and injuries, the pain and suffering information, the loss of earnings in a breakdown of all damages incurred in the accident. At the end of the letter, we will request settlement amount that we can negotiate from with the insurance carrier.

Why we only focus on pedestrian, bicycle, motorcycle and auto accidents

If you have perused our website, you hopefully know by now that Sally Morin Law handles only pedestrian, bicycle, motorcycle and auto accident cases. Unlike many other personal injury firms, we focus on what we are best at! We

don't take on a wide variety of cases (i.e. "everything that comes in the door" – like slip and falls, medical malpractice and other personal injury cases not related to traffic accidents). We believe our focused approach allows us to concentrate our skills, energy and resources to better serve our clients. We also pride ourselves on only representing clients who have similar values and objectives as we do. We take on wonderful clients who have experienced terrible accidents and just want to get back into the swing of their normal lives. Most of our clients are busy professionals and adventure seekers (surfers, rock-climbers, cyclists, all-around athletes, etc.) who are eager to get back to their active lives. Our number one goal is to get a good result for our clients so they can move on from the case and get back to their awesome lives! It's not about the dollars.

Many personal injury lawyers take on a wide variety of cases because they want every dollar that comes to them. They simply can't pass up any potential case or potential dollar they might make. This is a dangerous place to be when money dictates a law firm's case selection process. That is not how it works at Sally Morin Law. People and their personal qualities (their motivations, desires, personality, attitude and outlook on life, etc.) are in the forefront of our decision-making process. Then, we look to the circumstances of their personal injury case (facts, jurisdiction, liability, seriousness of injuries, etc.) If we find a good fit, that's when we invite the potential client to work with us. This is the formula we have determine works best for our team and our clients. It's a WIN-WIN! It's not about ego or adrenaline. Another reason a lot of personal injury attorneys take cases all over the board is because they want a "challenge." Maybe they get bored or need something new to stroke their egos. So, that's great, they are going to use you and your case to feed their desire to prove something to themselves and their colleagues. (Personal injury lawyers are notoriously competitive!).

At Sally Morin Law we don't look at clients or cases as a vehicle for us to use to show the world we are tough or to prove something to boost our egos. It simply isn't worth it to delve into too many areas of the law just to satisfy this human urge. Frankly, the way we challenge ourselves in our work is by working our

hardest possible with laser focus to eliminate our clients' stress of being involved in a personal injury case, AND by getting them the best and quickest results possible so they can move on from the accident and back to their jobs, families and exciting lives. So, unlike many competitive lawyers, we don't put our clients' well-being at risk just to get an adrenaline rush. We do exciting, challenging things outside of work to get that thrill… like surfing, rock climbing, adventure travel, cycling, competitive sports, continuously educating and challenging ourselves, but NOT by placing our clients and their cases at risk. So, if you are looking for a California personal injury attorney who puts your well-being before their ego, fill out our intake form and see if we are a good fit.

What areas do we cover in the US

Here at Sally Morin Professional Corporation, we pride ourselves on efficient, effective and personalized representation of long-distance clients who have suffered serious injuries in California, but live elsewhere in the United States and even out of the Country. We often have people contact us online, by email or phone saying they were seriously injured while visiting the California, either on vacation or on business. They tell us they consulted with an attorney in their home state, but were advised that they need a licensed California personal injury lawyer to assist them with their bicycle, motorcycle, pedestrian or auto accident case.

That is where Sally Morin Law: California Personal Injury Attorneys come in. It is common for our clients to live and operate in different time-zones. Our clients hire us and work with us via phone, email and various online tools. Being face-to-face for meetings is not something these clients require or even want. They happily communicate with us through these various technological channels and receive great results in their cases! If you or someone you know has had a serious accident in California, but does not live here, it is in your (or their) best interest to hire a local California personal injury attorney because:

(1) The local attorney knows the area and can go to the accident scene to investigate, or at least have a familiarity with the area/intersection where the accident happened.

(2) The local attorney knows the rules of the local courts in the state/county that the accident occurred.
(3) The local attorney is bar certified in the state in which the accident occurred.
(4) The local attorney may have handled cases involving similar facts, areas, parties, etc. that will provide a “leg up” in your case.

At Sally Morin Professional Corporation, we have years of experience managing our cases in a paperless, cloud-based system. This allows our long-distance clients who were injured in California to remain in their home area while we diligently work on their case. The long-distance clients typically do not have to come back to California for case-related issues, unless the case goes to trial (which only about 2-3% of cases do). Because we offer our clients a paperless interaction, we can seamlessly communicate with our clients via email, phone, online tools and other electronic communication to update them on their case, and ask/answer any questions.

We have handled many cases for people who live long-distance. These clients were seriously injured while they were in California and they sought out an experienced local attorney. This is to everyone’s advantage because our clients get the best representation possible, and they don’t have to set foot in a law office (in almost all cases) for the entire duration of their case! It is satisfying to know that travelers and tourists who were injured in California can rely on local California attorneys to represent them in their injury claims without having to worry about costly travel, hours of their time to travel and the pain and inconvenience of having to see their attorney in-person.

The ideal client for Sally Morin Law

What we do at Sally Morin Professional Corporation: Sally Morin Professional Corporation is a hip, tech-savvy, California personal injury firm that serves busy individuals who are taken out of their normal, active and fulfilling lives due to the negligence of others. When these people are badly injured in bicycle, pedestrian, motorcycle and auto accidents, we step in to help recover money from insurance companies for medical expenses, lost earnings and the pain and suffering. During this stressful time, our job is to handle communications with

the insurance companies so the client can focus on recovering from their injuries. Basically, we do the heavy lifting, take the stress of handling the claim away from the client, and successfully negotiate for enough money to cover legal fees, medical expenses, lost earnings and put more money in the client's pocket than if they handled things on their own.

Who should work with Sally Morin Professional Corporation? Former clients who rave (on Yelp or elsewhere) about their experience with Sally Morin Professional Corporation are mostly easy-going, positive, active, tech-savvy people who suffered significant injuries in bike, motorcycle, pedestrian or auto accidents caused by a 3rd party. We love working with urban professionals, adventurous individuals, adrenaline junkies, busy parents and active retirees. Our clients have jobs/families/lives that keep them too busy to worry about the legal details of their cases. They need a lawyer they can trust who can offer expert recommendations and advice to move their case along quickly and smoothly. We love our clients so much that we feel totally energized and stoked when we interact with them! Does this sound like you? Sweet! Contact us to see if we can help with your personal injury case. Who should NOT work with Sally Morin Professional Corporation? People who have suffered no (or very minor) personal injuries that require little or no medical care to resolve. People who have been injured in an accident other than a bicycle, pedestrian, motorcycle or auto accident case.

At Sally Morin Professional Corporation, we focus our efforts and resources on just these four types of cases. This allows us to provide the best possible service to our clients. We are experts in these areas! We do not try to handle "everything that comes in the door" like many personal injury attorneys do. We have also found that our overall philosophy does not quite "jive" with people who are looking for revenge or to "get back at" the person who unintentionally caused their injuries. At Sally Morin Professional Corporation, we go for fair results! Rather than stir up drama in our cases, we work tirelessly and efficiently to get our clients the compensation they deserve so they can get back to the things they love. We believe this approach helps keep our legal system a respectable and safe place for honest dispute resolution.

What it costs to hire Sally Morin Law

No recovery, no fee. That is the basis of the contingency fee agreement used by Sally Morin Professional Corporation. At our firm, all pedestrian, bicycle, motorcycle and automobile accident cases are handled on a contingency fee basis. In other words, you will not be responsible for any fees for legal services provided unless we obtain a favorable result in your case, or unless otherwise agreed upon at the outset of our representation. The fee is based upon a set percentage (set out in our fee agreement) of the total settlement or judgment. Our firm does not take any percentage free from the settlement of the property damage portion of your case. Also, in most cases, the case costs are not paid up front by the client, but are advanced until a favorable resolution is reached in your case, and then are paid out of the settlement or judgment achieved in your case.

The premise behind contingency fee arrangements is that they play a critical role in providing access to the courts for individuals who would otherwise not be able to afford to hire an attorney. In the personal injury context, contingency fee arrangements allow injured individuals who may have limited resources to enforce their legal rights. When someone is injured in a pedestrian, bicycle, motorcycle or auto accident, they often suffer a significant loss of earnings because they are physically unable to perform the duties required by their job. Further, they may be facing large medical expenses, outstanding medical bills, bill collectors and lienholders all wanting money from the vulnerable injured party. This can put the injured party in a very delicate financial situation. For these reasons, we understand that a contingency fee arrangement may be the only way for the injured party to seek just compensation from the party who caused their injuries.

A contingency fee arrangement is not only important because it allows injured person to obtain financial compensation for the injuries they received through no fault of their own, but it also affords them the opportunity to hold insurance companies, corporations and negligent individuals accountable for illegal actions that might otherwise go unpunished. When looking for a California

personal injury lawyer to handle your case, make sure they have experience in your specific case type, and also make sure they do not charge you any fees up front for their services. Almost all experienced and skilled California injury attorneys, including Sally Morin Professional Corporation, work on a contingency fee basis.

Would we be a good fit?

We are reasonable. The team at Sally Morin Law works best with clients who are reasonable in their approach to and expectations from their accident case. One thing we identify right away when interviewing potential clients is whether or not they come off as vindictive, looking for some kind of revenge, or are seeking to go after absolutely every penny they can get. This will not be a good fit for us. There are lots of personal injury lawyers out there that fit this profile. They want to take every case to trial and fight it to the bitter end. They want notoriety, they are focused on ego (another notch on their belt) and they want to look good to their peers. They're into the fight.

At Sally Morin Law, we are not so much as into the fight as we are into the fairness of the compensation and a quick, low-stress resolution of the case. Clients who are a good fit with us, want that too. They don't want their legal case to become their life. They want to get what they deserve and get back to their real life as quickly as possible. We are quick. Most of the people who work with us are not looking to drag out the process or get "top dollar." Typically, their primary goal is to minimize the stress that this whole thing is causing and get a fair result as quickly as possible, and they need a personal injury attorney who understands their objective. Our clients focus on a positive end result as getting back to their awesome life, not some big "payday." Clients who fit best with us are focused on getting back to working at their great job, being a great family member or spouse and getting back to whatever they love doing, like riding their bike or playing in a band, or whatever it is that makes them happy.

We fight when necessary. While we try to focus on low-stress, quick resolution of our cases, sometimes the circumstances require us to "take off the gloves" and fight. Getting in a fight is not our primary objective, but we are ready to do

it when the case calls for it. We have successfully taken cases to trial, and we do litigate cases to get fair compensation for our clients. Unlike many personal injury lawyers who start every case with this aggressive mentality, we selectively "go to the mat" in cases that require a little more "force" to get the insurance carrier or third party to pay our client fairly for the serious injuries they suffered as a result of their bicycle, motorcycle, pedestrian or auto accident.

We are very careful to educate our clients thoroughly through the process to be sure they are on board for the demands of litigating a personal injury case. This is a decision we make together. This is where a solid, trusting attorney-client relationship is mandatory. We want to serve the needs of our client in getting a fair result, but we do everything we can to avoid dragging them through an intensely stressful process. I am not saying that personal injury lawyers who often fight for these cases are wrong. There are most definitely some cases where there is serious injustice and they may be getting an offer of zero and then if they take it to trial, they'll get an offer of $100,000 or a million. But typically in the cases we handle, it is not a matter of zero or a million, it's a matter of fair or unfair. It's not all or nothing, so the decision to fight requires more contemplation and even math (see below).

Sometimes we have to prove to the insurance company that we will put up a fight if they don't get real with their offer. We have plenty of litigation experience, and do not shy away from this when we see moving forward as adding true value to the end result for our client (not for our ego or track record.) If we are getting an unreasonably low offer, we have no problem filing a lawsuit, moving the case into litigation and then pushing it forward. We do the math with the CLIENT in mind. As explained above, we fight when necessary, but how do you know when it is necessary? Well, you have to really do your math.

Personal injury attorneys who take cases all the way to trial may end up getting a higher dollar about than if they had settled the case, but this may not always be in the client's best interest. For instance, let's say the settlement offer was

$75,000, if they go to trial and they get $110,000, that's a bigger number for sure. They are sure to let everyone know (again, that ego thing.) They say, "Look at me, the offer was only 75, and I got 110!" The thing is that if you do the math, even though the number is $35k higher, what was the cost of getting that extra $35k? The client certainly does NOT get $35k more than she would have if the case settled for $75k. Maybe she got $10k more (or maybe she got less than if she would have settled.)

Not only is there a financial cost to be considered (thousands of dollars in litigation and trial costs and increased attorney's fees), but also a time cost. The increased result will likely not be seen for 12-18 (or more) months down the line. The client loses several months of being "free" from their case. (It is certainly liberating for clients to move past their personal injury cases.) Also, the client has to spend a week sitting in a courtroom watching this all go on before their eyes. When we discuss this option of settlement vs. litigation with the client, we make sure we are clear on what the end result could look like for the client, not just for our track record, ego or reputation. What matters most to us is the peace of mind of our clients!

Will your case go to trial?

The Short Answer

The short answer to this question is almost always no. In fact, only about 2 to 3 percent of all bicycle, motorcycle, pedestrian and auto accident cases end up in trial. At Sally Morin Law we try to settle every case where that is the best solution for our client, so they can move on from the accident and get back to their life. Only rare situations require that the case be pushed all the way to trial.

Sally Morin Law's Trial Philosophy

There are some personal injury attorneys who focus on taking almost every case to trial, often without even trying to resolve the case short of a trial, unless forced to by the Court. (Note that attorneys' fees increase at trial, as do attorney egos.) However, at Sally Morin Law, we are focused on quick resolution of our clients' cases, so they can put this terrible time in their life in

the past and move forward toward more joy and fulfillment. Our philosophy is that it is better to get reasonable compensation with minimal stress and move on, rather than prolong the stress and drama of a legal case only to "gamble" at trial on maybe getting a better net dollar amount. It should be noted that often the client ends up with less after a trial, even if the overall result is "better," because the increase in attorneys' fees and trial costs and "eat up" any increase in the settlement/judgment.

We only take cases to trial that NEED to go to trial (and where the client truly wants to go to trial.) Frankly, we find that most of the clients we work with are not real fond of the idea of spending a week away from their family, friends and careers to stress out about their personal injury case in a courtroom.

Sally Morin Law has the trial experience and resources if they are required in your case Should a quick, low-stress resolution not be available, Sally Morin has handled over a dozen trials (as a San Francisco District Attorney and as a California personal injury attorney). We have the experience and resources needed to try your case if that is what is required to get maximum value in the case. We have partnerships with well-respected (and even legendary) California trial attorneys who can assist our team in trying your personal injury case with the utmost experience, skill, strategy and cutting edge trial technology. So, although it is almost always best to settle your case, so you can be compensated quickly and resume your life, if it is necessary, we are prepared to fight for you all the way through trial.

You want to be sure and choose the right personal injury attorney for you, so that you work with someone who has the same goal for your case as you do. Is it to get a quick, fair resolution so you can get back to life? If so, then contact us to get your claim started. But if it's to push the case for every penny that it's worth--- then we're probably not a good fit and we wish you the best of luck!

Get A Free Case Evaluation

Common questions about personal injury cases

Can I pursue the responsible party's personal assets to pay for my case?

You can sometimes (mostly only in rare situations) go after the responsible party's personal assets. However, there are three questions you must consider before you decide to go after personal assets in a bicycle, pedestrian, motorcycle or auto accident case.

1. How much is your case worth compared to the amount of the responsible party's insurance coverage? You want to have a realistic view of the value of your case to make this determination. This is where hiring an experienced California personal injury attorney is important. Your personal injury attorney should have a realistic idea of the value of your case. If the realistic value of your case (amount you are likely to obtain through settlement or trial) is not significantly more than the responsible party's insurance coverage, then you probably do not want to pursue his or her personal assets. For instance, if your case is worth $120,000.00 and the responsible party only carried $100,000.00 in liability insurance, the time, effort, stress and money it takes to obtain a judgment will probably not be worth the small amount of extra money you might (and I stress the word might) recover. Getting a judgment is time consuming (it can take over a year) and costly with expert fees, depositions, jury fees, trial costs, etc.

2. How many assets does the responsible party have? You want to be sure the responsible party has sizeable (not just any) assets before pursuing them. Is the responsible party a 45 year old investment banker who makes $500,000 a year, drives a Porsche and owns an apartment building in San Francisco that has a small mortgage on it, but was only carrying $50,000.00 in liability coverage when he ran you down in the bike lane? This is very unlikely, but if he is, then he is a good candidate to go after (again, only if your case is really worth a lot more than his $50,000 coverage.) Alternatively, is the responsible party a 68 year old retired schoolteacher who lives off her retirement and social security, but only

carried $50,000.00 in liability coverage? You are not likely to get much, if anything, from this person.

3. How "collectible" are the responsible party's assets? If you have determined that the responsible party does indeed have sizeable assets compared to his liability insurance coverage limits, then you need to consider how easy or difficult it will be to collect those assets. If the responsible party has a lot of debt (you can find out about this online), he can easily file bankruptcy and any judgment you have against him for your personal injury case will be worthless. Also, the responsible party can transfer assets (like real property or accounts) into the names of family members (although doing so is illegal) or sell or spend assets by the time you get a judgment against them several months or years later.

The bottom line is that, unless the responsible party has a huge American bank account full of cash that he is not going to "shuffle" around or spend, collection of the judgment will be very difficult. Typically, going after a person's personal assets to pay for your personal injury case is not an encouraging option.

What happens if my case is worth more than the responsible party's insurance coverage?

I often run into cases where someone was seriously injured in a bicycle, motorcycle, pedestrian or auto accident, but the party who is responsible for the injury carries low liability insurance coverage. As I have discussed at length in my other blog posts, California has a minimum insurance limit for automobile liability policies of only $15,000. What this means, is that over one-third of all California drivers carry this minimum insurance limits, or carry no insurance at all. So, when one of my clients is injured by somebody carrying this minimum insurance limit (or other low limits policy like $25,000 or $50,000), we have to look to other sources to compensate them for their medical expenses loss of earnings and their pain and suffering damages all resulting from the accident caused by this other party.

Other potential sources of recovery could include other liability insurance policies held by the responsible party, such as business insurance, homeowner's insurance or umbrella coverage. However, homeowner's insurance policies typically have specific exclusions for traffic collisions.

Another potential source of recovery is from auto liability insurance policies held by other members of the responsible party's household. Usually an auto liability insurance policy covers any member of your household, because it is reasonable to expect that other people in your household may drive your car from time to time.

Another potential source of recovery is the responsible party's employer. If the responsible party was within the course and scope of his or her duties as an employee for their employer, they may be covered by their employer's insurance policy. Unfortunately, an employee who is driving to work or from work may not be covered by his or her employer's policy. So, you always want to do a thorough investigation as to what the responsible party was doing at the time of the accident. You want to ask the question, "was here she driving for personal reasons, or for some capacity as part of her employment?" Of course, I always investigate my client's own insurance coverages like health insurance, auto insurance policies with uninsured and underinsured motorist coverage, umbrella policies, etc. Although it is preferable to have your damages covered by the responsible party, if they don't have enough insurance coverage, you want to make sure that YOU do.

A last resort source of recovery is the responsible party's personal assets. Most people don't like that idea of going after another individual's personal property money and assets including me. However, there are certain instances when this route is appropriate. Stay tuned for my next blog post where I discuss in detail the process of going after personal assets to pay for the damages you incur in a personal injury case.

Is the process different if a child was seriously injured in a traffic accident?

The most rewarding part of our job is when we have successfully negotiated a settlement for our wonderful personal injury clients. Once the negotiation process is complete, we work tirelessly to ensure our clients are promptly paid. For our clients who are minors and receive a settlement from the at-fault party, there is an additional step that must be completed before the settlement proceeds can be distributed to the client. This additional step is called “the minor’s compromise.” In California, every child personal injury case that settles for over a certain amount must be approved by the court.

This procedure is in place to protect the child’s interests, to ensure the settlement is fair and equitable to the minor, and to secure the entirety of the settlement funds for the injured child until they reach the age of eighteen. The procedure begins with filing the minor’s compromise petition detailing the exact amount of the settlement to be received by the child, and from whom the settlement will be received.

At a court hearing, the judge will review the petition and either approve or deny the settlement amount. Once approved, the court will then order the funds be deposited into a “blocked account,” which is untouchable by any party including the minor’s parents, absent a court order to the contrary.

It is important that parents remember this entire process is set up for the exclusive benefit of the minor as the settlement funds are the minor’s alone. Once the funds are deposited into a blocked account in the minor’s name alone, the money will be untouchable until the minor reaches the age of eighteen.

Often parents will ask whether early release of the funds is possible. The answer is maybe. Because the settlement proceeds belong to the injured minor alone, any attempt by another party to access the funds will be met with apprehension by the courts. In order to obtain an early release of the funds, parents will need to show that the withdrawal of funds will directly benefit the child in a material way.

A petition must be filed and a hearing will be held on the matter. The judge will carefully scrutinize the reasons and justifications put forward in support of the early release of the settlement funds, and the minor's guardian must be prepared to demonstrate exactly how and why the early release will directly benefit the minor child.

Each petition is determined on a case-by-case basis, and any petitions that only indirectly benefit the minor will be denied. Due to the fairly complex nature of the minor's compromise, if a minor is seriously injured in a traffic accident, their guardian should seek advice from the qualified personal injury lawyer to help walk them through this process. Should you have any questions about this, please contact our legal team now!

What happens if I was in a car accident but I was not carrying my auto insurance at the time?

If you were not carrying liability insurance (on your auto insurance policy) at the time of your automobile accident, your recovery will be limited to economic damages. There will be NO recovery for pain and suffering. That is the law set out by Proposition 213 that was passed in 1996. As per Proposition 213, if you were not insured while driving, you are not entitled to recover non-economic damages like pain, suffering, inconvenience, physical impairment, disfigurement, and disability. As an uninsured injured driver you are only allowed to recover economic damages like your medical expenses, lost earnings, and vehicle towing, storage and repairs. This law was pushed through by the insurance industry who claimed the Proposition was meant to lower auto insurance rates. Clearly, there were other motivations. Prop 213 significantly limits valid personal injury claims and lets insurance carriers off the hook in some very big damage cases.

Another alleged policy reason given by the insurance industry for Prop 213 is that drivers who are out on the streets driving around uninsured should not reap the benefits of insured drivers (who injure them.) It is true… driving around

uninsured is not a good idea and is a disservice to those around you. However, the California minimum liability insurance limits is only $15,000.00. This small amount of coverage is hardly enough to cover someone's pain and suffering, let alone some humble medical bills.

So, even though a driver may have the minimum coverage, it is barely more than someone who is totally uninsured. However, the insurance industry makes this tiny difference into a MAJOR distinction through Prop 213. Insurance carriers profit a whole lot more from the person carrying the measly $15,000.00 policy than the uninsured person. But, the injured party does not receive much more from the person who is minimally insured than they would from an uninsured driver.

The real winner in this whole situation, no matter how you spin it, is the insurance carriers. This law is most clearly punitive to drivers who are usually diligent in carrying liability coverage, but accidently miss a premium payment or inadvertently allow their policy to lapse and the accident occurs before they can reinstate coverage. Note that if you are a passenger in a vehicle that is not insured, you can recover both economic and non-economic damages. Additional Exceptions to Prop 213 include minors and people bringing wrongful death claims. As an aside, you can recover both economic and non-economic damages even if you do not have liability insurance if the accident was the result of a defective vehicle, rather than another driver.

Do I pay a fee on the property damage settlement of my personal injury claim?

When a client hires us to represent them in a personal injury case that relates to a bicycle, motorcycle, auto or even pedestrian accident, there are usually two types of claims that we handle for them.

Bodily Injury Claim: We handle the bodily injury claim, which is the part of the case wherein the client is compensated for her medical expenses, loss of earnings and pain and suffering damages.

Property Damage Claim: The other type of claim we handle in these cases is the property damage claim (the client often will handle this on their own if they have comprehensive auto insurance coverage, but if they do not, we have to file this claim against the third party's insurance policy.) This is the claim for the damage or destruction of their bike, motorcycle or car and any other personal property items. (For instance, we often have pedestrian accident cases where the client is obviously not on a vehicle, but does suffer damage or destruction to some of the personal items he or she had with them at the time of the accident. Items most frequently damaged or destroyed are iPhones, sunglasses, clothing, computers, etc.) The client is entitled to receive money to repair or replace these items.

Loss of Use Damages: In addition, the client may be entitled to money for the loss of use of these items (the time that they were not able to use the items because they were broken or gone.) Most common is the loss of use of one's vehicle (bicycle, motorcycle or car) due to an accident caused by a third party. When your vehicle is destroyed, you are entitled to the reasonable value of the loss of use of your vehicle for the amount of time it should reasonably take you to replace the vehicle. So, you take the reasonable rental value for renting a similar vehicle (usually around $25-50 per day) and multiply that by the number of days you are without the vehicle. However, you are only entitled to a reasonable amount of time of these daily damages. So, if the 3rd party insurance company sends you a check for the loss of your vehicle, but it takes you three months after you get the check to buy a replacement vehicle, you are not entitled to loss of use damages for that period of time. You would likely only be allowed those damages until the time you received the check, because at that point, you were in a financial position to be able to replace your destroyed vehicle.

The bottom line is that if a client comes to us prior to resolving their property damage claim on their own (which can be really simple if they have comprehensive insurance coverage of their own), we assist them with this portion of their case as a courtesy. We do NOT take any portion of the money

we help them recover for the property damage or loss of use damages. We do however earn a fee (the percentages are set out in our fee agreement) on the bodily injury portion of the case, which is separate from the property damage claim. If your personal injury attorney is charging you a percentage fee on your property damage claim, you are likely paying too much. Always, make sure you clarify if there will be a fee or not on the property damage portion of your case.

If you or someone close to you has recently been in a serious traffic accident we want to help guide you on how to handle it. The sooner you take action the better your chances of getting good results.

How do you prove loss of earnings for self-employed people?

Recovering loss of earnings for our self-employed clients who are seriously injured in a bicycle, pedestrian, motorcycle or auto accident can present certain difficulties that do not arise in cases where our clients are employees who received predictable and documented W2 income. For example, if one of our clients is an employee of a company, we simply send a form to her employer to find out how much work our client missed when she was recovering for the accident, and what her salary is in order to calculate her loss of earnings.

We can also submit pay stubs and/or W2 forms to make a relatively easy claim, assuming the client received a doctor's instructions (and provides those to us in writing) to take the time off from work. Obviously, we do not have this option when establishing a self-employed client's lost earnings, and thus we have to use other means to ensure they are compensated for the losses they endured as a result of another party's negligence.

To make a valid loss of earnings claim for our self-employed clients, we must gather documentation that shows the lost profits, revenue and earnings they suffered as a result of the accident. This could include collecting receipts during quarterly periods prior to and after the accident, and subtracting the two to determine how the accident affected their business.

A yearly tax return is also a method of ascertaining a self-employed client's earnings. However, it is important to keep in mind that federal and state laws limit the opposing party from discovering a plaintiff's tax return documents. In Webb v. Standard Oil Co. (1957) 49 Cal.2d 509, 513 the California Supreme Court held that a plaintiff cannot be compelled to produce a copy of his federal or state tax return, except in cases involving tax enforcement or the prosecution of violations. The Court found that such information is privileged, and thus, not discoverable by a defendant in personal injury cases. The Court reasoning was based on the purpose behind the federal and state statutes governing tax enforcement, which is to encourage taxpayers to make full and truthful declaration in her returns without fear that her statements will be revealed or used against her for other purposes.

Thus, prior to obtaining such information from our clients to calculate loss of earnings, we advise our clients of their right to keep that information private and also assure them that we will not disclose that information to the opposing party unless they expressly consent. Some personal injury lawyers may operate differently, but you want to be sure YOU are the one allowing disclosure of this information, not your attorney.

We often have clients provide us with 1099's for the year before the accident the year after the accident, depending on whether or not the injury is permanent. Also, profit and loss statements generated by accounting software or even just a simple Excel spreadsheet can be helping in proving this loss.

The problem with these self-generated documents is that they can be altered for the purposes of litigation, therefore they are less trusted by the insurance carriers and defense attorneys. That is why they ask for tax returns, because you are under an obligation to provide truthful and accurate information on your tax returns. Therefore, they are seen as more reliable. However, this is the reason the Webb Court held that such documents are not discoverable in the normal personal injury case. It is really a judgment call made by the client and attorney as to whether or not you turn these over.

If you are a self-employed individual and want to make a loss of earnings claim it is always best to seek consultation with an experienced California personal injury attorney before making the claim. You want to be sure you are doing it right.

If I get a big personal injury settlement, will I lose my public benefits?

Special Needs Trust: Protecting Your Eligibility for Public Benefits Although we always recommend you consult with a qualified CPA or tax professional for questions about the taxability of personal injury settlements, most of the traffic accident settlement proceeds our clients receive are not considered taxable income by the IRS. While this money may not be taxable, it does count as "income" or as assets (once deposited into your bank account) when determining an individual's eligibility for public benefits such as Medi-Cal, Food Stamps, etc.

Public benefits are divided into two overarching categories: need-based (or means tested) and entitlement. Need-based public benefits include Supplemental Security Income (SSI), Medi-Cal (or Medicaid), Section 8 housing and food stamps. On the other hand, Social Security Disability Income (SSDI) and Medicare are classified as entitlement benefits. Because only some public benefits are affected by a personal injury settlement, an analysis of exactly what type of benefit our client is receiving must be made. SSDI and Medicare are programs based on the work history of an employee, and are therefore unaffected when an individual's gross income suddenly increases – there are no income or asset eligibility tests.

This is in contrast to need-based benefits where an individual is only eligible for the programs if they have very limited income and a very low dollar number in liquid assets (i.e. money in the bank) – there are income and asset eligibility tests. Accordingly, if an individual were to receive a settlement check for thousands of dollars, they may become ineligible to receive the very same

benefits they were eligible for immediately preceding the settlement of their personal injury claim. It is these need-based benefits that need to be protected.

When someone receives a moderate or large sum of money related to serious physical injuries they suffered in a bicycle, motorcycle, pedestrian or car accident, this is not really like them making money at a job – which is what we normally consider income. However, the government simply does not have the time to make that distinction.

So, if they discover that someone who normally qualifies for need-based benefits all of a sudden has a good chunk of money in savings, they are going to think that person no longer has the need for the benefits. As California personal injury lawyers, we know that a personal injury settlement is not "free money" or even income. It is money meant to compensate the injured person for the pain, suffering and interference with their normal life that they endured due to the negligent physical harm by another person.

One would think that the same principles that apply to why this money is not typically taxed by the government would also apply to not being disqualified from benefits. Sadly, that's not the case, so our personal injury clients have to use a formal financial vehicle to protect both their settlement money and their eligibility for benefits.

A special needs trust is a common method used to avoid the termination of an individual's eligibility to receive need-based public benefits. Assets in an individual's special needs trust are not counted for eligibility purposes, so long as the trust funds are distributed directly to the third-party providers of goods and services.

Surprisingly, the funds can be used for almost anything, but there is a specific list of these items available once the trust is set up. Also, the trust funds cannot be used for goods or services covered by the government benefits. Careful consideration and prudence should be exercised when establishing a Special Needs Trust. Clients and their loved ones should only enlist the help of a

professional with expertise in investing trust assets, SSI, Medicaid and other public benefits law, and can provide assistance in protecting the individual's interests and assets.

Overall, a special needs trust ensures the continued receipt of needs-based public benefits, while simultaneously allowing our clients to benefit from the personal injury settlement to which they are entitled. If you or someone you care about has been seriously injured in a traffic accident and may be in danger of being disqualified from public benefits, contact one of our personal injury attorneys now.

Do I need to hire a personal injury attorney if I was the one who caused the accident?

I know that many people do not know when they do and when they do not need a personal injury attorney to help them with their accident. First of all, if you were seriously injured in a motorcycle, pedestrian, bicycle or auto accident that was caused by another person, you might need a personal injury attorney. However, if you were the cause of the accident, it's a different story. If YOU caused the accident, your insurance carrier will handle things – Call them immediately!

Now, let's say you ran into somebody or you hit a cyclist, pedestrian, motorcyclist or another car while you were driving your car or riding your bike or motorcycle, that's a different story. I often get calls from people who are like, "Hey, I hit somebody and I think I need a personal injury lawyer." This is actually a circumstance where you do NOT need a personal injury attorney. If you were the cause of injury to another person, you need a defense attorney. It is likely that the person you injured will be getting a personal injury lawyer and you will need your own lawyer to represent you in the case. So, if you injured somebody or caused an accident you should immediately report the accident to your insurance company and they will provide you with legal counsel.

If you don't have insurance, shame on you, but you had better find a personal injury defense attorney right away. Note that most personal injury attorneys (like myself) only represent injury victims and not people who cause injury accidents, so you want to find an attorney who specializes in defense of personal injury cases, that is not a personal injury attorney. If you have insurance, your insurance company will handle the claim with the person that you hurt and you won't really need participate in the claim much.

You will likely have to give your statement of the facts to the insurance adjuster handling the claim, but things might end there. However, if at some point that case elevates to the point where it goes into a lawsuit and litigation (most likely because your insurance company is refusing to pay the injured party a fair amount), your insurance company will provide you with an attorney who will defend you in the lawsuit. They pay for your attorney and you are named as a defendant in that case.

So, if you carry sufficient liability insurance, your insurance company will cover you in the case. That's why you have insurance so that they will provide and pay for your defense in the unlikely event that you cause an accident and injure someone. You may have to answer discovery questions, give your deposition and/or show up at trial, but you don't have to go out and hire your own private defense personal injury attorney if you're the one who caused the accident.

Make sure you are carrying adequate coverage to protect you in the unlikely event that you cause an accident. Contact your insurance agent to make sure you have sufficient auto insurance coverage and even an umbrella policy to protect your assets should you ever be faced with a claim. So, if YOU were the one who caused the accident, you do not need a personal injury attorney – you need to contact your insurance carrier and have them get THEIR attorneys on it, as the injured party may have already hired their own personal injury lawyer.

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