



“The Ultimate Guide to Accident Cases in New Jersey”

Five Deadly Sins That Can Wreck Your New Jersey Accident Case

Avoid Them and You May Have a Shot at Winning

***New Jersey Accident Attorney
Wendy S. Bornstein***

Includes:

- Myths about insurance claims
- A war that can be won
- 10 steps to finding a qualified personal injury attorney
- How medical liens may reduce your recovery
- The service that can be the “kiss of death” to your case
- What “no fee if no recovery” really means
- Why you must disclose past accidents and injuries to your lawyer

**If you can answer YES to these six questions
we may be the injury law firm for you.**

1. Do you have total expected medical bills and lost wages (not just out of pocket expenses) of at least \$3,000?
2. Is there visible property damage to your car?
3. Was the accident someone else's fault?
4. Did you get prompt medical treatment after the accident from someone other than a chiropractor?
5. Have you followed the recommended course of treatment of your doctor?
6. Did the accident happen less than 18 months ago?

**If you can answer YES to each of these questions,
give us a call at 908-782-0075**



Somerset County Office
1200 Route 22, Suite 2000
Bridgewater, NJ 08807

Hunterdon County Office
14 Commerce Street
Flemington, NJ 08822

(908) 782-0075
www.bornsteinlegal.com
wbornstein@bornsteinlegal.com

*The Ultimate Guide To
Accident Cases in New Jersey*

Five Deadly Sins That Can Wreck Your Injury Claim

Avoid them and you may have a shot at winning.

By Wendy S. Bornstein, Esq.

BORNSTEIN LEGAL^{LLC}

WE STAND FOR INJURED PEOPLE

Somerset County Office
1200 Route 22, Suite 2000
Bridgewater, NJ 08807

Hunterdon County Office
14 Commerce Street
Flemington, NJ 08822

(908) 782-0075
www.bornsteinlegal.com
wbornstein@bornsteinlegal.com

Fewer Cases—More Time For You

We are “different.”

We don't rely on a high volume of cases generated by massive TV and Yellow Pages advertising. We don't claim to handle every type of law under the sun. We don't want to. We don't need to.

Each year, we accept a limited number of injury, accident and workers' compensation cases from the hundreds of people who ask us to represent them. We are not a “TV advertising personal injury mill.” We do not allow paralegals and assistants to negotiate your case with the insurance company. Fewer cases mean more time for you and, we believe, better results overall.

Since 1983 Wendy S. Bornstein has represented accident, injury and workers' compensation claimants throughout New Jersey. Most of our cases are referred to us by former satisfied clients and by other attorneys and health care professionals. If we accept your case and you are not local to us, we will come to you, anywhere in New Jersey.

Sometimes the best advice you can get when you are thinking about a lawsuit is that you do not have a claim that can be won. If that is true, we will tell you. We'll also tell you when we think you are better off handling a claim yourself—without an attorney. But, if your case passes our test and we accept it, you can be assured that you will receive personal attention. We will aggressively represent you, keep you up to date on what is happening in your case, and give you advice as to whether you should settle your case or go to trial.

We will fully explain all fees and costs to you before we start working on your case. Together, as a team, we will decide on the best tactics for your case.

Wendy S. Bornstein, Esq.

Forward

I wrote this book because, if you are like most people, this is the first time you have been in an accident. You have questions. You are getting calls from the insurance company representatives, wanting to ask “just a few questions.” The insurance company may be pestering you to sign their forms “so we can get the records and handle this for you.” They may even have already offered you money to settle your claim.

You started your search for an attorney but found that most attorney advertising doesn't give you any useful information at all about how to find the right lawyer for your case. All of the ads say “hire me, we don't charge a fee unless we get you money,” but then you realized that ALL personal injury lawyers say that. You soon realized that ads that showed fistfuls of cash, gory accident scenes or platitudes like “We Care For You” or “We Are Aggressive” are 100% meaningless. (Don't you expect that your attorney will care for you?)

Here are some other

“Meaningless Headlines You Might See In the Yellow Pages”

(Ask yourself: Does this headline help me figure out if this is the right lawyer for me?)

- Serious Injuries, Serious Results
- “Why Me?”
- Can You Get a Lawyer Who Cares?
- All Accidents and Serious Injuries
- Accidents and Injuries (Wow, that's original!)
- We're the Law Firm that Cares About You
- Legal Help for the Seriously Injured

(I won't even mention the ads that have, as a headline, the firm name! How useful is that?)

I wrote this book for **you**. So that you could have good information in the quiet of your own home BEFORE you hire a lawyer and before you talk to the insurance adjuster. (Hopefully you haven't signed forms yet!) You may not even need a lawyer to settle your claim.

MYTHS YOU MIGHT HAVE HEARD FROM FRIENDS, NEIGHBORS AND RELATIVES

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

INTRODUCTION

I am sick and tired of insurance companies taking advantage of people before they have a chance to talk to an attorney. For years one major insurance company encouraged claimants to not even talk to an attorney before settling the claim. They used fear (the lawyer will take one-third of this check we're about to pay you just for talking to them) to dissuade people from getting good advice.

Guess what? You may not need an attorney to represent you in your case! No one, however, should settle a case without understanding "the system." Typically, for example, the insurance adjuster isn't going to tell you that you *might* have to turn around and take the check they just paid you and pay it to your health insurance company. They don't care about you.

That adjuster just wants to close the file and get you to release all of your claims.

Here are some other tactics I've seen insurance companies use just to wear you out and get you to go away:

1. **Deliberate Delay.** They know that often you are in a financial squeeze. Even if you have good health insurance, the fact that you aren't working may make it difficult to pay co-pays and deductibles. The insurance company knows you are getting dunned by the doctors so they take their time with your claim.
2. **Request Unnecessary Information.** Insurance companies will insist that you track down every little piece of information before "we can evaluate the claim." Even if the info they are now asking for would not add a penny to their offer, they are happy to wait another six weeks for you to track it down. Meanwhile they are earning interest on the money they are NOT paying you.
3. **Disputing Medical Treatment.** Even though I've never met an adjuster who went to medical school, they seem to know just what treatment is right for you! Usually, they 'know' that you were over treated because "our computers say you should have been better by now."
4. **Nickel and Dime the Medical Charges.** Think about it. If they shave just 5% off of your claim and can do that to the millions of claims made each year, they get richer.
5. **Misrepresent Insurance Benefits.** This is a big one. They tell you that there's only \$100,000 in coverage. We file suit and "magically" find an umbrella policy! Don't you think they knew that just by looking on their computers before we filed suit? Of course they did.
6. **Acting Like Your Friend And Making False Promises.** Watch out for the adjuster who befriends you, shows up at your house and promises to pay your future medical

bills. This is a tactic to stop you from hiring a lawyer. (Believe me; they won't come around to your house once you have a lawyer.) Those future medical bills? Well, they'll pay them until their computer says "too much, too much, this claim is costing us too much."

“Allstate Had a Stated Goal of Reducing Attorney Involvement in the Claims Process To Achieve a Higher Rate of Return on Settlement Claims.”

The Washington Supreme Court hammered Allstate several years ago for its “Quality Service Pledge.”

The Pledge said: Because you have been involved in an accident with an Allstate policyholder, we will provide you with quality service. . . . Your claim representative is dedicated to carrying out this Quality Service Pledge.” Allstate’s internal rules directed the adjuster to act as the individual’s claim representative for unrepresented claimants.

An injured woman settled her case with Allstate based on the Pledge and on the fact that the adjuster gave her extensive “help” in settling her claim. Later, the woman tried to return the \$25,000 Allstate had paid her. Allstate said “no, you signed a full release.”

The Court, in allowing the injured woman to proceed with her bad faith lawsuit against Allstate, said that Allstate had a stated goal of reducing attorney involvement in the claims process to achieve a higher rate of return on settlement claims.

It said:

Here, Allstate's claims adjuster's conduct fell below that standard when she advised the Joneses to sign a release of liabilities, did not properly advise the Joneses that there were potential legal consequences of signing a settlement check and a release of all claims or refer them to independent counsel, and did not fully disclose the conflict of interest she presented.

Jones v. Allstate Insurance Co., 146 Wash.2d 291 (2002).

I WROTE THIS BOOK SO THAT YOU CAN BE EMPOWERED.

I am also sick and tired of outrageous lawyer advertising where lawyers with a reputation for handling hundreds of cases at a time make promises that can't be kept or equate your injury to "cash, cash, cash." Did you notice that almost all of the attorney ads in the Yellow Pages claim personal injury expertise? There are lawyers who NEVER go to court, settling each case for pennies on the dollar. The insurance companies know who they are, so should you.

Frankly, I am also tired of lawyers who file frivolous lawsuits, because frivolous lawsuits hurt everyone by delaying real claims from getting to court. If you are looking for a lottery win, look elsewhere. If you are looking to never have to work again because someone tapped you from behind at a red light, look elsewhere. My firm handles legitimate claims for legitimate claimants. No "quick cash for your pain" here, sorry.

What You Should Expect From Any Lawyer You Hire

When you hire a lawyer you are entitled to the following information:

1. A sample fee agreement;
2. A listing of sample verdicts, settlements and testimonials from former clients;
3. A full written explanation of the steps involved in a personal injury lawsuit;
4. A written assurance that they carry errors and omissions ("malpractice") insurance in the amount of at least one million dollars (you'd probably be surprised to see how many lawyers carry NO insurance.) Ask for this representation in writing.
5. A full explanation of fees and costs, the difference between the two, and how the percentage fee is calculated.
6. A professional biography that outlines at least how long they have been actually going to trial in personal injury cases and indicates whether they are Trial Certified or not. (Like doctors, there is no requirement that an attorney be Board Certified to handle your case. Anyone can advertise for any type of case.)

Please Note: Our policy is to not take your case if you are already represented! If you are already represented by an attorney, this book may raise questions for you. Ask your current attorney these questions. Everyone does things a little differently and we generally do not accept cases in which another local attorney has already been involved. If you are currently represented, use this book to increase your knowledge and to ask questions, but please don't ask us to take on your case. We won't.

This Book is NOT Legal Advice!

The New Jersey State Bar requires that I inform you that what is in this book is not legal advice. I'm not your lawyer until you and I enter a written agreement for me to be your lawyer. I know the arguments the insurance company will make — and so should you — even before you file your claim. I can offer suggestions and identify traps, but please do not construe anything in this book to be legal advice about your case as each case is different and an attorney can only give you quality legal advice when he or she understands the facts involved in your case.

What is a Personal Injury Case?

Let's start at the very beginning: Just what is a personal injury case? Lawyers say that they handle "personal injury cases" or "accident cases" or "wrongful death cases" and yet, it seems that not everyone understands exactly what this means. Indeed, people who have known me for years will come up to me and ask me for a referral to a car accident attorney! They do this even though I think that they know exactly what it is that I do.

A personal injury, car accident, or wrongful death case is any type of claim where a person has been injured or killed due to someone else's carelessness. If the only damage in your case is that your car got banged up, then you don't have a personal injury case – but you may have a property damage case. We do not handle cases involving property damage only, but there are some lawyers who do. If both you and your car have suffered an injury, then you have both a personal injury and a property damage claim. In those circumstances, we will handle your personal injury case and we will assist you in making sure that either your insurance company or the other driver's insurance company takes care of the property damage claim.

If someone's negligence causes the death of another, then this is called a "wrongful death" claim. The law of each state or jurisdiction differs significantly regarding what can be recovered in a wrongful death case. You need an attorney who understands the specialized wrongful death laws of New Jersey.

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

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

Admit it. Until you or a family member were injured, you too may have thought that a personal injury lawyer is a bad person and that people who make claims and file lawsuits are stealing from society. That's what billions of dollars in insurance company advertising will get you!

What Must You Prove to Win Your Case?

Just because you were hurt doesn't mean you are entitled to money. You must prove that someone else was negligent or careless and that it was their negligence or carelessness which caused your injury. If you fail to do this, you lose. If you sue the wrong person, you lose. If you wait too long to sue, you lose. If you had an injury BEFORE the accident, then you are only entitled to be compensated to the extent your injury is now worse.

In New Jersey, if you were more than fifty percent at fault in an accident, you lose. This is known as the law of comparative negligence. This means that if the "other guy" was 49 percent at fault and you were 51 percent at fault, then you cannot recover anything. Sound fair? Maybe not. You may think that anyone who contributes to your injuries should be obligated to pay for at least some of your damages but that is true only if that person is more at fault than you.

Before we accept your case, we must be confident that you were not more at fault than the other party.

Do You Really Need An Attorney To Settle Your Case?

You definitely do not need an attorney for every small injury case. In fact, our office does not even accept cases where there's little or no property damage or the injuries are minor. Why not? Simple. In the small case, the attorney fee and costs might leave little or nothing for you after your out of pocket medical bills are paid, and we don't believe that would be fair to you.

Before you decide whether to hire an attorney...

Did you know that a 1999 study found that insurance companies pay higher settlements to injured people who use an attorney than those who do not?

It's true. In 1999 the insurance industry performed a study to find out if people who had accident claims received more money in settlement by using an attorney than those people who settled on their own. The study was performed by the Insurance Research Council, a non-profit organization that is supported by leading property and casualty insurance companies across the United States. The mission of the IRC (IRCweb.org) is to advance the insurance industry's view on matters crucial to insurance companies. The IRC found that people who used an attorney received on average 3 ½ times more money in settlement than those individuals who settled on their own.

How Do You Find a Qualified Personal Injury Attorney?

Choosing an attorney to represent you is an important but daunting task. The decision certainly should not be made on the basis of advertising alone. The Yellow Pages and the internet are filled with ads—all of which say basically the same thing. You should not hire based solely on advertising—anyone can buy a slick commercial and many have.

How do you find out who in your local community is the best for your case? There are certain questions to ask that will lead you to the best person for your case—no matter what type of claim you have. Yes, it will involve some time on your part, but that's OK because the decision you are making may be critical to the success of your case.

In my opinion, the world of personal injury claims is much too specialized for someone who does not regularly handle these cases. Too many times we have looked at cases that have been handled by general practitioners, tax lawyers, criminal lawyers and family law lawyers. That's just no good. Get a specialist. They are out there. (**Clue:** does the yellow page ad list 27 different 'specialties?') Question to ask: how can that be?)

You should be aware that the insurance companies who defend personal injury and accident cases know who the attorneys are in your area that actually go into court to try cases and who do not. The insurance companies use that information to help evaluate their risk. One of the first questions some insurance adjusters will ask when a serious claim comes in is: who is representing the plaintiff? I've heard insurance defense lawyers laugh as they head for trial against one of these non-personal injury attorneys! It's like shooting fish in a barrel for them.

If this information is important to the insurance company, shouldn't it be important to you?

So, How do You Find Out Who is Good in Your Area?

Here Are Some Tips

1. Get a referral from an attorney that you know. He or she will probably know someone who does specialize in your area of need. If you need an attorney in an area of practice that we don't do, call us, we'll help you find the right lawyer for your case.

2. The Internet can be a good source of names. Understand three things, however: First, not everyone advertises on the internet. Most of our cases come from referrals from other attorneys or from satisfied clients. Second, be careful about the websites that tout too many different specialties, no one can do everything well. This advertising may attract a lot of frivolous cases that can overwhelm an attorney. Make sure that the attorney you hire is selective enough with his or her cases that your important case does not become just one more file in the pile.

We know several law firms that went out of business buried under the “weight” of full page Yellow Page ads.

4. Your local bar association probably has a lawyer referral service. Understand that lawyers have signed up and paid a fee to be listed in certain specialties. Their names come up on a rotating basis. This is another good source for an initial appointment. Just take the questions we talk about here to that interview. Call and ask for the written information that I mentioned above.

5. Interview several attorneys. Ask each attorney who else handles these cases in your area. If they won't give you any names, leave. Ask this question of each attorney. The names you see showing up on various lists of recommendations are probably good bets for attorneys doing these cases on a regular basis in your area.

6. Be careful about any attorney who rushes you to sign a contingent fee agreement. A contingent fee is standard for most personal injury cases. However, you should be confident that you understand it before signing it. We have heard of instances where fee agreements are delivered by courier within hours of the time you first call the attorney's office. That's right, before you even have had a chance to meet with the attorney. This is outrageous.

7. Run from any attorney who calls you first.

8. Beware of “runners.” A “runner” hangs out at the police station or listens to police radio to “run” to accident scenes or hospital rooms to encourage victims to sign contracts with attorneys. Outrageous does not begin to describe this practice!

9. Beware of any attorney who contacts you in writing just after you have had an accident for the sole purpose of soliciting your claim. If you are contacted “cold” it should be for the sole purpose of providing you free information that you can study in your own home on your own time, not soliciting your case.

10. Beware of any attorney who has a stable of doctors he wants to refer you to. You can tell who these attorneys are by the rack of doctors' cards they keep in their office. Local judges have said that when an attorney makes a referral of a client to a doctor for a garden variety case, this is the ‘kiss of death’ for that case. It's OK to get a referral to a specialist health care provider, but run from any attorney who has a stack of doctor or chiropractor cards in his office.

11. Here are factors and good points to look for and question your attorney about. Note that not every attorney will meet all of these criteria, but the significant absence of the following should be a big question mark.

- Experience – obviously, the longer you have been practicing a particular area of the law, the more you will know. Experience can be a big factor in many cases.

- Experience actually trying cases — ask the attorney how many cases he has actually tried. Has he or she achieved any significant verdicts or settlements? Does he have a list of verdicts and settlements available that you can look at? Don't accept the "All my cases are confidential" line! The greater your number of cases actually tried and substantial verdicts and settlements achieved, the more likely the insurance companies will respect you. Past results are not a guarantee of the future but past results do demonstrate some level of experience and success.

- Respect in the legal community— has the attorney taught or lectured to other attorneys? Does the attorney receive referrals from other attorneys?

- Board Certification—the New Jersey Board on Attorney Certification tests and certifies civil trial lawyers. It requires a minimum number of trials and recommendations from judges and opposing attorneys.

12. Ask your attorney if he or she is licensed in the state where your case will be filed. We believe that an attorney who is not licensed in the state where the case will be filed is at a disadvantage when it comes to negotiating with the insurance company. The insurance companies know who is not licensed and thus cannot actually try the case. We also recently ran across a horror story involving an out—of—state attorney who evaluated a New Jersey medical malpractice case. This attorney kept the file for two years and gave it back to the client on the day the statute of limitations was expiring in New Jersey. The problem was that the attorney told the client that he had one more year to file his case, but this was based on the statute of limitations in his own state. The client was then unable to file his case in New Jersey. Dealing with a lawyer who is not licensed in New Jersey can be another 'kiss of death' to your claim.

**Once You Have Decided on an Attorney,
Make Sure You Both Understand Your Goals and You
Understand How the Relationship
Between Your Attorney and You Will Work**

How will your attorney keep you informed about the progress of the case? Many attorneys send a copy of every piece of correspondence and pleadings in the case to the client. Your attorney should also take time to explain the “pace” of the case and in what time frames the client can expect activity to take place.

Find out who will actually be working on your case. Make sure that you and your attorney have a firm understanding as to who will be handling your case. There are a lot of things that go on with a case that do not require the senior attorney’s attention. On the other hand, if you are hiring an attorney because of his or her trial skills, make sure that that person is going to be trying your case for you.

What Does an Experienced Personal Injury Attorney Do for You in a Personal Injury Case?

Here is a more or less complete list of the tasks your attorney may be called upon to do in your case. Remember that each case is different, and that not all of these tasks will be required in every case. They are:

- Initial interview with the client
- Educate client about personal injury claims
- Gather documentary evidence including police accident reports, medical records and bills
- Analyze the client's insurance policy to see whether there are any coverages which the client has that may pay all or a portion of the medical bills while the claim is pending
- Analyze the client's insurance coverages and make suggestions as to what coverages should be purchased for future protection
- Interview known witnesses
- Collect other evidence, such as photographs of the accident scene
- Analyze the legal issues, such as comparative negligence and assumption of the risk
- Talk to the client's physicians or obtain written reports from them to fully understand the client's condition
- Analyze the client's health insurance policy or welfare benefit plan to ascertain whether any money they spent to pay your bills must be repaid
- Analyze the validity of any liens on the case. Doctors, insurance companies, welfare benefit plans and employers may assert that they are entitled to all or part of the client's recovery
- Contact the insurance company to put them on notice of the claim, if this has not already been done
- Decide with the client whether an attempt will be made to negotiate the case with the insurance company or whether suit shall be filed
- If suit is filed, prepare the client, witnesses and healthcare providers for depositions

- Prepare written questions and answers and take the deposition of the defendant and other witnesses

- Produce to the defendant all of the pertinent data for the claim, such as medical bills, medical records, and tax returns

- Go to court to set a trial date

- Prepare for trial and/or settlement before trial

- Prepare the client and witnesses for trial

- Organize the preparation of medical exhibits for trial

- Organize the preparation of demonstrative exhibits for trial

- Prepare for mediation and/or arbitration

- File briefs and motions with the court to eliminate surprises at trial

- Take the case to trial with a jury or judge

- Analyze the jury's verdict to determine if either side has good grounds to appeal the case

- Make recommendations to the client as to whether or not to appeal the case

More Insurance Company Tricks

- Wrongly telling their own insureds who carry collision coverage that they have to go through the careless driver's insurance company to get their car appraised/fixed since it was "the other guy's fault." This simply is not true. You paid your insurance company a premium for service. It is often quicker to go through your own insurance company to get your car fixed. Yes, you will pay the deductible up front but your insurance company should get that back from the other insurance company and reimburse you.
- Entering a secret 'side agreement' with the careless driver's insurance company to get reimbursed for medical bills it paid and never telling you about it.
- Secretly videotaping you and talking to your neighbors about you just to get some "dirt" on you to use in settlement negotiations.
- Trolling YouTube, Google and other internet social networking sites for your postings and videos of activity and sometimes attempting to be a 'cyber-buddy' to get you to admit to certain facts.
- Putting their own insured at risk of financial ruin by failing to settle claims fairly and by failing to advise their insureds of settlement offers. In several cases we have seen one of the largest car insurers in the world subject their own customers to large verdicts and recorded judgments against them because they refused to settle cases fairly. Suppose a negligent driver has only \$100,000 in insurance (a very low number, considering the cost of medical care) but the case is legitimately worth several hundred thousands of dollars. The insurance company makes a low-ball offer that is rejected. The jury returns a fair verdict of several hundred thousand dollars. The insurance company only has \$100,000 to pay, leaving their own customer with a recorded judgment of several hundred thousand dollars. Try getting a mortgage with a judgment like that against you!

Beware of the Medical Lien “Monster”

You should be aware that often, if your medical bills were paid by health insurance of an employer’s health plan, the health insurance company or plan may want you to reimburse it out of any personal injury recovery. Your “insurance” turns out to be not insurance at all, but a “loan.” The laws in some states, including New Jersey, generally prohibit such claims by insurance companies, but they make the claims anyway. We have seen cases where the insurance companies hired lawyers to make the claims for them. What they don’t tell you is that this area of law, known as “reimbursement or subrogation” is actually quite complicated and is sometimes governed by a federal law called ERISA (The Employee Retirement Income Security Act of 1974). Your attorney must understand the implications of ERISA on your case.

There are other liens that may affect your total recovery in the case. If your bills were paid by Medicare, Medicaid, the United States Government (including “free” military care) you may be forced to pay back a portion of your settlement.

11 Questions to Ask The Insurance Company Who Wants You to “Just Sign a Few Forms and Give us a Statement”:

1. Will you put in writing that the accident was not my fault?
2. Will you tell me how much insurance the person who hit me has?
3. If I give you a recorded statement will you give me a copy of the recorded statement that you already got from the person who caused the accident?
4. If I sign this medical release will you immediately forward to me a copy of everything you get using my release?
5. Will you tell me how much money you have set aside in ‘reserve’ to pay my claim?
6. Will you give me copies of the recorded statements that you have taken from any witnesses?
7. Will you tell me now whether there is any ‘umbrella’ insurance coverage available to cover my claim?
8. Will you tell me whether you have already done video surveillance of me?
9. Will you give me a copy of any “index” information that you have already gotten from your computer system?
10. Will you give me a copy of any financial information that you may have already obtained on me?
11. Will you tell me which of my neighbors you have already interviewed?

Good Luck! Our experience is that the information sharing with insurance companies is a ‘one way street.’ You give to them and they don’t give to you!

The Legal Process in Personal Injury Cases

After gathering all of the facts and medical records and after your medical treatment has ended, your attorney will develop a settlement strategy with you and attempt to get your case settled with the insurance company. There are many reasons to settle a case including the fact that we are living in a very conservative part of the country as far as jury verdicts go and your costs will usually be less than if the case goes to trial. Your attorney will help you analyze the insurance company's best offer and compare it to what you might net by going to trial. Of course, you must know that every case (even 'obvious' cases) can be lost.

Sometimes, attempting to negotiate with the insurance company before filing suit is not a worthwhile endeavor. Insurance companies sometimes use pre-suit negotiation only to attempt to find out as much about you, your lawyer and your doctor as they can. It is generally a dangerous practice to wait until the statute of limitations has almost expired to file suit. I have seen other attorneys do this only to find that the defendant they sued is either not the correct defendant or is now blaming someone else.

While there are legitimate reasons for delaying filing suit, there is no excuse for the practice whereby an attorney waits until the last moment to see if the insurance company will settle your case. Sometimes out of state lawyers attempt to represent people with New Jersey claims. When the claims do not settle, they often try to find an attorney to file the case on time. (I've received plenty of those last-minute calls. I reject them. I lead a balanced life and don't need to take on problems other attorneys have caused by their delay in taking action. Their inaction is not going to be my crisis.) Some accident victims are ill served by hiring attorneys who are not licensed in the jurisdiction where suit must be filed.

Once the lawsuit is filed, both sides engage in the legal process called discovery. Each party is allowed to investigate what it is the other side is going to say at trial. The defendant will be permitted access to your medical and work history, including your income records. You may have to give a deposition under oath and you may be required to submit to a medical examination by a physician of the defendant's choosing. The defendant is also subject to discovery. He will answer written and oral questions about his own background and he will have to give sworn testimony about the incident at issue.

Here are some of the Arguments the Insurance Company Will Use to Justify a Low Payment (or outright denial of your claim)--

1. You weren't wearing your seatbelt.
2. Your car had defective equipment.
3. You were drunk or impaired by legal or illegal drugs.
4. You didn't see our guy blow the red light so it's your fault you got hit.
5. You exaggerated the bad guy's speed or conduct so you are not credible.

What Cases Do We Not Accept?

- Cases involving minor impact. Bumps and scratches on your rear bumper do not make for a good case in New Jersey. Sorry.
- Cases with very minimal medical treatment. Cases in which there is little or no medical treatment can usually be settled on your own or with a less experienced attorney.
- Cases with significant pre-existing injury in the same body part. If you have had three back surgeries before this accident, then the chances of a jury awarding you a substantial amount of money for your back injuries here is very low.
- Cases where the statute of limitations will soon run. Your delay is not going to become my crisis.
- Cases where you were charged in the accident.
- Cases where you assumed the risk of your injury. Please don't call us if you spent three hours in a bar and let your drinking buddy drive or if you decided to test to see how fast your mom's Lexus could really go. You got what you deserved, sorry.
- Your case has already been filed by another attorney. We like to do things our way.

Well, Are There Any Cases Left?

Yes there are and we represent lots of accident victims. Our clients are positive thinkers, not whiners or frauds.

We represent many clients with valid claims. When we devote our time and resources to representing only legitimate claimants with good claims, we are able to do our best work. We have found that getting bogged down in lots of little cases, each with a "special problem" is not good for our clients with legitimate claims.

THE FIVE DEADLY SINS THAT CAN WRECK YOUR CASE

Here are what I consider to be the Five Deadly Sins that can wreck your personal injury claim. These sins are based upon my experience and discussions with many judges and jurors.

1. *The Client is Referred by the Lawyer to a Doctor or Chiropractor*

Some local judges call this “service” provided by some lawyers “the kiss of death” to a claim. I heard of a long-time attorney who was disbarred because he referred clients to a chiropractor and then told his clients to lie about the referral when asked in deposition. The problem is that jurors are highly suspicious of lawyers and doctors who have a referral relationship. While the client may not know how many of that lawyer’s clients have been referred in the last 12 months to a particular doctor, you can bet that the insurance company knows it or will find out about it. How credible do you think that doctor’s testimony will be when the jury finds out that he treated 50 patients from the same lawyer last year?

Are there exceptions to this rule? Yes, there are.

You may have a very special need for a doctor with a special expertise. It is perfectly legitimate for the attorney to make that suggestion/recommendation. If every client, though, is getting referred to the same chiropractor or the same orthopedist, then that is a huge problem. (So beware of the attorney who has a stack of doctor/chiropractor cards in his office. You need to ask the right questions and fully understand the business relationship, if any, between that attorney and the doctor.)

2. *Hiding Past Accidents From Your Lawyer*

Once you begin a case, the other side will be interested in knowing how many past accidents you have been in. The reality is that they probably already know the answer or have easy access to that information. All insurance companies subscribe to insurance databases and often the only reason they ask you this question is to find out if you are an honest person.

If you have been in other accidents, your lawyer can investigate this and make a determination as to whether this is a valid problem in your case or not. If you do not tell your lawyer, however, and you misrepresent your accident history to the insurance company, then it is almost guaranteed that you will lose your case.

One former client told us that she didn’t think she needed to disclose prior accidents to us because “It didn’t matter.” The insurance company already knew and when they told the judge, the case was lost. While we could have dealt with a past accident had we known about it, the mistake cost our client \$75,000.

Another client gave our confidential analysis of the good parts and bad parts of her case to her father. He gave it to his insurance company which gave it to the defense lawyer. Bye-Bye case! “Confidential” means CONFIDENTIAL.

3. *Hiding Other Injuries*

It goes without saying that you should be upfront and honest with your attorney about any injuries that occurred before or after this accident. Again, if you saw a doctor or other healthcare provider, then there is a record in existence that the insurance company will find. Your lawyer can deal with this if he knows about it. If you lie about it, and the insurance company finds out, then your case is over. Remember, there is no privacy in America today. When you make an insurance claim, your life becomes an open book.

If your doctor keeps “two sets of records” because she’s been treating you for years and you don’t make sure that we get ALL of the records, we’ll fire you. Simple as that.

4. *Not Having Accurate Tax Returns*

In many cases, a claimant will have lost income because of the accident. You will only be able to claim that lost income if your past tax returns are pristine. You don’t want to risk going to jail by claiming a loss of income, only to have your past tax returns not back up your claim. Again, being honest with your attorney is the only way to be, because he or she can deal with the problem if they know about it. Although you may have a good case, you may have to drop your claim for lost wages.

Be aware that you will most certainly be required to produce your tax returns if you file a lawsuit and claim lost wages. If you are a liar and a cheat, this will come back to haunt you in your injury case and I don’t want my name associated with liars and cheats.

5. *Misrepresenting Your Activity Level*

Insurance companies routinely hire private investigators to conduct videotape surveillance. Now, they also troll YouTube and other social networking sites or “Google” you. If you claim that you cannot run, climb or stoop, and you get caught on videotape or brag about break dancing on the Internet, you can forget about your claim. There is no explanation (other than “you got my brother, not me”) that can overcome the eye of the camera. One of our former clients claiming a “back injury” got caught on his roof repairing shingles. That didn’t look so good and I fired him as a client when I found out.

The Insurance Companies Will Stop at Nothing to Destroy Your Claim

This story is almost unbelievable yet Progressive Insurance Company once ADMITTED to these actions. It seems that the insurance company actually hired private detectives to JOIN A CHURCH in order to discredit a couple suing the insurer.

Progressive Corp Chief Executive Glenn Renwick later apologized for the use of private detectives.

What the investigators and Progressive people did was wrong - period," Renwick, head of the third-largest U.S. auto insurer, said in a statement. "I personally want to apologize to anyone who was affected by this.

Apparently the Progressive detectives worked their way into and taped support group sessions.

This conduct is outrageous but, unfortunately, not all that unusual. Victims of car accident cases must be ever vigilant because these companies will stop at nothing.

Progressive has been sued on this matter and based upon the admission, of its CEO, should expect to pay millions.

Please Refer a Friend to Get Our Free Newsletters

If you are reading this book you probably get our monthly newsletter. (If not, call us and we'll sign you up.) Now, you can get this newsletter for all of your friends. Now they can know how to best deal with insurance company denials; find out specific steps they can take to find the best lawyer for their case; read the "inside story" about frivolous lawsuits and get some practical advice about buying insurance from someone who does not sell insurance.

There is no need to destroy this book. Just photocopy this form, fill it out and mail or fax it to us. Fax to 908.782.5005 or mail to Wendy S. Bornstein, Esq. 14 Commerce Street, Flemington, NJ 08822. Or send us a list of names and we'll send them the newsletter along with a note telling them that you've helped make it available to them. Don't worry, we don't spam! If they don't want to get it there's always a toll free number to use to get off of the free subscription list.

Please start my subscription to your free legal newsletter:

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

If you would like to also receive our email newsletter, published 12 times a year, just give us your email address. We do not share our mail/email lists with anyone!

(email)



About the Author:

New Jersey attorney Wendy S. Bornstein has been representing individuals against insurance companies for over 20 years. She is certified by the New Jersey Supreme Court as a Civil Trial Attorney. Before starting her own law practice in 1990, she represented many insurance carriers defending personal injury claims. That experience has given her the unique ability to know how insurance adjusters think and what they require in order to settle a claim.

Ms. Bornstein has served as an arbitrator both privately and for the Superior Court of New Jersey. She has lectured to the legal profession on issues in the field of personal injury and civil litigation.

Wendy S. Bornstein



BORNSTEIN LEGAL^{LLC}

WE STAND FOR INJURED PEOPLE

Somerset County Office
1200 Route 22, Suite 2000
Bridgewater, NJ 08807

Hunterdon County Office
14 Commerce Street
Flemington, NJ 08822

(908) 782-0075
www.bornsteinlegal.com
wbornstein@bornsteinlegal.com