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Anatomy of A Good Personal Injury Case ---Part 1

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Woodland Hills Personal Injury Attorney Barry P. Goldberg was recently hired to represent an 18 year old traffic collision victim who was violently rear ended on the freeway---A very serious accident to be sure. During the initial interview, discussion about expectations with the victim and her family, it occurred to Mr. Goldberg that the topics addressed may give important insight to other injury victims. Moreover, the discussion gives some insight about how an attorney analyzes and evaluates a case.

Here is a little background. The victim, a college student, was rear ended at high speed two days before this interview. She has documented loss of consciousness and her main complaints revolve around “post concussive” symptoms like headaches, nausea, word finding, and general malaise. She had difficulty recalling her cell phone number and could not concentrate on our meeting. She had few words to say and I observed her starring off unconcerned from time to time. She does not recall the accident. The first thing she remembered after the crash was having a laceration on her check stitched up in the emergency room.

Fortunately, the Highway Patrol was nearby and prepared a comprehensive traffic collision report. That report will be available to us in about a week to 10 days. In discussion with the investigating officer, the parents believe that the offending vehicle was a large Chevy Silverado King Cab of a recent model year---- that’s it! The photographs of the property damage are more than dramatic---they are incredible. Her well aged Honda Accord was completely demolished up to the



rear of the driver's seat. It would appear that the safety considerations built into that vehicle worked perfectly and absorbed devastating force.

The family maintained a "liability only" minimum limits policy. Without an immediate contact from the adverse driver's insurer, the family wisely had the wreckage towed to a relative's home so no storage charges would be incurred. The 18 year old victim was well treated at Kaiser Permanente with instructions to return. She has a doctor's note excusing her from classes. However, how and if she can participate in her final examinations is in serious question. The family wanted to know 1) what I thought about the case; and 2) what was going to happen.

After assuring the family of my qualifications and substantial experience in these types of cases, I explained that it is impossible to predict what would happen in the case. Most notably, without a traffic collision report, we simply had no information whatsoever regarding the likely sources of recovery. I explained that liability insurers pay the overwhelming majority of auto injury claims. Since the family had no applicable Uninsured Motorist Coverage, we would be forced to first look at the policy, if any, that protected the adverse driver. I was careful to explain that in most cases where there is no insurance available, it is rare that the driver would have sufficient personal assets to compensate the victim for her injuries.

On the other hand, given that the adverse driver had a relatively recent and expensive vehicle, some insurance is likely. In addition, large pickup trucks with extended cabs are often used by contractors and others for work-related tasks. Vicarious responsibility for respondeat superior will have to be explored. I explained to the family that this case would never be in a position to consider a settlement until the insurance, work and personal assets questions were answered.



An even more important consideration is that a case can never be fully evaluated unless and until the accident victim's medical condition is fully understood. I emphasized to the family that first class proper medical care was the most important consideration over and above any accident claim possibilities. This young lady has to live with her injuries and the legal system may or may not provide an avenue for fair and adequate compensation. I urged the family to insist on complete and active medical treatment through her Kaiser coverage including, but not limited to, a neurology consult, orthopedic consult, plastic surgery consult and a psychology consult for accident desensitization.

Until I receive some word that there is liability insurance available, I felt uncomfortable taking the victim outside of her medical network for these essential services. However, future physical therapy and other medical services may be more complete and tailored for litigation if sufficient resources become available. It was also explained completely that Kaiser, and any other medical provider, will have a lien on the proceeds of any claim or case. Although these lien holders have become more aggressive over the years, in the end, we insist that there be fair and equitable reductions or even waivers depending on the outcome of the case.

Then, off we went to notify the client's insurer about our representation. We immediately requested the traffic collision report and are obtaining additional property damage and injury photographs.

Because the NEXT PART of this "Anatomy" is unknown to us, we will provide an update as soon as we learn more. Expect that there could be bad news---little or no liability insurance; or moderate news---that there is some liability insurance available; or good news---that there is a sufficient pool of resources between liability insurance, employers insurance and assets to adequately compensate my client. Stay tuned!

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For more information about blog author and attorney Barry Goldberg's civil litigation expertise, please visit his web page, [Woodland Hills Civil Litigation Attorney. *http://www.barrygoldberg.com/Practice-Areas/Civil-Litigation.aspx*](http://www.barrygoldberg.com/Practice-Areas/Civil-Litigation.aspx)

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