

# Why Most Accident Victims Do Not Recover the Full Value of Their Claim

An Insider's Guide  
to Accident Claims

Including  
10 Mistakes  
That Will Reduce  
the Value of  
Your Claim

By New York Accident Attorney  
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**My Guarantee**

Before I begin, let me be very clear about one thing: I guarantee that the information I provide in this book will prove extremely valuable if you, a friend or loved one has been injured by someone else's negligence. No "ifs," "ands" or "buts" about it. And no "small lawyer" print either.

**Separating Truth from Fiction**

Perhaps the most often used-and misleading-information provided by attorneys in their advertising, is the dollar values of the verdicts rendered in personal injury cases. If you look more closely at the reports of these cases, you can't help but notice that, generally speaking, precious little detail is given about these cases; thus, it should come as no surprise to you that the information that is selected for reporting in these cases is cherry-picked to make it seem like people with little or no injury were awarded hundreds of thousands, or millions of dollars.<sup>1</sup> These attorneys are hoping that you'll

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<sup>1</sup>For example, the fact that I have personally handled class action products liability cases against multi-national companies with class members in the thousands is not reason enough, in and of itself, to hire me or my firm. Nor are my firm's past results (which can be viewed at my firm's website), an intrinsically fair indication of what results you could expect for your case.

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believe that regardless of the facts of your case, they can obtain untold fortunes of money for you.

### **The Truth**

I am continually amazed by the sheer number of people I've come in contact with over the last decade who were profoundly disappointed when the insurance companies did not voluntarily throw money at them just to settle their case even when the accident was clearly someone else's fault. These people are surprised that the insurance companies were, and are, willing to fight to the bitter end before paying most claims – just as any of us would if someone tried to take away our money.

Likewise, in my experience I have found that prospective jurors love to cite that now-infamous McDonald's case, where the woman received well over \$1 million when the coffee cup she put between her legs caused her second and third-degree burns, as the paradigm of a judicial system run amok. But I have also found that these same prospective jurors usually concede that the results in that case would not be "outrageous" had they known that there was evidence that McDonald's deliberately made their coffee scalding hot -- with the tacit knowledge that patrons may get burned -- simply because they would make more money that way.

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There are many people who feel entitled to “get rich quick” for every perceived slight or injustice done to them. In these people’s defense, the vast majority of the lawyer ads I’ve seen make it seem just that easy. And I think that these ridiculous ads are largely responsible for the success that the insurance industry and doctors’ groups have enjoyed in their large-scale campaign to paint trial lawyers as the villains behind rising insurance costs. (This contention is patently untrue – and you are welcome to see articles on this issue at my website – [www.JonathanCooperLaw.com](http://www.JonathanCooperLaw.com).)

I have written this book so you can have a very basic understanding about accident cases, how your case will be evaluated by the insurance companies, and what questions you should ask an attorney in order to assure you are getting an honest assessment of your case.

### **Is This Book for You?**

If you think you should have truckloads of money thrown at your feet because you sprained your thumb, I can’t – and won’t – help you. This book is for people willing to understand that the world of accident cases is very difficult, and it is for you if you are prepared to learn how to improve your chances at maximizing your recovery *if you have a legitimate case*. To that end, even if you have a

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legitimate case, I cannot help you if your case is too small. Simply put, the way the laws (particularly in auto accident cases) are currently written, there is virtually no room for small cases.

But if you were seriously injured, and the accident was someone else's fault, I can help.

My name is Jonathan Cooper, and since 1997, I have worked in the personal injury field. I spent the first three years of my career exclusively defending the insurance industry and governmental defendants. Since that time, I have used the knowledge that I gained from that experience to represent seriously injured individuals.

I have lectured to other attorneys about civil practice in New York, and I'm proud to say that I get well over 95% of my clients from other attorneys who used to be my adversaries, and from former satisfied clients. My firm's website ([www.JonathanCooperLaw.com](http://www.JonathanCooperLaw.com)) has a lot of useful information and links on a variety of topics, including accidents, defective products and environmental hazards (including mold), and is regularly updated.

### **Why Did I Write this Book?**

I am tired of people being misled and disillusioned by attorney ads that all but promise people untold fortunes of money, and that the client

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will nary have to lift a finger, or even show the slightest interest, in their own case.

I wrote this book so that you can have good and straightforward information to review and study about accident cases in the comfort of your own home, and on your own time.

Quite frankly, this book also saves me a lot of time. For reasons that I will explain below, I can't – and don't – accept every case that comes my way; in fact, I probably decline over 90% of the cases that are referred to my office. Simply put, a good initial evaluation of the case takes at least one hour, and if you offer (as I often do), free initial consultations to every case that comes in the door, there would be little, if any, time to get work done.

By writing this book, I get a chance to “talk to you” about what you need to know about accident claims so that you can make an informed decision about what steps to take with your case to make sure that you maximize your recovery, assuming it is a legitimate case. Further, even if I can't accept your case, I want you to be educated about the process so you don't fall prey to the ploys of the insurance companies or slick lawyers.

**This Book Is Not Legal Advice**

That being said, it is important that you understand the limitations of this book. Although I believe this book is extremely valuable as a resource to identify common pitfalls that plague claimants' cases, every case is unique, and presents its own particular facts and legal issues. Consequently, please do not construe anything in this book to be legal advice about your case until we have mutually agreed in writing that I have accepted your case.

**What You Need to Prove to Win Your Negligence Case**

In very basic terms, you need to show that the defendants were negligent, i.e., at fault, for causing your accident, and that the defendants' negligence was a "substantial factor" in causing your injuries. The nature of the proof necessary to establish the defendants' negligence varies widely depending on the type of accident involved. For example, in a sidewalk defect case, you will need to show either that the defendants affirmatively created the defect, or that they knew or should have known about the defect long enough before the accident that they had time to repair it yet failed to do so. On the other hand, in a car accident case, you will be required to show that the defendants failed to obey the rules of the road and/or that they



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failed to take reasonable measures that would have avoided the accident.

In a defective products case, however, the requirements are more complicated; New York's courts have required plaintiffs to demonstrate that the product fails a seven-factor test in order to demonstrate that the product is defective. These factors include weighing the product's utility to the public as a whole and to the individual user; the likelihood that the product will cause injury; the availability (and feasibility) of a safer alternative design, and the degree of awareness of the product's potential danger that can reasonably be attributed to the injured user.

In many types of cases, particularly in defective products and professional malpractice cases, you will need expert testimony to prove that the defendants were negligent. In nearly all cases, however, you will need expert testimony to establish the nature and severity of your injuries.

### **How We Determine if We Are Going to Accept Your Case**

Since it takes a significant amount of time, money and effort to conduct the necessary investigation to prove the defendants were negligent (even in a case where the liability is fairly clear-cut),

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and to review this information, as well as the pertinent medical records with carefully selected experts, I believe that the monetary damages for your case must exceed \$50,000, or you must have suffered a significant and permanent disability or disfigurement to warrant the expense and risk of prosecuting your case. ***I concentrate my efforts on increasing the value of good cases. I have no interest in exacting "greenmail" for frivolous ones.***

Assuming that your case meets this threshold, I will take a comprehensive statement of the factual history of your claim, and will ask that you assist my office in obtaining records that will be necessary to prosecute your claim, including tax and employment records, and of course, your medical records. Before proceeding any further, it is important to mention (although the attorney ads never tell you this), if your medical bills were covered by a health insurance plan (or Medicare/Medicaid), those plans will likely demand reimbursement out of the proceeds of any personal injury recovery. Likewise, if you received Workers' Compensation benefits due to the injuries you sustained in an accident, your employer's insurer will likely assert a lien against any recovery you get in your case.

**Having A Clear Understanding of the Roles that Your Attorney and You Have in the Litigation Process is Critical to the Success of Your Case**

You have every right to expect that your attorney will give you, at a minimum, quarterly updates on the status of your case. Your attorney should also keep you apprised of significant developments in your case as they occur. Some examples of this include when the complaint is filed, advance notice of your deposition (including scheduling a preparatory session), and when your case has been assigned a trial date.

You should also find out which attorney will actually be working on your case. One of the chief advantages of hiring a smaller firm, such as mine, is that the vast majority, if not all, of the details of your case will be handled by one attorney. In order to further clarify the role that the attorney may play in your case, following is a general outline of the tasks that he/she may do in prosecuting your case:

- Client interview
- Educate you about negligence claims
- Gather documentary evidence, including photographic, investigative and medical records

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- Interview known witnesses
- Research and analyze the pertinent legal issues, such as comparative negligence (i.e., the claimant's relative degree of fault for the accident), the defendants' compliance with (or violation of) statutory or regulatory guidelines
- Obtaining the relevant medical literature and talking with your doctors (or assuring that you are sent to appropriately qualified doctors) to gain a fuller understanding of the extent of your injuries
- Obtaining and analyzing all applicable insurance policies to ensure (to the extent possible) that all available avenues for recovery are contacted
- Obtaining appropriate expert reviews of your claim
- Recommending whether an attempt should be made to negotiate the case with the insurance company (if applicable), or whether suit should be filed
- If suit is filed, preparing the client and witnesses for depositions

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- Preparing written demands for documents, such as incident reports, from the defendants, and responding to the defendants' written discovery demands
- Preparing and/or responding to motions made to the court on various legal and discovery issues
- Going to court to set a discovery schedule and a trial date
- Preparing the client and witnesses for trial, including organizing medical and demonstrative exhibits, filing briefs and/or motions with the court to eliminate surprises at trial, taking the case to trial with a jury or judge, and analyzing the jury's verdict to determine if either side has grounds to appeal the case<sup>2</sup>

On the other hand, your attorney should explain that you will be expected to keep his/her office advised as to the status of your medical treatment, of any change in your contact or insurance information, and, perhaps most importantly, to keep the appointments that are

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<sup>2</sup> Our agreement with you does not obligate us to participate in any appeal.

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made for you in the context of the litigation. (On personal note, I have “fired” clients that failed to keep their appointments without justification, because I have found such behavior not only time and money-consuming, but embarrassing for my office before the courts and my adversaries.)

Against that background, I think the following list can be helpful in further explaining the client’s role in the litigation.

**10 Reasons Why Most Accident Victims Do Not Recover the Full Value of Their Claim**

1. ***The Client “judges” the Facts*** – There are few, if any, more damaging things to a case than when a client is not completely truthful with his/her attorney. Harmful information to your case that you fail to disclose to your own attorney at the initial client interview, or even when preparing for deposition or trial, has an uncanny knack of coming out at deposition or trial, and at that point (unless the attorney is apprised beforehand), there is often little that your attorney can do to mitigate the damage.

For example, it is important that you disclose to your attorney any prior or subsequent injuries to the same areas of your body that

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you are claiming were injured in this accident, because the defendants will ultimately claim that this prior or subsequent incident was responsible for your injuries rather than the subject accident, and your attorney must be prepared to deal with this eventuality. Moreover, it is equally important that you disclose to your attorney any negative thing that could potentially have any bearing on this case, such as a felony conviction, or witnesses (or other evidence, such as documents, photographs or a videotape) that may come in against you at trial.

2. ***The Client Fails to Obtain the Other Party (or non-party witness)'s Contact Information*** – Although this may be self-evident, it is far more difficult to collect money for your injuries if you don't know who to sue, and have no one else to support your version of the events. The defendants' attorney will certainly suggest the obvious at trial -- that you are a biased, interested witness, which reduced your credibility.
3. ***The Client Fails to Take Photographs of the Defective Condition or Injuries Shortly After the Accident*** – Photographic evidence depicting a sidewalk defect, or even the

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position or damage to two vehicles that were involved in an accident that are taken either immediately or shortly post-accident carry enormous evidentiary value in establishing the liability in a case, because they most accurately reflect what likely occurred in the accident. Equally important, if the case involves burns, scars, bruising or casting, those injuries will most likely look far more severe initially than they will weeks or months later.

4. ***The Client Fails to Promptly Notify All Insurers of the Claim*** – It is not enough to notify your insurer about the accident and claim; you must ascertain the identity of the other party’s insurer(s) and notify them – in writing – about the claim as soon as possible. Otherwise, they can disclaim coverage for the accident based upon the failure of all involved to timely apprise them about the accident. In that case, you may be left without adequate resources to compensate you for your injuries.
5. ***The Client Fails to Carry Enough Underinsured/Uninsured Motorist Coverage***  
- Likewise, if you are involved in a hit-and-run accident, or an accident where the other vehicle carries minimal insurance, your



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recovery will often be limited unless your own insurance policy has adequate underinsurance coverage. Although a full discussion of this topic is beyond the scope of this work, it may be briefly summarized as follows: in the event of a claim, you are first compensated by the other driver's insurance company within their policy limits. Once this policy's limits are exhausted, you can make a claim with your own insurance company for the balance. In many instances, your insurer will not discuss this provision of your policy with you in detail, but it is very important. For little additional money, you can purchase coverage that will assure that you are compensated appropriately for your injuries – even if the other party has inadequate coverage.

6. ***The Client Fails to Promptly Seek Appropriate Medical Attention After the Accident*** – One of the first things that an insurance company – or a jury – looks at in evaluating a claim is whether the claimant sought medical treatment immediately post-accident. The reason that this is so important is fairly obvious: Chances are that if you really were severely injured as a direct result of the accident, you would need immediate

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(or near-immediate) medical attention.<sup>3</sup> Simply put, the longer you wait to seek appropriate medical attention post-accident, the less likely anyone is going to believe that your injuries were caused by this accident.

7. ***The Client Fails to Follow Doctors' Orders or Obtain the Necessary Diagnostic Tests to Confirm the Nature or Extent of the Injuries***  
– Let me say this very plainly: you can have the most agonizing back condition known to humanity, but if you don't get objective tests that confirm and quantify these injuries, you will never see a dime in recovery for your injuries. In the same vein, if you ignore your doctors' advice to continue treatment for your injuries, the assumption is that your injuries have resolved.

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<sup>3</sup> Parenthetically, the courts even relax certain evidentiary rules with regard to statements that are made to medical personnel at an accident scene or shortly thereafter, because the statements made at that time generally have more credibility than later, after the injured party has had time to think about the consequences of the accident, and perhaps even consulted with an attorney.

8. ***The Client Goes to Disreputable Doctors “Mills”*** – It should come as no surprise that neither insurers nor juries are impressed by doctors whose narrative reports do not vary from one patient to the next. I’ve even seen cases where these doctors leave the body of the report the exact same from one patient to the next – but have gotten caught because they forgot to correct the name of the patient at the top of the report. Similarly, I have seen cases where a client’s case went “down the tubes” when his medical expert’s credibility was destroyed when the jury learned that he had been disciplined by the Office of Professional Medical Conduct. I strongly urge you from both a medical and legal perspective – **SEE A QUALIFIED DOCTOR.**
  
9. ***The Client Fails to Document Out of Pocket Expenses*** – I assure you, at some point during your case (most likely during documentary discovery and at your deposition), you will be called upon to indicate how much this accident cost you in terms of out of pocket expenses. Examples of this include cab fare, additional household help, and medical expenses (including prescriptions and co-pays). Keep receipts and

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a diary of the expenses. It will help you prove these claims later.

10. ***The Client Fails to Document Properly His/Her Lost Earnings Claim*** – A jury cannot be expected to believe your claim that this accident has completely prevented you from obtaining gainful employment unless you can demonstrate – with concrete proof – that you made good faith attempts to get a job after the accident, but were rebuffed. These efforts will be necessary not only for your credibility before a jury, but to provide the strongest basis for a vocational rehabilitation expert’s testimony at trial.

### **The Legal Process in Accident Cases**

In most serious injury cases, attempting to negotiate with the insurance company before filing suit is a waste of time. The insurance companies use pre-suit negotiation in order to get a head start on their investigation of your claim, and to dig up as much dirt as they can about you, and particularly, anything they can use to demonstrate that your injuries were caused by something other than this accident. Moreover, I have seen several lawyers get into trouble by allowing cases to remain in this “claims” stage until just before the statute of limitations has expired before filing suit.

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In New York, a lawsuit is begun by filing a summons and complaint in the appropriate court. After the defendants serve their answer to the complaint, both sides engage in the legal process called "discovery." In discovery, the defendants will be permitted access to your medical, work history and income records. Additionally, you will be required to give a deposition under oath, and to submit to one or more medical examinations by the defendants' designated doctors. In short, when you file an accident case, your life becomes an open book.

On the other hand, the defendants are also subject to discovery. They will be required to provide documentation in terms of accident reports, records of prior similar occurrences (in defective premises cases) and photographs of the instrumentalities involved and the accident scene. The defendants will also be required to submit to depositions under oath.

After the discovery process has concluded, the plaintiff is required to file with the Court a document called the note of issue, which certifies that the case is ready for trial. Although it varies greatly from county to county, you can generally expect to go to trial in approximately 9 months - 1½ years after the note of issue is filed.

**Why You Should Hire Us**

As I'm sure you are aware, there are many, many attorneys who advertise for accident cases. Unfortunately, some of these attorneys have so many small cases in their offices that few, if any, cases get their personal attention. Others have no intention of trying your case themselves, and if the case cannot be settled with the insurance company, they will try to refer your case to another law firm for trial purposes.

Our clients get personal attention because we are very selective in the cases that we take. Without looking at formal numbers, we probably decline well over 90% of the cases that are referred to our firm in order to devote personal, careful attention to legitimate cases with serious damages.

**OUR SERVICES**

**We are here to represent you every step of the way of your claim. Sometimes the best advice is that you do not have a claim that can be won. If that is true, we will tell you so. If your case meets our criteria for acceptance, you can be assured that you will receive my personal attention. I will keep you advised as to the status of your case, and give you my advice as to whether your case should be settled, or whether we should go to trial.**

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**An initial consultation is free. We will fully explain our fees and costs to you before proceeding. Together, as a team, we will decide on the tactics best suited for your case.**

***Jonathan Cooper***