

THIRD EDITION

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THE 5 WORST MISTAKES THAT CAN RUIN YOUR INJURY CLAIM

AVOID THEM AND YOU MAY
HAVE A SHOT AT WINNING

**THE PREMIER GUIDE TO ACCIDENT
AND INJURY CASES IN CALIFORNIA**

Foreword

If you become injured, whether from a car crash, a defective product, a dangerous condition of property, a vicious dog or medical negligence, you enter a war zone. You are pitted against the insurance industry, big business, governmental entities, the courts, and all of the resources at their disposal. Hear me now, and believe me later when I say that no defendant or insurance company, no judge or jury, and no business or governmental entity will have your best interests, your health or your well being at the top of their list of important things to protect and defend. Every other person and entity that you deal with in pursuing your claim for compensation for injuries and losses has an agenda. That agenda is to protect themselves, not you or your family.

When I say that you enter a war zone, I do not use the term loosely. It is exceedingly rare for any defendant to admit responsibility for causing injuries or harming another person. It is rarer still for any defendant to willingly compensate you for your losses. The insurance industry, whose very purpose and existence is supposed to be to pay legitimate claims for their insureds, has become warped and virtually unrecognizable. The insurance industry now views its claims departments as profit centers. Their purpose is to offer less than your claim is worth, and force you to fight, at great time and expense, for every penny you collect from them. The money

that they withhold from injury victims represents their profit from the premium dollars they collect, year in and year out, from their policy holders.

You need reliable information BEFORE you deal with an insurance claims representative or hire an attorney. This book is one in a series in the Premier Guides to Accident and Injury Cases in California. It explains, in clear terms, what you need to know before you take action in your own claim, or the claim of a friend or loved one.

If you decide to hire an attorney, this book will provide guidelines and suggestions on what to look for in an attorney, what questions to ask, and what kind of answers you can expect to get in return.

You will learn what insurance companies, and their claims representatives look for in evaluating claims, and some of the many pitfalls you must avoid in presenting your claim.

Most importantly, this book addresses mistakes that are commonly made, both by well meaning people trying to handle their own claims, as well as by inexperienced attorneys and even doctors that provide medical care to injured people.

Making serious mistakes in your personal injury claim can ruin your case before it even starts. By avoiding mistakes in dealing with insurance claims representatives, lawyers and doctors, you will significantly increase the chances of a successful outcome.

Equally important with avoiding bad decisions is the need to make correct choices in how to proceed with your claim, and what lawyer to select to represent your interests to an insurance company and a jury. To accomplish these important tasks, you need to know what is important to insurance companies and juries, as well as how the legal system works. That is what this book is about. To teach you what you need to know so that you can make the decisions you need to make, before you have to make them

John P. Rosenberg has been a licensed attorney in California since 1977, practicing in the field of personal injury law. He is a graduate of UCLA and Southwestern Law School. After successfully handling thousands of cases, he wants to share his knowledge with consumers before they need to make decisions about their own personal injury claims.

This book is intended only for accident and injury claims in California. Tort laws vary from state to state. The laws and principles discussed in this book may not be accurate for claims in any other state. No warranty is made as to any result, any specific claim or any specific set of circumstances. A local attorney should be consulted for specific claim questions and legal issues.

Would a Lawyer Take On Fewer Cases So He Could Spend More Time On Your Case?

We are a different kind of law firm.

We don't rely on a high volume of cases. We don't claim to handle every type of case. We don't want to. We don't need to.

Each year, we accept a limited number of serious injury, accident, malpractice and wrongful death cases from the hundreds of people who contact us. We are not one of those law firms that advertise on television.

Fewer cases means more time is available for each individual case. This translates to better results, bigger settlements and larger jury verdicts for our clients whose cases do go to trial.



Since 1977 I have represented accident, injury, malpractice and wrongful death clients in the state of California. Our clients are referred to my office by former satisfied clients, by other attorneys who recognize our unique and effective skills in handling such claims, and through our own marketing efforts. If we accept your case and your injuries prevent you from coming to our offices, we will come to you.

I have learned that being able to take more time to get to know my clients and develop the facts and theories necessary to win their cases, the better and more consistent are our results. That is why we take on fewer cases. It will leave more time to spend on your case.

The extra time allows us to spend the time necessary to educate our clients about what they need to know about the claims process, if their claim can be won, as well as the costs and risks of pursuing their claim.

With potential clients we also spend the time to explain if their case is not likely to result in a successful outcome or if the risks and costs make the case not economical to pursue. We'll also advise potential clients when we think they are better off handling your claim themselves—without an attorney.

If we do accept your case, you can be assured that you will receive our close personal attention. I will aggressively represent you, keep you up to date on what is happening in your case and give you my advice and expertise throughout the legal process including when to settle your case and when to 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 way to protect your interests and secure fair compensation for your losses.

Here are some facts and about insurance companies, claims and injury lawsuits. All of them are



These are some common myths about insurance companies and claims. None of them are true.

If you cooperate with the insurance company in all of their requests, you will always be treated fairly and get a fair settlement offer.

After you have been in an accident and an insurance company calls you to ask for a recorded statement and to sign their authorization forms, you must give them what they ask for or they won't settle with you.

It doesn't matter which lawyer you choose, they all have the necessary ability, skills and experience to handle your case.

The insurance company for the party at fault will pay your medical bills and losses as you incur them.

Just because there has been an accident and it wasn't your fault, there must be an insurance company that will pay for your bills, lost wages and injuries.

When you have a serious injury claim, you can believe and rely on the insurance company commercials on television that tell you they will take care of you.

You can rely on a jury to see things your way, and disregard all of the excuses raised by the defendant and his lawyer.

Juries in California are generous.

Here are some facts and about insurance companies, claims and injury lawsuits. All of them are true.

The more serious your claim, the more important it is for you to have someone protecting your interests. If you don't believe me, ask the insurance claims representative in your case to help you with your medical bills and lost income as you incur them. They will not pay you in advance. They will pay you when it is time to settle your entire claim. Not before.

You are not obligated to provide a recorded statement, or sign insurance company form authorizations for your medical records or employment history, despite what you are told by an insurance claims representative. The purpose of a recorded statement is to pin you down to a statement that they will use to find reasons to delay, deny, defend and reduce what they are willing to pay you in your claim. Your recorded statement is not intended to help you or prove your case. They use it to look for reasons to not pay. You can provide information that the insurance company reasonable does need to understand and evaluate your claim without recording you.

The authorizations you are asked to sign provide the insurance company access to all of your medical records, from any doctor you have seen, for your entire life. I have yet to see a form authorization for medical information that limits the insurance company access to medical records. The request for your signature on a document that gives the claims representative access to your entire medical history is not necessary and is a serious and unreasonable invasion of your privacy. They only need access to your medical records that concern your injuries. Never sign an insurance company authorization form without reading it to make sure you understand exactly what personal information you are giving away to the representatives of the person who injured you.

You are not required to give your social security number to the insurance claims representative. You should NEVER give this information. Once given, you have no control over how it is used or who will have access to it.

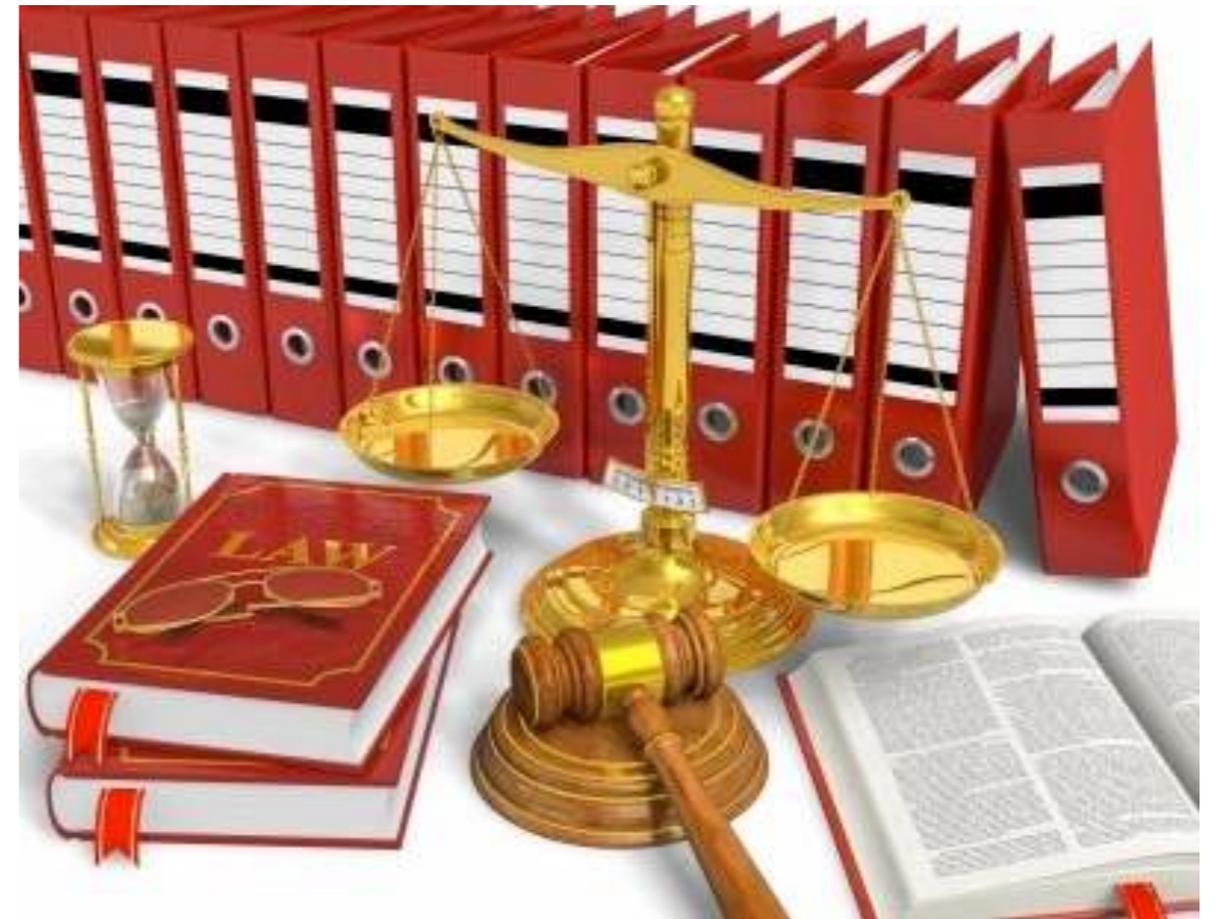
The days when any lawyer, regardless of his specialty, can competently handle serious personal injury claims is long gone. Lawyers vary in their background, experience, skill and ability to properly handle personal injury cases. You must ask the right questions to determine which lawyers are experienced in this field of law and who is the best lawyer for you in your case. I provide plenty of information in this book to help you accomplish this important task.

Insurance companies do not pay medical bills or your loss of income as you incur them. They won't do that because they do not want to make it easier for you to pursue your claim against them. Insurance companies believe that mounting medical bills and losing income will make you anxious to settle quickly; you will be less willing to fight for the full amount that they owe you, and you will settle for less. Denying you assistance when you need it most, especially when they clearly owe it to you, tells you all you need to know about the insurance company attitude towards you and your claim.

Juries in California are very conservative. Jurors are suspicious of people who make claims. Insurance industry propaganda has had its effect on the public. All jurors have been exposed to the constant industry claims of fraud, a need for tort reform, too many lawsuits or out of control jury verdicts, all which have tainted the jury pool. While these claims have no bearing on your case, jurors come into court and repeat this propaganda. The job of your attorney is to identify the jurors who have pre-judged your claim before they even enter the courtroom or hear one piece of evidence, and have them dis-

missed from the panel, and overcome these and other prejudices in those jurors that do serve on your jury.

Why would you need to hire a lawyer for your case?



For seriously injured people, there is a lot at stake in the claims process. Errors in the preparation and presentation of your claim are costly. You only have one opportunity to prove your claim or try your case in a court of law. Presenting your claim must be done correctly the first time.

You can expect to be compensated for your injuries only if you can:

1. Prove the fault of the other person [the defendant.]
2. Prove that you were not at fault if the other side claims that you were.
3. Prove that your injuries and damages were caused by the accident.
4. Prove that all of the damages you claim to have incurred, both past and future, are reasonable, necessary and caused by the defendant's negligent conduct.

One of the unique aspects of the practice of law in the field of personal injury, is that it is one of the few fields of work where there is someone on the other side working very hard to disprove everything that you are trying to prove. The insurance company trains its claims representatives to question and dispute the facts you present in your claim. If you file a lawsuit, they retain lawyers to do the same. If your case goes to trial they hire experts, including doctors, economists and accident reconstruction experts, to dispute everything you say and everything your doctors and experts say on your behalf.

If you don't believe me, check out a report on CNN on [Anderson Cooper 360 Degrees](#), which aired in February, 2007. The hardball tactics and blanket denials of liability by insurance companies revealed in that show are disturbing because they are true and because they are done with the intent to vic-

timize people who have been injured through no fault of their own. Contact us for a transcript of this eye opening report.

In all cases, it is the plaintiff, you, who bears the burden of proving all of the elements of your claim, not the defendant. The defendant does not have to prove anything if you cannot prove your own case first.

Unless you feel comfortable selecting and collecting the evidence you need and presenting it to the insurance company, you should have an attorney represent you. When the insurance company responds to your evidence and your demand for payment of your claim, they will first either deny liability or dispute that you were injured or damaged as badly as you claim, or both. If you disagree with the insurance claims representative, you will need to explain and prove why they are wrong and negotiate with them. If you cannot reach agreement as to your losses and settle your claim, you must file a lawsuit in a timely manner. Do you believe that you are equipped to do this with a trained insurance claims representative? If not, get yourself a good lawyer.

In earlier editions of this book I used the term "claims adjuster" to refer to the people you deal with that work for the insurance company. I have changed those references to "claims representative." Why? It used to be that insurance companies hired and trained people to "adjust" claims by giving them authority to settle or resolve injury claims. These experienced people were called claims adjusters. Today, the person you deal with on your claim is not trained or authorized

by the insurance company to “adjust” your claim. The person you deal with is merely a representative of the company, poorly trained, if at all, to tell you what his or her supervisor or claims department is willing to offer in your case. They have only limited authority to make offers in your case. They tell you what they are instructed to tell you to justify the offers. They do not have any authority to offer more. They do not make the decisions about what to offer you in your case. You are no longer able to or allowed to speak to the people who make decisions about your case.

Some companies use a computer program to decide what to offer to settle your claim. One such computer program, called Colossus, decides what your claim is worth. What the computer program offers depends upon the information entered into the computer program. If the claims representative does not enter all of the information, or if it is not entered correctly, you cannot hope to get an offer that represents a fair evaluation of your damages. The claims representative has no authority to offer more than the computer dictates, and even then, the representative is likely to be instructed to offer less.

The insurance company decision makers are insulated from you. They do not want to speak to you about your claim. If you don't like what they are offering, they are willing to bet that you'll take it anyway. In their minds, they are thinking, “what are you going to do about it...hire a lawyer???”

Who is John P. Rosenberg, and why should you listen to him?

If you've gotten this far, I want to thank you for taking the time to read this book. I hope that the information I give you here will help you to understand the claims process and your role in obtaining fair compensation for your injury case.



I wrote this book so that consumers would have a source of good, reliable information before hiring an attorney or dealing with an insurance company. As I point out later, not every case needs a lawyer. I believe, however, that you should have this valuable information right now, either before you are pressured by an insurance claims representative to answer their questions or settle your case, or before you retain an attorney to represent you.

Lets face it, lawyers are generally disliked and mistrusted. The lawyers I know are extremely hard working and dedicated. We take seriously our jobs of protecting, not only our clients' interests, but preserving the rights of all people and protecting the public against insurance, business and government interests that put corporate profits ahead of families and the individual. Unfortunately, not enough is done to make the public aware of the good works and public service done by attorneys or to make legal knowledge available to the public at large. That is why I give away so many copies of this book. Perhaps, in some small way, freely sharing this valuable information will be a small step in rebuilding the tarnished image of attorneys.

My name is John P. Rosenberg, and I have been representing individuals and families against insurance companies since 1977. You can find out more about me at my web site at www.jrosenberg.com . You can use my website to further edu-

cate yourself in a variety of areas on personal injury and malpractice claims.

Fighting For the Accident and Injury Victims and Their Families Against Insurance Companies Since 1977

A member of Consumer Attorneys Association of Los Angeles

Formerly served as a Judge Pro Tem for the Superior Court in Los Angeles County

Serving on the Arbitrators panel for the Los Angeles County Superior Courts

I have represented individuals throughout the state of California in serious accident, injury, product liability, wrongful death and medical negligence cases. I do not represent insurance companies against individuals, EVER. My office is in Woodland Hills, California.

I realize that a serious injury, and the disruption it causes in your life, can be overwhelming, frustrating, frightening and confusing. You are faced with difficult choices and decisions you never dreamed you would have to make. Wouldn't it be nice to have someone guide you through this maze? Someone who has walked down this path before and can guide you around the traps and pitfalls?

Over the past 30 years, I have represented thousands of people and their families who have been injured by the negli-

gence of others. I have also represented families of deceased loved ones in wrongful death cases. While each case is different, and past results cannot be used to predict future success, I can tell you that I have been privileged to stand up for my clients and help them and their families recover millions of dollars in settlements and verdicts from the insurance companies.

These “wins” came about through hard work and fighting the multi-billion dollar insurance industry which has the primary goal of earning profits. Insurance companies now consider their claims offices to be profit centers. They do this by following their three “Ds” of Delay, Deny and Defend against legitimate claims.

Why Was It Important For Me to Write This Book?

(The short answer is Insurance Companies and Lawyers)

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 openly encouraged claimants to not hire an attorney. Recently, I have received reports that two insurance companies have started sending claims representatives to the homes of accident victims within days after a collision, and before the victim has been released from care by a doctor, offering nominal sums of money and an ORAL PROMISE pay medical bills in the future, in exchange for a signed release from the victim. They do not tell the vic-

tims that their signature is a release of all claims and that the oral promise to cover medical bills is unenforceable.

For over thirty years, I have been telling my clients who are surprised at the way they have been treated by insurance companies, that if insurance companies would just treat people fairly, I would be practicing law in a different field. As it is, I keep very busy because insurance companies treat people who make claims worse than ever. Just ask anyone who has ever had the misfortune of making a claim. You are made to feel like the perpetrator of a crime.

You may not need an attorney to represent you in your case but you should be armed with this important information, right from the beginning of your claim. I wrote this book so that you can be informed, today.

I am also sick and tired of ridiculous lawyer advertising where lawyers with a reputation for handling hundreds of cases at a time [these firms are known in this business as “mills”] make promises that can’t be kept or equate your injury to “cash, cash, cash.” This demeans accident victims with legitimate injuries and trivializes all claims. It also provides ammunition for those people in government and business that rant about the need for “tort reform” and claim that allowing seriously injured people the right to compensation for their injuries is bad for society.

I am also tired of lawyers who file frivolous lawsuits, because frivolous lawsuits hurt everyone by delaying real claims from getting to court and frivolous claims make jurors unnec-

essarily suspicious of honest and legitimate claims. All of these actions hurt honest people who have suffered serious injuries and turn members of the public, who are potential jurors in every case, into angry, hostile and suspicious jurors who may serve as jurors in your case.

Most attorneys require you to make an appointment in which you might get only some of the information that I provide here. None will give you all of the information I provide in this book. I believe that you should be able to have this information, right now, and without any pressure.

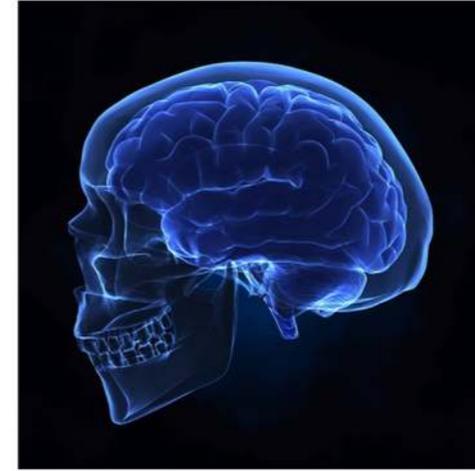
This method of providing vital information to you also saves me time. I've packed a ton of information into this book and it saves me the hours of time that it would take each day just to talk to new potential clients who call. I cannot and will not accept every case and, frankly, each year we turn down good cases that simply do not meet our case selection criteria. So, rather than cut you short on the phone, or in our meeting, writing this book gives me a chance to tell you what you need to know so that you can make an informed decision about what steps to take with your case. Even if I do not accept your case, I want you to be educated about the process so that you don't fall victim to the insurance companies or retain a law firm or attorney that is not right for you.

State Bar Rules of Professional Conduct Do Not Permit Me To Give Legal Advice On Specific Cases In this Book

I know the arguments the insurance company will make — and so should you—even before you file your claim. When you were injured you entered a war zone. The insurance industry has spent hundreds of millions of dollars to inflame the public against you and me. We will be in this together.

Ethics and good sense, however, prevent me from giving legal advice on any specific claim in this book. I can offer suggestions, teach how the claims process works and identify traps, but please do not construe anything in this book to be legal advice on your case until you have agreed in writing to hire me [in a Retainer Agreement] AND I have agreed, in writing, to accept your case. This applies to any attorney with whom you discuss your claim. You do not have an attorney without a signed retainer agreement. And in California, the attorney must give you a copy of that signed agreement.

There are many different kinds of personal injury claims



What is a Personal Injury Case?

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

Personal injury, negligence, malpractice, product liability and wrongful death cases are part of a broad field of claims 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 property damage only cases, but there are many lawyers who do so. If you have been injured and your car has been damaged, then you have both a personal injury and a property damage claim. In those circumstances, either your insurance company or the other person's insurance company will usually take care of the property damage claim.

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

Some of the other types of personal injury cases are:

Product liability: this is a case where an injury was caused by a product that was unreasonably dangerous or defective. The defect can be a manufacturing defect or a design defect.

Medical malpractice: this is a case where injury was caused by the negligence of a medical provider. The medical provider can be a doctor, a hospital, nursing staff, medical technicians or others who are licensed to provide medical care.

Premises liability: this is a case where there is a dangerous or defective condition of property that causes injury.

Government tort claims: these claims are against a governmental entity. It can be a state, a county, a city or any other governmental subdivision. It is sometimes difficult to determine if the injury was caused by a governmental entity. In California, you **MUST** file a claim with the governmental entity within 6 months of the incident. Failure to know this and file the appropriate claim with the correct governmental agency may act as a bar to your claim.

Sometimes an injury comes about as a result of more than one type of claim or negligence, such as medical negligence claims where the injury was caused by a defective medical product. Perhaps it is an automobile accident where the

owner of the vehicle negligently entrusted the vehicle to someone who should not have been allowed to drive. It can be a case of medical negligence at a county hospital. Each defendant and each basis for negligence must be evaluated and acted upon in the appropriate manner.

The above are only a few of the many types of negligence that can and do cause injuries every day. Your attorney must know how to recognize the nature of the negligence involved and be experienced in handling the type of case that you present.

If you are already represented by an attorney, this book may raise questions for you. Ask your current attorney these questions. Every lawyer does things a little differently. If you are currently represented, use this book to increase your knowledge and to become a better informed consumer and work with your attorney to get the best result possible in your case.

What About Libel and Slander, Wrongful Termination, Discrimination and Workers Compensation Claims?

When you are hurt by anyone's false and defamatory statements, you have libel or slander "personal injury" claim. Wrongful termination claims, when you have been wrongfully terminated from your job, are injuries, as are cases of discrimination in the work place. Workers Compensation claims are also injury claims that occur while the injured person was acting on the job or in the course and scope of their employment. Workers compensation rules are different and specific

to each state. I do not handle Libel and Slander, Wrongful Termination, Discrimination or Workers Compensation cases. There are plenty of lawyers who handle these cases, and we will be happy to try to help you find a lawyer if you have a claim or case in an area of law that we do not handle. There is no charge for this service.

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, government and business 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.

Even then, the insurance companies rely upon their propaganda to have hardened the jurors to limit the amount of money the jury is willing to provide as compensation for your injuries.

What Must be Proven to Win a Case?

The law does not require compensation for every injury. You must prove that someone else was negligent or careless and that it was their negligence or carelessness which caused your injury. If you have suffered an unfortunate accident that is no one else's fault, or if you do not sue the right person, then the law says that you will not win your case.

In California, even if the other party admits fault, they can still blame you, claiming that the accident was partially your fault. This is called Comparative Negligence. This means that fault for an accident can be apportioned between the parties 50/50, 60/40, or even 90/10. In some other states, the rule of contributory negligence prevents the injured victim from making a claim if they were at fault, even a little bit. This means that if the "other guy" was 99 percent at fault and you were 1 percent at fault, then you cannot recover anything. Fortunately, in California, we have Comparative Negligence. Even so, we must take into consideration and evaluate any potential claim the at fault party or their insurance company may dream up in their attempt to avoid their responsibility.

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 medical bills are paid, and we don't believe that would be fair to you.

We refer plenty of people to the Small Claims courts. Currently in California, you can bring a claim for as much as \$10,000 for your injuries **EXCEPT**, if it is a motor vehicle collision, the limit is still \$7,500. A small claims case can be done quickly and at minimal cost. While you cannot have an attorney represent you in Small Claims court, the at fault party cannot have an attorney either and the insurance claims representative cannot represent his or her insured and is largely prevented from testifying on his behalf. This provides an economical forum and a level playing field for smaller cases.

How do you find the best lawyer for your claim?



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 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. You shouldn't even hire me until you trust that I can do a good job for you.

How Do You Choose?

How do you find out which lawyer in your local community is the best for your case? I believe that there are certain questions to ask that will lead you to the best lawyer for your case--no matter what type of claim you have. It may involve some time on your part, but that's OK because the decision as to who your attorney will be is very important.

The world of personal injury, accident and wrongful death claims is, in my opinion, much too specialized for someone who does not regularly handle these cases. Too many times we have looked at cases that other--inexperienced--attorneys have handled, or tried to handle. You should be aware that the insurance companies who defend personal injury and accident cases know who the attorneys are in your area who are competent and actually go into court to try cases, and who do not. The insurance companies use that information to

evaluate their risk. One of the first questions some insurance claims representatives will ask when a serious claim comes in is: who is representing the plaintiff? If this information is important to the insurance company, it should be important to you too.

If you are represented by an attorney who has never tried a serious case or who "handles" a lot of automobile cases but settles them all, you may not be in the best of hands. I believe it is so important that you get into the right hands that in this book I give you the names and telephone numbers of other good attorneys in our area who you can call if you don't become my client. Why do I give you the names of my competition? Easy--I believe that we are all on the same side in battling the insurance companies. (There's an insurance company behind just about every case.) These people are attorneys for whom I have a great deal of respect. It is my desire, above all else, that people with meritorious cases get into the hands of the experienced, good, trial lawyers.

What Can You Expect A Lawyer To Bring To Your Case

One great question to ask is: just what does any given lawyer bring to the table that can change or enhance the value of a personal injury claim. Some personal injury attorneys believe that the facts of the claim speak for themselves. Others take good facts, and turn them into great stories that tell the

story of their clients' lives and how a serious bodily injury can have devastating effects on their lives, their plans, dreams and expectations.

The story of a client's life needs to be told with power and impact, whether it is told in a settlement demand to an insurance claims representative or to a jury. For example, we frequently use settlement demands that go well beyond the mere facts of the claim to tell our clients' stories.

For trial, we use compelling medical art, reconstructions and animations to show, not just tell, the jury what happened to lead them to a just and fair decision.

So, How Do You Find A Good Lawyer 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.
2. The Yellow Pages can actually be a good source of names. Understand three things, however: First, not every attorney advertises in the Yellow Pages. Second, be careful about the ads that offer too many different specialties, no one can do everything well. Third, be careful about multiple full—page ads. The best attorneys do not necessarily have the largest

ads or the best book position. This advertising typically attracts a lot of cases, including the small cases that we do not accept. 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.

3. Your local bar association probably has a lawyer referral service. Understand that this sometimes involves a fee for the attorney to be listed in certain specialties. Lawyers' 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.
4. 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. This is probably the best way to find the attorney who is right for you.
5. Ask each attorney if they have information just like what is in this book and/or a web site so that you can find out more about his or her qualifications, experience, and method of handling a case before you walk in the door. This is called doing your "due diligence," and it can really pay off.
6. Be careful about any attorney who rushes you to sign a contingent fee agreement. You should take the agreement home, read it and understand it. We have heard of instances where "cappers" arrive at your home within hours

of the time you first call the attorney's office to present you with a retainer agreement. That's right, before you even have had a chance to meet with the attorney. This is outrageous. Some attorneys employ "runners" or "cappers" to personally solicit accident victims. This is unlawful in the state of California. A "runner" hangs out at the police station or listens to police radio to "run" to accident scenes or hospital emergency rooms to encourage injured people to sign contracts with attorneys. Outrageous does not begin to describe this practice.

7. 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.
8. Beware of an attorney who insists that you stop seeing your doctor and has a stable of doctors he wants to refer you to. As I discuss later in this book, attorney referrals to doctors are proper, but they must be done correctly, and for the right reasons. If done improperly, they can harm your claim.
9. Here are some additional 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 is a big factor in most 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? Actually taking cases to trial is something insurance companies are aware of and increases the likelihood insurance companies will respect your lawyer and by association, you and your case. Past results are not a guarantee of the future success, but past results do demonstrate some level of experience and skill.

Respect in the legal community— Do other lawyers refer cases to him or her? Does the attorney teach other lawyers in Continuing Legal Education courses?

Membership in trial lawyer associations. In our area, you can certainly find a lawyer who is a member of the Consumer Attorneys of California (CAOC), the Consumer Attorneys Association of Los Angeles (CAALA) or The American Association for Justice [formerly known as the American Trial Lawyers Association.] These fine organizations provide networking, and information to keep lawyers on top of the issues that affect their clients and their practices. Membership in one or more of these fine associations suggests the attorney is involved in the field of personal injury and has access to the excellent resources offered to improve trial skills and results for its members. These organizations also provide extensive education and networking for trial lawyers.

Publications—has your attorney written anything that has been published? This is another sign of his or her skills and experience.

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

How will your attorney keep you informed about the progress of the case? In my practice, we stay in close contact with our clients to monitor their recovery, make sure they are getting the medical care or assistance they need, and get all of the documentation necessary to prove how their lives have been affected. We also take time to explain the "pace" of the case and in what time frames the client can expect activity to take place. Our clients are invited to call or email at anytime. If I can't call you back right away, my assistants will help you set up a specific "telephone appointment." You are also invited to make an appointment to come in at a time that is convenient to you.

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.

If You Don't Hire Us, or if We Decline Your Case,

Please Consider Calling an Attorney From this List of

Experienced Personal Injury Attorneys:

Andrew Bryman 818 225-5151

Steven Effres 818 222-9720

Arash Homampour 323 658-8077

Christa Haggai 310 998-2420

Eric Traut 714 835-0655

Brian Hanneman 909 980-7878

Linda Rice 818 999-2220

John Blumberg 562 437-0403

This list is not meant to be either all encompassing or an endorsement of any particular attorney, but is simply intended to give you a good start. Not all of these attorneys practice in all areas of personal injury law. All are, in my opinion, very good lawyers. If you have any questions, email me at jrosenberg@jrosenberg.com

The legal process in a personal injury claim



In most cases today, attempting to negotiate with the insurance company before filing suit is not a worthwhile endeavor. Insurance companies use pre-suit negotiation mainly to attempt to find out as much about you, your lawyer and your doctor as they can. Sometimes lawyers waste precious time attempting to negotiate with the insurance company before filing suit. If I accept your case it is because we believe it is meritorious and you deserve a trial by jury. Whether negotiations before filing a lawsuit are worthwhile is a decision best made on a case by case basis.

It is 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 to delay filing suit, there is no excuse for the practice that I sometimes see whereby some attorneys routinely wait until the last moment to see if the insurance company will settle your case. When the claims do not settle, they often panic 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. I believe that clients are ill served by hiring attorneys who are not prepared to do what is necessary to protect their clients.

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 or present to a jury at trial. The defendant will be permitted access to your medical and work history, including your income records. You will have to give a deposition under oath and you will probably 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.

What An Attorney Needs To Do for You In Your Personal Injury Case?

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

Initial interview with the client.

Educate client about personal injury claims.

Gather documentary evidence including police accident reports, recordings of 911 emergency calls, 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, property damage and visible bodily injuries.

Analyze the legal issues, such as comparative negligence, whether workers compensation coverage is available, the proper statute of limitations and whether a governmental entity may be involved, which requires claim forms to be filed in a timely manner.

Research, research, research. I cannot overstate the importance of research into the factual, legal and medical issues in your case. This must start at the beginning, not just before trial. Preparation for trial begins on day one.

Talk to the client's physicians or obtain written reports, medical bills and records from them to fully understand the client's condition.

Analyze the client's health insurance policy or 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, government benefit plans and employers may assert that they are entitled to all or part of the client's recovery.

Contact the defendant's insurance company to put them on notice of the claim, if this has not already been done.

Review case documentation with the client. Are the medical reports accurate? Learn how the injuries affected the client's life and ability to pursue his or her goals.

Decide with the client whether an attempt will be made to negotiate the case with the insurance company or whether a lawsuit shall be filed.

If suit is filed, prepare the client for written discovery and deposition, and 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 documentation of loss of income.

Go to court to set a trial date.

Retain the best possible consultants and experts to testify on your behalf at trial.

Prepare for court ordered events such as mediation or non binding arbitrations, mandatory settlement conferences and status conferences.

Prepare for trial and/or settlement before trial.

Research the defendant's experts, including their prior testimony or articles that they have written, and take their depositions.

Prepare the client and witnesses for trial.

Organize the preparation of medical exhibits for trial.

Organize the preparation of demonstrative exhibits for trial.

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.

Knowing how your medical insurance benefits affect your claim is now more important than ever.

Here's something really disturbing for those of you that have paid for medical insurance for years and years. In California, a defendant who causes you serious injuries and his or her insurance company now get a discount on your injury case because you have medical insurance. They would pay more for your injury claim if you had no insurance. You are penalized because you protected yourself with insurance. Your attorney must know how to deal with this perverse state of the law.

You should also be aware that often, if your medical bills were paid by health insurance of an employer's health plan or an HMO, the 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." In some cases such claims are prohibited, and in most cases they are unfair, but they make the claims anyway. 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.

Finally, check your auto insurance policy to see if you had medical payments coverage. If you purchased this important coverage believing that you were protecting yourself and your family with coverage for payment of medical bills in the event of an injury in a collision, check your policy. If your policy states that your medical payments coverage is “reimbursable,” it means that in the event of an collision, and you are successful in your claim against the responsible party, your insurance coverage will want their money back from you. This means your so called insurance coverage is not insurance coverage, it is merely a loan. If your policy states that your coverage is “excess,” it means that they will only pay medical bills that are not covered by any other insurance that you already have, including medicare. Unfortunately, it is rare for an insurance agent to explain these facts to you when they sell you your insurance policy and take your premium dollars.

The Worst Mistakes that Can Ruin Your Injury Claim



Here are what I consider to be a few of the worst mistakes that you can make which will ruin your personal injury claim. I started with 5 in the first edition of this book, but I have expanded the list to cover additional errors that seem to arise more often nowadays. These errors are based upon my experience and discussions with my clients, judges, defense attorneys, insurance claims representatives and jurors who have been turned off to claims because of how claimants or their attorneys have conducted themselves.

1. Run to the Lawyer's office before seeing a Doctor.

This just looks bad. The Plaintiffs claim they were hurt badly at the scene, but they refuse medical care by paramedics; they do not call their family doctor, or seek any medical care for their injuries. First, they call the lawyer! This sends up red flags for every insurance company. Jurors hate this, and it makes them suspicious of the plaintiff, the lawyers and doctors. Jurors will question your credibility and this invites the defense argument that the plaintiff was not really injured and the claim or lawsuit was made, not to recover damages for injuries, but because the plaintiff is taking advantage of the tort system.

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

You may have a very special need for a doctor with a special expertise. You may have no insurance, and no way to pay for the care. You may be faced with long waits to get an appointment for necessary medical care. [This is common with some HMOs.] It is perfectly legitimate for the attorney to

make a suggestion or referral to a doctor, but it must be done for the right reasons.

2. Hiding Past Accidents or Claims 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 test your honesty. 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, or if you misrepresent your accident history to the insurance company, then it is almost guaranteed that you will lose your case or the value of your case will be lower. We can deal with past accidents, injuries or treatment when we know about it in advance, protect our client's credibility and use this information to make the case even stronger.

3. Hiding Other Injuries or Treatment From Your Doctor

It goes without saying that you should be up front and honest with your doctor about any injuries that occurred before or after this accident. If you hide this information from your doctor, his opinions will be discounted if it is later revealed that his opinions were based upon incomplete or incorrect information. Again, your lawyer and doctor can deal with

this information if they know about it. If you lie about it, and the insurance company or jury finds out, then your credibility is shot and your case is over.

4. Not Having Automobile Liability Insurance [in Auto cases]

When California voters passed proposition 213 they put into effect a law that includes penalties for all drivers who are not insured while driving. The penalty for driving a vehicle without insurance is that in the event of a collision, even if it is not your fault, if you did not have insurance, and the vehicle you were driving was not insured, you cannot recover any “general damages” for pain and suffering. You can still recover your medical bills, lost earnings and property damage, but you can forget about any compensation for pain, suffering or disfigurement. In any case, but especially in a serious injury case, the exclusion of general damages can be a huge loss. Driving while uninsured can ruin a good personal injury case.

5. Exaggerating Your Claim or Misrepresenting Your Activity Level

Insurance companies routinely hire private investigators to conduct videotape surveillance of accident and injury victims. If you claim that you cannot run, climb or stoop, and you get caught doing these things on videotape, you can forget about your claim. There is nothing worse than seeing the change in jurors’ faces when embarrassing impeachment

evidence is presented at trial that shows the jury that the Plaintiff was exaggerating or lying. They put their pencils and note pads down and lose interest in the Plaintiff and his or her problems. There are few explanations that can overcome the eye of the camera.

Social networking websites are also used by insurance companies to check out claimants. More than a few claims have been lost or denied because, while the claimant was supposedly injured, unable to work and getting medical care, their Facebook or My Space pages had photos and stories of their vacations, parties and activities that were totally inconsistent with their claims. This conduct is just as wrong as the insurance company abuses I fight against every day. It has no place in the claims process.

6. Failure to recognize a defendant is a governmental entity

There are limits on how long you can wait before a claim becomes stale, and therefore void. If a defendant happens to be a state, county, city or other local government entity, you MUST file a claim against that entity within 6 months. The claim form requires certain specific information to be included in the claim.

It is not always obvious when you are dealing with a governmental entity. Failure to file a government claim within 6 months can be fatal to your claim and end it before it gets started. You must know how to determine if your defendant is

a government entity or agency, and make sure to take appropriate and timely action.

7. Failure to comply with statutes of limitations and file a lawsuit in time

Some claims require you to file a lawsuit within 1 year. Some claims require that a lawsuit be filed within 2 years. Medical malpractice claims are particularly complex and the deadline to file a lawsuit can vary depending on whether the victim is a small child and when you knew or should have known of the medical negligence.

Failure to comply with these deadlines will ruin your claim.

8. Failure to do what is necessary to obtain appropriate and necessary care for your injuries

If you have suffered bodily injuries, you must obtain medical care to treat your injuries. Delaying or failing to follow through with your medical care can ruin the value of your claim. When you get your medical care, your doctor's treatment records become proof of your injuries. If you don't go to the doctor, or if you do not follow through with the treatment or tests your doctor orders, you lose the chance to create the documentation you will need to prove your claim. Without this vital proof of your injuries, you cannot hope to recover an amount that will compensate you fairly.

Some Of Our Recent and Interesting Cases



THE CASE OF THE COLLAPSING UTILITY POLE:

Our client was seriously injured when a utility pole collapsed while he was climbing it to perform a cable television installation. The utility company destroyed the pole afterwards and then tried to argue that our client could not prove the pole was in a dangerous condition. We retained the top wood science expert in the country and proved that the utility company failed to properly inspect or maintain its wood poles. As a part of the settlement, we negotiated a high six figure settlement in the personal injury claim and got the client's workers compensation carrier to waive their lien and any credit in the personal injury case.

POST POLIO VICTIM REAR ENDED BY DELIVERY

VAN: Our 67 year old client was dependent on a walker after having contracted polio as a child. When he was rear ended by a delivery man who was dialing his cell phone while driving, the impact forced our client's vehicle over a curb and into a tree. This injured the client's shoulder which required shoulder surgery. The shoulder injury prevented him from using a walker, effectively taking away his mobility. The defendant's insurance company fought until the day of trial before entering into a substantial settlement.

BICYCLIST HIT BY VEHICLE EXITING SHOPPING

CENTER: Our client was struck by a vehicle as the vehicle was exiting a shopping center. The insurance company claimed the cyclist rode across the driveway and cut off their insured. The insurance company sent the claim to their special investigation unit before we were retained, and denied the claim. We proved the cyclist had the right of way, and forced the insurance company to settle for their policy limits. THEN, we made an underinsured motorist claim with our client's automobile insurance company and obtained another policy limits settlement under that policy.

ROLLOVER COLLISION RESULTS IN POLICY LIMITS SETTLEMENT AFTER INITIAL DENIAL BY INSURANCE COMPANY:

The defendant made a sudden lane change on the freeway because she was about to miss her exit. She moved suddenly into our client's lane, causing our client to swerve across a busy freeway. She almost made it, but before her vehicle came to a stop, it struck the gutter at the edge of the freeway and flipped onto its side. The defendant and her insurance company created a story, blaming our client for the wreck, stating that since the defendant's car never came in contact with our client's car, she was not at fault. After filing the lawsuit, and taking the defendant's deposition, we obtained the critical admissions we needed to force the insurance company to settle for their policy limits.

DEFECTIVE CAR JACK ALLOWS CAR TO COLLAPSE ONTO CLIENT'S ARM:

Our client was assisting a co-worker change a tire with a hydraulic jack purchased at a local auto parts store. The jack broke apart while it was holding up the weight of the car, causing the car to crash down on our client's arm and hand. We went out and purchased other similar jacks and had them tested. We found that the jacks were not built to the specifications required by the design plans and recovered nearly 2 million dollars from the manufacturer.

MISDIAGNOSIS OF PATIENT WITH THE FLU RESULTS IN DEATH:

Our client went to the urgent care center for his HMO complaining of pain and severe fatigue, similar to what he had several years earlier when he was diagnosed with blood poisoning. His and his wife's helpful offer of this information was brushed aside, and he was told he merely had the flu. He was given acetaminophen [Tylenol] and sent home. He died at home within 24 hours due to blood poisoning and toxic levels of acetaminophen in his blood. The HMO doctors neglected to review his chart where they would have found that he had liver disease, and that tylenol would be toxic to him. Given his history, a simple blood test was called for and would have identified the blood infection early, saving his life. We obtained a recovery for his family for his wrongful death through an arbitration hearing.

The above claims are examples of very different types of personal injury cases. They all illustrate that defendants and their insurance companies do not admit or accept responsibility for their negligence willingly until forced to do so. They make innocent and well-meaning people go to great lengths and expense to prove their negligence before they pay compensation to their victims. All of these cases require hard work and the resourcefulness of a dedicated attorney to obtain meaningful results for victims and their families.

So, where do you go from here?

If you or someone close to you has been injured and you are considering pursuing a claim for injuries, you need to decide whether you want to handle that claim yourself or through an attorney.

If you have any doubt, you should interview attorneys; as many as you need until you find an attorney with whom you are comfortable



With the information in this book, you can better understand not only your rights, but the duties owed to you by insurance companies and the claims representatives that do their bidding. You have the tools to interview attorneys, ask good questions and know what kind of answers competent and experienced attorneys will give you. And, perhaps just as important, you will be ahead of the game by avoiding mistakes that can seriously damage your claim before it even gets started.

For more information, visit my website at jrosenberg.com. It has more valuable information you can use to make the decisions you need to make. You can forward questions to me from the website, and you can submit your claim for an initial review. If you prefer you can call my office at 818 716-6400 to set up an appointment for a personal interview.

If you have any suggestions for information you would like to see on my website or in this book, I would welcome your suggestions.

Thank you for reading and good luck on making the right decisions in your own case.