



FORUM

PRESIDENT
WILLIAM SHERNOFF, *Claremont*

Vice Presidents
EUGENE BAMBIC, *Studio City*
H. GREIG FOWLER, *San Francisco*
JOHN GARDENAL, *San Francisco*
BROWNE GREENE, *Los Angeles*

Secretary
RICHARD D. BRIDGMAN, *Oakland*

Treasurer
PETER J. HINTON, *Antioch/Oakland*

Financial Secretary
LAURENCE DRIVON, *Stockton*

Parliamentarian
VERNON W. HUNT, *Santa Ana*

Board of Governors
WILLIAM H. BABER, *Oroville*
EDWIN T. CALDWELL, *San Francisco*
DAVID S. CASEY, JR., *San Diego*
JOHNNIE L. COCHRAN, JR., *Los Angeles*
VICTORIA DeGOFF, *Berkeley*
CHARLES A. DYER, *San Mateo*
PAUL A. EISLER, *San Francisco*
LARRY R. FELDMAN, *Los Angeles*
ROBERT M. FOX, *Sherman Oaks*
FERNANDO V. HERNANDEZ, *Cupertino*
IAN HERZOG, *Los Angeles*
STEVEN KAZAN, *Oakland*
HARVEY R. LEVINE, *San Diego*
SALVADOR A. LICCARDO, *San Jose*
RUSSELL R. MCKINNEY, *Visalia*
PETER E. MILLS, *Sacramento*
DOUGLAS H. NEWLAN, *Redding*
RICHARD M. NORMAN, *Santa Paula*
GARY M. PAUL, *Los Angeles*
ROBERT F. PEREZ, *Fresno*
ROBERTA RITTER, *Los Angeles*
RONALD H. ROUDA, *San Francisco*
ROBERT S. SCHLIFKIN, *Los Angeles*
RONALD B. SCHWARTZ, *Newport Beach*
MICHAEL M. SHEA, *San Jose*
SAMUEL SHORE, *Los Angeles*
JOSEPH THIELEN, *Los Angeles*
STEVEN J. WEINBERG, *Indio*

Former Presidents
MARVIN E. LEWIS, *San Francisco*
EDWARD I. POLLOCK, *Los Angeles*
JACK H. WERCHICK, *San Francisco*
ROBERT G. BELOUD, *San Diego*
ROBERT E. CARTWRIGHT, *San Francisco*
LEO M. O'CONNOR, *Sacramento*
NED GOOD, *Los Angeles*
THOMAS T. ANDERSON, *Indio*
WILLIAM H. LALLY, *Sacramento*
HERBERT HAFIF, *Claremont*
FLOYD A. DEMANES, *Burlingame*
DAVID B. BAUM, *San Francisco*
ELMER LOW, *Pasadena*
LeROY HERSH, *San Francisco*
WYLIE A. AITKEN, *Santa Ana*
RALPH D. DRAYTON, *Sacramento*
SANFORD M. GAGE, *Beverly Hills*
ARNE WERCHICK, *San Francisco*

Historian
GLEN T. BASHORE, *North Fork*

EXECUTIVE DIRECTOR
JAMES L. FRAYNE

Volume XI, No. 8

OCTOBER 1981

The CTLA Forum covers the activities at the California Trial Lawyers Association and specifically disseminates timely and useful information about Trial and general practice.

CONTENTS

FEATURE ARTICLES

USE OF COMMISSIONERS OR REFEREES TO MONITOR DEPOSITIONS	
Hon. August J. Goebel, Judge, Los Angeles Superior Court	PAGE 232
HANDLING THE SMALL PERSONAL INJURY CLAIM EFFECTIVELY AND EFFICIENTLY	
Peter R. Hubert, Esq., San Jose	PAGE 229

MONTHLY DEPARTMENTS

CONSUMER AFFAIRS — ATTORNEY ADVERTISING AND SOLICITATION: THE CLIENT AS CONSUMER	
Prof. Leslie A. Minkus, Golden Gate University School of Law	PAGE 236
EVIDENCE — INADMISSIBILITY OF EVIDENCE OF INCOME RECEIVED BY THE WIDOW FROM THE HUSBAND'S BUSINESS IN A WRONGFUL DEATH ACTION	
	PAGE 238
FAMILY LAW — WHY McCARTY SHOULD NOT BE GIVEN FULL RETROACTIVE EFFECT	
Richard Sherman, Esq., Berkeley	PAGE 239
INSURANCE — CAUSATION ISSUES IN DISABILITY INSURANCE POLICIES	
Kenneth C. Blickenstaff, Esq., Claremont	PAGE 244
RECENT CASE UPDATE	
Sacks/Levy California Tort Reporter	PAGE 247
TRIAL PRACTICE — FINAL ARGUMENT: BILLIARD BALLS	
Stanley K. Jacobs, Esq., Los Angeles	PAGE 246

ONGOING ACTIVITIES

PRESIDENT'S MESSAGE	PAGE 226
EDITOR'S MESSAGE	PAGE 227
INFORMATION SHARING CORNER — DALKON SHIELD LITIGATION FLASH	PAGE 238
AMICUS CURIAE REPORT	PAGE 242

The cover is a photograph of the late Associate Justice of the Supreme Court of California Wylie Manuel.

HANDLING THE SMALL PERSONAL INJURY CLAIM EFFECTIVELY AND EFFICIENTLY

By Peter R. Hubert, Esq.
San Jose

INTRODUCTION

The proverbial soft tissue injury victim has come into your office. It is the type of case that is in the two to five thousand dollar recovery range. These cases usually involve medical expenses of one hundred to one thousand dollars, no residual disability and temporary disability of less than six weeks. Here you want to maximize your profits by minimizing your time. This article will suggest methods that can be both expedient and low in cost.

THE INITIAL CLIENT CONTACT

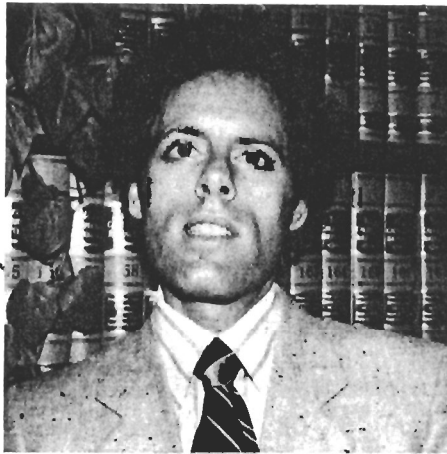
When a client calls and informs you that he or she has been involved in an accident, set up an appointment. Ask whether the accident has just occurred or whether it occurred some time back. If it is a recent accident and the client has the police report or can easily get it, have the client bring the report to the appointment.

Many clients are most anxious to do this because it gives them a sense of involvement and makes them feel that you will move their case quickly. If the client does not have the police report and is reluctant to get it, you can purchase it yourself from the police agency for a nominal fee (two to three dollars).

When the client comes in for his or her appointment, try to make the client feel comfortable and relaxed. This may be the first time they've ever seen an attorney. Obviously, you must get the initial information such as who the people involved in the accident were, where the accident occurred, and the type of damages done to the vehicle. Also, ask the client to give you the names of all witnesses.

It is also advisable to ask the client to bring in a copy of his or her own liability policy. There may be an uninsured motorist's claim, and it is good to know exactly what your client's coverage is. The policy may also contain medical payments coverage.

Ask the client in the initial phone conversation whether or not there were any other people in the vehicle in



PETER R. HUBERT

which they were driving or riding. You may find that you can represent more than one claimant without much additional work. If you find out that there was more than one party in the vehicle, ask the client to bring in the other passenger if possible. The person is definitely someone you want to talk to as a witness and may become your client. You can explain what you do in a bodily injury case to both of them and make optimum use of time.

At the office conference, have the client sign consent forms that will allow you to get medical records and work records. Also have him sign your contingent fee agreement. It can provide that if the client had hired you on a per-hour basis, your normal basic hourly rate would be whatever rate you deem is appropriate. Most practitioners charge somewhere between \$75 and \$100 an hour. When the client is informed of that a larger fee based on a contingency is more palatable.

DOING YOUR OWN PHOTOGRAPHY AND WHAT TO PHOTOGRAPH

A substantial way to cut down on your investigative cost is to do it yourself. Photographers and investigators are too expensive for a claim that has only minimal value. Owning two cameras is important. One could be a 35 millimeter with a lens that can take

pictures at close distances, such as very close focusing or macro-lens and, if you want to investigate accident scenes, a wide-angle lens. These are available in discount camera shops for around \$200. For about the same amount of money, you can buy a macro-focusing lens at a focal length of 28 millimeters to 80 millimeters, with macro capabilities. That one lens will suffice for most of your photographic investigative needs. The second camera should be a Polaroid. The SX-70 is good because of its close focusing capabilities. Cuts, bruises, and abrasions on your client therefore photograph well with it.

The two cameras are important for the following reason: You will get much better, more detailed photographs with the 35 mm camera than with a Polaroid or any type of instant camera. However, if you rely solely on the 35 mm camera, you may find that your film has been damaged or destroyed in processing and you have nothing because those pictures cannot be replaced. Therefore, your Polaroid acts as a safety factor in providing you with at least some pictures.

Photograph your client's vehicle, and, if at all possible, the vehicle of the other party. If it's a slip-and-fall case, photograph the store or the area where the accident occurred. Film is relatively inexpensive and processing is not that expensive either. Photographs can aid immensely in increasing the value of your claim. Another way to expedite time in the office consultation is to have the client drive the accident vehicle to your office if it is driveable, but damaged. The time you save by going down to your parking lot and photographing the vehicle can greatly increase your profit in that particular case.

Often you may have to go to the body shop to photograph the vehicles. When you are there, inquire of the body shop repairman about damage to the vehicles. If it is a typical rear-ender you may find only a crushed in trunk lid, a banged in

(Continued on page 230)

(Continued from page 229)

bumper quarter panel. This kind of physical damage can substantiate the typical soft-tissue back or neck area injury.

Get down on your hands and knees and look under the car. You might notice a slight bend in the frame. If the impact was strong enough to bend the frame of the car, you can argue effectively that it was strong enough to injure your client. Photograph the bent frame and point it out to the auto repairman if he has not been the one who pointed it out to you.

Look at the seat where the passenger or driver were sitting. On a rare case you may find that the sliding bracket on which the seat fits may have been slightly bent by the accident. Point these out to the body shop repairman. This will increase the damage repair estimate and can be used as a point of emphasis in the ensuing negotiations.

If your client has cuts, bruises or abrasions on his or her body, photograph these immediately in color. If you have a close focusing or macro lens on your camera, close ups of each particular injury can be very effective. For a cut on his or her lip of approximately $\frac{1}{4}$ ", a close-up of half of her mouth showing the cut can be enlarged to a 5×7 . This makes the cut look enormous and can have a strong effect on the adjustor for a relatively low cost.

If there are bruises, cuts or abrasions on parts of the body which make your client of the opposite sex from you feel reluctant to partially undress for you to photograph, you may be able to have the client's spouse take these pictures.

Photograph all body injuries as close to the accident as possible. Cuts, abrasions, and bruises disappear and may leave you without useful color photos.

It may be necessary to photograph the accident scene. Using a wide angle lens, you can photograph an intersection or other accident scene and encompass most of what you would see through your own eyes. If the accident scene is close to your office, you may wish to do that shortly after being retained by your client. The other advantage in seeing the accident scene is that you will be able to state in a certain degree of detail what the area looks like and why the other driver obviously was at fault. This can give you a certain feel for the accident

occurrence.

You may be asking yourself, "What do you do about the cost of the film and the cameras I purchased? Will I recover those?" The client can be billed for costs. A reasonable charge is approximately \$1.50 for each picture. This takes care of the cost of film, developing, and factoring a certain cost in the amortization of your camera. Half a roll of film which results in a \$15 or \$20 bill for photographs should not upset a client. Your actual cost may be only four or five dollars for the film and processing, but you should be entitled to recover part of your cost of buying your equipment.

CONTACT WITH THE ADJUSTOR

Write or call the other driver to find out who his or her insurance carrier is. Assuming that he is insured and you are not faced with an uninsured motorists claim, contact the adjustor. Usually the other party has reported his claim to his own carrier and his carrier has started to do its own investigation. They usually have purchased the police report. Invite the adjustor to your office and have a quick cup of coffee. Give him or her a couple of photographs that you have taken of your car or your client, or both. The adjustor may have pictures of his client's car and a copy of the police report that he or she will gladly, under most circumstances, trade you. Since almost everything is discoverable, informal discovery can expedite resolution of the claim. At the same time, it gives you a chance to size up the adjustor and get to know him or her on a one-to-one basis. This will make settlement that much easier.

If you have any medical bills at the time you first meet with the adjustor, you might want to give them to him or her. Also, tell him or her what is happening with medical costs and what kind of wage loss your client is sustaining so that the adjustor can start to set a reserve. The sooner that the carrier sets a reserve, the easier it is to deal with them. Of course you want to get a reserve set in a sum that will cover all of the damages.

Most soft tissue injuries that are in this \$2000 to \$10,000 class usually resolve themselves in four to six months. During that time, you may have contact with your client. Make the contacts brief, but cordial. Be willing to answer any questions that your client has and remind your client to

provide you with copies of his or her medical bills immediately.

WAGE LOSS

Employers often are reluctant to calculate the exact wage loss. It is sufficient if the personnel secretary states from what date to what date your client was off work, how many days your client lost, whether your client worked overtime or just straight time, you client's normal number of hours per day and what the hourly rate is. If your client works overtime, find out whether this is at time and a half wages or double time and approximately how many hours of overtime your client lost. Get this raw data from the employer on the employer's letterhead.

With this information you can calculate the exact dollar wage loss with an electronic calculator in five or ten minutes. Employers find that calculation burdensome.

GETTING A MEDICAL REPORT OR RECORDS

Doctors often have a higher rate for attorney medical reports requested for a liability claim than other reports. You can copy a short form medical report used by a variety of insurance carriers. It contains spaces for diagnosis, the prognosis, treatment, residuals, length of disability and so on. An inexpensive way of getting this information is to give a short form medical report to your client and ask him or her to take it to their doctor to see if it could be filled out. The doctor may assume it is for purposes of getting medical insurance payment and may fill it out for your client for no fee or a nominal charge.

If, however, the doctor's standard report fee is \$75 to \$100 and you feel the case (as most soft-tissue injuries) does not warrant a narrative, and its cost, you may inquire what the doctor charges for a simple one page medical report. This may give you all the information you need to present your claim.

Ask the doctor's office before hand. The doctor's secretary may tell you that the charge for this type of report is only \$10 or \$15. Ask the secretary his or her name. Then when you request the medical report, you can enclose a copy of your client's signed authorization and, at the same time, in your covering letter, say something

(Continued on page 231)

(Continued from page 230)

along the following lines: "Dear Dr. Jones, As per my conversation on this date with your secretary, Betty Smith, I was informed that your charge for a short form medical report is in the sum of \$10. Enclosed herewith please find a blank short form medical report, a signed authorization by my client, and my check in the sum of \$10. Your prompt attention is appreciated."

By sending the doctor the check in advance and by confirming that you spoke to his or her secretary who told you the charge, you avoid a supplemental bill or a higher bill than you expected from what you were told.

If the doctor says that his or her charge for a short form medical report is \$50 and his narrative is \$100 to \$150, you may not even want to get a short form medical report. Instead, get the medical records. For a cost of less than fifteen to twenty dollars, you can hire a photocopy service to go to the doctor's office and make copies of the client's entire record. That is often just as good as a medical report, especially if the doctor keeps good records.

If your client was in a hospital, you should get a copy of the hospital record even if you also get a report. There are always admission summaries and discharge summaries in addition to test results. If there was any type of surgery, no matter how minor, the doctor has to write a report for the hospital records. It is much less expensive to obtain this than to pay a doctor for a narrative which often will be identical to the report in the hospital records.

NEGOTIATING THE SETTLEMENT

After you have medical records or a medical report, wage verification, and your specials, you are ready to settle your case. After talking to many adjustors and finding out their preference, I have learned that it is advisable to send a short letter to the adjustor stating that the case is now ready for settlement, and that the following represents the specials incurred in this particular case. Then put down all the medicals, including the ambulance, hospital and doctor, physical therapy, any prescriptions, the wage loss, with an explanation as to how it was calculated, and any other special damages sustained by your client. Attach photocopies of all of the specials, so that the adjustor has some "hard data." Enclose selected

pictures that substantiate the claim. In short, try to give the insurance adjustor as much data as possible.

In my opinion it is best not to put a demand amount in this letter. Simply inform the adjustor that you have included these specials for his or her examination and that you look forward to hearing from him or her in the near future to discuss the final settlement of the claim. This way you avoid locking yourself down to any particular figure.

Depending on whether you know the adjustor and how he or she thinks, you may or may not have to demand \$7,000 for a \$3,000 injury because he or she invariably will counter at \$500. That is a waste of everyone's time, but sometimes necessary. If you have dealt with an adjustor who knows values of cases and knows that you know the value of a case, you can usually start your opening only \$500 higher than what you feel is the true value of the case that you would be satisfied to take. You may even get that amount because the adjustor may have come in for a figure near yours. If he or she says that you are a little high, like two, three or four hundred dollars, ask whether or not a figure lower by that amount will settle the case. This is much easier to do if you have had a prior cordial contact. Then a ten minute telephone conversation may settle your case.

CONCLUSION

By doing some of your own investigative work, designing forms that you feel comfortable with, you can maximize your client's recovery and your profits in the typical two to five thousand dollar soft tissue injury case. Indeed, you may find that when you total the time that you spent on the case, it will have been only a few hours, the most time consuming being the initial office consultation. The bulk of the other work can be accomplished by short letter and telephone calls. Your fee therefore should turn out to have been at least a hundred dollars an hour.

You also can make the client happy and develop a new source of referral for other business. If you recover well and swiftly for your client, he or she will remember you. You may find that eventually you will get a larger injury claim by having handled one of these small claims effectively and efficiently.

You will also find that having your own camera is great for vacations and what's even more enjoyable, you will find that it is tax deductible! Make a hobby of business expenses and at the same time use it to maximize your profits in the small cases, and to maximize the recovery for your client. ■

ECONOMIC ANALYSES

Negligence and other matters. Computer accuracy combined with detailed simplicity and explicitness. Results are spelled out in helpful ranges. Federal & state court tested. Prompt and extremely reasonable.

SPECIALIZING IN ANTITRUST MATTERS.

Doctoral expert testimony available.

ECRS, Inc. 212/772-0883
303 East Pan Am Bldg., N.Y.C. 10017

PROFESSIONAL ENGINEERS

Failure Analysis • Accident Reconstruction - machines, motor vehicles, industrial, casualty • Fire Investigations

TELEDYNE
ENGINEERING SERVICES

26102 Eden Landing Rd., Suite 5, Hayward, CA 94545 • 415-785-0401
666 Baker St., Suite 319, Costa Mesa, CA 92626 • 714-549-8607
303 Bear Hill Rd., Waltham, MA 02154 • 617-890-3350