

INTRODUCTION

“MR. DOROSHOW, CAN YOU TAKE MY CASE?”

Not long ago, I met John, who was a well-dressed middle-aged man, at my office on Kirkwood Highway in suburban Wilmington, Delaware.¹ About six months before we met, he was rear-ended in an auto accident. He was in a lot of pain. John listened to his doctors, took the medications they prescribed, and went to get the recommended physical therapy. Unfortunately, his pain was unrelenting, going down his back into his left leg, which was now weaker than his right leg. He saw a surgeon, who then recommended back surgery. John continued working in pain, but he could not keep up with the required physical demands of his job. He needed the surgery done quickly. He would be out of work for several

¹ This is not an actual client. John's story is a composite of cases I have handled at The Law Offices of Doroshow, Pasquale, Krawitz & Bhaya since 1978.

weeks. He did have health insurance to pay for part of the surgery and hospital bills, but the insurance came with large out-of-pocket deductibles and co-pays. This was money he did not have. John had used up most of his sick leave at work. He had no private insurance to cover his projected wage loss during the surgery.

John wanted me to take his case and pursue his claims against the insurance companies for his injuries and his financial losses. I agreed to take his case on a contingency basis: there would be no fee unless I successfully collected compensation for him.

In determining the value of claims like John's, there are several important factors I look at, including:

- Who is at fault in causing the accident? In Delaware, the injured victim must be less than 50% at fault to make a recovery.
- What are the injuries of the client? Typically, the greater the injury, the larger the value of the claim. However, preexisting injuries can sometimes reduce the claim.
- What is the appeal and likeability of the client? This is critical in any case. If the client is likeable, this can often overcome other weaknesses in a case.
- What are the insurance policies available from all sources to pay the claim? Without adequate insurance, injured consumers may not receive fair compensation.

In John's case, he was clearly not at fault since his vehicle

was struck in the rear by another vehicle. He suffered significant injuries, which resulted in the need for back surgery. John was very likable, hard-working, and came across as honest and forthcoming to all who met him. But what about his insurance?

I opened his file and began my investigation. Unfortunately, the car insurance John purchased on his vehicle had the minimum policy limits to drive in Delaware: \$15,000. This benefit is called Personal Injury Protection (PIP) and pays the reasonable and necessary medical bills and the net amount of lost wages for the insured up to the policy limits. This benefit is shared and pays both the client's lost wages and the medical bills for the case. Most of the PIP had already been paid out to the health care providers. There were additional unpaid therapy bills of \$5,000. There would also be future surgery bills. Critically, he had only \$2,500 left in his car insurance policy to pay for all of this.

Acting quickly, I contacted John's insurance company and reserved the last \$2,500 in his PIP for John's future lost wages from the surgery. I was able to get the health insurance company to pay for the surgery. I convinced the health care providers to wait until the end of the case to get paid for their deductibles and co-pays. I also convinced the physical therapists to wait until the end of the case to receive payment for their unpaid bills. As a result, I saved John and his family from having to pay thousands of dollars out of pocket during the pendency of the case.

I next examined the liability insurance coverages on John's

case. At the time of the accident, the at-fault driver was driving his own car and was on the job while working for a large company. I found that there were several types of insurance from different companies covering this accident. They included: the at-fault driver's insurance, other insurance policies in the household of the at-fault driver, and his employer's auto insurance policy.

It was important to coordinate these benefits to secure the maximum recovery for John. The claims I would be making would be significant and would include past unpaid medical expenses that PIP did not pay, future medical expenses, future lost wages, permanent injury, scarring from the surgery, and finally, John's pain, suffering, and inconvenience.

Although my client had not bought enough PIP insurance on his car, I thought that we still had a solid case to get compensation for his losses because of the liability insurance available.

My client then passed me a piece of paper that he had signed called **"Full and Final Release."** My heart sank. For the grand total of \$500 from the at-fault driver's insurance policy, all his claims were "settled" against all parties. My client got the \$500 check and cashed it. He was told by an insurance adjuster that this \$500 was just a down payment for his property damage claim and not a full settlement. But the paper said full and final release of all claims. My client never consulted with a lawyer before he signed the release.

Initially, the insurance company denied John's claims saying that the case was over based on the signed release. This forced our firm to file a lawsuit and litigate the matter aggressively in

the Delaware Superior Court. I finally reached a settlement with the insurance company a couple of weeks before the case was scheduled for a jury trial. I got our client the full and fair compensation he deserved from the accident, but it was a long, drawn out process that took a lot longer to resolve than if he had not signed the release.

In John's case, he made two critical mistakes that almost wrecked his injury case. The first mistake that he made was not buying enough PIP car insurance to pay for his current and future bills and wage loss. In this book I will discuss PIP benefits and why it is important to buy more than the minimum coverage of \$15,000. The second mistake that he made was signing a release before having it reviewed by a competent lawyer. I will also discuss releases later in this book.²

In the over 40 years that I have practiced law, I have repeatedly seen unfair settlements and unfair auto insurance methods practiced on Delaware consumers. Other members of my firm have also witnessed similar unfair auto insurance practices in the thousands of cases we have handled since 1978. As a result, I felt was critical to both warn and educate Delaware consumers about the most common mistakes that they can make to wreck their car accident cases. That is the reason I wrote this book. I even added some useful information to help Delaware consumers save on their car insurance premiums without wrecking their injury claims.

² The information in this book should not be considered legal advice and is not a substitute for seeking competent legal counsel. The information contained in this book is for educational purposes only. It is presumed to be accurate as of the date of publication. This book does not create an attorney-client relationship with any member of The Law Offices of Doroshow, Pasquale, Krawitz and Bhaya. The information contained in this book is general info and your legal rights may vary depending on your own situation.

You will probably never find this important information on the website of an insurance company. In fact, there may be some people in the insurance industry that hope you will never read this book.

Much of the information in this book involves the laws in Delaware. The laws in each state do differ. But much of the information in this book applies to those injured consumers in other states as well.

As a personal injury lawyer, I make no commissions from the purchase of auto insurance. I have no financial dog in this fight. My goal here is to make sure that you, the consumer, are properly protected.

If you have been hurt in an auto accident that is not your fault, it is critical that you receive fair compensation for your injuries. It is my sincere hope that the information in this book will help the consumer even the playing field with the insurance industry.³

Eric M. Doroshow

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