The Nuts & Bolts of Handling an Auto Accident Case

I. INTRODUCTION
   A. Opening Remarks

II. THE INITIAL PHONE SCREEN
   Use the initial phone screen to determine whether you want to meet in person.

III. CLIENT INTERVIEW
   Goal: To decide whether you want to handle the case and whether the client wants you to represent her.

   A. Client Brings to Meeting:
      - Auto insurance Declaration page
      - Photographs of vehicle and injuries
      - Adverse Party information
      - Medical Bills and Records
      - Traffic Collision Report
      - Medi-Cal/Medi-Care Cards

   B. Allow the Client to Tell their Story
      Use the Intake Sheet as a checklist to obtain necessary information

   C. Liability - Who is at Fault for the Accident?
      Traffic Collision Reports
      Witnesses
      Comparative Fault

   D. Property Damage
      Photographs
      Repair Estimates
      Low Impact Cases

   E. Injuries
      Elicit a detailed account of injuries
      Type of injuries
      Body parts injured
      Type of pain
      Treatment

      Pre-Existing Injuries

      Prior Claims
F. Wage Loss
Has Client missed time from work due to accident?
Did doctor authorize time-off?
Able to verify wage loss?

G. Insurance Coverage
a. Is client insured for accident?
Prop 213 requires all California Drivers to carry auto insurance
No insurance = no pain and suffering damages

b. The Auto Insurance Policy

c. Does Adverse Party have Insurance?

d. Uninsured Motorist Claims
Uninsured motorist protection is required by California law for every policy of automobile liability insurance issued in the state. It must be issued with limits of no less than $15,000.00 per accident. It protects drivers against uninsured drivers, but it also protects pedestrians and cyclists if they are injured by an uninsured driver or hit and run driver.

e. Underinsured Motorist Claims
If your injury is worth in excess of the 3rd party’s bodily injury limits, you have the right to go to your own insurance carrier and file a claim. An underinsured driver is someone who met minimum legal financial responsibility requirements, but did not have payment limits high enough to cover the damage they caused.

H. LIENS
A medical Lien is the right of a health care provider, doctor, or hospital to assert an interest in personal injury recoveries of its patients. The amount that can be recovered by way of a medical lien will be limited to the cost of the treatment or the service provided.

Types of Liens:
Medpay
Kaiser
City & County of San Francisco
MEDI-CAL
Right to recover reasonable value of benefits they provided to client. State is afforded a lien against any settlement or judgment in case. Lien is reduced 25% to defray attorney fees and litigation expenses.

The attorney representing a Medi-Cal Beneficiary has a duty to notify of claim. Welfare & Institutions Code Section 14124.73(a), 14124.76(a), 14124.79.

MEDI-CARE:
Insurance company and Plaintiff’s attorney are on the hook

I. RED FLAGS TO WATCH OUT FOR

a. Client is unrealistic or difficult

b. Client switching attorneys or has been previously represented

c. TIME LIMITS
Generally two year statute for injury or death actions. CCP Section 335.1

Shortened Time for Public Entities (State, City, County)
Claims for Personal Injury or property damage must be presented not later than six months after the accrual of the cause of action. Govt. Code Section 911.2

Federal Tort Claims Act - 2 years. 28 USC Section 2401(b)

J. DAMAGES INJURED PARTY CAN RECOVER
Medical Bills
Property Damage/Loss of Use
Wage Loss
Pain and Suffering

IV. CREATING AN ATTORNEY-CLIENT RELATIONSHIP

a. Contingent Fee Agreement

b. HIPAA Health Authorizations

c. Setting up File and Calendering Statute of Limitations

d. Keeping in contact with Client
V. THE CLAIMS PROCESS

A. Initial Contact with Insurance Adjustor/Claims
   a. Letter of Representation
   b. Be Polite - Everything you say is memorialized
   c. Do not agree to Recorded Statement or signing Medical Release Authorizations

B. Gathering Documents
   Obtaining Client’s Medical Records and Bills
   Wage Loss Documentation
   Photographs
   Incident Reports

C. DEMAND LETTER
   Adjuster will only consider objective evidence
   Valuing Case
   Negotiating Claim
   Should I settle the claim?

VI. LITIGATION

Filing a Lawsuit - Litigation
Brief overview of litigation process

Discovery

Written Discovery
Interrogatories
Document Production

Depositions

DMEs

Experts

Judicial Arbitration/Mediation

RESOURCES:
San Francisco Trial Lawyers Association - SFTLA
Consumer Attorneys of California - CAOC