JOHN BALES
ATTORNEYS

MEDICAL MALPRACTICE FREQUENTLY ASKED QUESTIONS (FAQ) BOOKLET

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MEDICAL MALPRACTICE
FREQUENTLY ASKED QUESTIONS (FAQ) BOOKLET

The following provides an overview of answers to some of the frequently asked questions our clients ask about their cases. Each case has its own set of facts that makes it virtually impossible for there to be only one answer applicable to all cases. However, the below may give you some insight into how your case may proceed. We want all of your questions to be answered. Of course, we encourage you to call us if you want to discuss any particular question concerning your case.

This booklet is a confidential communication protected by the attorney-client privilege, work product doctrine, and other Florida and Federal laws. In order to preserve these privileges, do not make copies of this booklet, or discuss its contents with anyone except an attorney, law clerk, or client manager from John Bales Attorneys.

The following Table of Contents – Reference Guide is provided to aid review:

TABLE OF CONTENTS – REFERENCE GUIDE

I. YOUR LAW FIRM - JOHN BALES ATTORNEYS

Your John Bales Attorneys team consists of attorneys, client managers, records managers, law clerks, and other support staff. John Bales Attorneys is "AV" rated, the highest rating given by the lawyer rating service Martindale Hubbell, and has many years of combined experience in representing injured parties. The use of advanced technology such as case management software, document imaging, and an in-house law library with computer-based legal research resources further enhances our ability to pursue your claim. Our case management software allows your entire team to manage your case.

Our firm is divided into two teams: Pretrial Team and Trial Team. Each of the two teams has several attorneys, and each attorney manages a team of support staff.

The Pretrial Team will typically handle cases from the time the case is accepted for representation through the pre-lawsuit negotiations with the at-fault party's insurance company, including waiting until you have reached maximum medical improvement and

the preparation and sending of a demand package. The above may include, but is not limited to, (1) accepting a case in which our firm will provide representation, (2) signing up new cases (with assistance of an Intake Manager), (3) communicating with the client about the facts of the incident, injuries and other damages, and the treatment client is receiving from health care professionals, (4) obtaining police reports and other investigative information, (5) obtaining witness statements from witnesses the client inform us of, (6) obtaining answers to client's questions, (7) obtaining medical records from health care providers clients inform us they are treating with, (8) preparing and sending demands, and (9) negotiating a settlement, if possible.

The Trial Team will usually handle cases from the time the file is accepted for litigation. This may include, but is not be limited to, (1) preparing and filing a complaint with the court, (2) serving process, (3) requesting, responding, and scheduling discovery, and (4) scheduling and representing client at hearings, mediation, and trial. In essence, it is taking the case from filing of the lawsuit through trial.

Attorneys who practice on the Pretrial Team will prepare your case with the goal of negotiating a reasonable settlement without the necessity of filing a lawsuit. However, if the insurance company will not make a reasonable offer, under the circumstances, to settle your case while it is with the Pretrial Team, the Trial Team will be asked to evaluate whether the case is one that should be litigated. If the Trial Team believes that a lawsuit may be necessary to obtain a reasonable resolution and you agree to filing a law suit, the case will be transferred to Team Trial and will proceed under the direction of one of the firm's litigation attorneys. In some instances, we may have other law firms participate in your representation. This will not increase the amount of the attorneys' fees or costs. Of course, we will advise you if this should occur.

We believe this innovative team concept helps us to more efficiently pursue your claim. With the inclusion of a Pretrial team as well as a Trial team, we are able to better serve you by utilizing attorneys and team members that specialize in the different processes of the law. Please understand that as your case progresses, your team of attorneys and client managers may change to improve service to you and assist in the effective resolution of your case. We will keep you advised of any such changes in your team.

Please consider going to our website, www.JohnBales.com, or the booklet titled "Information about John Bales Attorneys", which was included in your initial representation package to obtain additional information about us.

II. COMMUNICATING WITH YOUR JOHN BALES ATTORNEYS TEAM-ATTORNEY/CLIENT PRIVILEGE AND WORK PRODUCT DOCTRINE

As you know, communications between you and us as your law firm are important and are protected by the Attorney/Client Privilege. These communications can be by telephone (home, mobile, and work), in person meetings, email (personal

only), and/or mail to the address you provided to us. Accordingly, please immediately advise us in writing of any change to your telephone numbers (home, mobile, and work), email addresses (personal only), and/or your mailing address. Unless you notify us otherwise in writing, we will be using the provided addresses and telephone numbers for all communications with you as is appropriate.

Please keep in mind that the Attorney/Client Privilege only applies to communications between you and members of our firm, and you should not discuss your case with anyone or provide them with any of the documents you receive from our firm because such communications may then become discoverable. Additionally, you should not be receiving any communications from our office at your work email, only your personal email. There have been court decisions holding that emails sent to an office email address are not protected by the Attorney/Client Privilege.

Sometimes family members of our client will call and want to discuss your case with us. We normally cannot do this if our client is 18 years or older until you are willing to sign a waiver and acknowledgement that we will send you that informs you that you will be waiving your attorney-client privilege as to any information we discuss with this family member. These family members sometimes get upset with us when we decline to respond to their requests for information. We request that you explain this to your family members and let us know if you want a copy of this waiver and acknowledgment,

Additionally, any documents we request that you prepare are protected by the Attorney/Client Privilege and Work Product Doctrine, and will be protected from discovery as long as you only provide it to members of our firm. Of course, documents such as your medical records that were prepared by others are not protected and are discoverable.

A. YOUR CONTACT INFORMATION

Being able to communicate with you about your case at any time is very important. If you have not already done so, please confirm the contact information specified below is accurate and complete. Additionally, continue to provide us with any updated and missing information so that we may always have current methods to contact you throughout the course of your case:

1. Home Address.
2. Home Phone Number.
3. Cellular Telephone Number.
4. Work Phone.
5. Personal Email Address (Please do not provide us with a work or school email address because any communications sent to a work or school email address are likely not protected by Attorney/Client Privilege).

We attempt to save our clients costs by emailing letters and other documents to

them instead of having our clients incur the cost of postage for mailing such documents. Accordingly, if you give us your personal email address, we will use that email address to communicate with you unless you advise otherwise in writing. If you have not yet provided us with an email address, which gives us the ability to email documents to you, please do so if it is appropriate.

In the event we cannot reach you, the emergency contact we have on file is the following:

B. YOUR EMERGENCY CONTACT INFORMATION

Please also make sure that we have complete and accurate information for your emergency contact(s) that we may contact if we are unable to reach you using the above methods. The information we need includes, but is not limited to, the following:

1. Emergency Contact(s) Name.
2. Emergency Contact(s) relationship to you.
3. Emergency Contact(s) Home Address.
4. Emergency Contact(s) Home Phone Number.
5. Emergency Contact(s) Cellular Telephone Number.
6. Emergency Contact(s) Personal Email Address.

Although you need to confirm that you have provided us with contact information for your emergency contact(s), we plan only to ask them how to reach you and do not plan to discuss your case with them unless you give us permission to do so. Generally, we will contact an emergency contact if we are unable to reach you. Of course, if you would like for us to discuss the case with your emergency contact(s), you can contact us and we can discuss the risks and benefits of such communication including, but not limited to, the lack of attorney/client privilege for any discussions for which the emergency contact is involved.

<u>If any of the contact information changes for you or any of your emergency contact(s), please let us know immediately</u>. If you will be out of town for an extended period of time, we request that you inform us of this as well.

C. CONTACTING YOUR JOHN BALES ATTORNEYS

You will have a “point of contact” attorney and client manager. You will also have other team members that you can speak to when your point of contact attorney is not available. Although your attorney may not always be immediately available to answer your questions directly, you may be able to obtain an answer to most of your questions from another member of your team. Additionally, you can always ask to speak to the Staff Administrator, who is also dedicated to serving you.

For your convenience, we offer local telephone numbers for our clients to call our office at any time. To find the local telephone number in your area, ask a member of your team or go to our website, www.JohnBales.com and click on “Contact Us”.

D. CORRESPONDENCE FROM JOHN BALES ATTORNEYS

At various times throughout your case, you may receive correspondence or other documents from us. Please review them carefully and comply with any request as soon as it is received. The faster we receive all necessary information, records, and documents, the faster your case will be in a position to attempt to resolve it. Again, it is your responsibility to ensure that we have the most current contact information for you, so please contact your team if your mailing address, telephone number, or personal email address change.

E. ELECTRONIC COPY OF DOCUMENTS

We may image and electronically file all documents (collectively, the “Imaged Documents”) and destroy the originals of the Imaged Documents, including all original signatures on those documents. In the agreement you signed with us, you authorized us to take this action, and understood that, as a result, neither the original documents, nor any of the original signatures on such documents, will remain available to you or us for any purpose including, but not limited to, for use in any legal proceeding arising out of or relating to the documents (“Proceeding”). You knowingly, willingly, and expressly: (1) waived all rights relating to, and (2) agreed, based on our reliance on, among other things, your agreement and authorization, that you are estopped from asserting any claim, defense, or objection, whether evidentiary or otherwise, arising out of or related to the imaging and destruction of original documents and all original signatures on such documents, including, without limitation, any claim, defense, or objection arising out of or related to our introducing and/or court accepting, into evidence in any Proceeding copies of Imaged Documents, including all imaged signatures, in place of original documents.

III. WAIVERS OF CONFLICTS OF INTEREST

As addressed, in some cases we represent more than one person/entity from the same incident. If that is the case, we represent each and all persons/entities listed in the “Waiver and Authority to Represent and Contingency Fee Agreement”. In that agreement you agreed that each listed person/entity has asked us to represent them and have provided similar information relating to the above referenced incident. You are aware that a potential conflict of interest may exist and/or develop among those listed, others, and/or with us. After considering these matters and having the opportunity to discuss them with one of our attorneys, you waived any conflict of interest that may now or in the future exist. You further agreed that we may, in our sole discretion, withdraw from representing any of the persons/entities and represent another. You agreed and understand that any information provided to us will be shared with all listed persons/ entities.

If you have any further questions about this, please write to us.

IV. DOS AND DON'TS

A. DOS

1. Do Stay In Communications With Us and Immediately Update Us on Any Changes in Your Contact Information.

By you ensuring that we have the most updated information to contact you, we can attempt to keep you informed of important updates and the progress of your case. This also includes you informing us of any updates or changes in information and/or documentation. We strive to maintain a positive client-attorney relationship and understand the most effective way to contact you is step one in any successful case.

2. Do Always Ask Us Questions If You Do Not Understand Some Aspect of Your Case.

We understand that the process of resolving your case can sometimes seem overwhelming and laborious. If you are ever put into a situation where you do not understand something or are unsure how to proceed please do not hesitate to ask us any questions that you may have. Every member of your team has a role that revolves around attempting to make you comfortable and aware of aspects of your case and we are eager to answer your questions.

3. Do Read All of Our Letters to You and Let Us Know If You Have Any Questions About Them.

The letters and emails that we send to you are to provide you with information pertaining to your case. It is important that you read them thoroughly and completely. If you ever receive correspondence from us that you do not understand, we encourage you to ask questions to clarify any information presented in our correspondence with you.

4. Do Comply With Our Requests for Information, Documents, and Records and Timely Provide Them to Us.

By providing us with any requested information, documents, and records, we can provide you with quality care and service. Some types of documents and information that we may request includes but is not limited to medical records, driver's licenses, authorizations, change of address, etc.

5. Do Timely Appear at All Meetings, Depositions, Hearings, Etc. that are Scheduled with You.

If you have been schedule to appear at a meeting, deposition, or hearing it is imperative to your case that you arrive timely and prepared. If for some reason you are unable to appear, do let us know *as soon as possible* so we can try and secure other arrangements.

6. **Do Look at Your Case as a Judge and Jury will See It.**

A good "rule of thumb" is (1) always respond to requests as you would want a person to respond to you and (2) to look at your case as a judge and jury will look at it. When you discuss your case with us, think about how that judge and jury will observe your behavior, listen to the questions and answers, and decide the case on the basis of whom they believed and whom they liked more. A helpful perspective is to assume that the judge and jury are of diverse race, religion, and status in life. Assume that some would naturally like you and some would naturally dislike you. Obviously, this setting suggests caution and careful selection of words.

7. **Do Tell Us Everything about Your Case Whether You Think it Helps or Hurts Your Case.**

We need to know everything about your case. It is more than likely that the insurance company will investigate and discover information about you. If we are in the know for every positive and negative aspect of your case, we will be better prepared for when and if the opposing counsel attempts to use some knowledge against you. Therefore, we must know this information as well.

8. **Do Tell the Truth.**

Of course, this does not need to be stated. Everyone understands this. This paragraph is not included because of doubt about your credibility or honesty. On the contrary, we have faith in your integrity. However, in our opinion, every lawyer is obligated by the Rules of Professional Conduct to specifically inform his clients to testify honestly.

The truth, whether in the deposition or on the witness stand at trial, or speaking with us will never really hurt a litigant as much as a fabrication. A lawyer may be able to successfully "defend or explain" the truth, but there is no defending or explaining why a witness lied or concealed the truth. In the eyes of the judge or jury, untruth devastates the credibility of a witness and hurts immeasurably. Florida law also has provisions directly on point. For example, section 57.105, Florida Statutes addresses the use of sanctions for unsupported claims or defenses. Also, pursuant to section 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.803,

or s. 775.084, Florida Statutes.

B. DON'TS

1. Don't State Facts that are Beyond Your Knowledge Without Clarifying with Us that You Think This May Be True.

You may be asked a question that you feel you should know the answer to, but aren't sure. Sometimes you may be tempted to guess at or estimate the answer to avoid admitting lack of knowledge. If you do not know an answer to a question, even though you think you may appear uninformed or evasive, let us know that you do not and then inform us of what the answer may be.

2. Don't Let the Opposing Attorney or the Circumstances Get You Angry Or Frustrated.

This will affect your ability to objectively see your case and to help us better prepare your case.

3. Don't Try to Decide Before You Answer Whether a Truthful Answer Will Help or Hinder Your Case.

Always answer truthfully. You should not change your answer because of the effect you believe the answer will have on the case.

4. Don't Discuss Your Case With Others Because the Attorney/ Client Privilege May Not Apply.

Remember, the insurance company, opposing attorney, and the opposing party are not your "friend" for purposes of this case. Do not let their friendly manner cause you to drop your guard.

V. STOPPING NURSING HOME ABUSE

The elderly are a particularly vulnerable class of people and deserve special attention and care. Especially in Florida, where seniors make up a significant portion of the population, elder abuse is prolific and needs to be stopped. Public attention needs to be brought to cases of nursing home abuse in order to demonstrate the horrific treatment of seniors and to alert other nursing homes that they will also be subject to costly lawsuits if they don't respect and properly care for the elderly.

It is important that you do your part in helping to save other victims like yourself or your loved one. Please report any suspected nursing home abuse to the Florida Abuse Hotline, provided by the Florida Department of Elder Affairs. First, if a resident is still in the care of the abusive nursing home, they are in immediate danger and steps

need to be taken to remove the resident from the home. The Florida Abuse Hotline can help you secure the resident's safety.

Second, calling the hotline will provide a record of the nursing home's abuse that the Florida Department of Elder Affairs, in conjunction with Adult Protective Services, the Aging Network, and the Department of Children and Families, can use to ensure that there are not further victims of this nursing home's abuse. Although you or your family member has already been injured, you can help protect other vulnerable seniors.

VI. NURSING HOME ABUSE CLAIMS, CONSIDERATIONS, AND ISSUES

A. TYPES OF FACILITIES

Although this booklet will refer to nursing homes as the common abusive and negligent entity, it is important to remember that abuse and neglect can occur at a variety of facilities that care for the elderly. Abuse and neglect can occur at assisted living facilities, adult day cares, or skilled nursing facilities.

B. NURSING HOME RESIDENTS' RIGHTS

In the majority of cases, senior citizens are the victims of nursing home abuse. Seniors are a particularly vulnerable class and are often not fully advised of their rights. Residents may not even realize they are being abused by their nursing home. Under section 400.022, Florida Statutes, nursing home residents are entitled to a basic set of rights that promotes safety, privacy, and autonomy. Nursing homes are supposed to make public a statement of these resident rights. Many nursing home lawsuits result due to a violation of these rights by the nursing home or its staff. It is important that you are aware of these rights, if you are a nursing home resident or a family member, in order to take appropriate legal action and to protect yourself or your loved one. These rights include, but are not limited to:

1. The right to independent personal decision.
2. The right to private and uncensored communication.
3. The right to participate in social, religious, and community activities.
4. The right to manage his or her own financial affairs.
5. The right to be adequately informed of his or her medical condition and proposed treatment.
6. The right to refuse medication or treatment.
7. The right to receive adequate healthcare and protective and support services.
8. The right to have privacy in treatment.

If you or your loved one suspects that any of these rights, or others, were violated by the nursing home, please advise your attorney so we can better pursue your case.

C. STATUTE OF LIMITATIONS

Under section 429.296, Florida Statutes, there is a statute of limitations for nursing home abuse lawsuits in Florida. This means that your suit must be filed within the statute of limitations period, or you will be barred from bringing a claim. The statute states that victims of nursing home abuse have a standard time window of two years to file a lawsuit. In some cases, this time period may be extended; namely in cases where there was intentional misrepresentation of fact or fraudulent concealment that prevented the victim, or their family, from discovering the abuse. In such cases, the statute of limitations is typically increased to four years, but in no case can a claim be filed more than six years after the incident occurred.

Therefore, it is important that if you suspect nursing home abuse that you consult with an attorney as soon as possible to preserve your claim within the statute of limitations period. The statute of limitations will begin running at one of three scenarios: 1) When the harmful incident occurred, 2) When the victim or the victim's representatives learned that an existing injury was caused by a specific incident or 3) When the victim or the victim's family should have discovered the incident with due diligence. Do recall, nursing home claims require the potentially lengthy pre-suit period before you can file a lawsuit, therefore it is important to begin your pursuing your case as soon as possible.

D. WAIVER OF THE CONSTITUTIONAL RIGHT PROVIDED IN ARTICLE 1, SECTION 26, FLORIDA CONSTITUTION

On November 2, 2004 voters in the State of Florida approved The Medical Liability Claimant's Compensation Amendment that was identified as Amendment 3 on the ballot. The amendment is set forth below:

The Florida Constitution

Article 1, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first $250,000 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of $250,000, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

Before we are able to represent you, you must understand and acknowledge in writing the following:

1. You have been advised that signing this waiver releases an important constitutional right; and

2. You have been advised that you may consult with separate counsel before signing this waiver; and that you may request a hearing before a judge to further explain this waiver; and

3. By signing this waiver, you agree to an **increase in the attorney fee** that might otherwise be owed if the constitutional provision listed above is not waived. Without prior court approval, the increased fee that I agree to may be up to the maximum contingency fee percentages set forth in Rules Regulating The Florida Bar 4-1.5(f)(4)(B)(i); and

4. You have three (3) business days following execution of any waiver in which to cancel this waiver;

5. You wish to engage the legal services of our law firm in an action or claim for medical liability the fee for which is contingent in whole or in part upon the successful prosecution or settlement thereof, but you are unable to do so because of the provisions of the constitutional limitation set forth above. In consideration of the lawyers' or law firms' agreements to represent you and your desire to employ the lawyers or law firms listed below, you hereby knowingly, willingly, and voluntarily waive any and all rights and privileges that you may have under the constitutional provision set forth above, as apply to the contingency fee agreement only. Specifically, you waive the percentage restrictions that are the subject of the constitutional provision and confirm the fee percentages set forth in the contingency fee agreement; and

6. You have selected our law firm as your counsel of choice in this matter and would not be able to engage their services without this waiver; and you expressly state that any waiver is made freely and voluntarily, with full knowledge of its terms, and that all questions have been answered to my satisfaction.

VII. TYPES OF CLAIMS

Typically, there are three types of nursing home abuse claims. The first, when the victim is still living, is a claim for injuries. The second, when the victim is deceased but ultimately died from other causes, is a survival claim. The final, when the victim's family or estate brings suit due to the wrongful death of the victim, is a wrongful death claim.

A. CLAIM FOR INJURIES

If you or your loved one has shown signs of injuries due to potential nursing home abuse or neglect, the most important thing is to remove the resident from the facility as soon as possible. Make sure you or your loved one are safe and receiving

proper care. If you are capable, you may bring action on your own behalf. If you are seeking help for your loved one, a guardian who is in charge of making legal decisions on behalf of the elder can pursue a claim.

B. SURVIVAL CLAIM

If your loved one was injured due to nursing home abuse, but later died of unrelated causes, you may be eligible to bring a survival claim. This claim survives the victim's death. It does not claim that the victim died due to the nursing home abuse, but that your loved one suffered an injury from this abuse and died, due to unrelated causes, before your loved one was able to pursue a claim. You cannot claim wrongful death damages, however you can claim survival damages from the time the victim was injured by the nursing home abuse until the time of her death.

C. WRONGFUL DEATH CLAIM

If your loved one was in a nursing home at the time of their death, and you suspect that nursing home abuse caused the death of your loved one, you may bring a wrongful death claim on behalf of the family.

In order to pursue a lawsuit, the plaintiff must establish that (1) the defendant owed a duty to the resident, (2) the defendant breached the duty to the resident (3) the breach of the duty is a legal cause of loss, injury, death or damage to the resident; and (4) the resident sustained loss, injury, death or damage as a result of the breach.

In order to determine whether the survivors can make a claim for wrongful death, your attorney will investigate the decedent's death certificate, which might indicate that the victim did not die a natural death. Additionally, your attorney may hire a medical expert to examine the case and offer their opinion on the causation of death which may be more accurate and complete than just relying on the death certificate. The abuse or neglect caused by the nursing home does not have to be the sole cause of death; however, it has to be a substantial, contributing cause.

D. WHO QUALIFIES AS A SURVIVOR

In survival claims and wrongful death claims, essentially, the surviving spouse, minor children, adult children (if there is no surviving spouse) and the parents of the decedent (if they are still alive and there are no other qualified survivors) are eligible to receive compensation for these types of claims. Additionally, the decedent's estate may make a claim.

VIII. DAMAGES

The injuries resulting from nursing home abuse and neglect create significant economic impact on the elderly and their loved ones. These costs include, but are not limited to, medical bills, lost wages, and lost future earnings. Additionally, you or the surviving family members may bring claims against the nursing home for further

damages. Your lawsuit will seek to recover these costs in the form of damages.

A. MEDICAL BILLS

Florida law allows medical bills to be claimed as damages, even if they were paid by a third party such as an insurance company, Medicare or Medicaid. These expenses may not be the largest damages sought in a nursing home abuse lawsuit, but they provide a baseline to calculate more intangible damages, such as pain and suffering. Often, damages for pain and suffering amount to three times the amount of the medical bills.

B. LOST WAGES

A victim of nursing home abuse or neglect can make a claim for lost wages or lost future earnings. While the majority of nursing home residents are retired, many people enter nursing homes and assisted living facilities for rehabilitative services. For example, a person recovering from surgery may enter an assisted living facility for a short term period with the intention of returning to their job when they have healed. However, while at the facility they were injured due to the facility's abuse or neglect and now they cannot return to work. This victim would have a claim for their lost wages, as well as lost future earnings if they are no longer able to work due to these injuries.

Lost wages are the potential earnings that the injured or deceased party would have made if they were not injured by the nursing home. These lost wages would be based on the missed wages in the past and missed earnings proved by 1099's, W-2's and tax returns. If you are no longer able to work due to injuries suffered as a result of the nursing home's abuse, then you can pursue a claim for lost future earnings.

C. WRONGFUL DEATH

Wrongful death damages can be claimed by the surviving family members or by the estate.

Surviving family can claim the following:

1. Mental Pain and Suffering (for the loss of their spouse or parent)
2. Lost Companionship, Instruction, and Guidance
3. Medical or Funeral Expenses (If Paid By a Survivor)
4. Lost Support and Services
5. Loss of Decedent's Protection and Guardianship

The estate may recover damages for:

1. Loss of Net Accumulations
2. Decedent's Lost Earnings
3. Decedent's Medical and Funeral Expenses

D. PAIN AND SUFFERING

A victim can make a claim for pain and suffering. Quantifying the amount of pain and suffering damages is difficult, as there is no standard or guideline. Instead, the jury will, based on the evidence, determine the appropriate amount of damages for pain and suffering. Your attorney may suggest a baseline for the jury to consider, such as valuing the amount of pain and suffering damages as four times the amount of the medical bills. However, the jury does not have to follow this baseline; therefore it is impossible to accurately estimate what a jury may award. There is no cap and, depending on the facts of your case, this amount of damages can vary greatly.

Additionally, surviving family members can make a claim for their own pain and suffering caused by the death of their loved one. Pain and suffering is the largest set of damages claimed by the surviving family members. Pain and suffering are intangible, meaning there are no guidelines to how much you are awarded for this claim and every case is different. Instead, if your case goes to trial, the jury will, based on the evidence, evaluate the damages you suffered as a result of your loss. There is no cap on pain and suffering damages, thus this amount can be very high depending on the decedent's age and the type of relationship the survivors had with the decedent.

E. DISABILITY

Damages can be claimed if the victim is left disabled as a result of the nursing home abuse. For example, if a victim suffers a fall and can no longer walk, they are disabled. A claim for damages can be made for this resulting physical disability.

F. DISFIGUREMENT

Damages can be claimed if the victim is left disfigured as a result of the nursing home abuse. For example, if a victim suffers from pressure ulcers, the victim will likely be disfigured in the affected areas. A claim for damages can be made for this resulting disfigurement.

G. LOSS OF ENJOYMENT OF LIFE

A jury can compare the quality of life a victim enjoyed prior to their injury compared to their current quality of life. If the jury finds the victim's quality of life diminished, they can award damages. To demonstrate this, you should provide the name of witnesses that knew you well both before and after the incident. These "before and after" witnesses will testify how the victim's life changed for the worst after the incident. An example of a "before and after" witness could be a close friend, family member, or coworker.

H. MENTAL ANGUISH

In many cases, the victim is not just abused physically. Often, distress, anxiety

and fright are connected to the physical injury, especially given the nursing home's apparent authority over the resident. For example, a caretaker might have been intentionally abusive towards the victim. This would cause significant mental anguish for the victim and the jury can award damages based on this claim and should be taken with the same amount of severity as a physical disfigurement or disability.

I. LOSS OF NET ACCUMULATIONS

Net accumulations are determined by the jury and evaluate how much the decedent would have left to his estate if they had not died due to nursing home abuse or neglect. Net accumulations are evaluated based on the monthly income of the decedent (from work, pension or social security benefits) and their life expectancy. Then the jury subtracts from this amount what the decedent would have likely paid on personal and support expenses for the rest of their life. That determines approximately what the defendant would have left to their estate if they had not prematurely died due to the abuse or neglect of the nursing home.

J. PUNITIVE DAMAGES

In the State of Florida, it is very difficult to recover punitive damages. Punitive damages are used to punish defendants for their behavior, if it is intentional or grossly negligent. These damages are designed to hold the defendant corporations responsible for their bad behavior and hopefully will prevent the nursing home from abusing future residents and to remember that their victims are people who are far more important than their profits.

Punitive damages are rarely awarded in nursing home abuse cases; however, they may be available to you in order to send a message to the defendants that you cannot abuse the elderly. However, the threshold for punitive damages is higher than other damages. You must demonstrate that the nursing home's conduct was intentional, reckless or grossly negligent, which a higher standard than mere negligence is.

Your attorney will pursue a punitive damages claim by going before the Court and making a reasonable showing, through supporting evidence and testimony. Please be aware that, depending on the facts of your case and the jury's findings, there may be a cap on punitive damages and a limit to what you may receive.

IX. PURSUING A TYPICAL NURSING HOME ABUSE AND NEGLECT LAWSUIT

Chapter 400 of the Florida Statutes governs nursing home abuse and neglect lawsuits. This section will outline the typical procedure for pursuing an elder abuse case against a nursing home, including expert review, the mandatory nursing home pre-suit period, pre-suit mediation, litigation and trial.

X. INVESTIGATING YOUR NURSING HOME ABUSE CLAIM

After hiring our firm, your attorney will send a records request to the nursing home, pursuant to section 400.145, Florida Statutes. Once your attorney has collected the appropriate records, the attorney may retain an expert to review the records to decide whether your claim should be pursued. Your attorney will pay for the medical records and the expert review, and you will not be required to pay any upfront costs or fees.

This initial, investigatory period usually takes one month to four months or longer to complete. Of course, the length of time depends on the individual issues of the case and the amount of medical records needed to review. It is important to remember that your suit must be filed within the statute of limitations period, so this time extensive process needs to be initiated as soon as possible. Your role in this investigative process includes ensuring that we have the most up to date and current contact information so that in the event that we need to discuss an aspect of your case with you, you can be readily available. Additionally, you must constantly inform us of any change in your condition and/or information obtained from any health care provider.

XI. MANDATORY PRE-SUIT PERIOD

Once your attorney determines that your case has merit, they will send a Notice of Intent to Initiate Litigation to the at-fault nursing home, and any other prospective defendants, pursuant to section 400.0233, Florida Statues. The Notice of Intent begins the mandatory pre suit period and must be done before actually filing the lawsuit. Once the notice is mailed to a prospective defendant, no suit may be filed for a period of 75 days.

During this period, the defendants will conduct an evaluation of the claim. At this time, you may be asked to give an unsworn statement to the prospective defendant's attorney about the events surrounding your case. This statement is only used for evaluation purposes and cannot be used against you if litigation goes forward. Your attorney will prepare you for this testimony and will accompany you while you testify, which usually takes place at the attorney's offices.

Additionally, you will attend a pre-suit mediation within 30 days after the claimant's receipt of the defendant's response to the claim. This mediation gives the nursing home a chance to make an offer to settle the case and forgo litigation. At the end of the 75 day pre-suit period, the prospective defendant will either 1) reject the claim or 2) make a settlement offer. If the nursing home rejects the claim, refuses to settle, or you reject the nursing home's offer to settle, the case will proceed to the litigation stage.

XII. DEMAND - SETTLEMENT NEGOTIATION STAGE

Pursuant to your prior instructions, we are always looking for opportunities to settle your case for a reasonable amount. At the time we initially informed the opposing party's insurance company of our representation of you, we requested that they comply with their obligations under Florida law to investigate your case and pay a reasonable

sum to resolve it. We sometimes send a follow up letter requesting that they do the same thing. If the insurance company responds to such requests and makes an offer, we will obtain your authorization before responding.

Unfortunately, many insurance companies will not even consider a personal injury case until the extent of your injuries, pain, and suffering, as well as the case facts; can be determined to their satisfaction. While we often do not consider this reasonable, we will attempt to negotiate your case with the at-fault parties and/or insurance companies pursuant to the authority you have provided us. At the appropriate time, a demand for a specific amount will be made to the at-fault party's insurance company to settle your claim based on the information and documentation we have provided and they should have obtained. Of course, prior to sending the demand for a specific amount, your attorney will obtain authority from you to demand a specific amount. This negotiation process is usually frustratingly slow because the insurance company is very slow to respond.

The amount of time that a case remains in the pretrial phase is dependent upon the status of your medical treatment and the negotiations with the opposing party's insurance company. In the event that all negotiations with the opposing party's insurance company result in an impasse, your attorney will discuss with you whether your case should be transferred to the litigation/trial team. Although the litigation process can be lengthy and difficult, it may be necessary in order to protect your legal rights and ensure that you have been compensated fairly for the injuries and damages you have sustained.

A. DEMAND FROM YOU TO AT-FAULT PARTY AND/OR INSURANCE COMPANY

In most cases, settlement negotiations start when you send a demand letter to the at-fault party and/or the insurance company demanding that it resolves your claims. If a demand letter is necessary in your case, we will prepare it for you based on the representations you make to us. Once prepared, we will request your approval of the amount being demanded. When we send it to the at-fault party and/or the insurance company, we will also send you a copy and ask you to review it and inform us of any improvements or inaccuracies in it, such as the facts and the extent of the injuries and pains. Unless we hear otherwise from you, we will assume you are completely satisfied with it.

Almost always, the at-fault party will challenge the facts in the demand letter and make an investigation to find records, documents, and witnesses that will dispute them. Please make sure we are aware of all information and witnesses whether good for your case or bad.

Your demand will include your preliminary offer to settle your case and will represent the potential recovery you might receive only if you prevail in a jury trial. You should not view the amount of your preliminary offer as the amount you will recover in

your case because it usually is not. Instead, it is a negotiation tool meant to assist in your efforts to maximize your recovery by giving you room to negotiate with the at-fault party and/or the insurance company. The reasonable settlement amount of your case will likely be less than demanded because of weaknesses in your case and issues relating to the calculation of the preliminary offer, including the following:

1. Based On Facts Most Favorable To You

The preliminary offer will be based on the facts, records, and documents most favorable to you. It does not take into account any negative facts, records, and documents the at-fault party and/or the insurance company may present throughout your case, including at trial. The at-fault party and/or the insurance company will likely provide facts, records, and documents favorable to it that may significantly decrease the value of your case and weaken the amount of your preliminary offer.

2. Ignores the Risk and Costs, and Frustrations of Litigation

The preliminary offer does not take into account any of the risks you take on by continuing and litigating your case. These risks decrease the value of your claim because of the possibility you may recover nothing at trial. Some of these risks are discussed in the section titled *Considering Settlement Offers Made in Your Case*. Please read through that section carefully every time you decide to consider (a) making a settlement offer or (b) accepting/rejecting an offer made by the at-fault party and/or the insurance company.

In our experience from prior cases, the at-fault party and/or the insurance company may respond with a counter-offer. The at-fault party and/or the insurance company's counter-offer may be as little as nothing. Of course, we will discuss all offers we receive from at-fault party and/or the insurance company with you. We will not accept or reject any offers without your approval.

B. COUNTER-OFFERS FROM AT-FAULT PARTY AND/OR INSURANCE COMPANY

The at-fault party's insurance company almost always does not respond to your demand or will make a counter-offer. We will advise you of the response and discuss it with you to obtain your instructions and authorization on how to reply.

C. CONSIDERATIONS RELATING TO SETTLEMENT OFFERS

There are many issues for you to consider when deciding (a) to make a

settlement offer or (b) whether to accept or reject an offer from the at-fault party's insurance company. Some of them are listed below. Of course, if you wish to address others, please do not hesitate to call us.

As agreed, neither you nor we will settle your claim without first obtaining the consent of the other. You have agreed to us making a demand to the responsible parties and/or insurance companies to settle your claim based on the information and documentation provided to us. If the responsible parties and/or insurance companies do not make an offer that is acceptable to you, we will address the options available to you including potentially filing a lawsuit on your behalf, if we agree to do so.

1. Resolution of Claim at This Time

Settlement resolves your claims without trial. By continuing on with litigation and trial, it may be a year or two before the case is resolved. For example, even if we prevail at trial, the at-fault party and/or the insurance company can appeal that judgment, meaning your claim is not yet resolved. By settling, we should be able to conclude the matter so that you may receive your portion of the settlement money in a fairly short period of time after a settlement is reached.

2. More Likely to Receive Settlement Funds Sooner

You are more likely to actually receive the funds sooner by settling. You avoid a trial that can take several years, and even if you prevail at trial, you avoid the potential appeal that can take several more years.

You may actually receive the funds by settling. Sometimes the at-fault party does not have insurance or sufficient insurance and is not solvent by the time a judgment is entered. Therefore, even if we obtain a judgment, we may not be able to collect any funds from the at-fault party based on the judgment. Accordingly, you need to pay particular attention to the at-fault parties' ability to pay a judgment and the amount of coverage the at-fault party has because they may not have sufficient money and/or assets. Also, if we proceed into the discovery process, the at-fault party may incur significant legal expenses to pay their attorney. This could potentially exhaust the money and/or assets they currently have and you may not recover from the at-fault party.

Even if the at-fault party and/or the insurance company do have sufficient money and/or assets, they may decide to not pay any judgment. While an attempt may be made to collect on any judgment, we do not handle this type of law and you will need to find a separate attorney that does.

3. Settlement Avoids Extensive Discovery

If the case is not settled, the parties will most likely take extensive discovery that will include deposition of you, witnesses, health care providers, employers, and others.

During this time, the at-fault party and/or the insurance company may learn facts that weaken your claim. These facts may be used against you at trial to reduce or eliminate the value of your claim.

If the case is not settled, the parties will most likely take extensive discovery that will include deposition of you and other witnesses. During this time, defendant's counsel may learn facts that weaken your claim. These facts may be used against you at trial to reduce or eliminate the amount of hours you claim you are owed. This will also add to the attorneys' fees and costs and will require the litigation to become more complicated.

You should also consider the amount of time you will likely be required to spend responding to discovery requests from defendant's counsel, which may include you (1) responding to (a) written interrogatories (questions), (b) requests to produce certain documents and records, and (c) requests to admit to certain facts and (2) give a deposition. Each is discussed in more detail below and raises further considerations. For example, you may have to take a full day or more off of work because your deposition could last all day. Unfortunately, you will probably not be able to recover the lost wages that result from your time spent at a deposition.

4. Less Costs Incurred Which May Increase Your Recovery

While we have agreed to advance the costs associated with pursuing your case, these costs must be reimbursed when and if the at-fault party's insurance company pays a recovery amount as provided in your Authority to Represent and Contingency Fee Agreement that you signed. These costs can be substantial, especially the further the case proceeds. The costs for litigating a case including discovery and experts witnesses can be a high dollar amount. Some of the costs associated with pursuing your case are listed in your agreement with us. They include, but are not limited to, the cost of filing suit, service of process, discovery, expert witnesses, document copies, electronic research, etc.

5. Potential Exposure to Opposing Party's Attorneys' Fees and Costs

If a lawsuit is filed and you lose the lawsuit, you most likely will be required to pay the costs incurred by any winning parties/defendants. You may also be required to pay opposing party's attorneys' fees under certain circumstances. For example, if the opposing party is successful in meeting the requirements of a Proposal for Settlement, you would be required to pay the amount of fees awarded by the court. See the section below on Proposal for Settlement. You may also be required to pay fees if the opposing party is successful on a motion for attorneys' fees pursuant to section 57.105, Florida Statutes, which is addressed below.

6. Payment of Costs as Case Progresses

We have agreed to advance certain costs on your behalf and to only recover them if you receive any amount from the at-fault party and/or any insurance company. Under the Authority to Represent and Contingency Fee Agreement, we, in our sole discretion, decide on the costs and expenses to advance. We are not obligated to advance any costs/expenses or pursue any claim if we, in our sole opinion, believe it is not feasible to do so. If in our sole opinion your claim is not feasible to pursue but you wish to pursue such claim, and we are agreeable to do so, then you must pay and advance all costs/expenses from that date forward.

7. Criminal Record

Unfortunately, a criminal record for crimes that occurred in the past ten (10) years may be damaging to your case. Your credibility may be attacked by the at-fault party and/or the insurance company based on your criminal record or other bad acts. If they succeed in attacking your credibility, the jury may believe the fault party and/or the insurance company's assertions that you falsified your claim, injuries, and pains. This may cause the jury to find in favor of the at-fault party and/or the insurance company or substantially reduce any judgment entered by the jury.

XII. LITIGATION - TRIAL STAGE

A. DECIDING WHETHER TO TAKE A CASE TO LITIGATION

It is ultimately your decision on whether to file suit, if the Trial Team is of the opinion that the case should go to litigation. Your attorney will discuss with you the potential benefits and risks associated with proceeding to trial. Once suit is filed, it can take several years or more to obtain a trial date. During that time, you will be required to participate in the litigation process and make yourself available for the related discovery process, including depositions, compulsory medical examinations and live testimony at trial. Obviously, no one can assure you of what a jury might decide when the jury is presented with having to make a decision that involves addressing the issues in your case. The jury's decision can substantially impact whether or not you may realize any net recovery after payment of all the fees, costs, provider balances and liens, as well as determining whether the defendants might have a right to pursue you to recover some portion of their fees and expenses.

If both you and your attorney agree that your case should be transferred to the litigation team, you will be assigned a trial attorney and trial client manager. This team will then begin preparing your formal complaint and associated court documents. Once the complaint has been filed, there are certain court-imposed timeframes associated with your case. Your trial attorney will discuss this timeline with you and keep you informed of the litigation process.

A complaint will be drafted and filed with the Clerk of Court. We will then attempt to have the complaint served upon the defendant(s). The defendant(s) will have twenty (20) days after service to respond to the complaint. Commonly, at that time, you will be

asked by the defendant(s) to respond to written interrogatories (questions), requests to produce certain documents and records, and possibly attend a medical evaluation by a doctor of the defendant(s)' attorney's choice. Thereafter, your deposition may be taken by the defense attorney. We may also take depositions and other discovery from the opposing side. After your deposition, a mediation conference may be scheduled in an effort to resolve your case before proceeding to trial. Mediation is a procedure where an independent person meets with all parties and attempts to get the parties to settle the case.

Please evaluate the pros and cons of taking a suit to trial while considering settlement offers. Your case cannot be successful without your assistance, so you must be an active participant, which will require you to participate when requested. Aside from being costly, risky and time consuming, litigation is also stressful. This is especially important to consider if you or your loved one are elderly.

B. ATTORNEYS' FEES AND COSTS

Litigation will require an increase in the amount of attorneys' time and costs needed to litigate your case in court. Pursuant to the Authority to Represent and Contingency Fee Agreement that you signed, our attorneys' fees will remain at 40% of any and all recoveries that occur after a lawsuit is commenced on your behalf. This fee calculation is computed before costs are subtracted from the total amount recovered.

While you may be entitled to proceed with litigation and have your day in court, we must advise you that can be a very expensive day. Even if we convince a judge there is sufficient evidence you sustained a permanent injury to allow a jury to make the final decision on that issue, and the jury rules in your favor, you still face significant costs. Insurance companies realize this fact and recognize that there are certain fixed expenses that are incurred just to properly present your case to a judge or jury. The costs can be significant in pursuing a claim through a jury trial.

Those costs are in addition to the attorney fees which also increase from a third to forty percent. By way of an example, a physician who may have charged $100.00 or so per visit to provide you with treatment may charge $400.00 or more to meet with an attorney for fifteen or twenty minutes to discuss their thoughts regarding your injuries and further care requirement.

The same physician may then charge $2,000.00 or more to attend the deposition. In addition, some physicians charge $4,000.00 to $5,000.00 or more to take time from their practice to testify on your behalf at trial. Those kinds of costs can be multiplied by the number of physicians and experts involved in presenting your claim to the jury. The point is that the overall costs incurred to proceed with a jury trial can potentially approach or even exceed the eventual net recovery to the injured plaintiff, if any. It is not unusual for costs alone to approach the range of the defendant's current

settlement offer. Fortunately, if you prevail, the judge may award you some percentage of the costs you incurred in presenting your claim. However, just as often the judge may only award a portion of those expenses, the remainder would then be paid from the final award. Of course, if the costs exceed the award, you will not put any money in your pocket.

C. COMPLAINT-FILING A LAWSUIT

Once the mandatory pre-suit period is completed or waived without resolution, your attorney will file the lawsuit against the nursing home, and any other prospective defendants. You may notice that there are multiple defendants listed besides the nursing home, this is so the lawsuit will reach any money that has been "hidden" by the nursing home in shell corporations, management companies and associated entities. Additionally, you may bring claims individually against negligent facility employees.

A complaint will be drafted and filed with the Clerk of Court. We will then attempt to have the complaint served upon the at-fault party(ies), which can take thirty (30) days or more depending upon the speed of the process serving company hired for the purpose of service. Once served, the at-fault party will have twenty (20) days to respond to the complaint by filing an answer.

D. DISCOVERY

After the answer is filed, the discovery process will begin. Normally, we serve discovery on the at-fault party and the at-fault party's attorney serves discovery on you. Discovery from the defendant includes you (1) responding in writing to (a) written interrogatories (questions), (b) requests to produce certain documents and records, and (c) requests to admit to certain facts and (2) give a deposition. While the responses are based on your own testimony, it will help you to write down the responses.

During this process, the defendant may learn facts that weaken your claim or call into question your credibility based on any negative past conduct and witness testimony. The defendant may be able use this against you at trial to cause the jury to find in favor of the defendant and/or the insurance company or substantially reduce any judgment entered by the jury. The following discusses some of the discovery tools that may be used in your case.

1. Interrogatories

Interrogatories are questions that you are required to provide your sworn responses to that can be used against you at trial, including for the purpose of impeaching your credibility. If interrogatories are served on you, it is important that you answer each interrogatory unless the response calls for information that is irrelevant or protected by privilege. We will help you determine what responses request irrelevant or privileged information so that we make the proper objection to them. It is important to maintain truthfulness while answering the interrogatories and to have consistent answers

throughout the litigation process.

You should carefully read the questions and write down all the information you have including dates, witnesses, addresses, facts, and similar information that responds to each interrogatory. You should be especially specific as to responding to the injuries, treatment, and prior accidents related questions.

We understand that you may have provided some of this information to us in the past. However, it is important that you answer every question completely and to the best of your ability, whether or not you provided such to us before, so the response is comprehensive and up-to-date. Please understand that your responses are an important part of pursuing your claim. If not thorough, your responses may be used by the opposing party to indicate that you have not been totally truthful and are hiding information, which may restrict your ability to recover in your case.

Usually, the responses to interrogatories must be served on opposing counsel within thirty (30) days from the date they were served on us. To give us time to review and finalize your draft answers, you must send them to our office at least fourteen (14) days before the thirty (30) day requirement so that we have time to prepare the final copy and have you sign them.

2. Requests for Production

Requests for Production require that you provide certain documents to the defendant that may help or hurt your case. If requests for production are served on you, you should respond to each request unless it asks for irrelevant or privileged documents. We will help you determine what responses request irrelevant or privileged information so that we make the proper objection to them.

Upon receipt of requests for production, you need to immediately review them carefully and write down your response next to each one, whether you have or do not have such documents. We understand that you may have provided some of this information and documentation to us in the past. However, it is important that you respond to every one of these requests as thorough as possible and to the best of your ability, whether or not you provided such to us before, so the response is complete and up-to-date.

If you have the requested documents in your possession, custody, or control, you will need to make us a copy of them and provide us with that copy. You will also need to provide us with a copy of each document requested. Please only provide us with a copy. You should always keep originals. If you do not have the documents in your possession and think you know who has possession, custody, or control of them, please write this down as well.

Usually, the responses to requests for production must be served on opposing counsel within thirty (30) days from the date they were served on us. To give us time to

review and finalize your draft answers, you must send them to our office at least fourteen (14) days before the 30 day requirement so that we have time to prepare the final copy and have you sign them.

3. Request for Admissions

Request for Admissions require you to admit or deny whether certain facts are true in your case. Any fact that you admit as true is deemed not to be in dispute in your case, and we are unable to argue that fact is not true at trial. If requests for admission are served on you, you should respond to each request unless it asks for irrelevant or privileged information. We will help you determine what responses request irrelevant or privileged information so that you make the proper objection to them. Any request that you fail to provide an answer to, will be deemed admitted and cannot be in dispute at trial.

Upon requests for admissions being served on you, you will need to immediately review the requests carefully and draft a response to each request by stating admitted or denied, or unable to respond and the reason that you are unable to respond. We understand that you may have provided some of this information to us in the past. However, it is important that you respond to every request to the best of your ability, whether or not you provided such to us before, so the response is complete and up-to-date. You must admit, deny, or state unable to respond with a legally acceptable reason for being unable to respond. Please understand that any request for admission as to a fact that is not responded to will be deemed admitted and can restrict your ability to recover in your case. Every question must be answered accurately and thoroughly.

Usually, the responses to requests for admissions must be served on opposing counsel within thirty (30) days from the date they were served on us. To give us time to review and finalize your draft answers, you must send them to our office at least fourteen (14) days before the 30 day requirement so that we have time to prepare the final copy and have you sign them.

4. Depositions

A deposition is your oral testimony taken under oath by a court reporter in response to questions by other attorneys, and in some cases, by an attorney representing you. The testimony is transcribed after the deposition is concluded and is available for use by either side for summary judgment or trial. A judge or jury is not present during the deposition; only the lawyers, the witness, the court reporter, and a representative of each party usually attend. In all likelihood, the proceedings will be held in one of the attorneys' offices or in a court reporter's office.

If a deposition is scheduled in your case, we will provide to you the *Deposition Preparation Booklet,* containing information that many clients have found helpful to prepare them for their deposition. The booklet discusses many topics relating to deposition including the following: (a) purpose of a deposition, (b) what to wear, and (c) suggestions relating to your testimony.

5. Examination of Persons

In addition to taking your deposition and obtaining copies of all medical records that may exist prior to and subsequent your accident, the defendant may require that you submit to an Examination of Person ("EOP"). An EOP is an examination by a doctor selected by the at fault party for the purpose of determining the extent of any your injuries. It is most common for the doctor performing the EOP for the at-fault party will disagree with the assessment of your injuries by your doctors and may even say that you have completely recovered or that you were not injured. Of course, this will depend on the doctor and the injuries you suffered.

If you fail to attend an EOP the Court can enter sanctions against you, including dismissing your case. Therefore it is important that you attend and are aware of the date, time, and place.

E. HEARINGS

During the litigation process, there may be hearings scheduled by us or opposing counsel to ask the court to rule on issues that may arise as the case progresses. Unfortunately, the court's docket (calendar) is usually full and it can take many months before a hearing can be scheduled. This is one of the reasons your case can take an inordinate amount of time to resolve.

Usually, your attorney will represent you at these hearings without you being present. However, there may be some extraordinary circumstances in which your attendance may be necessary. In those circumstances, we will contact you and inform you of the date, time, and location of the hearing in judge's chambers so you can attend. Please understand, if your attendance is required you timely arrival is necessary because the Court will not accept tardiness. If for some reason you are unable to attend, please let us know with enough time beforehand to attempt to obtain a rescheduled hearing on your behalf

F. MOTIONS THAT MAY BE FILED

Motions are written requests to the court to make a ruling on an issue. There are many motions that can be filed with the court. A few are addressed below:

1. Motion for Summary Judgment

A motion for summary judgment is requesting that the judge rule on an issue as a matter of law. This motion can be made for all or any part of a claim. Prevailing on summary judgment in Florida is difficult because if there is any disputed material fact, the court may deny the motion. Accordingly, it is rare for a plaintiff in litigation to file one. On the other hand, defendants will use it as a tool to try to narrow the issues. However, in a few cases, such motion may at least be an effective way to bring a certain

issue to the court's attention, depending on how the case develops.

Usually for us to file a motion for summary judgment, we will need for you to complete an affidavit that provides the necessary facts for the motion. Please understand, if you are signing an affidavit for a motion for summary judgment in your favor, the affidavit is your sworn testimony. It is similar to giving testimony at a deposition and can be presented during your deposition and at trial. Again, you must make sure it is completely accurate and truthful. Of course, if you have any questions or comments about the necessary facts, do not hesitate to let us know. The affidavit must be accurate, complete, and meet your approval, before you consider signing it in the presence of a Notary Public.

Once you approve of the motion and affidavit, we will file it with the court and set it for hearing. Unfortunately, it may take a substantial amount of time to get a hearing time before the court. Your attendance at the hearing may not be necessary. We will advise you of the results after the motion is heard if you do not need to attend.

The defendant can also file a motion for summary judgment. If the defendant prevails and the court grants the motion, the issues addressed in the motion have been decided in the defendant's favor. This can cause the entire claim against the defendant to be resolved in favor of the defendant. However, if the court grants the motion pertaining to only part of the claim, your case will continue so that the remaining issues will be resolved through a final judgment.

Accordingly, you need to read in detail any motion for summary judgment we send you, including any affidavits. We need for you to inform us of whether the facts provided therein are accurate and complete.

2. Motion to Compel Discovery and for Sanctions Including Attorneys' Fees And Cost

A party may file a motion to compel discovery and for sanctions, including attorneys' fees and costs, when the other party does not timely respond to a discovery request. For example, the above addresses certain type of discovery and the amount of time a party is normally given to respond. Accordingly, failure of a party to respond to these types of discovery in a timely manner may result in a motion to compel discovery or sanctions.

Accordingly, it is important that you timely address all of your responses with us and execute them as is necessary so that we serve the responses in the time required.

3. Motion for Attorneys' Fees and Costs Pursuant to Section 57.105, Florida Statutes

Florida law has a statute that ostensibly is to help reduce the costs associated with frivolous lawsuits and defenses. The difficult aspect of this law is defining what is

frivolous. The current definition is that a claim or defense may be considered frivolous when the party making the claim or defense knew, or should have known, that it was (a) not supported by the material facts necessary to establish the claim or defense; or (b) would not be supported by the application of then existing law to those material facts. In such a case, the prevailing party may file a motion for recovery of attorneys' fees and costs pursuant to section 57.105, Florida Statutes.

However, monetary sanctions may not be awarded if the court determines that the claim or defense was initially presented to the court as a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, as it applied to the material facts, with a reasonable expectation of success. Further, sanctions may not be awarded against the losing party's attorney if he or she has acted in good faith, based on the representations of his or her client as to the existence of those material facts.

A party may file a motion for attorneys' fees and costs pursuant to section 57.105, Florida Statutes against another party to a lawsuit after certain requirements are met. These requirements include that the party making the motion for sanctions under this statute served on the opposing party but did not initially file with or present to the court the motion. This party may file and serve the motion with the court twenty one (21) days after service of the motion, if the opposing party does not withdraw or appropriately correct the challenged paper, claim, defense, contention, allegation, or denial within this time period.

Upon the motion of a party, the court may award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds as provided above.

Therefore, it is very important that you provide us with all the facts concerning you and your case, whether they support or harm your case, so that we can avoid exposure to a section 57.105 motion.

G. MEDIATION

After the parties have had time to perform discovery, the Court will order a formal mediation, even if you participated in the pre-suit mediation. This mediation will be much like the pre-suit mediation. Mediation is a confidential, informal conference where the parties to a dispute meet with a neutral, impartial person called a mediator, in an effort to reach a mutually acceptable agreement. A judge or jury is not present during Mediation; only the lawyers, the parties, and the mediator. The mediator controls the Mediation, but does not have authority to make a binding decision or force the parties to accept a settlement with which they are not satisfied. The mediator helps the parties voluntarily reach a settlement of the dispute. He or she is not to be biased in favor of either party, but may bring up positive and negative issues in an attempt to have all parties understand the entire case.

If mediation is scheduled in your case, we will provide to you the *Mediation Preparation Booklet* that many clients have found helpful to prepare them for their deposition. The booklet discusses many topics relating to mediation including the purpose of mediation and what to wear. If your mediation is within several weeks and you have not yet received the *Mediation Preparation Booklet*, please write to us immediately and we will forward you a copy for your review.

H. TRIAL

The purpose of a jury trial is to review facts of your claim, including your lost wages. If a trial is scheduled in your case, we will provide to you the *Trial Preparation Booklet* that many clients have found to be helpful in preparing them for their trial. The booklet discusses several topics relating to trial including the typical trial process and what to wear. If your trial is within several weeks and you have not yet received the *Trial Preparation Booklet*, please write to us immediately and we will forward you a copy for your review.

I. DEFENDANT'S ENTITLEMENT TO RECOVER FEES AND COSTS

As you may know, there are circumstances where the defendant can pursue you to recover money to compensate them for the amount they paid in attorneys' fees and costs incurred in defending themselves against your claim. If a jury renders a verdict against you and in favor of the defendant, the prevailing party may seek to recover their costs of defense from the non-prevailing party.

J. PROPOSAL OF SETTLEMENT

Prior to trial, a party may make a Proposal for Settlement, which is an offer to an opposing party to settle a case for a certain amount. As long as specific requirements are met, section 768.79, Florida Statutes allows a party to recover attorneys' fees and court costs if the jury does not award a certain amount in relation to the Proposal of Settlement amount.

If a defendant makes a Proposal for Settlement to you for a certain amount and the jury does not award you at least 75% of the Proposal of Settlement amount, you may be responsible to pay that defendant's attorneys' fees and costs if you rejected the settlement offer. For example, if a defendant offered to settle your case for $10,000, and the jury awards you at trial only $5,000, that defendant may be able to recover reasonable attorneys' fees and costs, even though the jury might award you some level of damages. The attorneys' fees and costs must be from any jury awarded amount or in a claim directly against you personally, if the award amount is insufficient.

On the other hand, if prior to trial, you make a Proposal for Settlement to a defendant for a certain amount and the jury awards you at least 25% more than your Proposal for Settlement amount, you may be able to recover reasonable costs and

attorneys' fees against that defendant if your settlement offer was rejected.

This statute must be considered in all cases and especially in cases in which you may be comparatively negligence. In situations involving arguments of comparative negligence, you can be in significant jeopardy of potentially being liable of owing substantial amounts of money to a defendant, even if you appear to have prevailed. The reason is that while a jury may award a significant amount of money, the jury award is then subject to reduction by the percentage of negligence attributed to you, if any. As noted above, in situations where you either do not prevail, or prevail at a level insufficient to meet the above percentage of recovery required pursuant to the Proposal of Settlement, then in addition to not being required to make payment to you, a defendant may be entitled to seek to recover their own attorneys' fees and costs of defending themselves against your claim from you personally.

XIII. APPEAL OR POST-JUDGMENT RELIEF STAGE

Often, if we prevail at trial on your case, the Defendant will appeal the judgment and/or file post-judgment motions to have the judgment overturned or modified. You should also be aware that if the amount of the judgment exceeds the insurance coverage, the Defendant may be insolvent by the time a judgment is entered to pay any additional amount. Therefore, even if we obtain a judgment on your behalf, we may not be able to collect any funds from the Defendant based on the judgment.

Under the Authority to Represent and Contingency Fee Agreement you signed, our representation of you does not include the pursuing or filing of any appellate proceedings or post-judgment relief or action by us concerning your case. You and we must reach a separate written agreement before any such appeal or action will be responded to or filed by us on your behalf.

Additionally, responding to appeals and post-judgment motions takes a substantial amount of work by your attorney and adds to the costs you must pay from any recovery. Accordingly, your agreement with us states that the attorneys' fees are increased by an additional 5% of any recovery if we agree in writing to represent you in appellate proceedings or post-judgment relief.

XIV. SETTLEMENT - CLOSING STAGE

In the event that we are able to reach a settlement with the opposing party's insurance company that is approved by you, your file will proceed to the closing stage. As part of the closing process, we try to negotiate outstanding balances for costs, bills, letters of protection, and health insurance and/or governmental liens from health care providers and others. This process can take time, as your attorney will need to speak with each provider and/or lien holder to request reductions on your bills and liens. We cannot guarantee we will be successful in obtaining such reductions, but we will keep you informed of our efforts in this regard.

After your careful review, agreement to, and execution of the settlement documents, your team will forward the Release to the opposing party's representative and the settlement check will be deposited into the John Bales Attorneys Trust Account ("Trust Account"). We must wait at least ten (10) days after depositing the check in the Trust Account before we can disburse the settlement funds to you. After the expiration of the ten (10) days from the date of the deposit of the settlement check into the Trust Account, we will be in a position to disburse the funds pursuant to your Closing Statement. Of course, the actual distribution will require the resolution of all other closing issues including those addressed above such as finalizing any bill reductions and lienholder payments.

Once all parties have reached an agreement regarding the settlement terms, your attorney will provide you with confirmation of the terms of the agreement. As part of the settlement terms, you will be required to execute a Release and Closing Statement. Your attorney will send these documents to you upon receipt of the Release. You should have a complete understanding of all of its terms. If you have any questions regarding the release, you should contact your client manager and request that they schedule a telephone conference with your attorney.

Your attorney will review with you what it means to sign the Release. By signing the Release, one of the provisions you are agreeing to is releasing the named parties from further responsibility and liability for your claims against them. This will, in all likelihood, include all past and future injuries, damages, and losses sustained by you. Accordingly, you will not be able to bring any further claims against the named parties. Upon receipt of the Release, please do not hesitate to discuss with your attorney any questions or comments you may have after reviewing this document.

Once all outstanding balances have been negotiated and approved by you, your team will provide you with a Closing Statement for your careful review and agreement to disbursement of the funds we recovered on your behalf. We must wait ten (10) days after depositing the check in the Trust Account before we can disburse the settlement funds to you. If we do not receive the signed settlement documents including the settlement check until after 2:00 p.m. on a business day, the bank will not consider it to be "deposited" until the following business day. After the expiration of the ten (10) days from the date of the deposit of the settlement check into the Trust Account, we will disburse the funds pursuant to your Closing Statement.

A. RELEASE

You will in almost all cases be required to sign a release that includes a release of the fault party and the insurance company from further responsibility and liability for at your claims against them including past and present injuries, damages, and losses sustained by you. Essentially, if a settlement is reached and you sign a release, you will most likely not be able to bring any further claims against the at-fault party and/or the insurance company for the at fault party's claim.

The following addresses some but not all of the terms that may be included:

1. Settlement Amounts: This is the total for any and all injuries, losses, and damages relating to all of your claims against Defendant.

2. Release of Claims: You will be releasing the Defendant and all other parties listed in the release from further responsibility and liability for any claims you may have against them. This includes all past and future injuries, damages, and losses sustained by you as specified in the Release. Accordingly, you will not be able to bring any further claims against any of the parties listed in the Release.

3. Indemnity and Hold Harmless: You may be required to agree to indemnify and hold harmless Defendant, of and from all claims of any sort from any party claiming an interest, a lien, subrogation, or any other type of legal or equitable claim to the proceeds or any part of the proceeds paid in exchange for this release. This specifically includes, but is not limited to, health care and health insurance liens or subrogation claims, Medicare, Medicaid, other governmental liens or claims for medical or support services provided, or any other type of claim by any third party on the proceeds paid in exchange for this release. The Release extends to and includes indemnity from all costs and attorneys' fees that may be incurred by the released parties as a result of such claims by third parties. You previously acknowledge that satisfaction of all such claims and liens is your obligation and further affirmatively stated that you have given appropriate notice to all holders of liens and subrogation interests concerning the compromise and settlement represented by the Release.

4. Confidentiality: You may be required to not disclose the existence of release, terms of negotiations regarding the release, and the settlement amount paid. When an inquiry is made about your claims against the defendant, you usually agree to state only that: "The matter has been resolved." There are exceptions such as addressing it with your accountant. However, if you are compelled by a court to disclose settlement information to a third party, you typically agree to inform the defendant of this intended disclose.

5. Attorneys' Fees for Enforcement of Release: You may be asked to agree that if legal action is taken to enforce any provision in the Release, the prevailing party is entitled to its reasonable attorneys' fees and costs.

6. Tax Implications: You are responsible for any federal, state, and local tax liability relating to the payments made under the Release. (We cannot advise you about tax issues and recommend that you speak to the appropriate accountant or attorney that practices in this area.)

7. Jury Waiver: You are agreeing to waive the right to jury trial as to any litigation relating to the agreement.

8. Court Approval of Settlement: In certain types of cases, the release is not effective until the Court has issued an order approving settlement and the lawsuit has been dismissed, with prejudice.

B. AUTHORIZATION FOR ATTORNEY TO SIGN SETTLEMENT CHECK

You have previously provided or will be asked to provide an Authorization for Attorney to Sign Settlement Check. This authorization is given for the purpose of authorizing us to collect settlement proceeds and deposit the proceeds directly into the appropriate bank account so that funds will be distributed pursuant to the Closing Statement reviewed, approved, and signed by you.

C. DEPOSITING SETTLEMENT FUNDS AND TIME FOR IT TO CLEAR THE BANK

Once we have received these executed settlement documents from you, we will forward the Release to the opposing party's representative and the settlement check will be deposited into the John Bales Attorneys Trust Account. We must wait ten (10) days after depositing the check in the Trust Account before we can disburse the settlement funds to you. If we do not receive the signed settlement documents including the settlement check until after 2:00 p.m. on a business day, the bank will not consider it to be "deposited" until the following business day. After the expiration of the ten (10) days from the date of the deposit of the settlement check into the Trust Account, we will disburse the funds pursuant to your Closing Statement as soon as it is completed.

D. AFFIDAVIT CONCERNING AT FAULT PARTY'S PERSONAL ASSETS

Sometimes we may request an affidavit concerning the at-fault party's personal assets if the insurance coverage is insufficient. While this affidavit is a sworn document and may indicate that there are limited to no assets of the opposing party, we cannot be sure of the amount of assets that this party may or may not possess. Of course, you can retain an investigator at your own expense or take other action to try to locate other assets and to establish that this affidavit is incorrect. However, based upon the settlement proceeds received, you may elect not to proceed with personal asset searches other than what has been performed.

E. ADDRESSING OUTSTANDING BILLS, LIENS, AND OTHER CLAIMS RELATING TO YOUR CASE

1. Negotiating Outstanding Bills, Liens, and Other Claims

Upon your case settling or receiving an award from a jury, we can attempt to negotiate the outstanding bills, liens, and other claims of which we are aware through communications with you and review of your file. Healthcare providers, lien holders, and others to which you may owe money invariably refuse to negotiate their bills until they are informed of the total amount recovered in a case. Accordingly, we will attempt to negotiate such claims against you after your case settles so that a healthcare provider, lien holder, and others know the total settlement amount. Sometimes they will negotiate and sometimes they refuse to make any reduction.

Unfortunately, this process is difficult and time consuming because there is no requirement that a response to our request for a reduction be provided within a specific period of time. Consequently, we often do not receive adequate and/or timely written responses to our inquiries and attempts to resolve the claim from these facilities and/or agencies. Often it takes months. This delay prevents payment of settlement funds to our deserving clients like you. We understand the frustration this may cause and request that you do not hesitate to call us for an update.

We will work hard for you to reduce any amounts that you owe that relate to your case. Please understand that attorney cannot assist a client in unlawfully avoiding statutory liens or court order involving the funds. Therefore a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party such as healthcare providers, lien holders, and others. Additionally, a lawyer cannot take it upon himself or herself to decide who is entitled to what. Hence, a lawyer may be prohibited from disbursing the disputed funds to anyone until the dispute is resolved.

In other words, we are unable to release the funds held in trust for the claims asserted by healthcare providers, lien holders, and others until such claims are resolved. Once these claims and others are resolved, we will be able to disburse those funds held in trust to cover these claims, pursuant to a Closing Statement.

2. Filing A Motion For Pro Rata Distribution

When a health care provider, lienholder, and others that are making a claim to the recovery will not reasonably negotiate its claimed amount and/or there are not sufficient funds to pay all parties, you can consider having us file a motion for pro rata distribution. To file such a motion, a lawsuit must be filed and then all persons making a claim to the funds recovered must be named in the motion and served with the complaint. This is an expensive and time consuming process. If a lawsuit was filed against the at fault party, some Courts will allow you file such a motion in that lawsuit and serve all parties making a claim. After all parties have been served, a hearing will need to be scheduled before the Court, which may take months to accomplish. The

Court may require at the hearing each party to present evidence to establish its basis for receiving all or a portion of the recovered funds. Please understand that this type of action or motion is not commonly used and some Courts will not consider them.

Also, some of the Courts that will hear such a motion may decide to disburse all of the money recovered to the persons making a claim and none to you. Additionally, please understand that even if a Court rules on this motion, the persons making a claim still may pursue you for any amounts the Court did not require you to pay from the recovery.

Based on the above, most clients are reluctant to have us file a motion for pro rata distribution and prefer to take the best offer from health care providers, lienholders, and others that are making a claim to the recovery.

3. Filing An Interpleader Law Suit

When a health care provider, lienholder, and other that are making a claim to the recovery will not reasonably negotiate its claimed amount and/or there are not sufficient funds to pay all parties, you can also consider having us file a law suit for interpleader. When the lawsuit is filed, all persons making a claim to the funds recovered must be named in the lawsuit and served with the complaint. This is an expensive and time consuming process. There are costs associated with filing suit as well as serving each party to the law suit. Further, we, as the filer of the interpleader, can recover costs incurred for filing it. Additionally, it will take months to file the suit, obtain service on all the parties, and give the parties the mandated amount of time to respond to the complaint. After all parties respond, a hearing will need to be scheduled before the Court, which many take months to accomplish. The Court may require a trial in which each party presents evidence to establish its basis for receiving all or a portion of the recovered funds.

The court will then determine which party is entitled to recover all or a portion of the proceeds. Please understand that even if a Court rules in the interpleader lawsuit, the persons making a claim may still be able to pursue you for any amounts the Court did not require you to pay from the recovery.

Based on the above, most clients are even more reluctant to have us file an interpleader lawsuit and prefer to take the best offer from health care provider, lienholders, and others that are making a claim to the recovery.

4. Types of Claims That May be Asserted Against Any Funds Recovered

The following provides a short summary of some of the types of claims that may be asserted against funds discovered:

a. Health Care Provider Bills

The health care providers that treated you for your injuries caused by the at-fault party must be paid. We will attempt to have the health care provides reduce the amount of these bills when there is a recovery in your case. Health care providers are all those who treated you including, but not limited to, doctors, chiropractors, hospitals, and all others that provide health services.

b. Medicare Liens

We will address a Medicare claim of which we are aware through communications with you and review of your file. 42 C.F.R. Section 422.108, provides in part, the following:

> Medicare is considered to be a secondary payor when group insurance or other forms of first party insurance are available, including personal injury settlements and recoveries involving liability insurance.
>
> When it is not certain whether Medicare is primary or secondary under a given set of circumstances, Medicare will make a conditional payment. If it is later determined that some other party had primary responsibility for making this conditional payment, then Medicare is entitled to recovery from that responsible party or from anyone who received the primary payment.

Accordingly, the United States may bring an action to recover any conditional payment from any entity that is required or responsible, directly or otherwise, to make primary payments. In addition to this independent right, the United States is also subrogated to the rights of the Medicare beneficiary in asserting the rights to third-party payments. 42 U.S.C. section 1395.

In other words, Medicare is entitled to reimbursement for any medical expenses it paid on your behalf as a result of your accident and the settlement funds cannot be distributed until an agreement is reached and payment made for this lien. Consequently, we are unable to release funds held in trust to cover this claim until this claim has been resolved.

We can begin negotiating such claims after your case settles because the settlement amount must be provided before a final amount due will be given. Unfortunately, this process is difficult and time consuming because there is not a requirement that Medicare respond to our request within a specific period of time. Accordingly, we often do not receive adequate and/or timely written responses to our inquiries and attempt to resolve the claim from these facilities and/or agencies. Sometimes it takes months. This delay prevents payment of settlement funds to our deserving clients like you. We understand the frustration this may cause and request that you do not hesitate to call us for an update.

c. Medicaid Liens

We will address any Medicaid claim of which we are aware through communications with you and review of your file. Section 409.910, Florida Statute, The Medicaid Third-Party Liability Act, provides, in part, the following:

> **409.910 Responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.—**
> (1) It is the intent of the Legislature that Medicaid be the payor of last resort for medically necessary goods and services furnished to Medicaid recipients. All other sources of payment for medical care are primary to medical assistance provided by Medicaid. If benefits of a liable third party are discovered or become available after medical assistance has been provided by Medicaid, it is the intent of the Legislature that Medicaid be repaid in full and prior to any other person, program, or entity. Medicaid is to be repaid in full from, and to the extent of, any third-party benefits, regardless of whether a recipient is made whole or other creditors paid. Principles of common law and equity as to assignment, lien, and subrogation are abrogated to the extent necessary to ensure full recovery by Medicaid from third-party resources. It is intended that if the resources of a liable third party become available at any time, the public treasury should not bear the burden of medical assistance to the extent of such resources.
> ….
> (4) After the agency has provided medical assistance under the Medicaid program, it shall seek recovery of reimbursement from third-party benefits to the limit of legal liability and for the full amount of third-party benefits, ….
> ….
> (6) When the agency provides, pays for, or becomes liable for medical care under the Medicaid program, it has the following rights, as to which the agency may assert independent principles of law, which shall nevertheless be construed together to provide the greatest recovery from third-party benefits:
> (a) The agency is automatically subrogated to any rights that an applicant, recipient, or legal representative has to any third-party benefit for the full amount of medical assistance provided by Medicaid. Recovery pursuant to the subrogation rights created hereby shall not be reduced, prorated, or applied to only a portion of a judgment, award, or settlement, but is to provide full recovery by the agency from any and all third-party benefits. Equities of a recipient, his or her legal representative, a recipient's creditors, or health care providers shall not defeat, reduce, or prorate recovery by the agency as to its subrogation rights granted under this paragraph.

In other words, the State of Florida is entitled to reimbursement for any medical

expenses Medicaid paid on your behalf as a result of your accident. Consequently, the settlement funds held in trust to cover this claim cannot be disbursed until an agreement is reached and payment made for this claim. Please go to the website http://www.leg.state.fl.us/statutes/ for further information including the Medicaid Third Party Liability Act.

We can begin negotiating such claims after your case settles because the settlement amount must be provided before a final amount due will be given. Unfortunately, this process is difficult and time consuming because there is not a requirement that Medicaid respond to our request within a specific period of time. Accordingly, we often do not receive adequate and/or timely written responses to our inquiries and attempt to resolve the claim from these facilities and/or agencies. Sometimes it takes months. This delay prevents payment of settlement funds to our deserving clients like you. We understand the frustration this may cause and request that you do not hesitate to call us for an update.

d. Veteran Administration (VA) Liens

The United States Department of Veterans Affairs ("VA") is entitled to reimbursement for any medical expenses it paid on your behalf as a result of your accident and the settlement funds cannot be distributed until an agreement is reached and payment made for this lien. Consequently, we are unable to release funds held in trust to cover this claim until this claim has been resolved.

We can begin negotiating such claims after your case settles because the settlement amount must be provided before a final amount due will be given. Unfortunately, this process is difficult and time consuming because there is not a requirement that the VA respond to our request within a specific period of time. Accordingly, we often do not receive adequate and/or timely written responses to our inquiries and attempt to resolve the claim from these facilities and/or agencies. Sometimes it takes months. This delay prevents payment of settlement funds to our deserving clients like you. We understand the frustration this may cause and request that you do not hesitate to call us for an update.

e. Florida Hospital Liens

Many years ago, the Florida legislature enacted a law that that allowed liens against recoveries from third parties who caused the injury for which the hospital is treating the patient. Later, the legislature enacted special statutes that enacted lien law on a hospital by hospital basis. In 1971, the Florida legislature enacted a statute that provided that those previous hospital lien laws were to become ordinances in their respective counties. It also provided that counties could enact special hospital lien ordinances as each county deemed appropriate. The Florida Supreme Court has held properly drafted hospital lien ordinances to be constitutional.

The hospital lien attaches to the patient's recovery from the at-fault party, who caused the patient's injuries as related to the cost of the care that the hospital rendered the patient. In those counties that do have hospital lien ordinances, failure to resolve the hospital's lien can nullify the settlement. Just as important, failure to reach a resolution of the hospital's lien can have the effect of voiding the settlement agreement , or adversely affecting the hospital's rights of recovery and exposes you, defendants, insurance companies and attorneys involved to potentially significant monetary damages for the amount of the lien.

Additionally, these lien ordinances are not uniform and can and do vary from county to county whereas some only apply to public hospitals, some only apply to not for profit hospitals, and some apply to all hospitals within the county.

Some hospitals have taken the position that they need not submit their bills to the client's secondary coverage, especially Medicaid and County Assistance, with the goal of hoping to receive a greater recovery under the lien ordinance than through those plans. Failure to timely submit may not only void certain payments that may have been made on the client's behalf, and the client's entitlement to reduced lien amounts that would have resulted.

f. Health Insurance Liens

Your health insurance may have covered all or a portion of your treatment expenses for injuries caused by the at fault party. The insurance company that makes such payments may seek reimbursement once you settle your claim with the at-fault party or are awarded a judgment by a jury. Section 768.76, Florida Statutes, Collateral Sources of Indemnity, provides, in part, the following:

> (4) A provider of collateral sources that has a right of subrogation or reimbursement that has complied with this section shall have a right of reimbursement from a claimant to whom it has provided collateral sources if such claimant has recovered all or part of such collateral sources from a tortfeasor.

g. Letters of Protections

If you decide to enter into a Letter of Protection Agreement ("LOP") with the healthcare provider or others, we will attempt to obtain a reduction in the amount owed to this party at the time of any settlement. However, we do not know whether the Provider will agree or accept a reduction of its bill. Accordingly, you could be obligated to pay the full amount claimed to be owed by the LOP party. If you decide to enter into an LOP with a party, our firm will not be able to distribute any settlement proceeds to you until resolution of this LOP party's costs and expenses. Additionally, the LOP cannot be cancelled without the Provider's written agreement to cancel it.

F. CLOSING STATEMENT

The Closing Statement specifies how funds recovered through settlement or award at trial will be disbursed and certain terms and conditions relating to the closing and your case. We will prepare a Closing Statement for you to review in detail upon a settlement or an award at trial. By signing this document, you are instructing us to disburse the funds as provided and agreeing to the terms therein. Once (1) we receive the Closing Statement that you have reviewed, approved, and signed, (2) all the terms of the settlement have been met, and (3) bills, liens, and other claims are resolved, the funds will be disbursed according to the Closing Statement.

The following describes the sections in a Closing Statement:

1. Case Status Section

Section 1 of the Closing Statement describes the status of the case at the time of the Closing Statement and the action, if any necessary to conclude your case**.**

2. Total Recovery (Settlement Amount) Section

Section 2 of the Closing Statement specifies the amount for which your case was settled pursuant to your instructions and authorization.

3. Total Attorneys' Fees Section

Section 3 of the Closing Statement specifies that amount of the attorneys' fees, pursuant to the Authority to Represent and Contingency Fee Agreement that you signed with our firm. The fee is based on the total amount recovered (which includes the fair market value of any property that may be recovered) from any source and for whatever reason, including, but not limited to, judgments, awards and/or settlements of damages, costs, interest, fees, and/or payments/discharge of your liens, medical, and/or healthcare services, bills, or claims. The fee calculation is calculated before costs are subtracted from the total amount recovered.

Prior to litigation, the fee is 1/3 of the total amount recovered. Because of the substantial increase in the amount of attorneys' time and costs needed to litigate your case in court, the fee increases to 40% of any and all recoveries.

4. Total Costs For Reimbursement Section

Section 4 of the Closing Statement specifies that total costs known as of the date stated in the Closing Statement. Pursuant to the Authority to Represent and Contingency Fee Agreement that you signed, our firm costs and expenses incurred by our firm in connection with your representation may include, but are not limited to, expenses or disbursements for taxes; travel; document duplication; courier and messenger services; long distance and cellular telephone tolls; user fees for computer

research; fees paid to experts, court reporters, private investigators, and other third parties; medical/health care, screening, and testing services; file set up and closing costs/incidentals ($60 one time cost/expense); filing, recording, certification, and registration fees; postage; overnight deliveries; tele copier costs; reasonable interest on costs advanced and other incidental expenses; secretarial overtime; and other extraordinary costs necessitated by the time constraints associated with this representation.

The costs incurred will be summarized in the Closing Statement.

5. Amount Retained In Trust For Additional Costs Incurred Section

Section 5 of the Closing Statement addresses funds held in trust for additional costs incurred by our firm. Costs can include, but are not limited to, postage, printing, and travel expenses that our firm has spent in direct relation to your case. Upon final resolution of all matters relating to your case and determination of the additional costs, that amount will be paid by trust check to our firm operating account without another closing statement for additional, outstanding, and subsequent costs incurred by us. If there are no additional, outstanding, and subsequent costs incurred by our firm or there is an amount remaining in our firm trust account after payment of our firm additional, outstanding, and subsequent costs, that remaining amount held in our firm trust account will be paid by trust check to you without another closing statement.

6. Total Client Authorized Disbursements For Outstanding Liens, Medical Bills, And Other Amounts Section

Section 6 of the Closing Statement addresses the disbursements for outstanding liens, medical bills, and other amounts that you authorized. You are confirming in your Closing Statement that you advised us of all bills, liens, and other claims and that you remain responsible and financially obligated to healthcare providers and others for all fees, costs, and expenses incurred by you relating to your case, whether or not listed in the Closing Statement.

7. Total Client Authorized Amount Held In Trust Pending Determination Of Amounts Owed Section

Section 7 of the Closing Statement addresses similar issues that are addressed in Section 6. Because our clients often need the settlement proceeds as soon as possible, we are often instructed by a client to hold in trust the funds necessary to address any outstanding amounts due and disburse to the client any remaining funds.

Once the issues relating to the funds withheld are resolved, the remaining funds, if any, are disbursed to the client.

8. Balance Of Recovery To Client Section

Section 8 of the Closing Statement specifies the amount being disbursed to you, pursuant to the Closing Statement. It also states to whom the trust check will be made payable.

9. Provisions Concerning Closing Statement Section

Section 9 of the Closing Statement provides certain provisions and terms relating to your case and the closing. You should read the entire Closing Statement including these provisions carefully and ask any questions you may have.

10. Notes Concerning Closing

Notes in the Closing Statement are listed just before the provision section. A note provides certain information, provisions, and terms relating to your specific case and the closing. You should read the entire Closing Statement including any notes carefully and ask any questions you may have.

G. CLOSING FILE AND DISPOSING OF DOCUMENTS

When your case is resolved and any settlement funds disbursed, your case will have reached a final resolution and our representation will be concluded. Accordingly, we will not take any other action except to close our file, which includes disposing of certain documents. We only obtain copies of documents. Accordingly, unless we receive a written request from you within ten (10) days from the date of this letter that all original documents were not returned to you, we will assume that they were and proceed with completion of closing our file and destroying the documents, items, etc.

H. <u>IMPORTANT REMINDERS</u>

Of course, without your help we cannot properly prepare and present the case to the at-fault party and insurance company. Accordingly, please allow us to again remind you of the following relating to your case:

1. SOCIAL MEDIA

PLEASE REMEMBER: It is very important that you do not discuss any part of your case with anyone except a member of our firm. This includes not discussing the case on Facebook, Google+, LinkedIn, YouTube, Twitter, Myspace, Instagram, any blog, any chat room, or any other similar social media website/application. Information and pictures posted on these websites may be discovered by the opposing party in your case and used against you. Marking these pages as private may not protect you from the information and pictures being used against you. Please advise us of any Facebook or other social media account you may have. Further, we strongly encourage you to

archive your Facebook or any other social media account and stop using it during the entire time your case is pending. However, you should not destroy or delete your social media website/application or destroy any information or pictures that are currently on it. Any such destruction may be considered spoliation of evidence, which may cause the court to enter sanctions against you. You can consider reopening your website/social media account/application after your case is completed.

2. MAINTAINING DIARY/CHRONOLOGY OF EVENTS

We recommend that you keep a diary of all of your medical treatment including what the doctor may tell you or what tests may be ordered. Additionally, it is also essential to write down how this incident has affected your life such as your ability to continue to do your work, daily activities, chores around your home, leisure or recreational activities, and/or caring for your children or other family members. Write down and tell us about what you used to do for fun by yourself or with family and friends that you are no longer able to do, or because of your injuries, is simply no longer fun to do. Do to the fact that we have asked you to keep this diary; it will be protected by the attorney/client privilege. Accordingly, we request that you write at the top of each page of the diary the following: "PROTECTED BY ATTORNEY/CLIENT PRIVILEGE".

Please send us a monthly update of this diary so that we can use it in informing the insurance company of how this incident has affected your life.

3. INSURANCE COMPANY INVESTIGATOR MAY BE MONITORING YOU

As discussed, the insurance company may have hired a private investigator to follow you and take video of your actions. We do not know if the insurance company will do this, but we want you to be aware that they may. You should at all times be aware that your conduct will have an effect on the case. If the investigator obtains pictures or videos that can be interpreted as you doing tasks that you say you cannot do, this will be raised by the insurance company to support its position.

4. KEEP US UPDATED

Again, please also remember to immediately inform us of any new doctor that may be involved in the care and treatment. Additionally, you should let us know if there are (1) diagnoses of any new injuries, conditions, disabilities, or illnesses or (2) have a substantial change in the medical condition. We need to know of any doctor's opinion that you think helps or harm the case so we can fully evaluate it when considering the claim. You should ask the doctors for a copy of the records relating to the treatment or diagnoses, and send us a copy. Additionally, you should immediately inform us of any additional information and documentation that you may obtain whether it supports or does not support your claim. The opposing party will most likely discover it and we should be prepared to address all issues. This information and documentation is important in yours and our efforts to be successful in the case.

5. YOUR REFERENCE MATERIALS

For your convenience and information, we encourage you to go to our website at www.JohnBales.com. As mentioned above, a biography of our firm and lawyers is enclosed for your consideration. The biography specifies many of the areas of law we practice and information about our attorneys. We have also attached to your folder a magnetized business card that you may place on your refrigerator for quick reference. The magnet has our toll free telephone number and website address. Please let us know if you would like additional magnets for family or friends.

6. JOHN BALES ATTORNEYS ACCIDENT & INJURY TOOLKIT APP

Additionally, we have developed for your use the John Bales Attorneys Accident & Injury Toolkit app that is available on iPhones and Android phones. You can download the iPhone app in the “App Store” and the Android app in “Google Play.” The app includes a quick reference to our phone number and 911; a map locator of the nearest hospital to your current location; an accident tips checklist; a check list for capturing information about an accident; a case consulting section; an expense log; a flashlight on your phone; and a place to store a photo of your insurance card.

Of course, we encourage you to advise others of this app and hope that it will be helpful in the unfortunate circumstances when someone is hurt in an accident.

I. MAKE SURE ALL OF YOUR QUESTIONS ARE ANSWERED

Again, please allow me to emphasize that we want all of your questions to be answered. Accordingly, we encourage you to always contact us if you want to discuss any aspect of your claim.