Letter 6

Dear ,

One of the questions I am most frequently asked by clients and prospective clients is “What’s my case worth?” That’s a complicated question to answer. In the FAQ sheet I sent you earlier, I listed a few of the most important factors that affect the value of a personal injury case including medical bills, lost wages, permanency of your injury, and the quality of your evidence and witnesses.

To give you a more in depth explanation of these and other settlement factors, I have attached my Bulletin: **18 Factors that Could Impact the Settlement Value of Your Personal Injury Case.** This Report describes how each of these factors could figure into your bottom line. Of course, no attorney can give you an exact dollar figure for what you will recover. However, an experienced personal injury attorney should be able to give you a range of likely settlement values, once he or she has investigated your case and knows all of the facts and the nature and extent of your injuries.

To provide some additional insight into the value of your case, I have also attached my Bulletin **What Adjusters Look for in Evaluating Your Proof of Damages**. When your attorney makes a settlement demand, he or she will send the insurance company a packet of materials documenting your injuries, medical expenses, and lost income. The adjuster will scrutinize these documents carefully for any “red flags” that suggest weaknesses or exaggerations in your claim. This Report points out the red flags and provides advice for how they can be avoided or mitigated.

If you would like a personalized assessment of how these settlement factors apply to your case, call me today to schedule your free consultation. Please don’t hesitate to leave a message with my assistant if I am in court or at a deposition. I promise I’ll call you back as soon as I am free, usually within [a couple of hours]. I look forward to an opportunity to meet you in person and learn more about your situation and your case.

I wish you well.

**18 Factors That Could Impact the Settlement Value of Your Personal Injury Case**

Prepared by

**[Attorney]**

**[Contact Information]**

1. **How clear is the defendant’s fault?**
2. **Were you at fault, and to what degree?**
3. **The amount and source of your medical bills**
4. **The quality of your medical reports and records**
5. **The nature and extent of your injuries**
6. **Whether you have suffered permanent impairment or permanent disfigurement**
7. **The amount of your lost income and whether you can prove it**
8. **The extent of collision damage if you were injured in a motor vehicle accident**
9. **Your jury appeal**
10. **The defendant’s negatives**
11. **The impact of your injuries on your spouse (“loss of consortium”)**
12. **The insurance company’s settlement policies**
13. **The quality of your potential witnesses**
14. **The law**
15. **Your lawyer’s track record**
16. **Your location**
17. **How long it could take to get your case to trial**
18. **Liens on your settlement**

# How clear is the defendant’s fault?

The ultimate question is: how strong is your case that the potential defendant was negligent and that the defendant’s negligence caused your injuries? It doesn’t matter how your injury occurred. Your injuries could stem from a motor vehicle accident, fall, medical treatment, or a defective product. The bottom line depends on the strength of your case against the defendant.

If the defendant’s liability is absolutely crystal clear, the value of your settlement is correspondingly increased. If the liability is on the weak side and your chance of winning at a trial approaches 50/50 or less, the value of your case is significantly reduced. In short, a 90% chance or better of winning is excellent, a 60% chance is fair, and a 50% chance or less approaches the not-so good to bad range.

# Were you at fault, and to what degree?

Comparative negligence is the term used to describe the role your own negligence played in causing your injuries. Your comparative negligence will reduce your recovery.

If your negligence approaches 50% of the defendant’s, you are in an unfortunate predicament and you can lose the case completely at trial. If your comparative negligence is minimal, do not worry too much about it.

In some cases, the insurance adjuster will raise comparative negligence just on the defendant’s version of the incident, especially in motorcycle cases. Slip-and-fall cases almost always raise the issue of comparative negligence.

# The amount and source of your medical bills

To insurance companies, medical bills are the best indication of your injuries. Insurance companies evaluate the amount of your medical bills as the primary factor in settlement. Insurance claims supervisors and adjusters place a tremendous value on the quality of documented medical bills.

The source of your medical bills is important. Do the bills reflect a hospital stay, physical therapy, medical and osteopathic treatment, chiropractic treatment, diagnostic tests, orthopedic devices, prescriptions or over-the-counter medicine? A two-week hospital stay and three months of physical therapy is much stronger evidence of an injury than a few thousand dollars worth of negative diagnostic tests such as MRI tests, X-rays, CAT scans, etc.

If your medical bills are well documented and relate to actual injuries, you are obviously on the plus side. On the other hand, if your medical bills are for a series of tests that failed to document any injuries, you are leaning to the weak side. Even worse, if the bills are inflated or relate to treatment for injuries unrelated to your case, you will unfortunately find yourself in the minus column.

# The quality of your medical reports and records

The quality of your medical information including medical reports, emergency records, physical therapy records and interpretations of diagnostic tests are the next most important items when evaluating settlement. Narrative reports from well respected doctors explaining the nature of your injuries are preferable to unreadable hen-scratched office notes that fail to document much of anything. Reports that are descriptive and factual are the best. On the other hand, reports that use terms such as “slightly possible,” “maybe,” “dubious,” etc. can hurt the value of your case.

Detailed typed office notes are good in most cases as are physical therapy records. Hospital records with detailed nurses’ notes are also excellent sources of information on your injuries. Forms that are prepared for insurance companies are less good. The bottom line is-how well documented are your injuries? How complete are the records? How strong are the doctors’ opinions?

# The nature and extent of your injuries

Some injuries are worth more to insurance companies than others. Broken limbs, permanent scarring, rupture of internal organs and other well documented objective injuries are worth more to insurance companies than soft tissue, musculo-skeletal injuries, emotional suffering and other injuries where the symptoms are completely subjective.

Even though most broken legs heal faster than many so-called “whiplash” injuries, insurance companies will almost always pay more for broken legs than they will for strained backs. If you had a compound fracture, for example, the jury can see and almost experience your injury. It is far more difficult for a jury to identify with a low back injury or neck injury that has no supporting objective evidence. Such evaluations may be unfair, but they are a fact of life.

# Whether you have suffered permanent impairment or permanent disfigurement

The word “permanent” is an important word in the settlement of any personal injury case. If your doctor has indicated any amount of permanent impairment or element of permanency, this factor will increase the value of any settlement by a fairly substantial amount. Most states allow a special jury instruction on the issue of permanent impairment. If you have any injury with any permanent aspect, even if it is minimal, the value of the case is increased.

The element of permanent disfigurement always lends some value to a small personal injury case. Your medical bills can be low, your loss of income can be low and your injuries may be fairly minimal. However, if you have some permanent scarring or disfigurement, the settlement value will increase. Scars (especially on the face and especially on women), burns, dog bite marks and other permanent disfiguring aspects are constant reminders of the injury. Jurors can see such injuries and are more likely to award damages higher than damages for “mere” pain and suffering.

If your injuries have left a scar or disfigurement that is likely to be permanent, have it evaluated by a plastic surgeon or specialist. Also, you should get photographs, preferably from a professional, of the scar or mark. Pictures are not only worth a thousand words, but when it comes to permanent disfigurement, they can be worth thousands of dollars.

# The amount of your lost income and whether your can prove it

Lost wages or lost profits are another primary consideration of insurance companies because they can be evaluated in dollars and cents. The best records are those pertaining to an employee who has lost a specific number of work hours multiplied by a certain rate of pay per hour. A letter from a reputable employer with supporting personnel records that provides for a specific dollar amount of lost income is the best type of documentation.

A self-employed worker who keeps sketchy records and who paid little or no income tax presents a much more difficult case. Workers who receive money “under the table” can virtually forget about filing a lost wage claim.

# The extent of collision damage if you were injured in a motor vehicle accident

In many automobile cases, the actual damage to the automobile may be minimal. Unfortunately, jurors are impressed by evidence, or lack thereof, of substantial collision damage.

If the car in which you were injured looks like an accordion, it is less difficult to convince a jury that you sustained fairly serious injuries. On the other hand, if there was only a bumper scratch or minor fender damage, the jury will question the extent of impact and, therefore, the extent of injury.

Significant collision damage to the defendant’s vehicle can also be used to convince an insurance adjuster, or a jury, that you sustained more than minimal injuries. Thus, it’s important to obtain pictures of all automobiles involved in the collision.

# Your jury appeal

What kind of person are you? Will the jury like you? Will your attorney feel positive sitting next to you in the court room or the settlement conference room? Some plaintiffs are obviously likeable and some are unlikable. If a jury is likely to be unfavorable to you, then you may be better off taking any reasonable settlement offer from the insurer.

# The defendant’s negatives

There are some “bad defendants.” Bad defendants are usually very obvious—the drunk driver, the bully, the company that put profits ahead of safety, or the bar owners who were too busy pushing drinks to notice who was getting drunk. If you have a bad defendant, your settlement range goes up.

Other negative factors include prior court awards against the defendant or large settlements. If the defendant has been in the media for business missteps, the defendant may be less likely to endure a public court battle. Are there any criminal charges pending against the defendant? Has there been federal government action by the EPA, the Food and Drug Administration or OSHA? Has there been state or local government action that provides an unfavorable backdrop for a defendant?

If you have a good defendant, such as the little old man who rear ends you while he is looking for his doctor’s office, or the owners of a small variety store who did not repair one of the steps soon enough, the settlement value is lower because the jury will sympathize with such a defendant.

# The impact of your injuries on your spouse (“loss of consortium”)

Some cases have a greater value because of the element of loss of consortium. If you have some good evidence that your spouse’s life was actually affected in a negative way by your injuries, then the loss of consortium value may be fairly high. Consider the following:

a. Did your spouse have to perform extra services such as household duties, taking care of the children, etc.?

b. Did your spouse have to attend to you because of disabling injuries such as a broken leg, open wounds, inability to go to the bathroom alone, etc.?

c. Was your marital relationship affected? Did your spouse have to sleep separately for a period of time?

d. Did your injuries alter your relationship with your spouse and children? For example, did you become angry, upset or discouraged so often that it affected the entire family?

e. Was leisure activity affected by your injuries? For example, some husbands and wives are golf partners, bowling league partners or travel together often. If such a relationship was altered for a period of time, there may be some value to the loss of consortium claim.

# 12. The insurance company’s settlement policies

Some insurance companies are far more conservative than others. Their practices will not change even if they lose 100 lawsuits. These companies do not mind litigating.

It doesn’t bother an insurance company to pay several thousand dollars to defend a $25,000 case even if they lose to a verdict of $35,000. It’s part of doing business. Therefore, knowledge of the type of carriers you are dealing with is very important in evaluating settlements. If the carrier is fair, and some of them are, you can count on a few more dollars in the settlement offer. If the carrier is conservative (perhaps we can even use the word “cheap”), you have to take this into consideration in evaluating the offer. With conservative companies, you definitely have to give up a few thousand dollars to achieve settlement.

# 13. The quality of your potential witnesses

The quality of your witnesses has a significant impact on the value of your settlement. If your only witness to support liability is a relative or friend, your case is weaker than one that has several impartial witnesses. If your doctor has never testified, doesn’t want to testify or cannot testify well, this also weakens your case. In short, your case is only as good as your evidence, and usually your evidence is only as good as your witnesses.

# 14. The law

There may be a statute, case, ordinance or legal standard that applies to your case, either for or against. If there is strong supporting law that your lawyer can cite in your favor, the settlement value is enhanced.

**15. Your lawyer’s track record**

How many cases of this type has your personal injury attorney handled before? Did he or she win, lose or leverage a big settlement? An attorney seasoned in a particular specialty can be more confident in his or her negotiating approach.

# 16. Your location

In some states, some counties, and some municipalities, very low verdicts occur, while jurors in other locales are known to be more generous.

# 17. How long it could take to get your case to trial

If it takes three or four years to get to trial and your injury is already a year old, the jury will be hearing abort things that happened four of more years before trial. Especially with soft tissue injuries, insurers knew that jurors find it difficult to empathize with a plaintiff who experienced pain that lasted six months or so several years ago.

# 18. Liens on your settlement

If you have to pay medical bills, workers’ compensation liens or medical payments to insurance carriers from your settlement, then the amount payable to you is obviously less. However, if your medical bills have been taken care of by a health insurance carrier who doesn’t expect to be paid back, then the amount left for you will, of course, be higher.

# The final settlement figure

Consider your case as you would a poker hand. How many pairs do you have? Are you holding any aces? Is the insurance company holding any aces? Seldom will all factors line up in your favor. One factor can make or break the value of the ultimate settlement.

**What Adjusters Look for in Evaluating your Proof of Damages**

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**Medical Bills**

**Past medical bills**

**Future medical expenses**

**Proportionality between your injury and your medical bills**

**Chiropractic bills**

**Medical Records and Reports**

**Correlation between your medical bills and medical reports**

**Cookie cutter medical reports**

**Causal Relationship between the Accident and your Injuries**

**Prior claims and injuries**

**Time-lag between accident and your report of injury**

**Medical history as you related it to the first caregiver**

**Wage Loss**

**Past wage loss**

**Future wage loss**

Insurance adjusters do not evaluate claims on the honor system. It’s not a matter of whether they trust you or not. It’s their job to question everything and view personal injury claims with a healthy dose of skepticism. You must present proof of your injuries and the losses they have caused.

Your attorney will prepare a packet of materials to send to the insurer to substantiate your settlement demand. In analyzing these documents, the adjuster will consider the following factors.

**Medical Bills**

**Past medical bills**

All other things being equal, the higher your medical bills, the more your case is worth. If a settlement demand includes charges for which you don’t have the supporting documentation, an adjuster may wonder what other areas of the claim are soft, suspect or padded.

When your personal injury lawyer provides the adjuster with a breakdown of expenses in a cover letter or settlement notebook, the lawyer must also provide a copy of that bill in the supporting documentation. If a bill is referenced, but no such bill is produced, the adjuster will not give that number much weight or credence.

**Future medical expenses**

For some injuries, future treatments are foreseeable. Your lawyer should get a doctor’s opinion to this effect and an estimate to include in the packet of materials sent to the insurance company demanding a settlement.

**Proportionality between your injury and your medical bills**

One prime aspect that insurance adjusters look for in any claim is a sense of proportionality between the injuries claimed and the extent of medical bills incurred. Adjusters develop a “sixth sense” as to when the medical bills are out of alignment with the nature and severity of the injury.

Soft tissue injury claims, in particular, are prime candidates for “build up,” a term of art among adjusters meaning the phenomenon of artificially inflating the amount of medical bills incurred, in order to artificially inflate the perceived settlement value of the claim. Adjusters will balk at paying or weighing these heavily if they believe that the medicals have been “goosed up” or that you were steered to a medical treatment “mill” to inflate the bills.

The best method to avoid raising this suspicion is for you to locate your treating doctor yourself rather than be referred by your lawyer.

If you are treating with your primary care doctor, who is probably a not a specialist, you should request a referral to a board certified specialist to confirm the treatment and recommend future care as well. A report from a board certified medical doctor showing that the amount of treatment was medically necessary and appropriate can allay the adjuster’s suspicions.

**Chiropractic bills**

There is no question that adjusters are less impressed by doctors of chiropractic than board certified orthopedic surgeons. After a minimal amount of chiropractic treatment has taken place, it’s a good idea for you to see a board certified medical doctor to confirm the amount of treatment, the appropriateness of the charges to that point, and their necessity.

**Medical Records and Reports**

**Correlation between your medical bills and medical reports**

Adjusters become suspicious if the medical bills submitted by your personal injury attorney lack the necessary corresponding medical reports. The reports validate the diagnosis made, treatment given, and future prognosis. If the attorney does not include a medical report for each bill, the adjuster may discount—or even disregard—those particular charges.

In medical malpractice litigation, it is often said, “If it’s not in the chart, it didn’t happen.” Some bodily injury adjusters take the same approach to evaluating medical expenses: if there’s not a medical report to go along with the bill, it isn’t worthy of consideration.

**Cookie cutter medical reports**

Another aspect of a claim that may draw an adjuster’s raised eyebrow is a standard medical report that changes only the patient’s name. Fill-in-the-blanks medical reports also garner an adjuster’s skepticism. This is a problem since many doctors who specialize in treating patients who have been in accidents charge a considerable amount for these reports and they are often the same reports time after time with slight variations. For example, if three people in the family are involved, the reports may be identical with changes only to the names of the parties. Your attorney can tell the doctor to keep the reports customized.

Adjusters become accustomed to seeing medical reports from the same health care providers over and over again and develop a perspective on certain doctors and their medical practices. When a claim is presented with one of those doctors as the treating physician, the red flag can be raised in the adjuster’s mind.

**Causal Relationship between the Accident and your Injuries**

**Prior claims and injuries**

The adjuster will closely examine your medical records for any evidence that your injuries may have been caused by something other than the accident. The adjuster is looking for:

* Notations of prior claims or injuries;
* Mention of pre-existing conditions or injuries to the same body part;
* Any mention of intoxication, alcohol or drugs; and
* Reference to the history that deviates from the “official” account of the accident that has been represented to the adjuster.

If you have a history of prior claims, you can rarely expect fast-track handling of your injury claim. In fact, the insurer may suspect it is dealing with a “professional claimant” and arrange surveillance on you or even refer the file to its “Special Investigation Unit” (SIU’s), which investigated fraud. One of the best methods to minimize this problem is to establish that prior injuries and claims concern completely different portions of your body, assuming this is true.

**Time-lag between accident and your report of injury**

The longer the time-lag between an accident and the time you report of an injury to a doctor, the higher the skepticism with which the adjuster will view the claim. If you did not seek immediate treatment, you will need to explain why.

**Medical history as you related it to the first caregiver**

Expect the adjuster to scrutinize especially closely the medical records of the first caregiver, focusing on the explanation you gave for your injury. If the records say nothing about an accident or attribute your injury to a pre-existing condition, expect adjuster resistance.

For example, in one case, the claimant alleged injury to her back when she fell off of a physical therapy table. She asserted a product liability claim, contending that the table was defective. The claimant’s attorney sent her medical records to the insurer. These records did not mention any fall off of a physical therapy table. They did, however, relate a history of this woman having slipped and fallen on rocks while crossing a creek. Of course, the claimant’s attorney had difficulty explaining this away.

**Wage Loss**

**Past wage loss**

How much time did you lose from work due to the injury? Can you document it? Be prepared to do so. This means you or your lawyer will need to obtain:

* A written report from a doctor stating that you were disabled for a specified length of time.
* A statement from your employer, verifying hourly wage or salary and absence from work for the time-period during which the doctor stated you were unable to work.

If you lack these, expect the adjuster to refuse to factor wage loss into your damages, especially, if your claimed lost earnings are a high proportion of your total economic losses; or if the length of the disability seems out of whack, given “normal” recovery times for comparable injuries.

**Future wage loss**

Aside from the time you have already lost from work, you injury may cause you to lose wages in the future. Future wage loss might include: diminished earnings from a permanent disability, hospitalizations for future surgeries, and time off for continued physical therapy and medical treatment.

To convince the adjuster that these losses are legitimate, your attorney will need to get a written medical opinion documenting your permanent disability and probable need for future care.

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Like the warning lights on your car’s dashboard, these are flashing “red lights” on the adjuster’s bogus-sensors as he or she evaluates any injury claim. Each sticking point is surmountable, but you and your attorney should anticipate these possible sticking points and prepare to address them.