

**Getting Started:
Initial Case
Management and
Organization**

**Trial Preparations
from Start to Finish
for Texas Paralegals**

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Table of Contents

1. In General 1

2. Initial Client Interview 1

3. Client Interview Questionnaire 2

4. Overview of the Investigation and Evaluation 13

5. Accident Information Summary Form 13

6. Accident Information Summary Form 13

7. Investigators 16

8. Instructions to Investigator 16

9. Investigation Report Form 17

10. Lay Witnesses 22

11. Lay Witness Investigation Checklist 23

12. Letter to Prospective Lay Witness 26

13. Letter Explaining Service of Subpoena 27

14. Lay Witness Report Form 28

15. Insurance Adjusters 33

16. Checklist on Dealing with Insurance Adjusters 34

17. Notice of Uninsured Motorist/Underinsured Motorist Claim 37

18. Medical Experts 38

19. Notice of Representation 38

20. Request for Previous Medical History 40

21.	Request to Doctor	40
22.	Request to Hospital	41
23.	Request for Medical Report	42
24.	Impartial Medical Expert	43
25.	Checklist of Ways to Use IME to Plaintiff's Advantage	44
26.	Evaluation and Acceptance or Rejection	45
27.	Case Evaluation Checklist	45
28.	Checklist on Drafting Effective Complaints	51
29.	Damage Evaluation Checklist	52
30.	Special Damages Outline	62
31.	Non-Economic Loss Calculations	64
32.	Loss of Consortium Claims	65
33.	Checklist for Recovery of Loss of Spousal Consortium	65
34.	Checklist for Loss of Parental Consortium	66
35.	Soft Tissue Injury Cases	67
36.	Checklist on Soft Tissue Injury Evaluation	67
37.	Retainer Agreement	69
38.	Agreement With Referring Attorney	70
39.	File Organization	71
40.	Tracking Medical Costs	73

41.	Case Rejection Letter	73
42.	Practice Tips	74

1. In General

The personal injury case requires a great deal of preparation, especially with respect to information gathering. As a result, it is easy to overlook some materials, simply because there is so much to do. Although there are certain aspects of preparation that you must conduct personally, such as the client interview, there are other duties which can and should be delegated to other responsible individuals, such as secretaries, paralegals, legal researchers, and investigators. A basic system of organization, with sample forms, documents, and checklists, can accelerate and streamline (a) the initial interview, (b) the decision on whether to take the case, and (c) the discovery proceedings. A system will also assure that no important items are overlooked or ignored.

The personal injury case cannot be won without adequate information and careful preparation. The initial client contact should have as its goals: (1) the examination and obtaining of information from the client regarding the facts prior to, during, and subsequent to the accident or incident; (2) the education of the client about the relevant merits and problems with the case; (3) the education of the client regarding the personal injury discovery, trial and settlement process; and (4) a clarification of fee arrangements for handling the case. To accomplish these goals, use the sample forms in this Chapter. They will help to insure a positive initial interview in the personal injury case, and will also help to build a solid foundation for trial by insuring that you gather all the necessary information to prepare the personal injury case in a professional manner.

2. Initial Client Interview

The personal injury case is a special form of litigation. In many instances the client has suffered serious and tragic injury. The initial interview may be the client's first exposure to our legal system. Therefore, it is important to put the client at ease, to gain his confidence and to elicit the information needed to evaluate the case in an objective, responsible, and professional manner.

To develop a successful personal injury practice, you must know whether the case should be accepted, refused, or referred to another attorney. Most of the information needed to make that decision can be obtained if the initial client interview is conducted thoroughly.

The client is a human being who has been injured, and he should be regarded and treated humanely. He is more than just a "plaintiff" in a personal injury case. Emphasize your concern for the client, his injuries, his frustrations, his fears and his legal rights to just and fair compensation.

3. Client Interview Questionnaire

Date: _____

Interviewer: _____

Referring Attorney: _____

The answers you give on this form are for our use only. All answers are confidential; no information will be released to any unauthorized person, and the information will only be used in the preparation of your case. If you so desire, at the conclusion of your case this interview questionnaire will be returned to you.

Please be candid in answering these questions. Although some may ask for personal information, all questions have a purpose. These questions are aimed at getting the information necessary to prepare your case adequately and professionally. We must know all relevant information if we are to represent you effectively. We cannot afford to be surprised at any stage of the proceedings. Also, you must be prepared for trial, and, if we have the necessary information, we can prepare you.

Although this questionnaire is long and may seem complicated, the material it contains and the answers you will supply are important to your case. Answer each question as fully and as accurately as possible.

Please print or write legibly.

General Background Information

1. Name: _____

2. Age: _____

3. Have you ever been known by any other names? _____ If so, please list: _____

4. If you are a minor, give your guardian's full name, his relationship to you, address, and telephone number.

5. Social Security number: _____

6. Marital status: : _____
7. Name of spouse: _____
8. Age of spouse: _____
9. Home address: _____
10. Home address of spouse: _____
11. Work address: _____
12. Work address of spouse: _____
13. Home telephone no.: _____
14. Home telephone no. of spouse : _____
15. Work telephone no.: _____
16. Work telephone no. of spouse: _____
17. Other than the addresses and telephone numbers given, are there any other addresses or telephone numbers where you or your spouse may be contacted? _____

18. List all other persons living in your household, their ages, relationship to you, and whether they are dependent upon you for support. _____

19. List any other persons who are dependent upon you for their support, include ages, relationship to you, and addresses. _____

20. Have you signed any authorizations to release information or any other documents in connection with the accident/incident? _____

21. If so, (a) do you have a copy of the document, (b) do you know the title and purpose of the document, (c) at whose request did you sign the document, and (d) when did you sign the document?

22. List every arrest, charge, and conviction brought by the police or state, or determined by a court. For each item, please provide the following information:
Date
Place of Arrest Charges
Result

23. Have you ever been in the military service?_____

24. If so, what branch?_____

25. Please state dates of service and type of discharge._____

26. Did you receive any commendations or medals? If so, which ones?_____

27. Did you have any service disability or injuries? If so, give the details.

Employment Background

1. Are you presently employed? If so, state the name and address of your employer and how long you have worked there.

2. What is your present job title? _____

3. What are your job duties? (Be specific and complete.)

4. What is your rate of pay? _____

5. How many hours per week do you work? _____

6. Were you employed at the time of the accident/incident? _____

If so, state the name and address of your employer.

7. What was your job title? _____

8. What were your job duties? (Be specific and complete.)

9. What was your rate of pay? (Include any "non-monetary" pay, such as the use of a car.) _____

10. Were you a member of any union? _____

If so, indicate the union and local chapter, and list all union benefits which were available to you (e.g., vacation policy, insurance benefits, guaranteed pay increases).

11. How many hours per week were you working on a regular basis prior to the accident? _____
12. Did the accident occur while you were working for your employer? _____
13. Did the accident occur while you were at the workplace? _____
14. Did the accident occur on your way to or from the workplace? _____
15. Were any co-workers involved? _____
If so, give their names: _____
16. Were there any witnesses to the accident/incident? _____
If so, give their names: _____
17. Have you been able to perform the same job duties listed in number 8 above since the accident/incident? _____
If not, explain. _____
18. Did you report the accident to your employer? _____
If so, list the date and time of the report, whether the report was oral or written, the name of the person to whom you reported the incident and, if written, whether you have a copy of the report.

19. Have you at any time given an oral or written statement to your employer or to someone acting on your employer's behalf (for example, an insurance adjuster)? _____
If so, to whom? _____
20. Have you missed any time from work as a result of any injuries incurred from the accident/incident? _____
If so, list all dates you were unable to work. _____
21. Were you paid by your employer for the dates you were unable to work? _____

22. Did you make a claim for any insurance benefits, workers' compensation benefits, or any other benefits as a result of the accident/incident? _____ If so, identify all documents which you signed to obtain such benefits, and indicate whether you have a copy of each.
23. Did you receive any insurance benefits, workers' compensation benefits, or any other benefits as a result of the accident/incident? _____
If so, from whom? _____
24. Did you lose any wages for the time periods missed from work as a result of the accident/incident? _____
If so, list the total amount of wages lost. _____
25. Have you had to change jobs, or change job duties, as a result of the accident/incident? If so, explain in detail how your job or job duties have changed and the reason for each change.

26. If you have changed jobs or job duties since the accident/incident, have you had any change in earnings? _____ If so, explain in detail.

27. List your complete employment record for as far back as possible. (This is important to show occupational disability.) For each employer, provide the employer's name and address, the date of employment and reason for leaving employment.

28. How much money did you make in the year preceding the accident/incident?

29. Did you file federal and state income tax returns for the last three years? _____
If so, where were they filed? _____
Where they joint returns? _____

30. Did you retain copies of them? _____
31. Did you retain payroll stubs? _____
32. Are the figures shown on the income tax returns and the payroll stubs the same?

 If not, explain. _____
33. Did you have any income from any source that you did not declare/ _____
 If so, explain why. _____

Physical History

1. List every physical examination you have had during the last tell years. For each exam, itemize the name and address of the doctor, the date of the examination, and any results as best as you can recall. For each exam, please provide the following information:
- (a) Date
 - (b) Place of examination
 - (c) Doctor's name
 - (d) Reason for examination
 - (e) Result of examination
- _____
- _____
- _____
- _____
- _____
2. List all prior accidents and injuries you have had, and specify whether they resulted in claims for damages. For each accident or injury, provide the following information:
- (a) Date
 - (b) Place of injury
 - (c) Nature of injury
 - (d) Extent of injury
 - (e) Damage claim
 - (f) Amount received and from whom
- _____
- _____
- _____

3. List all your illnesses, disabilities and diseases before your accident. (This is relevant on the issue of present physical complaints.) For each one specify the following information:

- (a) Date
- (b) Nature of illness, disability or disease
- (c) Treating physician
- (d) Duration of illness, disability or disease
- (e) Manifestations of illness, disability or disease

4. List all your illnesses, disabilities, and diseases after your accident. For each one specify the following information:

- (a) Date
- (b) Nature of illness, disability or disease
- (c) Treating physician
- (d) Duration of illness, disability or disease
- (e) Manifestations of illness, disability or disease

5. List all activities which you have not been able to perform since the accident/incident, or those which you can now perform only with difficulty (e.g., household chores, sports activities, social activities).

6. List the name, address, and telephone number of each physician or surgeon who has examined, treated, or interviewed you relating to your current injuries, and for each one complete the following:

- (a) Physician's name
- (b) Address
- (c) Telephone number
- (d) Date of treatment
- (e) Treatment prescribed
- (e) Costs incurred

7. List every prior claim or prior lawsuit made for personal injury or property damage either before or after the accident, and for each one complete the following:

- (a) Claim Date
- (b) Defendant(s)
- (c) Whether resolved by suit or settlement
- (d) Result

8. Are you receiving, or did you at any time receive, any payments for service-connected injury or disabilities? _____
If so, give the details, your VA claim number, and the present status of your service-connected injury or disability.

Miscellaneous

1. List all drugs and other medications prescribed for you as a result of the injuries incurred, and explain whether you purchased such drugs or medications and where you purchased each.

2. List all medical support items prescribed (e.g., braces, neck supports, traction devices, oxygen units, clothing, crutches, glasses, false teeth), their total cost, and where they were purchased.

3. Have you had to hire any domestic help as a result of your accident? _____
If so, list the name and address of all domestic help hired, the dates and amount paid, and describe the type of assistance you required.

4. List all your lost earnings as a result of the accident.

5. Have you been judged permanently or partially disabled by any state, federal, or administrative agency as a result of the accident? _____

If so, what were the details of the decision?

6. Please list any additional information you have which is not covered in this interview form and which you believe may be of any assistance to us in preparing and evaluating your case.

Attorney's notes and comments:

4. Overview of the Investigation and Evaluation

The investigation and evaluation of a personal injury claim is the first step toward a successful settlement or recovery at trial. Investigators, lay witnesses, and expert witnesses must all be consulted, interviewed, and prepared for the discovery process. The following forms are designed to accomplish these goals.

5. Accident Information Summary Form

Once the initial interview has been conducted and some general background work has been done, the information gathered from the comprehensive client interview form can be transferred to a short accident information summary form. The use of this form will help you to streamline case preparation. You can also refer to it briefly for settlement purposes and for reintroduction to the file before deposition, conference, or pretrial strategy sessions.

6. Accident Information Summary Form

1. Name, address, and telephone number of client: _____
2. Date of accident: _____
3. Statute of Limitations applicable to case: _____
4. Name and address of defendant(s): _____

5. Summary of facts:
 - (a) Nature of accident
 - (b) Scene of accident
 - (c) Time of accident
 - (d) Police reports, investigation, and arrests
 - (e) Witnesses and witness statements_____

7. Investigators

One of the most important members of the litigation support team is the investigator. The investigator can either be a professional one, specifically trained in gathering evidence, interviewing witnesses, taking statements, and conducting background checks, or can merely be a paralegal or researcher used for those purposes. If the case is large and sophisticated enough, it is highly recommended that a professional investigator be used. Properly instructed and monitored, he can be an immense benefit to preparation of the case. Remember that the investigator, though trained, is not an attorney. He needs direction, guidance, and supervision. The forms in this section are designed to cover those needs.

8. Instructions to Investigator

We have been asked by (name of client) to represent him in a personal injury claim against (name of defendant) arising out of (cause of action). Before undertaking representation of our client, we need more information about how the accident occurred, how it may have been avoided, whether there were any witnesses to the accident, and how those witnesses would likely testify concerning fault. In this regard, we require recorded interviews and statements from witnesses. We also require photographs and diagrams of the scene of the accident and copies of any statements previously made by any parties or witnesses.

Please provide us with complete copies of any police reports or motor vehicle reports as well.

We also request that you immediately begin a background check of the defendant to determine whether he has insurance coverage, what the policy limits are of any coverage, who is the adjuster handling the case, and what other property or assets the defendant may have.

Your investigation and report are to be held in strictest confidence and you are not to discuss the merits of this case or any of your findings with any third persons without our express consent. If you have any questions during your investigation, contact us immediately. We have enclosed the following for your review:

1. A signed statement by our client.
2. A copy of a portion of the police investigation report our client had obtained.
3. Photographs of our client's vehicle taken at the scene of the accident.
4. Photographs of our client taken the day following the accident.

10. Lay Witnesses

It is important to building a successful personal injury case to identify all prospective lay witnesses as early in the development of the case as possible. Once you have identified a witness, you should establish initial contact, by sending a letter to notify him of your representation and to make arrangements for an interview.

Prior to the initial interview, which is usually conducted by an investigator or a paralegal, you should go over a lay witness investigation checklist with the interviewer and give him a copy of the lay witness report form for the witness to complete. The lay witness report form, which will help you to prepare for deposition and trial testimony, contains information on the witness’s background and his recollection of the accident. After the interview, it is a good practice to review the checklist and report form to ensure that all necessary information was obtained.

In most cases, it is also advisable to subpoena the witness to a deposition or to trial, even if the witness is friendly. A letter of explanation will make the witness feel that you are considerate and understanding of his time and work commitments, and will help make trial and deposition scheduling more practical. First, it lessens any defense argument concerning collusion or bias, and second, the subpoena is more likely to assure the witness’s attendance. If you subpoena the witness, it is also wise to contact the witness to:

- (a) explain to him the reason for the subpoena; and
- (b) make arrangements to have the witness “on call” if any problems or time delays are involved.

The following forms include a sample witness investigation checklist, sample letters to lay witnesses, and a sample lay witness report form to be used when contacting and interviewing lay witnesses.

11. Lay Witness Investigation Checklist

1. Name, address (home and business), and telephone number (home and business) of witness:

2. Any other telephone numbers or addresses where witness can be contacted: _____

3. Best time of day to contact witness: _____

4. Educational background of witness: _____

5. Marital status: _____

6. Employment history: _____

7. Physical appearance: _____

8. Personality and demeanor (how the witness will relate to the jury; is the witness friendly or adverse; what is the potential for bias impeachment?):

9. Has the witness talked to the defendant, the defense insurance carrier or to the police? _____

10. Has the witness given any statements (oral, written or otherwise recorded) to any parties or to the police? _____

11. Has the witness ever testified in any other proceeding? _____

17. How good is the witness' recollection and ability to narrate? _____

18. What can the witness recall? (Obtain specific details with respect to clothing, weather conditions, traffic signals, other persons present, the color, make, and model of cars, ages of the parties, and statements given.)

19. Does the witness plan on leaving the jurisdiction at any time in the future? (It may be necessary to preserve the witness' testimony.) _____

20. Does the witness have any criminal background?

21. Will the witness testify without subpoena? _____

22. When is the witness available for a further interview with counsel? _____

Attorneys notes and comments:

12. Letter to Prospective Lay Witness

(Date)
(Name of witness)
(Address of witness)
Re: (Name of client) Date of Accident
Dear (name of witness):

This office represents (name of client).

It is our understanding that you were a witness to an accident involving our client at (location) on (date) and that you have given a statement to (name of police department or insurance carrier). We believe that you can be of assistance to us in evaluating our client's case and possibly in settling or otherwise resolving this matter. As a result, we would like to meet with you, at your convenience, to discuss your recollection of the accident. Of course, we will reimburse you for any out-of pocket expenses you incur, such as mileage or parking costs. If you prefer, we can make arrangements to interview you at your home or business.

The civil justice system works properly when individuals, such as yourself, cooperate and come forward with relevant information so that a full and proper evaluation of the merits of a case can be made. Please contact us as soon as possible so that we may make arrangements for an interview.

Thank you in advance for your cooperation and courtesy.

Sincerely,
(Name of attorney)

13. Letter Explaining Service of Subpoena

(Date)

(Name of witness)
(Address of witness)

Re: (Name of client) Date of accident Subpoena served

Dear (name of witness):

This office represents (name of client).

The purpose of this letter is to explain to you why you were served with a subpoena to appear at (deposition or trial). We have a duty to represent our client fully and zealously, and it is important that we obtain from you the knowledge that you may have regarding this accident.

We realize, however, that you have no financial interest in the case, and we do not wish to inconvenience you any more than absolutely necessary. There are, however, many delays and postponements in lawsuits. Because you will be one of many witnesses testifying at (deposition or trial), it is impossible for us to know exactly when you will be needed. Therefore, although the subpoena lists a particular time and date for you to appear, you may not be called until some time thereafter. We would prefer to have you on an "on-call" basis. If you agree to be on call, we will give you advance notice by telephone as to when and where you should appear for (deposition or trial), and will try to give you as much notice as possible when you will be called. We hope that this arrangement will lessen any inconvenience to you.

If you agree to this arrangement, please so indicate by signing the acknowledgment below and returning it to us promptly.

Sincerely,
(Name of attorney)

ACKNOWLEDGMENT

I (name of witness) hereby agree to obey the subpoena and all of its terms in the case of (name of case) and promise to remain on call for (trial or deposition testimony). I can be reached at the following addresses and telephone numbers:

Day: _____

Night: _____

(Name of witness)

14. Lay Witness Report Form

Case name: _____

Date: _____

WITNESS REPORT FORM

1. Name: _____

2. Date of birth: _____

3. Marital status: _____

4. Home address: _____

5. Business address: _____

6. Occupation: _____

7. Recollection of accident (Do you recall the accident? When did it happen? What do you recall?):

8. Where were you when the accident occurred?

9. Describe everything you saw:

10. Describe everything you did as a result of the accident:

11. What were you doing immediately before the accident?:

12. Where were you going?:

13. From where were you coming?:

14. Was anyone with you at the time? If so, please give his name, address, and relationship to you.:

15. How far were you from the accident? _____

16. Did anything obstruct your view? If so, please explain, and describe the obstruction in detail.:

17. Describe what attracted your attention to the parties or to the accident.:

18. Do you have any problems with vision or hearing? If so, please explain:

19. Do you wear corrective lenses or hearing aids? _____

20. Did you do anything after the accident (did you give statements, did you talk to any parties, or did you discuss the accident with anybody)? If so, please give details.:

21. Since the accident, have you been contacted by anyone to discuss your knowledge of it? _____ If so, please give details.:

22. Have you given any statements (oral, written or otherwise recorded) or signed any reports regarding the accident? _____ If so, please give details:

23. Do you know any of the parties involved in, or witnesses to, the accident? _____ If so, please give details:

24. Have you ever testified in any proceeding (court, worker's compensation or disability hearing)? _____ If so, please give details:

ACKNOWLEDGMENT

I have read the above statement and it is true and accurate to the best of my knowledge, recollection and belief.

Witness

INSERT NOTARY BLOCK

15. Insurance Adjusters

Whether you represent the Plaintiff or the Defendant in any personal injury case, the adjuster will play a significant role in determining whether the case settles or must proceed to trial. Plaintiff's counsel should remember that the adjuster and he need not have an adversary role. In many cases, the adjuster needs documentation to justify to his superiors how and why settlement funds are being expended. In this regard, Plaintiff's attorney can supply the written confirmation and back-up material necessary for the adjuster to "put money" on the case. In addition, the adjuster may view the personal injury attorney as an assistant in helping obtain medical reports, lost wages, property damage and other materials necessary to discuss settlement of the case intelligently.

Alternatively, defense counsel must work with the adjuster to obtain settlement authority in the case and must keep the adjuster apprized regarding liability and damage theories. By keeping the adjuster fully apprized of all developments including discovery, changes in the law, settlement proposals, demands, etc., defense counsel and the adjuster can work together closely and productively in settling the vast majority of cases.

There are, however, cases where the adjuster must be viewed as an adversary, and any communication with the adjuster should be designed accordingly to protect against any intentional or negligent "misunderstandings" regarding coverage issues, demands, settlement proposals or discussions. In this regard, Plaintiff's counsel should prepare a confirming letter regarding any conversations with the insurance adjuster to avoid any disputes at a later time. In addition, the paper trail will help if it becomes necessary in the future for the Plaintiff to take an assignment of the insured's bad faith claim against the carrier.

16. Checklist on Dealing with Insurance Adjusters

1. Who is the adjuster? (experienced or novice) _____
 - (a) Generally depends upon the size, nature and complexity of the claim
 - (b) The more complex and dangerous the claim, the more experienced and aggressive the adjuster

- (c) In minor personal injury cases, adjusters are usually inexperienced and do not have authority to settle beyond a certain limit; rather they must go to a supervisor, or in larger cases, to the home office for settlement authority

Note: Regardless of whether the adjuster is experienced or a novice, it is important to treat the adjuster with courtesy and respect. By responding promptly to the adjuster's inquiries, and by maintaining deadlines regarding submission of medical records, employment reports and documents, demands for settlement, etc., you can also expect to receive the same kind of treatment. You should also attempt to personalize dealings and transactions with the adjuster for three basic reasons: first, it will often take the "edge" off tense negotiations; second, it may disarm the adjuster, making it more difficult for him to employ his usual negotiation tactics; and third, by keeping a file of biographical details regarding the adjuster, you will be able to continue to personalize negotiations regarding any subsequent dealings you may have on the present case, or on future cases.

2. Advantages and disadvantages of interacting with adjusters

- (a) Young and inexperienced adjusters:
 - A. May not evaluate case properly from settlement perspective;
 - B. Often will offer little or nothing;
 - C. Generally do not realize the cost involved in litigation, the merits of the personal injury case or the likelihood of eventual success;
 - D. As a practical matter, they generally want to begin a track record for a supervisor to review showing that they are aggressive and will not give the company's money away.
- (b) The experienced adjuster:
 - A. Is usually aggressive;
 - B. Is prone to playing lawyer: attempts to analyze case with its legal ramifications, complexities and uncertainties;
 - C. Generally requires documentation regarding special damages: lost earnings, medicals, etc.;
 - D. Must document both merits (liability theories) and damages.

Note: One of the most effective ways to deal with insurance adjusters is to provide them with objective evidence and negotiation criteria. Prepare and provide medical articles, affidavits from health care providers, statements from friends, family members and co-workers regarding pain, economic evaluations regarding future

damages including income, medical bills, domestic or rehabilitative care, results of recent case settlements or jury verdicts and diagnostic tests that will help to provide objective evidence of injury, such as thermograms, magnetic resonance images, discograms, myelograms, etc. These can aid substantially in settlement. The more objective the criteria on which you base the plaintiff's claim, the more reasonable your claim appears to the adjuster - and the more likely the settlement will approach your demand.

Similarly, the adjuster should be held to the same objective standards. Therefore, he cannot evaluate your case as just another "personal injury case" with a resulting low ball damage figure. Rather, the adjuster should be required to provide the basis for the offer, the basis for any rejection of the settlement's demand and an honest and objective evaluation of liability and damages.

3. Confront liability problems head on; consider "adjusting" the case for the adjuster. That is, discount the case from a liability standpoint. If there is only a 50% chance of recovery, get the adjuster to concede the reasonableness of your damage figures and then discount by 50%.
4. Special problems in documenting damages
 - (a) Rely on physician reports and statements (highlight those portions of the report that indicate and support client's injuries; suggest to the adjuster that the physician will make a credible witness).
 - (b) Provide adjuster with synopses of medical reports and statements from various kinds of potential witnesses.
5. In weak liability cases, consider the following:
 - (a) Dissuade the adjuster from taking a liability/no liability position;
 - (b) Admit weaknesses and evaluate case with those weaknesses in mind.

Note: For example, if you have a 20% chance of prevailing at trial, but believe that in a 100% liability case the damages would be \$100,000, offer to settle the case for \$20,000 or 20% of the settlement value. This gives the adjuster an easy way to justify how and why the case was settled.

6. In excess liability cases, attend to the following:
 - (a) Document each discussion you have with the carrier with a memorandum to file and a follow up letter confirming conversations;