

SEMITRUCK WRECK

Semitruck Wreck

A Guide for Victims and Their Families

David W. Craig



LIONCREST
PUBLISHING

COPYRIGHT © 2020 DAVID W. CRAIG

All rights reserved.

SEMITRUCK WRECK

A Guide for Victims and Their Families

ISBN 978-1-5445-0842-9 *Hardcover*

978-1-5445-0841-2 *Paperback*

978-1-5445-0840-5 *Ebook*

978-1-5445-0975-4 *Audiobook*

Library of Congress Control Number: 2020912800

For over thirty years, people have allowed me the privilege of representing them during some of the worst and most difficult times of their lives. They have trusted me with their future. They have become close to me and the other members of our law firm. For this, I am truly humbled. This book is dedicated to them.

Contents

Foreword	9
Introduction	15
1. First, There Is Chaos.....	25
2. Where Do I Turn for Help?.....	41
3. How to Find an Experienced Attorney.....	57
4. Understanding the Legal Process: Pretrial.....	71
5. The Discovery Phase.....	85
6. Understanding the Legal Process: Mediation and Trial....	101
7. Moving Forward after Your Case	117
Conclusion.....	127
Afterword	137
Acknowledgments	139
About the Author	141

Foreword

BY JENNIFER SHELLY

I wish I could say that the circumstances in which I met David Craig were pleasant. I wish my first meeting with him could have been at a safety festival where he was passing out bike helmets to children. Or that I had met him at a dinner out with a group of friends for a special occasion. But that wasn't the case. Unfortunately, I met David Craig in his law office during the summer of 2011, just days after my husband was killed in a horrible crash caused by a distracted commercial truck driver.

While I was preparing to lay my husband and the father of my children to rest, the last thing I was thinking about was whether I needed an attorney. And I certainly wasn't paying attention to the numerous advertisements from law offices

that had piled up in my mailbox. One of my family members had reached out to David, an expert truck accident lawyer who had come highly recommended.

The day I came to meet with David, I was confused about why I was there and uncertain if I even had a case. After I arrived at his office, I was escorted to a room where his paralegal, Kelley, offered me coffee. Then David walked in and introduced himself and we began to talk.

During the meeting, he maintained eye contact with me, leaning in and listening to every word I said, acknowledging every concern I had, and taking in every detail of my story. All the while, Kelley took notes, recording the entire conversation.

David not only listened to me; he *heard* me. I could already see what sets him apart from other lawyers. I'd met with other attorneys in the past, and they had always made me feel as if I were a case they were taking on, rather than a person they were taking in. I'd tell them my concerns as they'd scribble in their notepads, barely bothering to look up at me, never really seeing me. They had never made me feel as though the words I was speaking were truly being heard.

I immediately knew that David was different. He explained to me that he worked for me and my family, and that he

would work tirelessly to find out exactly what happened to my husband and why. His team would be there to make certain that there wasn't a single stone left unturned. He also explained that he would do all of this while making certain our needs were met throughout the legal process, including making sure we continued our health insurance, that we received grief counseling, and that steps would even be put in place for my children in case the unthinkable happened to me. I felt a sense of comfort in that room, and I knew I wanted to work with David.

David showed up personally to every appointment, and his paralegal was there too, recording every word we spoke. Each of the concerns I had voiced at previous meetings was addressed, and any new concerns I had were recorded and tackled. David and Kelley made me feel like a priority, not just another client in a conference room.

David even developed a special bond with my children. They loved coming into his office and speaking with him. He knew just how to engage with them, how to gently encourage them to voice their concerns even though they were too little to understand why we were all there. In his kind and personable manner, he helped guide them through the process, even offering me advice on the next steps to take to help them in their healing.

David understands grieving, and his advice to begin

counseling for my children was invaluable. He helped me understand and consider all my options and every possible outcome to ensure we would all have a healthy transition into the future.

David and his staff worked hard to determine what caused the wreck that took the life of my husband. He hired a team of experts, traveled the country taking depositions, and prepared the case for trial. He kept that promise to leave no stone unturned to uncover the truth so he could fight for me and my children.

Months later, as the mediation in my case approached, he put together a team of people to work on a financial plan for my family to make sure our current and future needs would be met and that we would always be financially secure. With the help of the financial advisor and the structured settlement expert he found for me, we worked out a monthly budget and made plans to address future financial needs. My settlement coordinator had a plan set up before we left the building.

I can still remember sitting in that room during mediation, overwhelmed with anger and pain, confused, and crying as the defense questioned me. Even though I was experiencing these intense emotions, I was keenly aware that David was also feeling anger and pain. His empathy was there. I could see it in his eyes, in the expression in his face. David,

my advocate, was determined to protect my feelings above all else. David, who had become upset at how I was being treated, pulled the other party out of the room to speak with them.

When David returned, he personally apologized for their behavior. He explained every option to me and made sure to express to me when he felt that something was not fair. When the possibility of an agreement was in reach, David discussed the other outcomes we could pursue, making it clear that he was ready to take my case to trial if that was the option I chose.

I asked about the involvement of my children if we went to trial, and his honest answer to me was that they might also have to go to trial. My top priority is protecting my children, so when I told him absolutely not to the prospect of my children testifying at trial, he didn't attempt to sway me in any other direction. He listened to me, he listened to my concerns, and he respected my decision. David empowered me to make the decision that I felt was right for me and my family.

David doesn't create clients; he creates friendships. Although I no longer have a current case with him, David and his staff continue to check up on me and my family from time to time. When we do see each other, his compassion is still as genuine as our very first encounter.

I can't imagine going through what I did without David by my side. If you aren't in a position to hire him to represent you in a truck accident case, at least you have this book to guide you through the process.

Introduction

The unthinkable has happened. You or someone you care for has been involved in a catastrophic accident with a large commercial vehicle, a semi tractor-trailer, or a box truck.

You are in shock, not yet able to wrap your mind around the fact that so many lives have been suddenly, permanently, and tragically altered.

In the midst of trying to make sense of this senseless and horrific turn of events, you are faced with the harsh reality that the worst of times do not necessarily bring out the best in people. While you and your family struggle with the confusion, anger, fear, and chaos in the aftermath of the crash, there are people hell-bent on turning your personal and family misfortune into their own financial gain.

Within hours of the accident, you may have been approached by underqualified and unscrupulous lawyers who are hoping to make a quick buck by rushing to settle a claim on your behalf. You also may have encountered trucking company employees and consultants, holding themselves out as someone you can trust, while telling you that you don't need to hire an attorney. Their real mission? To convince you to take the trucking company's low-ball cash offer and quietly drift away. If they play their cards right, the trucking company will escape the bulk of responsibility and the insurance company will save a lot of money.

At the same time that you are feeling overwhelmed and confused about what you should do, you may also be grieving the loss of a loved one. Or you're grappling with heart-wrenching life-and-death decisions on behalf of your husband or wife, your mother or father, your sister or brother or, in the worst cases of all, your child.

Nothing in your life has prepared you for the challenges you are facing. You have no idea who to trust or what to expect. You have so many questions and so few answers.

You are the reason I decided to write this book.

LESSONS FROM THE FRONTLINES

For more than thirty years, I have walked into hospital

rooms, living rooms, conference rooms, and courtrooms as a lawyer representing people just like you, people whose lives have been turned upside down because they or someone they love is the victim in a serious semitruck wreck.

My hope in writing this book is to help you understand your rights as a victim, survivor, or victim's advocate after a catastrophic trucking accident. I want to provide the reliable and understandable information you need so you can make the best decisions possible under the worst circumstances imaginable.

In the chapters to come, I will answer your most pressing questions, including: Can you trust the trucking company? *The short answer is no.* Do you need a lawyer? *Yes, but they must have specialized knowledge and experience with trucking accidents.*

I will help you understand:

- How prevalent trucking accidents are, and how something like this could happen to you or someone you care for
- Why the first order of business has to be making sure the trucking company preserves evidence, and how a good lawyer should go about this
- What kind of experts and consultants you are going to

need, and how to make sure you have the right people on your team

- How plaintiff's attorneys in cases like yours get paid
- The questions you need to ask when selecting a lawyer to represent you and your family
- What factors to consider when deciding whether to settle a case or go to trial
- How the legal process works, including the different stages of litigation—from discovery to trial
- The role that mediation can play in resolving a trucking accident case
- How to address all the financial needs of the victims—including how bills will get paid pending conclusion of the case—and how to make sure the injured party's needs are met for the rest of their lives
- How to cope with long-term care, and how to begin accepting a new normal after the case is closed

My hope is that I can show you there is a way to survive this tragedy, that you do not have to go through this alone, and that while life will never be the same, the future can be brighter and more secure than you can imagine at this moment.

LESSONS FROM MY FATHER

I handled my first commercial vehicle accident case more than thirty years ago, when I was a young attorney recently

out of law school. At the time, I didn't know that this was the case that would define my career; I just knew that I wanted to do something that mattered. I wanted to do something bigger than myself. I wanted to help people in a meaningful way.

I wanted to be like my dad.

I grew up in a working-class family in Richmond, Indiana. My mom, who was only seventeen when I was born, worked in a laundromat while my dad served in the Marines before obtaining a psychology degree and going to work for the welfare department. Both my parents were hardworking, salt-of-the-earth people who taught me to value people above everything else. Things can always be replaced, they taught me, but people can't.

When I was seven years old, my dad took me to meet a recluse who lived underneath a bridge in Richmond, Indiana. The man was entitled to assistance and benefits, but he wouldn't let anybody get close enough to help him. My dad, who had met him before, volunteered to try.

I was apprehensive when we approached the man, but my dad reassured me that this was just a person who needed some help. I watched closely to see how my dad interacted with him. I noticed how my dad treated him with respect and dignity. When we were getting ready to leave, this man, this hermit who didn't like talking to or interacting with

people, handed me a baseball. The fact that someone who had so little would give me a gift left a profound impression, as did the example my dad set for me.

From that day on, I understood that everybody has something inside of them that should be valued and that everybody is worthwhile.

This and other experiences with my dad made me want to champion the underdog, to serve people in need. That is what compelled me, I suppose, to accept that first commercial truck accident case as a young idealistic lawyer so many years ago.

FIGHTING FOR THE UNDERDOG

In that case, a dump truck had veered off the road, run into and through a building, and then struck my client, leaving him severely injured.

The driver and the trucking company claimed that the accident resulted from an unexpected tire blowout and was not their fault. They wanted to settle quickly and cheaply, and were hoping to capitalize on my inexperience and my client's need for money. However, as I delved deeper into the investigation and the discovery portion of the lawsuit, I found out that the truck driver was epileptic and had no business driving that truck in the first place.

It turned out that his employer had been in a pinch and needed a driver. Even though they knew that this man should not have been able to get the required license to operate the truck, the company helped him get a falsified medical card through a doctor who agreed to just rubber-stamp his fitness to drive. The driver had had a seizure, and that was what caused the accident.

I wanted to win that case. I *needed* to win that case. The driver and others involved were lying; the trucking company was lying. By cheating the system and violating the safety regulations, they had caused irreparable harm to my client, forever changing his life and the lives of the people in his family. Once I discovered the truth, I prepared the case for trial. We demanded a fair resolution that would fairly compensate my client. We wouldn't budge. On the first day of trial, they agreed to pay us what we demanded.

I learned valuable lessons handling this first case. I learned not to trust the trucking company. They lied and hid evidence. I learned that the only way to protect your client and get them a fair and just resolution is to fight hard, be prepared, and be willing to take the case to trial. Until the trucking company felt the fear of losing at trial, they refused to do the right thing.

After that victory, I knew that I had found my purpose, my vocation. I also knew that representing trucking accident victims was not going to be an easy way to make a living.

The fact is, this area of law is not only substantively challenging and a lot of hard work; it is also heartbreaking. I'm fighting for people who have lost someone they love or who have suffered catastrophic injuries that render them disabled for life. My clients are suffering in ways most people can only imagine. After all of that, they find themselves up against some of the largest trucking and insurance companies in the world, adversaries that can afford to hire the biggest, fiercest law firms and draw upon enormous resources to defend their cases. My clients are always the underdogs. And they hire me to be their champion, someone who will fight for them and their cause.

Like most great litigators, I'm competitive. I like to win. I am willing to pay the price to win. I will make the sacrifices. I will devote the time and money necessary to win. In the heat of battle, nothing is more important than my clients and their families.

But representing clients in semitruck wreck cases goes beyond doing battle. It is also very personal. I feel an attachment to my clients that is hard to describe. We spend so much time together, my clients become like my family. They rely on me to tell their stories, and I consider it an honor that they have given me that level of trust during the most difficult and critical times of their lives. Helping people through this process is emotionally rigorous, and if I didn't genuinely love my clients and feel an obligation to

do my best for them, I couldn't show up for them the way I do every single day.

Since that first truck accident case, I have handled over one thousand commercial motor vehicle accident cases involving semitrucks, cement trucks, dump trucks, wreckers, box trucks, and buses. Each time I handle one of these cases, I am reminded how much specialized knowledge is needed. For that reason, I've made it a point to become as proficient and knowledgeable as possible in this complicated area of law.

Along with being recognized by the National Trial Lawyers as one of the top ten trucking lawyers in Indiana, I am one of a handful of lawyers in the country to be board certified in truck accident law by the National Board of Trial Advocacy. I have also gained a level of experience that could only come from the caseload I've managed. I have taken on some of the biggest trucking companies and the biggest insurance companies in the world and won.

I know how the trucking industry and the insurance companies work. I know what standards they are supposed to uphold, and I know when they have violated those standards. I have done this for so long and in so many different jurisdictions that I've developed a nationwide team of experts, lawyers, and paraprofessionals who share my dedication to seeking justice for victims of catastrophic trucking

accidents. I have handled hundreds, if not thousands, of these cases. I have obtained results well in excess of \$10 million and have been recognized for my work in this area.

Because helping trucking accident victims seek justice is my passion, I have made it a mission to share my knowledge and expertise with other attorneys. I am a frequent speaker at national trucking law conferences and have published extensively in the area of trucking accident victim representation.

This book, however, is not going to cover the same material that I cover in those speeches and publications. I am not going to be talking in detail about the laws of interstate commerce or the specifics of the Federal Motor Carrier Safety Regulations and the Commercial Motor Vehicle Driver's Manual. Although attorneys might find this book helpful, I did not write it for the lawyers.

I wrote this book for you.

It is my sincere hope that, as you read through this book, you will feel like you are being guided by a trusted friend. It is my wish that when you reach the end of this guide, you are confident that you have the knowledge and insights you need to be a strong and empowered advocate for the people you are called upon to champion.

CHAPTER 1

First, There Is Chaos

As with so many of my cases, it starts with a phone call.

The woman on the line tells me she has family members who have been in a horrific truck wreck. I can tell she is trying to hold it together, but her voice breaks, nonetheless. She asks me if I can come to the hospital to speak with the family. She gives me a few details, but not enough to paint the whole picture. I can tell that it was hard for her to make this call so I don't keep her on the phone any longer than necessary. We set a time to meet.

I get in my car and start going over in my mind the tough issues this particular family could be facing. Even though I've been through this many times before, I know that every case is different and every family is unique. After decades of doing this job, however, I have a good idea of what to expect.

They probably have medical decisions to make, unfathomably difficult decisions like whether or not to end life support for a loved one whose injuries are so severe that there is no hope of recovery. A lot of folks don't have living wills. And even with the ones who do, the family will often second-guess it, sometimes praying for the person to come out of it, even though they've been told that there is no chance of recovery.

If their loved one survives with catastrophic spinal injuries or brain damage, they are worried about how to help this person when they leave the hospital. *Will they be going to rehab? If so, which is the best place? Who can visit them? How much care are they going to need? Will they need to be there forever? What happens when and if they are sent home?*

Some people live in apartments. Some people live in houses with stairs or steps. Some people's bedrooms are on the second floor. *How are we going to get them home? How will we manage their care? Who will help us?*

Of course, care costs money. *How on earth are we going to pay for all of this? Is health insurance going to cover everything? Is there going to be a cap? Are there going to be deductibles? Will there be copays?*

If someone has died, the family has to think about arranging a funeral. Most people—especially younger people—have

not made prearrangements. *Who is going to prepare the funeral? Where's the funeral going to be? Where would they want to be buried? Would they want to be cremated?*

These are all things that truck accident victims and their families find themselves facing in the blink of an eye. And nobody has a clue about what to do. When families get together for weddings or reunions or Sunday dinners, they do not usually talk about whether or not to pull the plug in the event somebody is brain damaged and in a possibly permanent coma. People who find themselves in these situations are, understandably, not equipped to deal with it.

These are my thoughts during the two-hour drive to the hospital as I brace myself for another heart-wrenching encounter with a family in crisis.

SCENE FROM THE HOSPITAL

I am in the hospital elevator going up to the fourteenth floor. The door opens and I see some people off to the left huddled together; one is slumped over, crying uncontrollably, and the others are consoling her.

I know that I'm on the right floor.

I exit the elevator and stand still for a moment, briefcase in hand, not wanting to impose on the grieving people in the

hallway. A middle-aged woman walks up to me. She is the person who contacted me. Her eyes are red and heavy. It is obvious from the dark circles that she hasn't slept in days.

She thanks me for coming. We walk down the hall and she starts introducing me to various family members. You can tell by the look on their faces that they feel lost and confused. Many have reddened, puffy eyes from crying. All seem to be in shock.

I tell them how sorry I am for their loss. There is some small talk. Then my escort pulls me aside to tell me that a mom, a dad, and a little boy—their son—were killed in the trucking accident. She is the dad's aunt. Her brother and sister-in-law are sitting in intensive care with the only survivor, another son who is fourteen years old. Their grandson, who is now an orphan. They think he is going to make it.

Someone asks me to follow them to the ICU so they can get the grandparents' attention.

We walk down the hallway to ICU and peek in. An elderly gentleman is holding the hand of a young boy as a nurse inspects one of the tubes in his arm. His wife sits solemnly by his side. Machines monitor the child's breathing and heart rate, giving out short, repetitive, little gasping noises. The child is unconscious, his injuries obviously severe.

The grandfather sees us, nods his head, and he and the boy's grandma join me and several family members who have now congregated outside the ICU. We find a secluded waiting room large enough for us all to sit and talk and, immediately, I am bombarded with the inevitable questions: *What is going to happen now? How will we take care of this boy? Who will take care of this boy?*

I ask some questions in response and find out that there is no will. None of them have ever had discussions with the parents about what to do if something like this happened. The boy is in and out of consciousness, they say. He is asking for his mom and dad. *What do we tell him? When do we tell him that everyone in his immediate family is dead? Should we wait until he stabilizes? How in the world is he going to deal with this news?*

The questions keep coming.

It becomes clear after a few minutes that the people from the husband's side of the family and the wife's side of the family don't know each other that well, if at all. Maybe some met briefly before as some extended family get-together, but they are from different parts of the country. Now they are all together for this moment, and they are practically strangers.

I can tell that even in their shock and grief, infighting has begun. Some of the relatives want a quick settlement,

and others, like the aunt who contacted me, believe that they should hire a lawyer with expertise in truck accident cases. Now, sitting in this hospital waiting room with these grieving family members, I know that even though there are issues to consider, there is one question, above all else, that they want me to answer: *how could this happen?*

HOW COULD THIS HAPPEN?

The answer is both simple and tragic: the trucking industry puts people in danger. By its very mission—to get goods from point A to point B as quickly as possible—people are at the mercy of the enormous rigs running on our roadways.

As a result of a strong economy and a higher demand for getting products delivered quickly, there has been an increase in both the number of truck wrecks and the number of resulting fatalities over the last several years.

According to the Federal Motor Carrier Safety Administration, of the approximately 475,000 police-reported crashes involving large trucks in 2016, there were 3,864 fatal crashes and 104,000 injury crashes. Between 2009 and 2017, there was a 40 percent increase in fatal crashes involving commercial motor vehicles.* And the government is predicting an increase in this number in 2020 and beyond.

* NHTSA, *Large Truck and Bus Crash Facts*, <https://www.fmcsa.dot.gov/safety/data-and-statistics/large-truck-and-bus-crash-facts-2016> (last updated May 2018).

Whether these commercial drivers were speeding, distracted, impaired, unqualified, or operating a vehicle that should have never been on the roadways in the first place, as a motor vehicle driver, passenger, or bystander, you and every other driver and passenger on the road are at their mercy.

SPEED KILLS

There is no doubt that speeding is one of the primary causes of large truck wrecks.

Truck drivers are often in a hurry to get wherever they're going. There are more trucks on the road making time-sensitive deliveries than ever before, and a lot of this urgency comes from today's competitive online shopping industry. It used to be that if you ordered something, you would wait a few days or maybe a couple of weeks for your merchandise to arrive. Now, everyone expects to get their orders delivered the next day or even, in many instances, the same day. These shortened delivery schedules add to the pressures that trucking companies are already under to get goods to their destination quickly. This means that the companies, in turn, put more pressure on the drivers. The result is that truck drivers are going way too fast, putting the public at enormous risk.

While semitruck drivers are pressed to go too fast in normal

situations, the real dangers occur when they drive too fast in adverse weather conditions. For example, most state commercial driver license manuals mandate that if the pavement is wet, drivers must decrease their speed by one-third. When driving on packed snow, they're supposed to decrease the speed of their truck by 50 percent; and if there's ice, they should get off the road as soon as they can. The Federal Motor Carrier Safety Regulations require that under adverse weather conditions, drivers must use extreme caution.

Good companies with good drivers who are driving good equipment are going to adhere to those procedures. The problem is the further down the food chain you go, the less experienced and proficient drivers you are going to find—and the less likely they are to stick to the rules. It's not unusual to see those lower-level drivers driving on packed snow at the speed limit, rather than at a decreased speed like they are supposed to. You see those drivers operating their vehicles when there's ice. You see those drivers not slowing down in the rain.

Speeding through construction zones is another issue that creates enormous problems for everyone. As soon as I see the construction zone signs go up, I know that people are going to get seriously injured or die. This is true everywhere. I've handled construction zone truck accident cases in Ohio, Illinois, Indiana, and Kentucky—and the stories are always

the same: a semi plows into the back of stopped traffic because the driver is going way too fast through a construction zone and is either distracted or asleep at the wheel.

The trucking industry has good standards; the problem is that too many drivers aren't following them.

DISTRACTED DRIVING

It's probably no surprise that truck accidents caused by distracted driving are on the rise, often because the drivers were using their cell phones. Even though Federal Motor Carrier Safety Regulations require truck drivers to use Bluetooth technology whenever they are talking on their mobile phones while driving, the problem is that cell phones aren't only used for phone calls.

Recently, I represented the family of a woman who was killed because a flatbed truck driver was checking the GPS on his cell phone, attempting to get directions to his next destination. The victim was sitting in her car at a stoplight, completely unaware that in just seconds her life would end because the driver of a flatbed truck had taken his eyes off the road and was about to plow into the rear end of her vehicle.

I've represented clients who were severely injured when they were rear-ended by a truck driver who was too busy

texting pictures of naked women to other drivers to see that traffic had stopped in front of him; and I had a case where the driver was actually watching a video on his phone as he barreled down the highway, causing a wreck resulting in severe injuries.

I've even seen truck drivers carry more than one cell phone at a time so they can multitask—simultaneously talking on the phone, texting, and consulting their GPS—all while driving. Truck drivers are distracted by phones, computers, messaging systems in the truck, food, drinks, as well as other items. The results are often devastating, leading to deaths, brain injuries, or other severe injuries.

IMPAIRED DRIVING

While distracted driving might be a leading cause of truck accidents, driving under the influence of drugs and alcohol continues to be an issue among truck drivers. The use of methamphetamine—taken by some drivers to stay awake—is particularly dangerous not only for the trucker, but for every other motorist on the road as well. Meth creates a false sense of well-being, and users feel invincible, like they have boundless energy. A trucker on meth will tend to push his body, and his truck, faster and farther than they are meant to go.

Impairment is not always drug or alcohol related, as was the

case with the driver who had epilepsy that I discussed in the introduction. In that instance, the trucking company was short on drivers and hired someone whose physical impairment rendered him wholly unqualified to safely manage a heavy truck on the roadways. But greed won out and the trucking company, desperate to meet its customers' needs, hired the driver all the same, with devastating results.

FALLING ASLEEP AT THE WHEEL

Another major cause of commercial motor carrier wrecks is the driver falling asleep at the wheel. As I am writing this book, I am working on three of these cases: one in Kentucky, one in Iowa, and one in Indiana. Altogether, there were seven people killed and several people severely injured in these three wrecks. In the first case, the semi driver plowed into the rear of a stopped vehicle at a construction zone, causing that vehicle to start a chain reaction that involved two other stopped vehicles being struck with devastating results. In the second case, the driver crossed the highway median and struck two vehicles heading in the opposite direction. The third case involved a semi rear-ending another semi that was stopped at a red light. All involved drivers who fell asleep and did nothing—did not brake or take any other evasive action—to avoid the collisions.

These types of scenarios are all too common. Truck drivers are often overweight and unhealthy, which can contribute

to obstructive sleep disorders like sleep apnea. In fact, it is estimated that as many as one out of every four truck drivers suffers from an obstructive sleep disorder. In addition, many semis are operated through the night, which increases the odds of the driver falling asleep. And although the number of hours a commercial motor vehicle driver can be on the road at any one time is regulated by the federal government, this doesn't mean the drivers are getting adequate sleep when they are not working. Over the past thirty years, I have handled numerous cases caused by a truck driver who had a sleep disorder, was driving tired, or fell asleep at the wheel.

Unfortunately, not all trucking companies do enough to ensure that their drivers are not pushing themselves too hard, that they are physically fit to drive, and that they are getting adequate sleep. As a result, we will keep seeing people injured and killed by semi and other big truck drivers falling asleep.

EQUIPMENT AND MAINTENANCE FAILURES

Failing to make sure trucking equipment is in good working order, in a condition appropriate to the environment in which it is being operated, can also be behind deadly crashes.

For example, I have seen an increase in crashes caused by

Mexican truck drivers who are operating large commercial vehicles in unfamiliar terrain, an unintended consequence of the proliferation of more open trading between Mexico and the US. A semitruck trailer is attached to the cab by something called a fifth wheel, and that fifth wheel needs to be greased. You use a different type of grease in warm weather than you do in freezing temperatures. The results of using the wrong grease can cause all kinds of problems, including the trailer disconnecting from the truck. I've seen Mexican semitruck drivers whose rigs do just fine in a warm climate create big problems when they hit roads covered in snow and ice in the northern parts of North America due to the fact that they used the wrong type of grease or the driver was not experienced driving in adverse weather conditions.

In a case that I will be talking about in greater detail later, I represented the family of a woman who suffered permanent brain damage when her car went underneath a tractor-trailer, something that would never have happened had that truck's underride guard been functioning properly.

MAKING SENSE OF THE SENSELESS

Pointing out what can and does cause a large number of large commercial truck accidents does not answer the question of what happened in your specific case. To find out the cause of a particular truck wreck takes a team of

highly skilled experts. Fortunately, after so many years in this field, I've gained access to some of the best.

Before we bring the team together, however, our first order of business is to do everything we can to make sure that the trucking company and truck drivers do not take any actions to alter or destroy evidence. In chapter 2, I discuss two mechanisms I employ for this purpose: the preservation of evidence letter and the temporary restraining order.

Next, my colleagues and I put together a team appropriate to the case at hand. We usually immediately send private investigators out to the scene to take photographs and talk to witnesses, and we identify any surveillance cameras that might be on buildings nearby. We also send a reconstructionist to the scene to try to help us reconstruct the wreck and figure out exactly how the wreck happened.

We hire engineers and mechanics to tear the trucks and equipment apart and to download any computer information off of the truck's electronic control module (ECM), a computer inside every tractor-trailer. These experts look to see if there were any mechanical problems such as faulty brakes, as an example, that made the truck dangerous to operate. The information on the ECM will tell us things like how fast the truck was going and when it braked—for instance, did it brake at impact or right before?

Our experts will examine the truck driver's cell phone to determine if it was being used at or near the time of the wreck. We pull the truck driver's medical records to see if they had health issues that may have played a role into the wreck. We use high-tech equipment—including drones—to scan the scene and take every measurement possible to recreate what happened on a 3D computer module.

I may not be able to answer the question of how the accident happened at my first meeting with a client, but I will put together a team immediately after I'm hired to figure this out. Getting to the cause of an accident is key to the client's legal case, and it's of paramount importance that the legal team is selected and gets going with putting all of this together as soon as possible after the accident.

Knowing where to go for help and who to trust is the most important thing right now. In the next chapter, I will explain how to know where you should turn for help.

CHAPTER 2

Where Do I Turn for Help?

Reality is beginning to set in. You, your loved ones, or friends are the victims of a horrific crash with a semi or other commercial motor vehicle. Your lives are turned upside down. Chaos is the new norm. Your days and nights run together. You feel helpless. You are confused. You are afraid. You are physically, mentally, and emotionally exhausted.

It is at this moment in time, when you are your most vulnerable, that the predators—unscrupulous trucking companies, insurance companies, and unethical attorneys—attack. They will try to take advantage of the situation. What is unfortunate is that they will attempt to make you feel like they are on your side. They will act kind and caring. They are wolves in sheep's clothing.

Be careful who you turn to for help. The consequences of trusting the wrong people following a semi or big truck wreck where serious injury or death occurred can have long-term devastating consequences.

BEWARE THE UNETHICAL LAWYER

Unfortunately, there are unethical lawyers who prey on victims of commercial motor vehicle wrecks. Injury attorneys get paid a percentage of what the victim's family recovers. Because these cases have the potential for recoveries in the millions or even tens of millions of dollars, the accompanying attorney fees can also be significant. As a result, some lawyers are willing to lie or otherwise violate the rules of professional responsibility to which all lawyers are ethically bound.

ATTORNEYS AND ETHICS

Every state has rules of professional responsibility. In order to practice law, every attorney must take an oath to follow these rules. Every state has some version of a rule that prohibits lawyers from soliciting a victim of a truck wreck, either in person or through another working on his behalf.

The Indiana rule, for example, is found in the Indiana Rules of Professional Conduct 7.3 (a) and provides:

A lawyer (including the lawyer's employee or agent) shall not

by in person, by telephone, or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted (1) is a lawyer; or (2) has a family, close personal, or prior professional relationship with the lawyer.

In addition, Indiana Rule 7.3 (b) (3) prohibits solicitation in written form, the internet, video, or other forms when:

...the solicitation concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the solicitation is addressed or a relative of that person, when the accident or disaster occurred more than 30 days prior to the initiation of the solicitation.

Every state's rule is substantially similar.

The reason for these rules is to protect the victims and their families who are injured or grieving over the loss of a loved one. These folks are more vulnerable and can potentially be more easily persuaded or coerced by the attorney or person acting on their behalf.

You must stay clear of these lawyers who are willing to violate the rules of ethics to get you as a client. If they are unethical enough to break a rule they swore to uphold, they

certainly may be willing to put their own interests above yours through lying or other means.

This is a real concern. I have not met with a family in a catastrophic case in the past several years where an attorney has not attempted to improperly sign up the client. I have seen families approached in the hospital by “runners” who deliver the police report to the family with the business card of a lawyer. I have clients who were contacted by phone and text by lawyers attempting to get the case. I have seen people lie about their own identity to build the trust only to then try to get the business for an attorney.

The worst example of unethical attorney behavior I have ever seen occurred in connection with a case I handled in Missouri where a woman who had been injured in a semitruck wreck was left in a coma. Her husband went to the hospital every day to sit by her side, hold her hand, and pray for her to regain consciousness and come back to him.

He got up during one of these visits to get a cup of coffee and was approached by a gentleman offering condolences. When the husband asked the stranger how he knew his wife, the man said, “I was in the air ambulance helicopter with her and I prayed for her during the entire flight from the accident scene to the hospital. I held her hand the whole time and I just wanted to tell you that I’m still praying for her and for you.”

My client felt comforted by this stranger so, when the man offered a referral for a lawyer, this grateful husband gladly accepted the help. Thankfully, I was eventually hired through a legitimate referral. I later came to find out, when I actually met with the air ambulance paramedics and doctors, that this stranger was never in the air ambulance with my client at all. His job was to drum up business for his unscrupulous and unethical boss, a lawyer, it turns out, who had never even handled a semitruck accident case before.

You have to wonder how many semitruck accident victims and survivors of victims, who don't know any better, hire one of these attorneys rather than an ethical, skilled, knowledgeable, and caring attorney.

THE TRUCKING COMPANY IS NOT YOUR FRIEND

I am going to say this as clearly and as plainly as I can: *Anyone who works for or with the trucking company or the insurance company is not your friend. Do not trust them.*

In the case I described at the beginning of the last chapter, a trucking company liaison had arrived at the hospital shortly after the victims arrived by ambulance. She was there before the out-of-town relatives arrived. She was on the ground days before I was called.

The trucking company representative knew exactly how

to ingratiate herself with the family. She stationed herself at the hospital, greeting the grieving family members and helping them get oriented to the hospital. She gave them prepaid cell phones to use, snacks, offered meal vouchers and continuous cups of coffee. By all accounts, she appeared sympathetic to what this family was going through, a kind and gentle woman devoted to keeping family members comfortable.

She even seemed interested in the victims. She wanted to know all about the couple who had passed away and the child that had been killed with them. What did the parents do for a living? What did they do for fun? Was the child good at school or at sports? What were the family dynamics? Who in the family would be making decisions? Was there a life insurance policy that could help take care of the surviving child? Was there a will? She seemed so interested in the family, asking questions, and offering advice. She told the family that they would be taken care of and didn't need an attorney. An attorney, she said, would take money away from the family.

The harsh truth is that this nice lady had an agenda, and that was to get information that could be used to limit how much the trucking company would have to pay out for the accident. She was there to discourage the family from hiring an attorney. She was there to protect the trucking company that had killed this young family.

The lady was effective. She delayed the family from filing a lawsuit. It wasn't until the trucking company made a ridiculously low offer that its true colors showed. Luckily, the family had hired me and allowed me to preserve the evidence. Regardless, the delay they caused and all of the inside information that they were able to gather prolonged the process.

A reality of the trucking business is that wrecks and claims are part of their business. Death and serious injuries are not uncommon. Although trucking companies insure against these losses, they often have a large self-retention amount. This means the trucking company must pay the first part of the claim. Consequently, both the trucking company and their insurance companies are usually responsible for paying large claims. In order to increase their profits, both the trucking company and their insurance companies will work hard to minimize the amount they pay in claims.

Trucking companies are prepared and ready to do damage control as soon as a wreck happens. Their goal is always to limit liability, and they have the resources to dig deep to find ways to squirm out of their responsibility to the victims.

While you are in shock, confronting chaos, and trying to survive just putting one foot in front of the other, the trucking company is calm, cool, and collected. They have this type of situation down to a science. Not only may their

employees already be at the hospital offering tea and sympathy to you and your family; they are encouraging you to settle prematurely, before you have any idea about the consequences of the injuries or the far-reaching repercussions of a loved one's death. Their goal is to convince you that a lawyer isn't going to help, that the trucking company will give you everything you need.

Their aggressiveness goes beyond you and your family. Many trucking companies are ready to deploy their professional accident response teams—claims professionals, attorneys, accident reconstructionists, investigators, mechanics, and public relations consultants—the second an accident is reported. Some truck drivers are even instructed that their first call after a crash should be to their employer, not the police or paramedics. Only after they have notified the trucking company of the wreck are they allowed to call 911. It may seem unbelievable, but it's true: the trucking company probably knew about the wreck before the first responders did.

As soon as a major trucking accident occurs, these companies dispatch their response teams who, in record time, make their way to the scene, where they are on the ground talking to witnesses, talking to the police, examining evidence, and trying to spin the news of the event in the trucking company's favor. Often, they will coach the driver at the scene about what to say and do. Many trucking com-

panies will instruct their driver to never admit fault even if the driver believes it is his or her fault.

I had one case involving a school bus where the driver's company representative was on the scene right after the crash. The company's goal was to get witnesses to sympathize with the driver's predicament, hoping they would spin their statements to make the driver seem like a victim of circumstances. The company rep did this by posing questions designed to sway their thinking, such as: *The driver didn't intentionally do this, right? Wasn't the whole thing just a mistake that anyone could make? You don't want the bus driver prosecuted, do you?*

The goal was to imply to the witnesses that if they told the truth—which in this case was that the bus driver was speeding—the poor woman who was driving the bus and didn't mean any harm might be put in jail (which wasn't true).

In another case, this one concerning an accident at a construction site in Ohio, the Indiana-based semitruck driver was required to undergo drug testing—pursuant to both company policy and the Federal Motor Carrier Safety Regulations. Instead of transporting him to a testing facility that was close to the site of the accident in Ohio, however, trucking company reps scooped him up at the scene and took him back to Indiana for his drug test. Of course this meant that the test was delayed for several hours, a factor that probably

altered the results of the test in the driver's favor. The trucking company was willing to be penalized for not following the proper drug testing procedures, probably because a positive drug test would have been more damaging.

I've seen situations where the trucking company sent public relations professionals and so-called trucking accident experts to some horrific accident scenes to give on-the-spot print and on-air media interviews. The goal? Twisting the facts so the victims of the accident looked like they were at fault. I've also seen cases where, if that type of spin isn't possible, the public relations people will at least try to make it appear as if the wreck could have been caused by something other than their driver's carelessness.

The reality is that the trucking and insurance companies are experts at controlling the scenes and people's perceptions following these trucking accidents, and you, the victim, are out of your league. While you are dealing with the immediate aftermath of a horrible accident, the big companies are thinking long-term. You need your own team to protect your rights for the long haul too.

LONG-TERM FALLOUT FROM SHORT-SIGHTED DECISIONS

Several years ago, I talked to a man living in Arkansas whose brother had been left a paraplegic following a serious truck accident in Indiana. The man explained that after

a prolonged hospital stay and rehab, his brother had been released and had no one to take care of him. So he loaded his disabled brother up in his personal vehicle and moved him to Arkansas.

The injured brother, who had been on the job when the accident happened, had received some money up front from a worker's compensation claim. That money was now gone, and the brother was struggling to buy the medical necessities and products he needed to survive.

To make matters worse, the trucking company was hounding the injured brother to settle. The poor man didn't know what to do to help his brother. He had been talking to a personal injury lawyer who did not have experience in commercial motor vehicle cases for several months but had not officially hired him. Finally, things became so desperate that the other lawyer told the brothers to call me. When I finally talked to the truck crash victim, I found out that the trucking company had already sent someone out to his house. The trucking company offered him a million dollars—an amount that seemed like a fortune at the time. I begged him not to take it. From experience I knew that the medical cost projection for people who are paralyzed is in the tens of millions of dollars.

Despite my best efforts, the brothers decided to settle for two million dollars. This was nothing compared to what it

was going to cost for care going forward. Two million dollars didn't come close to replacing a lifetime of lost earnings and the unusually high medical costs the accident victim would incur for the rest of his life. To make matters even worse, the truck company had not told him that he would have to pay back the worker's comp carrier or the effects the settlement would have on his lifetime Social Security benefits.

Settling with the trucking company without working through a qualified and experienced truck accident attorney was the worst thing the injured brother could have done. And, unfortunately, once he settled with the trucking company, there was nothing I or anyone else could do for him. He would pay dearly for the time he wasted talking to that first attorney for the rest of his life. By the time he got to me, he was too desperate to listen to a qualified professional. The trucking company claims representative did this poor man a great disservice, but succeeded in saving his employer, the trucking company, tens of millions of dollars.

Like this gentleman, you are likely already in debt over this accident. If it's a catastrophic case, that means there are serious injuries that are being treated now and will continue to be treated and managed—with ongoing medical procedures, including surgeries, rehabilitation, and physical and behavioral therapy—for years to come. The people who have already provided care—or the people who

have fronted the money for care—need to be paid. And the people who are going to manage care tomorrow and the next day and long into the future are going to need to be paid as well. A million dollars might seem like a lot when you are in crisis facing immediate bills, but that amount of money, in many cases, covers just the tip of the iceberg.

THE IMPORTANCE OF LOOKING TO THE FUTURE

In chapter 1, I mentioned a case involving an underride guard malfunction. The victim, a young wife and mother, was driving to work when she got into that semitruck wreck and was severely injured when the truck's underride guard failed. It was a horrific accident. Part of her skull caved in. The paramedics airlifted her to the hospital trauma center where it was determined that she had a brain injury so severe that if they left her skull intact, her brain's swelling would cause significantly more damage. The decision was made to remove part of her skull and place it in her stomach until it was safe to reattach it. Nobody knew if it would work, whether she would live or die.

Her husband rushed to the hospital as soon as he heard about the accident, and he sat there, by her side, day and night. The children would be brought in and they would pray together, cry together, hope together. This went on for months.

Her skull was able to be reattached and, finally, she did

wake up. After some additional time, she was able to go to a nursing and rehab facility. She had to be taught to walk again and to talk again. She had to relearn how to feed herself. She was never able to regain all her functioning, however, and she ended up in a situation where she was going to require 24/7 care for the rest of her life. As her kids got older, she was no longer able to recognize them. Her memories were suspended in time, only existing up until the day of the wreck. I would go in and meet with her and talk to her. She was always friendly and smiled at me, but she didn't remember me the next time I returned to visit her.

As her attorney, my job was not just to figure out what happened—something that proved quite difficult because the underride guard that had caused her injuries had gone missing—but I had to make sure that we were taking into account what she would need so she could be taken care of for the rest of her life.

We had to understand from the doctors', psychologists', occupational and physical therapists' points of view what types of services would be needed to take care of her needs and to give her a comfortable life. We helped her husband figure out care and logistics issues such as where she should live, whether she should be moved to a facility closer to family so people could visit her, and which facility would best meet her needs.

Her husband, her parents, and her sister all thought they were best suited to oversee her care, and there was some family infighting that we helped smooth over. There was a lot involved in taking care of this young lady and, as her attorneys, we were charged with understanding it all. Our job was not just to prove fault and win a case; our job was to make sure that we advocated for everything she needed, for all the money that she required to cover all these expenses so her family could afford the best placement for her.

If you are in a similar situation, you also need an experienced advocate to lift the post-accident fog and champion your cause.

LIFTING THE POST-ACCIDENT FOG

The best person to help you find your way through the post-accident chaos and get you the immediate, short-term, and long-term help you need is going to be an experienced trucking accident lawyer.

Not only do you need to engage your own attorney as quickly as possible so you can start the process of uncovering the truth about what happened; you also need your own attorney—who has a legal obligation to work in your best interests—to put together a team of experts and professionals to figure out your present and future needs, information that is vital for making an informed decision

about whether to settle the case (and for how much) or take it to trial. The right attorney will protect you from making short-term decisions that fail to consider long-term needs.

Chapter 3 will show you how to find an experienced attorney—and what to look for when selecting the best advocate for yourself and your family.

CHAPTER 3

How to Find an Experienced Attorney

There are some distinct advantages to working with an experienced truck accident attorney in a truck wreck case. Not only will they be able to assess all your present and future needs; they will be able to refer you to resources that will help you manage your own unique situation today, tomorrow, and for years to come.

It stands to reason, then, that the most important decision you are going to make is how to select the right person to see you through this ordeal. But first, I want to dispense with the two questions I am often asked: The first concerns how you are going to be able to pay for this type of high-end legal help, and the second concerns whether you need a highly skilled truck accident attorney at all if you are in a situation where the accident victim is deceased.

HOW CAN YOU AFFORD AN ATTORNEY?

You may have been told that attorneys are too expensive and you should just take what the trucking company and insurance company are offering.

This is misleading. All lawyers who work in this area work on a contingency fee basis. Under a contingency fee arrangement, the attorney doesn't get any money unless you get money. You do not have to come up with a dime up front or pay as the case progresses. The attorney advances all the costs of litigation, and that includes hiring and paying the investigators, experts, and other professionals who will work hard to prove your case and how much you are entitled to recover. Because your attorney pays all these people up front, you only are required to reimburse these costs if and after you win.

The great thing about the contingency fee arrangement is that it gives you the opportunity to hire the best attorneys out there, something you likely wouldn't be able to afford if you were paying on an hourly basis.

IF THE VICTIM WAS KILLED, DON'T YOU NEED AN ESTATE ATTORNEY?

Sometimes in cases where there were no survivors, the trucking company will recommend an estate lawyer to the family, explaining that there is no real need to hire a

personal injury lawyer at all. They will try to convince the family that it's better to work with an estate lawyer to settle the estate, since estate attorneys work by the hour; that way, they won't incur large attorney fees.

This advice is just plain wrong, and the trucking companies know it.

First of all, most estate lawyers know nothing about trucking, so they aren't going to have any idea what the value of the case is or how to begin finding that out. Hiring an estate lawyer who is not a skilled truck wreck lawyer could end up being a million-dollar or even multimillion-dollar mistake. Second, as I pointed out earlier, trucking accident lawyers will work on a contingency basis, and this is the case in wrongful death cases as well as cases where there are accident survivors, which means you don't pay a cent unless and until there is a recovery in the case.

So now that you know you need an experienced attorney, how do you find the right person to help you?

HOW TO CHOOSE YOUR ATTORNEY

While you need an attorney who narrows their practice to personal injury (or PI) matters, don't rush into a decision about who to hire. Do your homework. There are plenty of good PI lawyers who, while well meaning, simply do not

have the expertise to take on complicated truck accident cases. And, as we saw in chapter 2, there are also unscrupulous lawyers out there, some of whom will employ tactics that can make the trucking company antics pale by comparison. You need to find someone who is trustworthy, knowledgeable, and experienced, who has a proven track record, and who has a good reputation. Above all, you need to hire a person you feel comfortable with.

FINDING THE RIGHT LAWYER FOR YOUR CASE

Not all lawyers are equal when it comes to representing victims of truck wrecks.

Expecting a general practice lawyer to handle your truck accident case would be like going to your family doctor and expecting them to do a heart transplant. Even while a personal injury attorney may be proficient at handling car wrecks, slip and fall cases, and medical malpractice, they may not have a lot of experience with trucking accident cases like yours.

You are going to need someone who has the specific and unique qualifications to make sure your rights are protected and that you receive everything you are entitled to from the trucking company. You need an attorney who not only has knowledge of the Federal Motor Carrier safety regulations, the state commercial driving manuals, state laws, industry

standards and how those standards apply to the type of equipment involved in your case, but also has a track record of successfully handling cases like yours.

FIND A BOARD-CERTIFIED TRUCK ACCIDENT ATTORNEY

The best place to start is with attorneys who are board certified in truck accident law from the National Board of Trial Advocacy (NBTA), an attorney board certifying agency accredited by the American Bar Association. As a practical matter, the NBTA screens the lawyers and only board certifies a select few attorneys who meet their qualifications.

Because the body of law involving commercial truck accidents has grown large and complex, the NBTA established the truck accident law certification for attorneys who devote a substantial percentage of their practice to trucking litigation, show hands-on experience in multiple truck accident cases, and pass a comprehensive written exam showing proficiency in the procedural, substantive, and practical issues unique to collision cases involving commercial tractor-trailers and other commercial motor vehicles. In fact, less than 4 percent of all practicing attorneys have earned board certification in a specialty, and a small percentage of those are certified in truck accident law. At the time this book was written, there were less than fifty lawyers in the entire country who were board certified in truck accident law.

To become board certified in truck accident law, an attorney must demonstrate:

- That at least 30 percent of his or her time has been spent practicing truck accident law during the three years preceding the application
- Participation in at least one hundred adversarial events, including trials
- Involvement as a counsel of record or as a consulting attorney in:
 - At least twenty-five litigated matters that have been brought to conclusion (settlement or verdict) in the previous seven years, including at least twelve litigated truck accident cases
 - At least three current open cases involving truck accident law
 - At least five jury trial cases that went to verdict
- Participation in continuing legal education and development of the law with respect to commercial motor vehicle accidents in the three years immediately preceding application, including at least forty-five hours of courses, teaching, or speaking, and/or writing professionally about truck accident law

There are no shortcuts to becoming a NBTA board certified truck accident lawyer, believe me. My partner, Scott Faultless, and I have both earned the distinction, and it was no easy task. Being board certified in this specialty is not

something a lawyer can buy their way into, and it is not a popularity contest. We each had to submit a legal writing sample about truck accident law that presented a set of facts and analyzed how the law applies to the facts. We had to submit twelve references—they could not be present partners, associates, or relatives—to attest to our proficiency in handling commercial motor vehicle cases. The references had to include at least one judge, one opposing counsel, and one truck accident expert witness.

Only lawyers who have undergone this level of vetting and can objectively demonstrate that they are experienced and knowledgeable in truck wreck cases can become board certified in truck accident law. Choosing a board-certified truck accident lawyer is the best way to ensure that you are working with a qualified professional who is capable of properly handling your case.

RESEARCH YOUR BOARD-CERTIFIED ATTORNEY

Once you have selected a board certified lawyer, I recommend researching that attorney on the Martindale-Hubbell website: <https://www.martindale.com/>. Established in 1868, Martindale-Hubbell is a respected lawyer directory that provides peer and client review ratings for lawyers across the country.

Look for a lawyer that has earned Martindale-Hubbell's

“AV Preeminent” rating. This AV rating signifies that a large number of the lawyer’s peers—other attorneys and members of the judiciary—have ranked him or her at the highest level of professional excellence for legal knowledge and ethical standards.

Another peer-driven system, Avvo, also ranks attorneys. Look on Avvo.com or the law firm’s website to see how the lawyer you are considering working with ranks among his or her peers. The highest ranking available—a 10.0 Superb rating—is a good indication that you will be in competent and experienced hands from a substantive legal and ethical standpoint.

Super Lawyers publishes a list each year of the top lawyers in certain areas of practice as selected by other lawyers in the state. Check to see if the lawyer you are considering is on this list. Another list, Best Lawyers, is published every year by *U.S. News and World Report*. If a lawyer and his or her law firm are consistently ranked highly by their peers every year in most or all of these lists and publications, you can feel secure that you are talking to a reputable firm with a good reputation and track record.

You are also going to want to make sure you are working with a firm that has worked on larger cases. One way to ensure that your attorney is up to the challenge is to determine whether they are part of an exclusive trial lawyers’

organization called the Multi-Million Dollar Advocates Forum, which is a subsection of the prestigious Million Dollar Advocates Forum. In order to be a Multi-Million Dollar Advocate, the lawyer must have acted as principal counsel in one or more cases that resulted in a final judgment (not subject to appeal or modification), award, or settlement in favor of his or her client in the amount of two million dollars or more. You can also ask any attorney you are considering about the size of the cases she or he has handled.

DIGGING DEEPER FOR THE RIGHT LAWYER

While having an AV-Preeminent rating, a 10.0 Avvo rating, being a Super Lawyer, and qualifying as a Multi-Million Dollar Advocate are all indications that a lawyer is at the top of his or her game, all these accolades still don't mean that he or she is the right lawyer for you. An attorney can be a highly rated trial lawyer and still not be qualified to handle your case. One drawback of these rating systems is that they do not take deep dives into specialized practices such as truck accident plaintiff's attorneys. Instead, they will indicate whether the lawyer has a great reputation in the less specific personal injury legal field. To make sure you are dealing with a true specialist, you should pick an attorney who is board certified, as mentioned earlier, and who has experience in groups that handle these types of cases.

Find out if the lawyer you are considering is an active member of any trucking organizations, particularly any organizations of lawyers who represent truck wreck victims, such as the Academy of Truck Accident Attorneys (ATAA) or the Association of Plaintiff Interstate Trucking Lawyers of America (APITLA). In order to belong to either of the organizations, attorneys have to be a plaintiff's lawyer. They have to be someone who is dedicated to representing victims, not the trucking companies, and who is willing to help other lawyers become good at fighting the trucking companies.

The best trucking lawyers will often have a history of being active in these organizations as well as the American Association of Justice (AAJ) and other state trial lawyer associations. You want to find someone who has written extensively on truck accident law and who speaks out in favor of victims. As a member of the board of both the ATAA and APITLA, I can tell you that the best trucking lawyers I know show their dedication to the field of truck accident law through their involvement in these groups.

This is also very important: Make sure that the attorney you are considering has actually tried trucking accident cases and has enough substance and financial solvency to see your case through to the end. Most cases settle, and there are plenty of attorneys out there who call themselves trial lawyers who have never set foot—except for motions—in

a courtroom. They've never talked to members of a jury, never given opening or closing arguments or questioned expert witnesses in open court. The bottom line is that the trucking companies know which lawyers will try cases and which will go for a settlement because they don't want to go to court. While it's true that most cases never actually go to trial, it is vitally important that the trucking company knows that your attorney has no reservations whatsoever taking the case through the trial process if they are not offered a fair settlement. Leveraging trial experience can make a big difference in these types of cases. Go with a real trial lawyer, always.

Another factor to take into consideration is the size and solvency of the law firm you are considering. Truck accident cases can be enormously expensive on the front end, especially given all the experts and analysis that is needed to get to the root cause of an accident and prove that the trucking company was at fault. As I've mentioned before, in these types of cases the victim is not required to pay any of the costs up front. I've personally put as much as a quarter of a million dollars into a case before we even set foot in a courtroom, so I know firsthand what kind of resources a firm needs to represent a client in these matters. A firm without sufficient resources is going to want to rush into settlement, and that is never in your best interest.

The great equalizer today is online reviews, something we

didn't have ten years ago. I would recommend looking at the attorney's and the firm's reviews to see what people are saying. I would want to make sure that the reviews match the kind of attorney you want. Are they responsive? Does the attorney return phone calls? Does this person seem like he or she treats people the way they would want to be treated?

ASK THE HARD QUESTIONS

Once you have done all your due diligence, I recommend narrowing your choices down to two or three attorneys and then interviewing them, preferably in person. Ask them who in the office will actually be working on your case. Sometimes a lawyer will be the face of the firm, the one you see on the billboards or in the TV ads, but it turns out that another lawyer entirely is going to be handling your matter. You might be surprised how often this kind of bait and switch actually happens. Find out the name and role of every person who will be on your team and ask to actually meet with each one of them. There will be a lead lawyer, certainly, but that person is going to be backed up by a lot of different people, and you want to know them and, as importantly, you want for them to know you.

Don't be afraid to ask the lead attorney some hard questions, including why they are the best person for the job. I actually got this idea from a client of mine who did this.

He came to me and said, “I’ve narrowed it down to three lawyers, and obviously I know that all three of you are very good at handling cases against trucking companies, so you don’t have to sell me on that. I’ve already done my research and all three of you are in this area; all three of you are experts in trucking wrecks. All three of you will take a case to trial.” Then he went on to ask me, “Why should I pick you over the other two?”

Now I didn’t know who the other two lawyers were; I didn’t need to. I knew what made me different from all the others, so I answered this way: “The thing is, I bet you that those two lawyers will tell you, either directly or by inference, that you are lucky to have them as your lawyer. I look at things differently. From my perspective, I feel like I would be very fortunate to have you as my client.”

It might seem like a minor difference, but it’s not. He later told me that he chose me because of this answer. All things being equal, what swayed him was that I was an attorney who valued him as a client, who was grateful to have the opportunity to represent him, not the other way around.

EMPATHY AND COMPASSION COUNT

At the end of the day, you are going to be spending a lot of time with the lawyer that you choose. Trucking accident cases can take months or years. All things being equal, hire

a lawyer who is empathetic, someone you feel like you can talk to and who will be available to you. You want someone who will work night and day for you because they take the fact that you are putting your trust in them extremely seriously. Choose someone with compassion, someone you like and feel comfortable with, someone who will be there for you and answer your questions, because you are going to have a lot of questions.

Once you have the right lawyer for you, the legal process starts. Chapter 4 will cover what happens before the trial ever begins.

CHAPTER 4

Understanding the Legal Process: Pretrial

It has been my experience 100 percent of the time—and I am talking about in over thirty years of practice and having handled hundreds of these types of cases—that once I am hired, the family lets out a kind of collective sigh of relief. I’m not saying that the chaos is lifted entirely, but there is a sense that now they have someone who can give them the information they need to make informed decisions—the *right* decisions.

While, like many of my clients, you might feel a sense of relief once you have hired experienced counsel, that doesn’t mean you won’t have anxiety about the legal process. It is normal to feel nervous about a lawsuit, especially if you have never been through anything like this before. It can

be scary not knowing what to expect or even understanding the terminology.

The legal system has procedures that can seem confusing to anyone. I've had clients from just about every walk of life, including engineers, accountants, mechanics, and homemakers. Some had college degrees and others didn't have a high school degree. The one thing they did have in common was a lack of understanding of how a claim for an injury or death would proceed. Regardless of background or education, they were all equally anxious about the legal aspects of their cases, so it wouldn't surprise me if you were feeling the same way. Without experience or training in law, you have no way to know what to expect or to gauge whether your case is proceeding properly.

In this chapter and the next two, I am going to break down how the legal system works in truck accident cases, step by step. I hope this will help you better understand what is happening and what to expect so that you feel comfortable asking your lawyer questions as your case proceeds through the system.

HOW LONG WILL THIS TAKE?

Practically every client I have represented in a large truck accident case wants me to tell them how long the case will

take. And, to be perfectly frank, this is probably the hardest question to answer. The duration of a truck wreck lawsuit depends, in large part, on case complexity, something that might not be known in the immediate aftermath of the accident or even for months and, less often, years after that. Factors that affect the complexity of the case include but are not limited to:

- The number of vehicles involved
- The numbers of fatalities and injuries
- The number of plaintiff’s lawyers representing different victims
- The skill of the attorneys involved
- The type of wreck
- The trucking company involved
- The defense attorney involved
- The type of equipment involved
- The number of people or entities being sued
- The extent of your injuries and recovery

One of the biggest factors in determining case complexity is the condition of the injured parties. If you are dealing with one or more people with severe injuries, you have to know the full extent of those injuries and what it is going to take for their recovery or, in the absence of full recovery, to address their long-term needs. Without this information, it is hard—if not impossible—to even attempt to settle a case or make plans to take it to trial.

While it is always in the victim's best interest to start the process as quickly as possible—I'll explain more about that later—that doesn't mean it follows that the case should be settled quickly. You can't resolve a case until you know either that the victim has fully recovered or that they have recovered as much as possible.

If you are dealing with a wrongful death case, and there are no surviving accident victims, you can move the case through the process faster because you don't have to wait for someone to recover from their injuries. In fact, we try to move wrongful death cases along as fast as we can, especially where the victim was one of the breadwinners in the family, because we know the family is hurting from the loss of that support. The case can, however, be delayed by some of the other complexity issues listed above.

Without diminishing the emotional side of these cases and the loss and anguish that you and your family members are feeling, it is your lawyer's job to make sure that the case is proceeding at a pace that is beneficial to you from a financial recovery standpoint.

Earlier, I mentioned the case of an accident victim who took a quick settlement of a couple of million dollars—what seemed like a huge amount of money at the time—that ended up being completely inadequate to take care of him for the rest of his life. A quick settlement was the wrong

choice in that case. He should have hired a skilled truck wreck attorney who would have hired medical experts to come up with a future life care plan that took into account how much money he needed to take care of his medical needs. The right attorney would have also hired a vocational rehabilitation expert to determine his loss of income over his lifetime.

While knowing the extent of injuries is one factor in a case's timing, a lot is also going to depend on how much of a fight the defendants put up, as well as how much the court will tolerate the other side dragging their feet.

All that being said, it's been my experience that wrongful death cases can usually be resolved in anywhere from six months to three years, whereas cases where there are catastrophic injuries can take anywhere from a year to as many as five years to resolve.

What follows is a rundown of how most trucking accident legal cases proceed during the preliminary pretrial phases, from the all-important task of ensuring that vital evidence is not destroyed or mishandled, through the pleadings, and up to the discovery phase, which is covered in chapter 5. In chapter 6, I lay out the mediation, trial, and appellate processes.

PRESERVING THE EVIDENCE

The minute I am hired—that very same day—I send what is called a “preservation of evidence” letter to everyone who might be involved, including, but not limited to, the truck driver and the trucking company; the logistics company, if applicable; and the insurance company, if it has been identified. This letter expresses our belief that litigation is imminent and that we have reason to believe the recipient has evidence in their possession that will be critical to the prosecution of our case. Most importantly, this letter admonishes the recipients to hold on to that evidence or face the legal consequences.

We don’t mince words here; we spell out in as much detail as we can anything and everything that relates to or could pertain to that wreck. We include information about the truck driver involved, the equipment that was used, and any electronic devices or recordings that show what happened before, during, and subsequent to the wreck.

The goal of the letter is to make sure that potentially telltale items—like the dashboard camera videos, electronic control modules, semitruck internal computer systems, and/or the semi tractor-trailer itself as well as any driver’s logs, photographs, or incident reports—are not tampered with or destroyed. We are going to need to get our experts out to examine these things so we can get to the truth and build our case. And it is imperative that the evidence stays intact.

I know from experience how essential it is to get this letter out right away.

You may recall the case I've talked about where the young woman suffered a catastrophic brain injury because her car ended up underneath a semitruck after its underride guard malfunctioned. An underride guard is a crucial safety mechanism for all tractor-trailers. Its function is to prevent that exact scenario from occurring. A properly functioning underride guard will keep a motor vehicle from entering the underside of a large truck. Obviously, the underride guard was a key piece of evidence that we were anxious to have our experts examine.

Immediately after being retained, I sent a preservation of evidence letter to the trucking company; but, lo and behold, that underride guard went missing, nevertheless. After producing the preservation letter to the judge and explaining what happened to the court, the judge made some favorable rulings that helped our case. Had we not sent that preservation of evidence letter, we would not have had the same leg to stand on with the court or with the jury.

There can be additional benefits to sending out a preservation of evidence letter, depending on the jurisdiction of the court. Some state laws allow the victim to sue an individual or company for "spoliation," which is the act of destroying or tampering with evidence. In other states, the judge will

instruct the jury that because the defendant destroyed evidence after being put on notice through a preservation of evidence letter to maintain it, they are to presume that the evidence would have been damaging to their case. This is why we always begin our representation by getting that preservation of evidence letter out immediately. That one piece of correspondence has the potential to make or break the entire case.

FILING THE COMPLAINT

The next step in representing the victim—now called the plaintiff—in a truck wreck case is the filing of the complaint, the legal document that formally starts the lawsuit. Sometimes complaints are filed in federal court, and sometimes they are filed in state court. You may have an option as to which state in which to file your case. It is the experienced lawyer's job to know what your options are and which court system is going to be best for you and your case.

In the complaint, your lawyer will list out all the individuals and entities involved in the case, the general facts around what happened, and the theories of law that make the defendant—the trucking company and/or the truck driver—liable for the accident.

It is surprising to many people that insurance companies are not named in the complaint, even though in most instances

the trucking company has insurance and in some instances there are multiple insurers involved. The reason the insurance companies are not parties to the case is that they do not own the truck, and their employees and representatives were not in control of the vehicle. So, because they are not directly responsible for causing the accident, the insurance companies cannot be an actual party to the lawsuit.

While they might not have direct responsibility, they do have an obligation to pay money damages to the injured parties under the terms of the insurance contract. Therefore, even though they are not named in the complaint, the insurance companies are very much involved in defending the truck driver and trucking company. They have a huge stake in the outcome of the case, and they will fight tooth and nail to see that as little is paid out as possible. It is also not unusual for them to want to hold onto their money by delaying any settlement or trial as long as possible.

Along with naming the parties to and the circumstances that gave rise to the lawsuit, the complaint is going to set out the damages you are seeking. Generally, there are two types of damages: actual and punitive.

Actual damages are anything that flow from or relate to the harm that was caused by the defendant. These include medical expenses (current and future), funeral expenses, lost wages, loss of future earnings, property damage (like

the loss of your vehicle), loss of love and affection, and loss of enjoyment of life, to name a few. Actual damages are always part of the complaint and are designed to compensate the victim and the family for the suffering they have endured and will endure as a result of the accident.

Punitive damages, on the other hand, are not designed to compensate the victims but, rather, to punish the driver or the trucking company for their behavior. Punitive damages are designed to deter people from engaging in bad behavior, so for punitive damages to be awarded there has to have been some really bad conduct on the part of the person or persons responsible for the accident. For instance, if the driver who caused the wreck was drunk or on drugs, that behavior would likely give rise to an award of punitive damages, as would a case where the trucking company knew that a vehicle had dangerous mechanical problems, but the company allowed it to remain in its fleet, nonetheless.

RESTRAINING ORDERS

At the same time the complaint is filed, it is common to file a request for a temporary restraining order (TRO). Getting that restraining order filed is extremely important to protect the evidence that is under the control of the other party.

While it is similar to the preservation of evidence letter, the TRO is signed by a judge so it has the weight of the court

behind it. When we file our TRO motion, we ask the court to tell the trucking company to refrain from even touching the equipment unless our experts and I are present. We work to make the orders as detailed as possible and advocate for language that makes it clear that the defense side cannot alter, modify, repair, or test any of the equipment, download information, or do anything to the semitruck unless we are present with our own experts.

Time is of the essence when safeguarding evidence. Even before the complaint is filed, we will have already put together a team that will work toward preserving evidence. This team will visit the scene and go over everything there in detail. They will look for witnesses. They will look for security cameras. However, it is very likely that they will not be allowed to examine the semi, cell phone, or other items in the possession or control of the trucking company. That is why it is so important to request the TRO. As soon as the judge signs the temporary restraining order—typically within days of our request—we go to the salvage yard or garage or wherever the tractor-trailer is being stored and tape a copy of the actual restraining order right onto the truck window. We want to make sure that everybody who comes in contact with that piece of evidence knows that they are not allowed to touch the vehicle by court order.

It is important to note that we don't just seek TROs to preserve evidence obtained from the truck itself; we ask for it

to cover all sources of evidence in the case. For instance, we might ask that the truck driver's cell phones be subject to a TRO, preventing that driver from using their phones in any way, either for legitimate purposes or to destroy, alter, or delete information that could be relevant to the case, until we complete our investigation. I've handled plenty of cases where the key to the trucker's liability rested on the information in their cell phones. Without a TRO in place, all that vital evidence will become lost.

After the TRO is issued, we will work with the other side to coordinate a date when their experts, our experts, and the lawyers can get together to examine the evidence. This usually includes hooking up the semitruck's computer so we can download all the relevant information, as well as having the respective mechanics inspect the vehicles to determine if the vehicle was working properly, check its brakes to determine if they were in good working order, and inspect the vehicle for any other defects that could have caused or contributed to the wreck.

The restraining order is an extraordinarily important tool for the victim's legal team, which is why we waste no time in getting it filed. Because the order is temporary, both sides need to move forward with their inspections and evidence-gathering in order to get all the information they need. Typically, evidence is examined within thirty days of the TRO going into effect.

UNDERSTANDING THE DEFENSE'S ANSWER

After our team files the complaint, the other side has to file a formal response, called an answer. This usually occurs around sixty days after they receive the complaint.

Typically, the truck driver and the trucking company deny each and every one of the allegations we made in the complaint. My clients are often upset by this. How can the trucking company just lie in its answer when the trucker and everyone involved know full well that there are allegations made in the complaint that are simply indisputable?

The complaint may say, for example, that the truck driver ran a red light. Maybe there are a dozen witnesses that saw the truck run the red light, there is traffic light camera footage of the truck running the red light, and the police report says that the defendant ran the red light. How can the defendant's answer—a legal document filed in a court of law—deny something that is so blatantly true?

These are all good and fair questions.

At this point in the case, the defense lawyers, who are drafting the answer on their client's behalf, don't know a lot about what happened. The formal discovery process (which we'll look at in the next chapter) has not yet begun, so they have no evidence to really confirm or deny any of the allegations in the complaint. By denying everything—

even the facts that seem undeniable—they are preserving the defendant’s ability to deny certain aspects of the case later on.

Even if you can wrap your mind around the rationale for denying all responsibility for the accident, it is understandably harder to grasp situations where the defense’s answer actually attempts to place blame elsewhere—often on the victim!

Deflecting liability to others is part of the gamesmanship of litigation. These types of allegations are called affirmative defenses and may include accusations that the victim was the one actually at fault in the accident.

For example, in an affirmative defense, the other side’s attorney will state that the driver of the car that crashed into the semitruck did not have proper control of their vehicle, and that was why the accident occurred. Lawyers, as a matter of course, assert affirmative defenses like this in the answer until they have had a chance to delve into the actual facts of that particular case. Denying the allegations and even blaming you for causing the accident are expected and, while upsetting, will have absolutely no bearing on the outcome of the case.

Once the defense’s answer has been received, your attorney’s job is to determine the facts. That’s the subject of the next chapter covering the process of discovery.

CHAPTER 5

The Discovery Phase

The discovery phase of the case is where the parties exchange information about the witnesses and evidence that could be presented at trial. Covered by specific rules of procedure, the details of what is allowed during discovery may differ from jurisdiction to jurisdiction and whether you are in state or federal court. Regardless, the formal process will basically flow the same way.

Discovery usually begins with a written request for production of documents and lengthy questionnaires called interrogatories. At this time I usually also include requests for admission, if allowed by the court. From there, you move into depositions. This chapter will follow each of these steps in this part of the process.

REQUESTS FOR ADMISSIONS

In requests for admissions, you actually write down certain facts that you ask the other side to then formally admit or deny. The idea is that if the parties can agree on certain things, it will limit the amount of fighting, saving everyone—including the court—time.

Often, the requests for admissions cover no-brainer types of things, such as the fact that the truck driver worked for the trucking company, or that the truck driver was driving a certain truck on the date of the accident. Harking back to the example we used earlier when discussing blanket answers, we might even ask the defense to now admit that the driver ran a red light. At this point, the defense attorney has more knowledge as to the facts of the case and may be in position to admit this fact.

In some cases, when appropriate, we will even ask the defense to admit that the victims did nothing that caused or contributed to the wreck. If they admit large issues like these, we can quickly dispense with a lot of issues, shortening the process and eliminating a lot of the work that has to be done. Typically, the other side will not make admissions as to liability, but there are instances where the facts are so overwhelming in the plaintiff's favor that moving the case along to get to the issues that actually could be in dispute in the case makes sense. Any admissions made by either

side are absolutely binding on them and can be relied on by both parties in court.

INTERROGATORIES

“Interrogatories” is just a fancy word for written questions. Each lawyer writes out questions, and the other side has to write down answers. What makes interrogatories different from just answering a questionnaire is that all of the answers are given under oath and under penalty of perjury. Interrogatories are preliminary to depositions, which we will discuss later in this chapter. The answers help your legal team explore the facts of the case, understand who the players are, and get insights into how they can leverage this information to contribute to your case.

The kinds of information we typically want to learn through interrogatories include the make and model of the truck that was being driven, what was being shipped, and what the weight of the load was. We use interrogatories to find out, for example, who the trucking company safety director was and which key people in the company have information about the case. We are interested in finding out the truck driver’s version of what happened in the wreck and which insurance companies are involved. This is also the time that the legal team would be able to find out how much insurance coverage there actually is.

Of course, there is another side to interrogatories, and that is the fact that the victims also have to answer them, which can be frustrating.

Some of the questions that are going to appear in the defense's interrogatories are going to seem like they have nothing to do with the case. The rules of discovery say that the information being sought doesn't have to be relevant; it just has to be something that could possibly lead to the unearthing of relevant information. This means that the defense is probably going to ask some questions that seem off the wall, but we are going to have to answer them all the same. Just like the other side, you and others answering the interrogatories will be under oath, so it's important that everyone answers as accurately as possible.

Of course, most people would never lie when under oath, but sometimes it can look like the person is lying because the answers are inaccurate or incomplete, usually because the person simply can't remember something or is hesitant to include information that they think is irrelevant or even embarrassing.

Let's say, for example, that you are asked in an interrogatory if you've ever broken a bone before. The fact may be that you broke your leg when you were a small child, but it had completely healed and, in your mind, was in no way similar or related to the case where a broken leg was the least of

the injuries received in the trucking accident. So, because it seems irrelevant—after all, it was so long ago—let’s say you answer no.

The only right way to answer that question is to disclose your prior leg injury. The question isn’t asking if you have ever had the exact same injury before, or if the injury then has any bearing on your injury now. It’s much broader than that. Answering the question in a manner that is not completely open and thorough is going to make it look like you’re lying, and that may be used against you. I always advise my clients to be completely forthcoming and accurate when answering interrogatories. You need to be honest and open with your legal team. Otherwise, you could ruin your case on something not that important.

You don’t need to worry if your answers will impact your case or not. Worrying about that is my job as your lawyer. And you can rest assured that someone on your legal team will be helping you throughout this process and will look over all the answers before they are submitted. You are never alone, and you can feel secure that we will make sure you don’t make any missteps in answering interrogatories or during any other part of the discovery process.

REQUEST FOR PRODUCTION OF DOCUMENTS

Like all the other tools of discovery, both sides will use the

“request for production of documents” tool to find out more about the case. We tend to send these right away because we want to get as much information as possible about the driver, the vehicle itself, and the relationships between all the parties so we can begin building our case.

Typically, we will ask for the driver’s logs, the driver’s employee file, the maintenance records of the truck, the relevant shipping orders, and copies of any contracts between the shippers and the trucking companies. We make a point to ask for all the documents that pertain to the case that are required to be maintained pursuant to the Federal Motor Carrier Safety Regulations. We will also request the operator’s driving record, the company’s safety manual, its driver’s manual, and anything else that relates to the company’s policies. We are looking for things that could specifically impact the case. For example, if we are asserting that the accident was caused by a truck driver using his cell phone, we will ask for the company’s cell phone usage policy.

We will ask for documents on how the driver is paid—whether it was by the mile or by the job—and what they were hauling. All of this information has the potential to explain some things later on, like why the driver may have been speeding.

Of course, the other side is also going to file a request for

production of documents. From their perspective, they are going to be looking for medical records, copies of medical bills, and copies of tax returns, anything that shows potential loss or damages. Your legal team will help gather all this information and will put it all together in the response.

While rules of procedure in most jurisdictions give each side thirty days to produce documents, the defense almost always asks for extensions. Remember, at this point in the proceedings it's in their interest to delay as much as possible. As a result, sometimes we don't get the documents we've requested for sixty or even ninety days. On the other hand, we try to respond to the other side's discovery within thirty days.

Up to now, we have covered how a lawsuit is filed and the process of going through written discovery. This helps us know who we want our witnesses to be and who the other side is likely to call. Our experts have examined the vehicle, likely reconstructed the accident for us, and provided information about the truck driver's and/or trucking company's suspected violation of the law and industry standards. We are probably about six months into the lawsuit when depositions begin.

DEPOSITIONS

In depositions, each side's lawyer gets to ask questions of

all parties to the case, the police, witnesses and bystanders, each side's experts, as well as people who can explain, confirm, or expand on the information gathered in interrogatories, in the inspection of the vehicles and the scene of the wreck, and through document requests. Some courts and some states limit the number of depositions the lawyers can take without permission from the court.

You will very likely be deposed by the other side in the case and that might cause you some anxiety, so let me take this opportunity to set your mind at ease. No good lawyer will ever let their client walk into a deposition room unprotected and unprepared. First, if I am representing you, my team and I will have worked with you over the course of several hours to make sure you are prepared for any question or contingency that could arise. We may meet with you on more than one occasion. We will review with you your medical records, your answers to interrogatories, and any other relevant information we have gathered. We will actually role play and ask you questions as if we were the opposing counsel. We will not allow you to be deposed until you are fully prepared.

During this deposition preparation, we will make sure you understand the gamesmanship involved. While you might think that all you have to do is tell the truth—and that is certainly the case: you must always tell the truth in a deposition under penalty of perjury—the other side's lawyers may try

to trip you up by asking convoluted or lengthy compound questions. We teach you how to answer so the truth does, indeed, come out. Because we have been doing trucking accident cases for so long, we usually would have seen the lawyer for the other side in action during previous cases. We instruct the clients on how to prepare for that specific lawyer, which always proves extremely helpful.

As mentioned, we will review your medical records with you in advance of the deposition, refreshing your memory about certain things. Even though you might honestly not recall something or have memories that have innocently become faded and inaccurate, the other side will try to make it look like you're lying if you make an inaccurate statement or say you don't recall. That's why we work so much on preparation. We don't leave anything to chance and we are rarely, if ever, surprised by a question asked of a client in a deposition.

As long as you are properly prepared, you should feel confident walking into your deposition.

Of course, your legal team will also be scheduling key depositions with the other side. These will likely include the truck driver, the safety director, dispatch, maintenance people, and the company spokesperson. I often also depose the police officers who investigated the wreck, any witnesses, as well as the first responders like paramedics and ambulance drivers who were on the scene.

Who we depose depends on the case. If the other side is not admitting that the wreck was their fault, we will want to take depositions of all the people who were at the accident scene not only to get their take on what happened, but also because the truck driver might have said something that differs from what they are asserting after the fact. If we are in a court or jurisdiction that limits the number of depositions we can take, then we will only do the depositions that are key, and then may end up doing video interviews of other witnesses, including people who were at the scene.

The questions we ask the truck driver and others are going to be based, in large part, on the data and information we downloaded from the truck's computer system, as well as all the intelligence we have gathered throughout our investigation and the discovery process to date.

In every deposition, the lawyers for all sides are present as is a court reporter who takes down the questions and answers verbatim using a kind of shorthand machine. I also always hire a videographer to videotape the depositions I am taking, and sometimes the other side videotapes the people they are deposing from our side.

Depositions of our clients often take place in the county where the lawsuit is pending. When I am handling a local case, we schedule the depositions of my clients in my

offices, or in another location, such as the court reporter's office, where they will feel comfortable. I rarely, if ever, will do a deposition of my client in opposing counsel's office where there is a chance they would feel intimidated. When I do the trucking company' depositions, I end up flying all over the country because I have to go to them since my client is the one who is suing.

By the time depositions are completed, we are likely about a year or so into the lawsuit. The lawyers from both sides have probably been in court a time or two, and the client will likely not need to be at the pretrial court hearing. These hearings are usually on legal issues that are setting the stage for the trial.

The defense may file a motion asking the judge to rule that the case shouldn't go forward at all (a motion for summary judgment). They might also file a motion requesting that the judge knock out part of the case, like dismissing the possibility that we are awarded punitive damages. These types of motions are very rarely granted, and are part of the overall gamesmanship that occurs during civil litigation.

WITNESS AND EXHIBIT LIST

There are rarely surprises by the time your case gets to trial because of the discovery that both parties have engaged in. Both sides must disclose every witness they plan to call

and every piece of evidence, in the form of exhibits, they plan to show the jury. Each party must write down their witnesses and exhibits in a list that they file with the court. In my experience, cases can be won or lost based on your witnesses. My firm begins exploring and talking with witnesses as soon as we are hired.

Witnesses are so important because they are the ones who can tell the story of what actually happened, how it happened, and why it happened. They can also tell the jury how the injuries, or wrongful death, have altered the lives of the victims and their family members. It is not unusual for employers, coworkers, friends, and acquaintances to be on the plaintiff's list.

A lot of time is spent thinking about these witnesses and asking who you think should be called on your behalf. We spend time talking to witnesses to find out what they know and to see if they are cooperative. We want to make sure that we call the witnesses who will be most persuasive in telling your story. The most persuasive witness is also the one who is genuinely a good and truthful person. I always like to have people who are diverse in age, sex, and race to help tell a client's story. As I'll discuss later when I go into the details of how trials work, it's helpful when jurors are able to relate to you and to your witnesses, and since juries are comprised of people of all types, it's a good idea to show diversity in the witnesses as well.

Of course, the trucking company will have a list of witnesses that they intend to call. Most likely, by the time we receive their final list, we will have already deposed everyone on it. But if a person is named that has not been deposed, a deposition will be scheduled. We do not leave room for surprises. It is our goal to be completely prepared, always.

EXPERT WITNESSES

A witness list also contains the names of the experts you intend to call at trial. Earlier I talked about how important it is to find out exactly what happened in your particular case, and that is why we hire a slew of experts to help in this regard. These same people—the reconstructionist (who helped us figure out what happened in the wreck), a mechanical expert (who helped us determine whether the truck had malfunctioned), and tech experts (who download the information from the cell phones and the ECM and are able to explain all the data)—are the experts we begin with in most cases. But, as the case progresses and we learn more, other experts will likely be hired, such as doctors to explain the injuries you or your loved ones received, as well as experts who can explain how the accident has altered the day-to-day lives of all of the victims.

An expert economist or loss of future earnings expert may need to testify about financial issues such as the loss of future earnings and how that impacts your entire family.

Depending on the type of case, a psychiatrist, a psychologist, or a grief counselor may be hired. Trucking industry experts and truck driver experts will likely be hired to explain how the industry's own standards were not upheld in the case.

Experts help show the jury the impact of the wreck, especially in terms of the losses your entire family has suffered. The experts will help prove our case, answering questions related to whether the company was violating the hours of service, whether the driver spent too many hours driving, or if he was driving too fast. If it is suspected a driver fell asleep at the wheel, we may hire a doctor to examine the driver to determine if he suffers from sleep apnea or some other condition that would cause him to fall asleep while driving. The final witness list will identify all the experts we intend to call at trial.

EXHIBIT LIST

The final exhibit list will describe every piece of evidence that will be introduced into evidence for the jury to see. This will include the evidence that our experts rely on in forming their opinions—everything from an email to a text message to the data from the semi-truck electronic logs, GPS, medical records, and cell phone records. If it is an identifiable object that we want the jury to consider, it will be listed on the exhibit list.

Of course, during this time of gathering information, both sides are assessing the other's perceived strengths and weaknesses. Following the discovery phase, after the information has been exchanged and all the key depositions have been taken, both sides will have an idea about the strength of their cases. It is now possible to place a monetary value on the damages in the case and move on to mediation. Chapter 6 continues through the mediation process and beyond—to trial.

CHAPTER 6

Understanding the Legal Process: Mediation and Trial

Most state courts require or encourage the parties to mediate a case before a trial is held. The mediation is scheduled after both sides have had the opportunity to work up the case enough to know the strengths and weaknesses and the value of the case. By the time they sit down for mediation, all sides should be in a position to know the risks and the costs associated with a trial. This is their opportunity to reach an amicable resolution before going through a time-consuming and expensive trial.

HOW MEDIATION WORKS

Mediation is a confidential supervised settlement conference that is overseen by a qualified and neutral mediator selected by both parties. Mediations involving a wrongful death or plaintiffs with catastrophic injuries will usually last all day.

All key decision makers must attend the mediation. The injured parties—or the personal representative of the estate in a wrongful death case—will be there with their attorney. Usually someone from the trucking company is there along with an insurance representative and their attorney. The truck driver usually is not at the mediation.

Mediation provides all sides with an opportunity to settle before trial expenses are incurred. By settling at mediation, both sides avoid the risks and expenses associated with a trial. If the case settles at mediation, usually the client has their money within thirty days.

Whether the victim or their family settles at the mediation is entirely their choice. The mediator cannot force them to settle and their attorney should not force them into settling or not settling. Instead, it is the attorney's job to empower the client to make the decision that is right for them. The client should have everything they need from their lawyer to make a well-informed decision.

Some attorneys, unfortunately, try to force their client to

settle at mediation. They have no intention of going to trial. They will do things like scare the client or encourage the mediator to push the client toward settlement. In my opinion, this is wrong. I see my job as a plaintiff's attorney to make recommendations, but I make sure that my clients know that the ultimate decision is theirs to make. And if they do not want to settle, my firm and I are ready, willing, and able to take the case to trial.

Mediation, even if it doesn't result in settlement, provides a great opportunity for our side to educate the defendants. Insurance companies, adjusters, and trucking companies are used to seeing, hearing, and thinking about horrible accidents and the injuries and devastation left behind. Because they see so much of this, they are able to view the situation impassively. Mediation, if done properly, can be a means to bring humanity back into the mix.

The defense team is comprised of professionals. Day in and day out they look at claims and think, "Okay, someone died, you lost your leg, you lost an arm, you have this injury or that injury. How much is that worth?" They become desensitized to the suffering their clients and employers have caused. The people putting a price tag on human suffering are simply "blood accountants." These people look at the injuries suffered, add up the medical bills, determine whether there are any wages lost, and then plug these numbers into a computer and the computer spits out a range

of numbers that they believe represents the value of the case. The value of an arm. A leg. A person's memory. A person's life.

As plaintiff's counsel, my job is to try to make these truck claims people, insurance folks, adjusters, and attorneys look at the case differently. Each person is different; and each case is different. You want the other side to see this, to recognize the human story behind these tragic events.

The format for the mediation can vary depending upon the mediator and the location of the mediation. In some states, it is common to start the mediation with a general session where everyone gets together and explains their view of the case. In other parts of the country, general sessions are often skipped. Regardless, there will be multiple rooms, and most of the day you will be in a room with just your lawyer, separated from the defense. The mediator will go back and forth between rooms discussing the case, the other side's view of the case, and the amount of money being offered.

During the mediation, your attorney may have a financial planner and/or a structure settlement person either at the mediation in a separate room or available by phone to answer any questions and assist you with financial planning for the future.

A mediation is your opportunity to impress and educate

the other side. It must be clear to them that your lawyers are prepared and ready to take your case to trial if you are not offered an appropriate settlement. Your attorney should be presenting gripping visuals for the other side to see, such as posters showing the client's injuries and any surgeries. A video that presents a clear story of how the accident happened and how it has affected the victim and their family should also be prepared and shown. These videos are usually ten-to-fifteen minutes long and should be professionally done. These settlement videos are more powerful than anything else to help the other side see what could be presented at trial.

For example, the husband of one of our clients was a champion monster truck driver who was killed in the trucking accident. We showed the other side video footage of him driving his monster truck raising money for charity and spending time with family. We were able to drive home the fact that this wasn't just some male with a life expectancy of X and potential lifetime income earnings of Y; this was a caring, fun-loving, larger-than-life, charitable man with a huge heart whose death was a great loss to his family and his community.

We always put a lot of time and resources into making these videos, and their impact can be profound in showing what the future holds for injured accident survivors. The doctors and other experts explain what the injured person has gone

through and, more importantly, what the future holds for them. Are future surgeries going to be necessary? Will he be able to work and still take care of his family? Will he experience pain for the rest of his life?

Friends, family members, and coworkers are interviewed and asked to explain how the wreck has affected the victim and their family. These interviews help us all understand the victim's suffering through the eyes of those who know and care for them.

Lawyers differ on how they use these videos. When we show them, we do so in a controlled setting from beginning to end. We never give a copy to the other side. We know that the impact of each story comes through when it is told in its entirety. And that is how we present these stories, in a manner that makes the decision makers on the other side see, hear, and almost feel the damage done to our client and their family. I have seen the emotional impact these videos have on the defendant's representatives. I have seen how these videos bring home the point that if we do not settle, we are ready to go to trial with witnesses who will be there supporting our client in some very compelling ways.

The closer you get to trial, the better your chances are of a successful mediation. And the larger the case, the more likely that it will take more than one mediation to settle. If

your case doesn't settle at mediation, however, this does not mean your case will not ever settle. Often, as you get closer to the trial date, the case does end up settling. If you and your attorney keep pushing the case to this point, the trucking company and its attorney will know you are serious and are not willing to settle for an unfair amount.

But if it doesn't settle, we move on to trial.

MOVING ON TO TRIAL

Television and the movies have given a lot of people a false impression of what trials are like. They aren't short and sweet with a lot of grandstanding and people jumping up and down yelling, "You're out of order!" every two seconds or "You can't handle the truth!"

Trials can be long, and they can be tedious. The more complicated the case, the longer the trial will last, with many taking anywhere from several days to several weeks. I believe that you should make the trial as short as possible: make it short and persuasive.

Your attorney should do their best to get to trial as soon as possible, but there are often delays. Even after the trial date is set, it's not unusual for the court to grant one side or the other a continuance. Delays are frustrating for clients—they frustrate your attorneys as well—but there is little that can

be done. It is up to the court to decide whether to continue a case. Regardless, at some point, the court will say enough is enough and not allow any additional continuances and set the case for trial.

Most people dread the thought of going to trial. They are nervous about going to trial, being on the witness stand, and being cross-examined by the other side's attorney. They are scared that the words will be twisted against them. They dread the thought of having to relive the tragic events that brought them to the courthouse.

The insurance companies, the trucking companies, and the big corporations all know that people don't want to go through this process. For these companies, it's easy. They haven't gone through a life-changing trauma. Some are in no hurry to shell out a lot of money for a trial. So they will cause delays. They will fight. They will argue about the smallest things just to throw a wrench in the proceedings. Some defense attorneys view it as their job to make it as difficult as possible, and that can be very frustrating to people. In fact, it's one of their tactics. The other side hopes that the victim will take their frustrations out on their own lawyers, that they'll get tired of it, reach a breaking point, and end up being so fed up that they will settle the case for less than what's fair.

You must be prepared for their tactics. *They're going to do*

things along the way that will frustrate you. They're going to anger you. But that's part of the game that they're playing. Don't let it work. Don't do it, don't give in. Just hang in there with your attorney; let them help you through this process. Remember, at some point, the delays and games will end and the jury will get to hear your story.

PREPARING THE CASE

Good lawyers start preparing for trial as soon as they get hired. When they are trying to figure out why the truck wreck happened, they hire experts who not only can figure that out, but who also will testify well at trial. Likewise, they hire experts such as doctors, economists, life care planners, lost future earnings witnesses, grief counselors, and others who can explain to the jury, in a persuasive way, the damages you and your family have suffered.

In addition, your lawyers will look for good “before” and “after” witnesses, people who knew you before the accident and people who knew you after the accident. Obviously, a witness who has known you for a while may be able to testify to how you were before the accident and how you and your life have changed as a result of it.

If we are dealing with a wrongful death case, this witness can tell the jury about the person who was killed and how his or her loss has affected those left behind.

These before and after witnesses are more powerful, in my opinion, than medical doctors. These are the people who see the injured person's life up close. These people can really drive home to a jury the extent of what was lost in the accident. Juries relate to real people. They identify with them.

This is when having as many different types of people from different demographics is going to help bring our points across. As I mentioned before, I like to have people with diversity in age, sex, race, and even occupations to appear on a client's behalf and tell their story. We have no way of knowing who will be picked to serve on our jury, and we want to give the jurors as many opportunities as possible to identify with our witnesses.

Your legal team will meet with these witnesses. Clients are often hesitant to ask before and after witnesses to get involved. However, as mentioned, these witnesses are critical for a successful outcome. My experience has been that most of these people genuinely want to help and will voluntarily testify.

Our legal team meets with every potential witness suggested by our client. We work with everyone, including our client, so they know what to expect when they testify at the actual trial.

JURY SELECTION

Before each side puts on its case, a jury must be selected. The potential jurors will be seated in the courtroom, and the lawyers will have the chance to talk to them and ask them questions. The purpose of the questions is to make sure that the potential juror has no independent information regarding the wreck, are independent minded, and can listen to the case and make a decision based upon just the evidence and the law as presented by the court and the attorneys.

Jury selection is extremely important. Your attorney should be trained and skilled in this phase of the trial. Many courts will limit the amount of time the lawyers can question the jury panel. It is important to find out which jurors can't be fair or are not willing to award an appropriate damage award. Your attorney will try to remove the ones that are clearly prejudicial to your case. The number of jurors that will decide your case will vary depending on the state your case was filed in. Once the jury is selected, the court will then proceed with the trial.

LIABILITY AND DAMAGES

During the trial, your legal team's job is to prove two things: liability and damages.

In order to prove liability, we must show who is at fault for the wreck and who acted unreasonably. We may call

police officers, accident reconstructionists, as well as the mechanics, truck download experts, truck industry experts, experienced truck drivers, cell phone experts, and witnesses to the accident to show that the truck driver and/or the trucking company did or did not do certain things that caused the accident. Their conduct must be unreasonable and below the standards in the industry.

The second part of the trial is damages. These are the losses of the client and the harms that have been done to the family. All of this must be proven through the testimony of the doctors, economists, and experts who will explain the extent of the loss of past and future earnings, as well as the projected costs of any future medical expenses and future life care needs. In addition, the before and after witnesses we discussed earlier will also be called. Other elements of damages may include pain, suffering, scarring, permanency of an injury, loss of enjoyment of life, and the effects the injury is having on you.

PUTTING ON THE CASE

A trial begins with both sides giving an opening statement. In opening statements, the lawyers summarize what the evidence will show. It is a preview of the case. Once the opening statements are given, as the injured party, your side presents your case first. You go first because you have the burden of proof. Witnesses are put on the stand by both

sides. Your attorney goes first, then the defense lawyer will cross-examine them.

The trial progresses in this manner until all the witnesses and all the evidence that supports your case are presented. Next, it is the defense's turn to put on their case. They will call witnesses and present their evidence. Then your lawyer gets to present rebuttal evidence. When all of that has concluded, each side gives a closing argument.

In closing arguments, the lawyers each get to argue their case. This is their chance to persuade the jury to find in their favor, based on all the evidence that has been presented. The attorneys go over the facts and the law, and explain what it all means. Typically, this is the time that we tell the jury the amount of money we want and think is fair. We are specific about the amount in damages we are asking for and why.

The jurors then are not allowed to talk to anybody after that point. They go back to the jury room to deliberate. Their job is now to decide whether and to what extent the semi driver, the trucking company, or the others you sued are liable for the accident and what damages you are entitled to get. Deliberations can take hours or even days.

Once the jury comes up with a verdict, it is presented to the judge, who then enters it as a judgment.

THE APPELLATE PROCESS

I'd like to be able to say that this is the end of the litigation process, but it might not be. Once there is a judgment, the losing side has a certain period of time in which to appeal the judgment. If that happens, each side must present a brief to the court of appeals and potentially engage in oral arguments before the court. The client is not involved in the appellate process. There are no witnesses or depositions, only legal arguments presented on paper by both sides.

The court of appeals looks at the arguments of both sides to determine whether there were any mistakes made during the trial that require the judgment being set aside or changed. If the appeal doesn't go your way, you can appeal that to the state supreme court. If the supreme court agrees with the appellate court, the judgment becomes final. If they don't, then the case may be sent back to the trial court. If the case was tried in federal court, then the appeal is to a Federal Court of Appeals, not the State Court of Appeals.

How long the appeal process takes varies from jurisdiction to jurisdiction. In Indiana, for example, appeals usually take at least a year. The only good thing about an appeal is that the plaintiff gets interest beginning on the day the original judgment was entered.

Whether you end up at trial or not, chances are that months or years will have passed since the first day that you and

your lawyer sat down together. I would like to tell you that entering into a settlement or receiving a final court judgment signals the end to your ordeal, but the reality is, there is more work to be done and there are going to be more hurdles to overcome.

CHAPTER 7

Moving Forward after Your Case

I can't tell you how many times I've heard, "I would like to get this lawsuit over because once it's over, I can move on. I'll have closure."

Deep down inside, you know this isn't true. It just ends the legal process.

The end of the legal process is not the end of your ordeal. In some ways, the end of your legal case can even make things seem worse because you're left with a void. Going through a lawsuit is time-consuming. It takes up a lot of your spare time and energy. It is a distraction. It keeps you busy. Things in your life will slow down after the legal process ends. Even though you will probably feel relieved when

the case is over, you are still going to be facing a new reality. You likely will be tasked with a slew of new responsibilities, including how to manage what could be a significantly large amount of money.

As your guide through the entire process of surviving a severe trucking accident, it would be irresponsible of me to walk away without offering information and advice on how to handle this new, and perhaps overwhelming, financial responsibility.

Let's face it. Most of us haven't gone to school to learn how to manage money and aren't experts in how to take care of our finances under normal circumstances, let alone how to take care of the kind of substantial sum that you could be receiving at the conclusion of your case. Believe me, you are going to be bombarded by well-meaning people trying to advise you on how to invest, people who could unintentionally steer you in the wrong direction.

THE RIGHT FINANCIAL ADVISORS

At the very beginning of our attorney-client relationship, my clients and I talk about how we are going to help them determine how much money they are going to need as well as how to manage that money once a settlement is reached or a final judgment is entered.

In chapter 3, I offered insights into how to choose an attorney, including what questions to ask before agreeing to become a client. I would now like to add another piece of advice to consider when choosing counsel: make sure your attorney is devoted to your success not only before and during your case, but also after the case has closed.

When choosing your lawyer, you want to pick someone who's going to put a team together for you and for your family to make sure that you're going to be taken care of financially. If that's not taken care of at the outset, then the rest of what happens in your case isn't going to matter. If you don't have the finances part firmly in place, then not only are you going to be struggling with extreme loss and change in your life, but you're also going to be struggling just to get by day in and day out.

It's equally important that you ask your lawyer what type of team they are going to put together at the end of the case. Too many lawyers think a case is finished once that judgment is entered, and I couldn't disagree more with that attitude. As an advocate, I consider it my job to make sure my clients have all the resources they need to manage life's challenges once the case concludes. That is why we work so hard to put the right team together to assess all the relevant damages—including loss of future earnings, life care costs, loss of support, and ongoing medical and emotional needs—that the victims and families will require

for the rest of their lives. And it is why we assemble a team of financial advisors and professionals to make sure our clients have the resources they need to manage the money once it is received.

Depending on your circumstances, we may assemble the following types of advisors to help you establish and maintain a long-term financial plan: accountants, life care planners, financial planners, structured settlement advisors, and experts in establishing trusts.

LIFE CARE PLANNERS

Life care planners are experts on assessing the overall economic loss that results from the accident. For example, if a person is going to need medical care for the rest of their lives, the life care planner will put together a future medical plan that takes into account all the costs and developing needs of the patient. The person may need medical care, therapy, equipment, transportation, modifications to their house, or assisted living. It is the life care planner's job to determine all the current and future needs of the injured party and come up with a plan that ensures, as much as possible, that everyone involved will enjoy a financially secure future.

FINANCIAL PLANNERS

Once a settlement or judgment amount is paid out, a plan

for how to preserve and protect the money—how to keep it from being mismanaged or lost—should be in place. For instance, in some cases, the recipient is a minor. Nobody would think it was a good idea to give a child millions of dollars. And it might be equally imprudent to give a large sum of money to someone with no financial management background.

We bring in reputable financial planners to advise clients on the best options to manage the funds. I always work with financial planners who are paid by the hour, rather than those who get paid based on what they sell. I want somebody who gives independent advice based on the clients' particular circumstances, rather than someone who might point my client in a particular direction because it means financial rewards for them.

STRUCTURED SETTLEMENT ADVISORS

Structured settlement advisors assist people with the purchase of an annuity. When you buy an annuity, you enter into a relationship with a company that pays you or a designated third party at set intervals.

The advantage of a structured settlement is the money grows, and you get interest on it, but you don't have to pay any taxes on the interest, so the money grows tax free. The disadvantage of the structure is it only pays out under the

exact terms of the contract, so it lacks the flexibility of other money management tools.

You do get to pick how and when you want the money to be paid out. For example, you could have payments made monthly, quarterly, or annually for the rest of your life. Or you could have it paid out at certain key dates.

A structured settlement is a good way to manage children's access to the money. Under most state laws, once a child turns eighteen, they no longer need someone to manage any of their assets. I don't know many teenagers or even young adults who have the experience and maturity to manage extremely large sums of money, funds that were intended to last for years and even take care of them for the rest of their lives. With a structured settlement, the family can decide how much money the child will get for each year—for instance, what they can receive during college or when they decide it's time to buy a house. Usually, these annuities are set up for a certain amount of money to be distributed on a regular schedule, either monthly, semi-annually, or annually.

EXPERTS IN TRUSTS

We also regularly bring in trust and estate attorneys and advisors to help our clients manage their finances. You can put money aside in a trust for any purpose; you can draft

them very broadly or you can draft them very narrowly. It depends on what you're trying to accomplish.

For instance, you can set up a trust for medical expenses, for long-term care, or for food, shelter, and clothing. As long as the use meets the purpose of the trust, you can pretty much draft them any way you want.

MAKING THE BEST PLAN FOR EACH PERSON

With a significantly injured person, it's not unusual for the client to set up trusts, a structured settlement, as well as other types of investment accounts.

You may remember the woman who suffered severe brain injuries after the underride guard in a semitruck failed. Before we even began settlement negotiations, or thought about mediation or a trial, we had financial professionals figure out how much money we would need to give her a safe and comfortable life, to make sure that she could live in an assisted living facility that met the family's approval and was close to them.

You won't always know what the future is going to hold. It is the job of these seasoned professionals that we bring onto our team to anticipate the possibilities and set plans in motion to address them, come what may.

For example, I have seen my share of situations where the children who were impacted by these kinds of tragedies developed emotional and/or drug abuse problems later in life. I'm not saying this occurs with every case, or even most cases, but it does happen and it is imperative that financial plans are flexible enough to deal with these kinds of possible issues years down the road. Even though children I've represented have experienced challenges years after the devastating accident that affected their families, I am happy to say that every one of them successfully made it through the tough times. I am 100 percent certain that their success is in no small part due to the fact that, through foresight and planning, resources were made available for them years before.

CREATIVE PLANNING

I had a client whose significant other was killed by a bus. They weren't married, but they had lived together and had two children together, as well as a third child from the girlfriend's previous relationship that the accident victim considered his own. However, he had never adopted this child. This man, a construction worker, was the sole breadwinner of the family, and his family was dependent on his income to live. But under the law, only his two minor children were allowed to recover. This would not help the mother or the other child.

This was one of the worst cases I ever handled, in terms of

the resources of the survivors and the way the defendant behaved. The woman and her three kids were living in a small rented apartment and were facing eviction because there was no income coming in after her boyfriend was killed. The commercial bus company insisted that the accident was the victim's fault, that he walked in front of the bus, and they actually threatened to sue my firm for bringing a frivolous lawsuit.

The bus company had their lawyer at the scene soon after the wreck. They sent their investigators and claims people out to the scene before it had even been cleared. These investigators hit the ground taking statements from onlookers, working to put their spin on the facts and sway people's perceptions of what had transpired.

They were extremely good at it. It was amazing how those statements were spun in favor of the bus company. The team for the defense started feeding information to the news media that made it sound like it was completely my client's fault for walking in front of the bus.

Luckily the family hired our firm, and we worked hard on that case to establish that it was not his fault. We brought in accident reconstructionists to run the bus down the roadway and recreate the flow of the bus, reenacting the scene. Because the bus company had intentionally not hooked up the ECM, there was no data that could be downloaded.

However, there was a security video that showed the people on the bus and the shadows at the time our client was hit. Using all this information we ran another bus at the same time of day that the accident happened and were able to show how fast the bus was going. We proved that the bus was speeding, which, as it turned out, was one of the reasons my client was struck and killed.

Because we believe in our client and were able to put enormous resources into the case, we were able to get a good settlement. However, because only two of the three little children were legally entitled to make a recovery and the other child and mother were not, we had to get creative in protecting those two while helping the entire family. We actually used some of the settlement funds to purchase a house in the name of the two who could recover so they had a place the entire family could live.

Conclusion

My dad always used to say, “No one says life is easy, it’s just life. There are always ups and downs, good days and bad days. The important thing is to keep your faith and not give up when things are the worst.” As they say, tough times do not last; tough people do.

My dad’s words might ring hollow if you are just at the beginning of your journey following a semitruck wreck. You are in the middle of dealing with pain, trauma, or even the loss of a loved one. I understand that your life will never be the same. In my experience, the emotional trauma will never completely go away. But I have represented many people who, once the yolk of financial devastation was lifted, were able to rebuild new lives filled with purpose and even joy.

FINDING A NEW NORMAL

I represented a gentleman who was paralyzed. He came to us physically, emotionally, and financially devastated. We weren't able to take away his physical or emotional pain, but we were able to help him become financially stable. Being able to control his own financial destiny contributed a great deal to his ability to reassert his independence. And being able to live independently once again, I believe, set him on a path to regaining the physical and emotional strength that he lost.

Like many people who end up with a spinal cord injury, the thing this man feared most was the loss of independence. With the money he recovered in his case, he could afford to make adjustments to his house. By having ramps put in and adapting his house so the kitchen and bathrooms were at wheelchair height and wheelchair accessible, he could regain some of his independence.

He was a mechanic before his injury and, although he was no longer able to get underneath vehicles and do the physical mechanic's labor himself, he had the financial means to open his own garage and bring people in that he could train and supervise.

He was not only able to live on his own and run his own business, but he felt a sense of purpose and accomplishment in being able to operate a successful hometown business that

provided income for himself and employment for others. His life was never the same, but he found a new normal and excelled.

THE HEALING POWER OF GIVING

One of the ways that can help people get through this change of lifestyle is doing something for others. I'm a firm believer that by helping people, we can help ourselves. And I know that many of my clients feel the same way.

One client, the father of a young man who was killed in an accident, used the funds he recovered to start a scholarship fund at the university his son had been attending.

As a firm with deep roots in our community, we are always looking for ways to give back. We often approach our clients with ideas for turning their own personal tragedies into something meaningful that can help others avoid going through the pain they've experienced. It's not surprising that my firm—Craig, Kelley & Faultless—would join forces with our clients on philanthropic projects.

One such project came about after settling the claim of a firefighter who was killed in a truck wreck. He was driving his pickup truck down the roadway with two of his young children, as his wife and daughter followed in a separate vehicle. A box truck crossed four lanes of traffic and hit

the husband's pickup head on, right in front of his wife's and daughter's eyes. It is hard to imagine something more tragic than this.

Miraculously, the children survived with relatively minor injuries, but the husband was killed.

During our investigation, it became clear that the box truck driver was distracted. We were able to settle the case and, because we set the victim's wife up with the type of top-notch life care and financial planners I described in chapter 7, she and her children had the means to remain financially secure for the rest of their lives.

Together our client and our law firm wanted to educate the community about distracted driving. With her blessing and in her husband's name, we took a portion of our fees from the wife's case and purchased four high-tech distracted driving simulators.

Picture a seat, gas pedals, and a steering wheel set up just like a car in front of a monitor. You sit behind the wheel pretending to drive through the city streets projected on the screen. You are told to do specific tasks with your cell phone while you are driving—like text a certain phrase to a friend—while you are driving under simulated true-to-life road conditions. Suddenly a car stops in front of you. Or, a child darts out into your path.

The goal of the simulation is to see how far you can get driving a motor vehicle while periodically engaging your cell phone to interact with others. People think they can get through the entire route without wrecking because they drive distracted and use their cell phones in real life. The truth is, they have just been lucky that nothing has stopped in front of them or pulled into their paths. The reality is that nobody gets very far without hitting someone or something. The machines effectively make their point: distracted driving is a deadly game-changer for you, your passengers, and all the innocent people around you.

We donated one of these simulators to the firehouse that our client's husband had worked at so they could use it for safety demonstrations, and we donated another to the fire department whose firefighters had been first responders at the scene of the crash. We kept the other two to demonstrate the dangers of distracted driving at events through the state of Indiana, especially community gatherings where kids will be in attendance. We have loaned the simulators to driver's education classes.

These machines aren't going to bring our client's husband back or give her children back their father. But it helps all of us cope so we can feel that he did not die in vain. Educating the public—and especially kids—about distracted driving holds a special meaning for his family, me, and my entire staff. It is our hope that through education, we can

help prevent another family from going through what this firefighter's family went through.

TURNING TRAGEDY INTO POWER

One of the missions of our firm is to make a positive difference in the lives of our clients and the lives of the people in the communities in which we practice. In keeping with this purpose, we are always looking for ways to turn tragedy into power.

I recently settled a case that involved a police vehicle that, operating without lights or sirens in a non-emergency run, hit another car and killed somebody. Our client was looking for more than monetary compensation in that case; they also wanted to make sure nobody else fell victim to the same circumstances. During mediation, we insisted that the mayor of the city and the chief of police sit down with us and listen to our demands, and the result was that that police department changed its enforcement policies and how it trains its officers, greatly reducing the likelihood that the same thing would ever happen again.

I had another case where a little girl was hit and killed while crossing the street on her way to school. There was no crossing guard at that busy street's crosswalk, even though children regularly took that path to the nearby elementary school. Part of the settlement in that case

involved changing the way the city operates its crosswalks, making sure that crossing guards are at their posts at the times children are actually making their way to school. Undoubtedly, untold lives have been saved through this change in policy.

Our firm is perhaps best known for our bike helmet giveaways, something we have been doing for over twenty-five years. We represented the parents of a boy who was killed when he was hit by a car while riding his bike. He didn't have a bike helmet on, and I don't know whether the bike helmet would've saved his life or not; we'll never know. But what we did after that case was take our fees and use it to buy bike helmets to give away to any child who needed one. Over the years, we have given away over ten thousand bicycle helmets to children. I have been told on numerous occasions that those helmets have made a difference in saving many children from head injuries or even from being killed when they are riding bikes, skateboards, or scooters.

These are just a few examples of ways our law firm has assisted our clients in turning their personal heartaches into positive results and inspired our firm to make a difference. In sharing these stories, I hope that they will help you see that there are infinite possibilities to help your family move forward, when the time is right.

YOU ARE NOT ALONE

I shared all of these stories with you because I wanted to assure you that you are not alone in this. There are well-qualified and compassionate attorneys out there who are ready and willing to get you and your family through this horrific time in your life, no matter how stacked you think the odds might be against you.

But there are some things you have to do to make sure that you receive the best representation.

You must choose your lawyer wisely. Semitruck and other large commercial vehicle accident cases require a skillset that few lawyers possess, even seasoned personal injury attorneys. I have given you some concrete tools to use in finding the right type of lawyer for your circumstances. Please take advantage of them. It will make all the difference.

Even if a lawyer is qualified, that doesn't mean he or she is up to the task. Ask questions. Make sure your counsel has access to trucking industry experts, great engineers, mechanics, technical analysts, and accident reconstructionists. Make sure that the firm has the resources to hire and use these experts to the greatest advantage. Verify that they will hire the best financial consultants and advisors who will consider your monetary needs now and in the future, and that they will not abandon you once the case is concluded.

Don't be afraid to ask questions throughout the legal process. I hope the information I have provided here has empowered you to feel comfortable with how the legal proceedings work from discovery to mediation to trial. And remember, it is very important to select an attorney who has actually tried cases like yours. While most cases settle or are successfully mediated, some do end up in trial. Make sure you have a top-notch trucking accident trial attorney on your side.

Above all, remember that your attorney and their staff are going to be with you for months, if not years. All things being equal, find a team that shares your values, that believes in your case, that will go the distance to keep you and your family safe now and into the future.

I am sorry for what you are going through as the result of a careless and reckless truck driver. You deserve justice. You deserve for the truth to be determined. You deserve to have your story told. By picking the right attorney and team, you can rest assured that these things will happen.

CONTACT INFORMATION

If you have a case you would like to discuss, questions, or concerns, please feel free to contact David by email or phone.

Email: dcraig@ckflaw.com

Phone: 1-800-746-0226

For more information about Craig, Kelley & Faultless LLC, check out the website and Facebook page.

Website: www.ckflaw.com

Facebook: www.facebook.com/ckflaw

Afterword

This book has covered a lot of ground. However, truck wreck cases are complicated and there is no way that a book this size can be comprehensive. It is my hope that it will guide those families that find themselves dealing with the aftermath of one of these catastrophic events. After reading it, you should know the basics and be in a better position to understand the process as well as what questions to ask.

However, every case is different and the outcome will be affected by a variety of factors. Nothing in this book is intended to create a particular expectation about your case or about myself or my law firm. No law firm can guarantee a specific result or outcome. Any case result, information, or testimonial provided herein should not be understood as a promise of any particular result in a future case. A past

case result does not guarantee or predict a similar result in future cases undertaken by our law firm.

The organizations listed herein are independent companies and the law firm does not endorse them, their operation, or the content of their sites. There may be other sites or organizations that can provide helpful information to someone trying to gain information about a lawyer that is not included in these materials.

Acknowledgments

This book, my career, and what success I have achieved would not have been possible if it is was not for my wife, Dana. Being a wife of a trial lawyer and law firm owner is not for the fainthearted. I work six to seven days a week. My day is rarely shorter than ten hours. When I have a trial, I disappear for long periods of time. Dana has been the person who has held our family together in my absence. She is the strongest and most caring person I know. It was her support and encouragement that got me through college, law school, the bar exam, and helped me launch our law firm.

My parents taught me key lessons that I follow to this day. My dad instilled in me a strong work ethic and the ability to see the good in every person. My mom taught me that people are more important than things. My Grandma

Marge gave me confidence because she believed I could accomplish anything. My Aunt Pat and Uncle Charlie taught me to respect others and to always be polite.

Next to my wife, the other person who is the most responsible for my professional career success is my partner, Scott Faultless. I have worked with Scott for over twenty years. Scott knows the law better than anyone I have met. He is an extraordinarily hard worker, and it has been a privilege to stand beside him all of these years.

I would like to acknowledge my partner, BJ Kelley, who was instrumental in starting and building our law firm. Lastly, I would like to acknowledge all of the other members of the firm both past and present. To be successful in handling the types of cases we handle, you have to have a great team. I do have a great team, and I know that I am fortunate to work with a group of people who care deeply about our clients. Together, we work hard to make a positive difference in the lives of our clients.

About the Author

DAVID W. CRAIG is the managing partner at the law firm Craig, Kelley & Faultless LLC. He is board certified in Truck Accident Law. David sits on the board of regents for the Academy of Truck Accident Attorneys (ATAA) and has more than 30 years of experience representing truck accident victims. David is a member of the Multi-Million Dollar Advocates Forum and a proud recipient of the Thurgood Marshall “Fighting for Justice” Award. He was also named a top-ten trucking trial lawyer in Indiana by the National Trial Lawyers Association. To connect with David, visit ckflaw.com.

