

#### **IV. Trial Preparation and Strategies:**

##### **A. Effective Utilization of Paralegals in Auto Accident Litigation**

A well-trained paralegal is a critical member of the litigation team in an auto accident case. Paralegals should play a key role from the day the client first contacts the firm until the day the case file is closed.

##### **Pre-Trial Communication**

The most successful auto accident attorneys are those who communicate with their paralegals on a consistent basis. Good communication creates familiarity with the case and clear definition of roles. Familiarity with the case is important because the paralegal is frequently the voice for the attorney, whether in contact with the client or in communication with opposing counsel. As attorneys and paralegals work together over time they will get to know each other's habits, preferences, strengths and weaknesses. Consistent communication will make that day arrive sooner and once it does keep the relationship – and the case – running efficiently and smoothly.

Your paralegal should be involved with a potential client as soon as possible so the client will be comfortable dealing with the paralegal and the paralegal will know about the details of the case. Paralegals often have more contact with clients in the early stages of a case than attorneys do so it is important to have your client and paralegal form a relationship as soon as possible.

##### **Paralegal Contact with Attorney**

One of the best ways to keep an open line of communication with your paralegal is through regular case meetings. You and your paralegal should leave the meeting with a list of clearly defined tasks to complete by the next meeting. In addition, at the end of every case meeting you should set a specific date and time for the next meeting. This helps ensure that cases and tasks will neither languish nor be ignored.

In addition to case meetings, there are two things that attorneys can do on a day-to day basis to make a paralegal's life easier. The first is to return phone calls as soon as possible. A good day for a paralegal can change instantly if an angry client or insurance adjuster gets a hold of them because we didn't return a phone call. Secondly, quickly review and return drafts to paralegals. Paralegals shouldn't have to go hunting for a draft they wrote last week.

##### **Paralegal's Contact with Client**

Much of a law firm's interaction with clients will be handled by your paralegal, so your paralegal should be involved in and apprised about important case strategies and developments. At the outset of the case, paralegals should have a checklist of information that needs to be collected from the client. Portions of a sample checklist appear later in this manuscript.

In auto accident cases as with any other, it is often difficult for attorneys to give their client as much time as they would like. Clients who are not informed about what is

happening may eventually become distrustful of their legal team. Paralegals can be a great resource for keeping clients informed and educated about their case, even in cases that are in a temporary holding pattern.

Clients appreciate regular communication from their attorney, regardless of whether the case is large or small. Such regular communication can pre-empt a phone call from a disgruntled client asking about the status of their case. Whether it is a letter giving a major update or just a brief voice mail message, this communication is crucial to good client relations. A paralegal is an invaluable asset in making sure such regular communication takes place.

#### **Paralegal Contact with Medical Providers**

Although the attorney is usually the one who handles negotiations, paralegals are an invaluable resource when it comes to communicating with medical providers. It is helpful to have one paralegal who handles all of a firm's communication with providers, whether it is a hospital or doctor's office. Familiar names and voices create a rapport between the firm and the medical provider, appreciated by both sides. Calling an office and speaking with several different people is just as frustrating for providers as for law firms.

The access that clients and medical providers have to paralegals is usually greater than their access to attorneys. This allows the paralegal to serve as conduit between the lawyer and client even when the lawyer is not available, allowing the client or lawyer to get information when decisions need to be made quickly.

#### **Coordinating and Preparing Meetings, Depositions and other Case-related Events**

Experienced paralegal-attorney teams often develop systems to coordinate and prepare for events such as meetings, depositions, mediations and arbitrations. Whether there is a system intact or whether good communication exists without one, make sure to exchange news of important events and clarify respective responsibilities. Develop contact management systems, whether simple (lists) or complex (software), to make sure everyone that needs to be included when events are scheduled is contacted. Make sure your client is at the top of the list.

#### **Trial**

While the preparation to take a case to court begins the day the client first walks through the door, more specific steps are taken once it becomes obvious a case will not settle. During this time, a paralegal's continued responsibility should include communication with the client, medical providers, defendant's counsel, and all insurers. In addition, one of the most important roles of a paralegal during this stage is locating all parties and witnesses to serve process and subpoenas. The paralegal will likely also assist in the drafting of pleadings and motions, preparing and answering discovery, gathering and handling evidence, and keeping up with witnesses. Many of these responsibilities are shared by paralegals and attorneys so once again, good communication is a must, as well as clarity in the delegation of tasks.

As the trial nears the paralegal will take on additional responsibility including: preparing exhibits for trial, researching opposing expert witnesses, obtaining jury lists, conducting focus groups, preparing trial notebooks, and doing research.

A trial away from home can create a host of logistical difficulties. If trial requires the lawyers, clients or witnesses to travel, you may be inclined to delegate the responsibility of accommodations to your paralegal. Just remember that if you give your paralegal these types of

duties, they may not be able to accomplish others. If they are in the middle of creating charts, collecting updated medical files, copying depositions, calling clients, and tracking down salary records, it may not be the best time to ask them to make accommodations for trial. Some duties, such as making calls to hotels, can be delegated to others in the office or even a temp. While it is always easy to add one more thing to a paralegal's already full plate, keeping a paralegal's work load balanced and equitable is one of the most important but most frequently overlooked aspects of our job.

### **Lists**

Communicate in writing the respective responsibilities that you and your paralegal will be responsible for. The following list is an example of how to divide responsibilities:

<u>Attorney</u>	<u>Paralegal</u>
Voir Dire	Jury Lists
Trial Briefs	Exhibits/Exhibits List
Opening Statement	Subpoenas
Pre-trial motions	Witness List
Direct Exams	Witness Contact Information
Jury Instruction Research	Proposed Jury Instructions
Evidence issues	Organize Depos
Motions research	Prepare Motions
Closing Argument	

It is better to have your list include too much rather than too little. Forgetting something critical to your client's case can be not only embarrassing but potentially disastrous.

### **Appearance**

The paralegal is a part of your team, both in the office and in the courtroom. Expectations of a paralegal's appearance, mannerisms and demeanor should be clearly established before they enter the courtroom. While the overwhelming majority of paralegals carry themselves in a professional and dignified manner, it is always important to remember that jurors are watching not just you and your client but your paralegal as well. In addition, jurors will notice the way you treat – or mistreat – not only your client but your paralegal as well.

### **Awareness**

During trial one of the most important roles of paralegals is to make attorneys aware of things we may have missed. Whether it is during jury selection or during the cross-examination, your paralegal's advice and suggestions are invaluable. A paralegal's perspective is unique because while they work with the law on a daily basis, unlike attorneys they have the ability to think "like a non-lawyer."

In auto accident cases lawyers often get caught up in acronyms or phrases that, while common to us, are not understandable to a jury. Remember that in a single auto accident case jurors may be presented with complex expert testimony, myriad medical records and confusing legal instructions. Paralegals are excellent at recognizing when information isn't being conveyed clearly.

### **Equipment**

You and your paralegal need to coordinate your efforts to ensure that you have everything you need for trial and that the courtroom is properly equipped. You should rely on your paralegal to coordinate this but make sure you clearly delineate exactly what the paralegal should do and what they need to bring to court. Have your paralegal check with the clerk and bailiff before taking an easel, overhead projector, television, or Powerpoint presentation into a courtroom.

### **Post-Trial Matters**

There are few things more frustrating to a client than having a favorable decision handed down at trial but then having to wait through post-trial motions and appeals. If an attorney knows with reasonable certainty what motions will be made, or what an appeal will be based on, it is a good idea to have a paralegal assist the attorney in working on these matters soon after the trial while it is still fresh in everyone's mind. Being prepared after a judgment is rendered is just as important as being prepared before you go to trial.

### **Closing the File**

The importance of closing files and making sure they are organized in an easily understandable fashion to *anyone* who may need it in the future cannot be understated. It is of no help to another paralegal or attorney in the firm who may be looking in the file for something that you or your paralegal knows where it is. Furthermore, five or three or even one year later, you and your paralegal may have forgotten as well. After trial or even after mediation or a settlement conference, a file is inevitably in disarray. Having your paralegal take the time to reorganize the file before closing it is time well-spent and will prevent having to reinvent the wheel.

### **In It Until the End**

Once the post-trial motions have been made and ruled upon and any possible appeals have been tried or exhausted, let your paralegal take part in any meetings you have with your client. Remember that most paralegals have more contact with clients than attorneys. They've been in it since the very beginning, so let them be in it at the very end. Over time paralegals become attached to clients on both a professional and a personal level. There are few things more rewarding to a paralegal than actually seeing a client receive a judgment that was in part based on the paralegal's hard work.

### **B. Discovery Techniques**

Like it or not, you will need to complete four tasks in every personal injury case in your office: (1) gather information about your client and the case, (2) organize the information, (3) edit the information and (4) present or, in some fashion, publish the information. The most important of these tasks is gathering the information, because the efficacy of the other tasks depends on the quality of the information you gather. The primary sources of information in an injury case are your client, available public records, your client's medical providers, and witnesses. Your client is the principal guide to all other information. However, it remains your responsibility to complete the four tasks outlined above regardless of whether your client is helpful or not. This is particularly true after a lawsuit has been filed (for purposes of this section

of the manuscript, it is assumed that settlement negotiations have broken down and a lawsuit has been or soon will be filed, and that discovery is on the horizon). Accordingly, the subject of getting information from your client will be the main focus of your efforts and this portion of the paper.

### **1. Getting What You Need From Your Client**

Your job will be easiest if your client is helpful and cooperative. The trick is to how to get assistance from a client who is not inherently helpful, or easily put off by the burdensome and tedious nature of litigation. Even in cases where a client is by nature cooperative, getting information that is personal or burdensome to compile can be difficult. Nonetheless, it is worth whatever effort it takes to get this information now because having accurate and complete information at this stage of the process will do more to help your case than anything else you can do. You will save time and effort if you can educate and involve your client, be proactive, and have a plan for getting what you need.

#### **a. How to Persuade Your Client to be Helpful**

A client who understands the importance of providing accurate information will be more helpful than one who has no personal commitment to their case. Clients will be more enthusiastic about helping if they know why it is important to provide you with complete and detailed information. Educate the client: explain how forthright responses help and how efforts to withhold information can be disastrous. Provide cautionary tales and war stories that illustrate how a party's lack of candor has caused problems. Convince the client that their efforts to help at this stage will pay off as the case proceeds. Most people respond favorably to inclusion, affection and control. So will your client when you make him or her feel like a key member of your litigation team instead of a mere bystander.

#### **b. Be Proactive at Getting Information:**

It is only a matter of time before you will receive from your opponent extensive written discovery requests directed to your client. These discovery requests (usually in the form of interrogatories and requests for production, but occasionally requests for admission as well) almost always seek information about your client's medical, personal, and claims history. You can attempt to get this information from your client either before you file the lawsuit (a proactive approach) or after you receive discovery requests from your opponent (reactive). I recommend that you be proactive and get this and other in-depth information about your client before you even file suit. I believe it is important for many reasons. Here are five:

- You learn about the weaknesses in your case before you are mired in a lawsuit. This allows you to withdraw from a bad case before suit is filed and a motion to the court allowing withdrawal is required.

- You are in a better position to identify parties that need to be named in, or require notice of the lawsuit. Examples of parties that may require notice include underinsured motorist carriers and certain lien-holders. Parties that might need to be named could include uninsured motorist carriers or those that are involved because of an agency relationship or derivative claim. A thorough exchange of information with the client, followed by some independent analysis of the case on your part, when done before suit is filed, often keeps these types of matters from slipping through the cracks.

- You will unearth other claims that should be raised, such as those for punitive damages, those that arise out of agency relationships, or claims between the parties. Again,

getting information from your client early can prompt you to identify these before you file your complaint, saving you the burden of having to later amend your pleadings.

- You can develop a discovery plan. The more you know, and the sooner you know it, the better able you will be to determine the themes of your case. Once you have established the themes of your case, you can create a roadmap that will guide your discovery efforts toward getting the evidence you need to support the themes of your case.
- You will learn something about your client's character. It is helpful to know how your client reacts to adversity or questioning before they are deposed. Clients with something to hide often bridle at routine requests for personal or medical information. Clients often reveal their tendencies to be evasive, argumentative, and secretive, or to exaggerate or complain when asked to provide the breadth and depth of information that is routinely requested in discovery. Clients who are honest, prompt, and helpful reveal those traits as well. You are better off knowing about these character traits sooner rather than later.

While such a proactive approach can create unnecessary work, most times it will enhance the value of your good cases and help you cull out weak ones.

#### **c. Have a Plan**

Skilled craftspeople know both the importance of using the right tools at the right time and having a good set of plans to work from. The same is true in gathering information. Before you file suit, you should spend some time thinking about the theme of your case and formulating a discovery plan that will produce evidence to prove your case and reflect that theme. In fact you really need two plans, one to get information from your opponent, and another to get what you need from your own sources of information, such as your client, your client's medical providers, other witnesses and public sources of information. I like to first get what I can from my sources. This usually allows me to strategically determine what I need from the other side and better assess the credibility of what my opponents produce.

#### **d. Methods of Getting Information**

The main tools I use to get information from my clients are personal meetings with the clients, checklists, and form questionnaires. At this stage I will likely begin by sending the client a form questionnaire.

Form questionnaires can save time for you and your client. By this stage of the process, I have ordinarily met with my client at least once, if not several times, to discuss the case. During these meetings I usually take good notes and ask questions, but there is much that I miss because these meetings only cover limited topics or only touch on certain matters in general terms. Questionnaires, on the other hand, cover a broad spectrum of topics while allowing you to get exhaustive detail on certain topics. A good questionnaire will only ask for truly important information because otherwise they become so onerous that clients rarely complete them. Questionnaires are also well suited to compiling information that needs to be obtained from documents or other resources that clients may have at their homes or need time to compile.

Personal meetings between you and your client are the backbone of an attorney-client relationship. They are important throughout the case, but are indispensable in the beginning, when they allow you to assess the merits of the case, identify issues, and build rapport with the client. During meetings in which critical information needs to be communicated, such as those before a deposition, trial or arbitration, or when particular legal advice needs to be communicated, I like to use checklists in tandem with a flexible interviewing style. This way, I

can efficiently cover all the essential topics and still be sensitive to the client's particular concerns. I use checklists in the first meeting with the client as well.

I always try to have some contact with the client every time they come to the office. Even if they come in to meet with a staff person, for example to review their interrogatory responses, I will at least check in on them to see how they are doing. This is good client relations and provides the client an opportunity to ask you questions that a lawyer should answer. You should always be the one to discuss private or personal information. You are the appropriate person to remind the client that all such conversations are confidential and to discuss the relevance of such topics. You should encourage the client to tell you everything, even if the client believes it might be harmful to their case; explain that revealing this information now will, in the long run be better for the client's case, and reassure them that every client and every case involves sensitive matters.

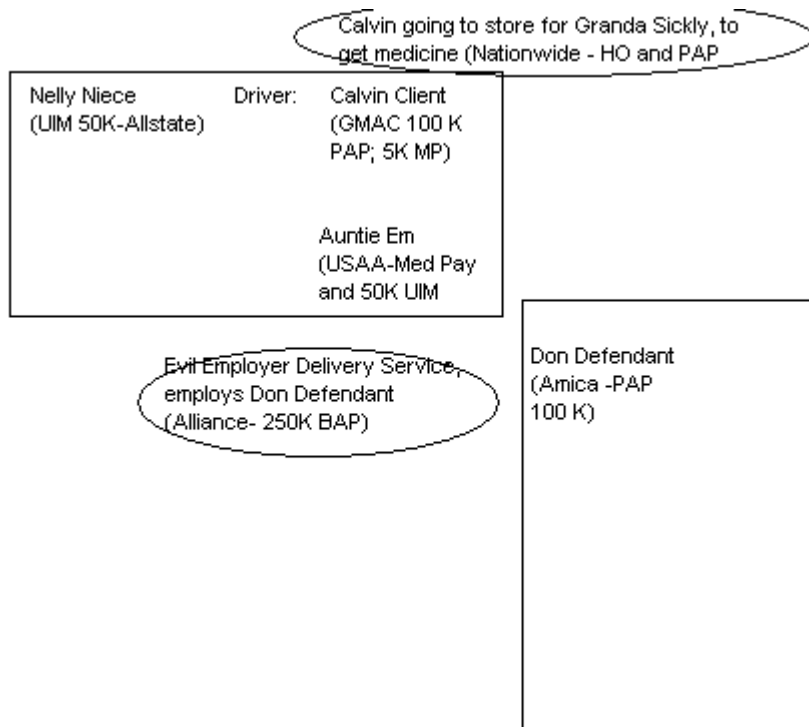
**e. What to Ask Your Client About**

Obviously, you need to know all there is to know about issues affecting liability, the extent of your client's damages, and the available coverage. Less obvious is how to get needed information without wasting your time or your client's patience. This is best accomplished by getting what you need when it is important. As noted above, I find checklists help ensure that meetings stay on track and cover essential topics. I also have found that using a consistent format of note taking helps me and my staff obtain and find necessary information. Whatever format you use, it must be tailored to your own sensibilities. I am a strongly visual learner, so the look and placement of information is important. One of my partners is a narrative learner, so he prefers a few pages of prose rather than a form to fill out. You should develop a format that works for you. Whatever style you develop it should cover the basics. Here is some of what I do, depending on the circumstances.

**Liability**

Start by asking your client to again tell you what happened. It is often helpful to have the client illustrate their description by drawing a picture of the accident scene, which can also be used to compare your client's story with the accident report. Make sure you squeeze every drop of information from the accident report by referring to an accident report code sheet available from the NC DMV.

After getting the gist of what happened and mentally flagging any big issues, such as contributory negligence, systematically identify each potential party and relevant insurance policies. One widely used format, which serves as a visual checklist, is to draw a small rectangle to represent each vehicle in its relative position within a drawing of the intersection. Inside each rectangle, place the names of all occupants of the vehicle it represents, outside but next to each rectangle place the names of any individuals that have a agency relationship to the vehicle or drivers, such as owners and employers. Beneath each name, in parentheses, put the carrier and limits of each insurance policy that applies.



Depending on the stage of litigation and how much information you already know, you may need to delve into matters affecting insurance coverage. For now, you should at least attempt to locate an insurance policy for each potential party and vehicle. Starting with your client, determine in sequence what policies provide coverage for the vehicle your client was in, for the driver of the vehicle your client was in, to your client, and for any family members with whom your client may reside. Repeat this analysis for each vehicle and then look for sources of coverage for other parties that may be involved due to agency or other relationships. Keep a special lookout for excess liability policies and underinsured motorist policies that may not be readily apparent. Explore the extent of the injuries of other victims to avoid conflicts of interest due to insufficient coverage.

Mentally flag negligent or grossly negligent conduct by the defendant and any actions by your client that could be construed to be contributorily negligent. If necessary, explore last clear chance. In cases where liability is in dispute, your client will be asked about the speed of each vehicle at each of three relevant times or events: when some other vehicle was first seen, when the client first thought there might be a collision, and when the collision took place. They will also be asked to estimate the distance between vehicles at the time of each of these events. You should go over these types of details with your client before they are deposed. By the time every witness has been deposed, you should have covered all of these areas sufficiently to create, if you wanted to, a matrix for each vehicle of the following information.

Event	Vehicle First Seen by You	First Thought There Might Be Collision	Collision
Time Elapsed (from last event)	n/a		
Speed of Vehicle at time of event			
Distance Vehicle Traveled (from last event)	n/a		

Attention should also be focused on the location each vehicle came to rest after the wreck, and the location and extent of damage to each vehicle. In some cases you will need to explore the property damage issue even further. In minor damage cases you may want to ask about the full extent of all damage and repairs, paying particular attention to hidden frame damage. Keep an eye out for other claims such as those for accelerated depreciation, loss of use or profits, or personal property damage claims. If you do not have pictures of the vehicle you should attempt to locate photos others may have taken. You may need to locate the salvage if the vehicle was a total loss, especially if the salvage needs to be examined by an expert in accident reconstruction.

Ask your client about statements made by the defendant or others at the scene. Defendants or their employers sometimes make statements that support your case or exonerate your client, or lead to evidence of aggravating circumstances – such as drinking, racing, drug use or fleeing from the scene. Fill in any gaps in the contact information for witnesses the client knows. You may even want to make a visit to the accident scene with your client. At a minimum, you will want to discuss in detail all pictures, videos, and drawings of the scene or the vehicles. A checklist for covering some of these topics follows.

#### Accident Information

- |                              |                              |                              |
|------------------------------|------------------------------|------------------------------|
| _____ fault determined       | _____ accident report        | _____ ticket to def. issued  |
| _____ photo of plaintiff car | _____ photo of defendant car | _____ photo of scene         |
| _____ property damage paid   | _____ how much               | _____ release signed         |
| _____ med pay claim          | _____ accelerated dep. claim | _____ disagree w/acc. report |
| _____ weather                | _____ obstructions           | _____ aggravating circum.    |
| _____ glasses/limitations    | _____ traffic                | _____ recorded statement     |

### Damages

It is useful to begin discussions about damages with a review of your client's injuries. I like to have the client list each and every injury, starting with the top of their head and working their way down their body all the way to their feet. After listing each injury, you should determine whether the body part injured was struck by or hit some part of the vehicle or something else in the collision. You will then want to review the treatment the client received, is still receiving for each injury, and the length of time that injury persisted if it has resolved. A table in which to place such information follows.

### Injuries

<u>Area of Body</u>	<u>Nature of Injury</u>	<u>How Injured</u>	<u>Where Treated</u>	<u>How Long</u>

If the client complains of persistent injuries, you need to determine if there is sufficient medical documentation to make a claim for permanent injury. This may be a good time to meet with or write to the doctors to help establish this. It is essential to get a list of each medical provider that the client has seen or plans to see. At such time, you want to keep in mind that

hospitals often have separate billing for facilities and doctors. Therefore, whenever there is a hospital service involved, such as the operating room, there will often be attendant services involved as well, such as radiology, anesthesiology, and pathology.

At this stage you may wish to explore the activities that are affected by the person's injuries. The most significant activity affected by a person's injury is usually their work. Lost wages, as well as lost earnings capacity, should be fully explored and basic contact information for the employer, supervisor, and co-workers should be obtained. Tax returns, W-2s, or pay stubs can also be obtained at this point. In addition, your client should be reminded to provide you with authorizations from their physician(s) excusing them from work.

This should segue into a discussion into prior automobile accidents, prior chronic health problems, prior claims or lawsuits, and a general review of the client's social history including involvement with the law. As to prior automobile accidents, consideration should be given to frequency, claims consciousness, prior similar injuries, and excessive claims activity. You will certainly want to identify the dates and locations of each automobile accident, the injuries suffered in each, and the length of treatment or whether the injuries were permanent. Prior similar injuries or accidents will always be relevant on the issue of proximate cause. Other claims activity may also be used to show a client's claims consciousness. Accordingly, you should ask about all other claims, such as benefits or compensation from Social Security Disability, SSI, Medicare/Medicaid, workers' compensation, short-term disability, long-term disability, or other sources. Each of these also needs to be examined both for its relevance to the existing claims and to determine whether there are subrogation issues or offsets that may apply.

### **Coverage**

Discuss with the client all sources of insurance coverage. This begins with the plaintiff's personal auto policy, which may provide medical payments, UM, and UIM coverage, but should also extend to other family members in his household, other owners of the vehicle involved, employers, and health insurers of all types. Any health insurance policies should be examined for subrogation provisions. This includes other third-party payers such as Medicare, Medicaid, Vocational Rehabilitation, and ERISA Plans. Health care providers liens should also be identified. Subrogation claims and liens should be verified and their legitimacy confirmed. Make sure that you obtain the benefit of all legitimate collateral sources of recovery, but be wary of any liens or subrogation claims that may exist. Get a copy of your client's policy booklet (or for Medicare and Medicaid and other federal liens, the relevant federal code provisions). You are responsible to protect some liens and reimbursement obligations even without actual notice of them. This is true of many liens created by statute, such as Medicare, Medicaid, workers' compensation, and vocational rehabilitation, and arguably even self-funded ERISA plans. While you will want to zealously work to minimize the impact of any liens, such as using the provision of the North Carolina Administrative Code that prohibits them or navigating the federal regulations and case law that govern ERISA, you should never ignore liens or claims for subrogation.

Also, in order to avoid a coverage denial based on lack of notice, now is the time to be certain that all potential carriers have been notified.

### **2. Informal Discovery and Public Sources of Information**

The adage "knowledge is power" recognizes the strategic value of information. The quality of information obtained from public sources ranges from highly valuable data available

for free to glorified spam at an exorbitant cost. The information that is most valuable is the material that comes from official agencies, neutral research facilities, governmental entities, or scholarly institutions. In the right case, corporate, trade association, or industry materials are also helpful. A creative researcher of public records can find a variety of useful information from which to craft powerful evidence, often without leaving their desk.

### **Governmental Records**

Public records compiled by governmental agencies are the primary source of investigative materials in auto cases. Any good investigation begins with the accident report (DMV-349). The accident report contains the information you need to access other investigative materials. For example, the driver's name, birthdate, and license information will enable you to obtain a history of the driver's criminal convictions (from the clerk of court in any given county, or statewide from a private company such as NC123.com) or driving history (N.C. DMV). The information about the vehicles allows you to get insurance information, as well as title information from the Departments of Motor Vehicles and Insurance. The names of the investigating officers allow you to contact them for follow up. The locations to which vehicles were towed, along with the name of the towing companies themselves, provide you with a source of witnesses and where the salvage is located. Similarly, the portion of the report that indicates whether an ambulance was called is helpful because it provides the name of the hospital where the injured were taken. This information may lead to medical records and potential witnesses. Accident reports will state whether criminal charges were filed (which you can then get at the clerk's office in that county), the names of witnesses, and may indicate whether there were supplemental reports or additional investigations, which can be obtained from DMV or the local SHP office.

Other governmental agencies also provide useful reports. In wrecks where death or catastrophic injury occurs, the North Carolina Highway Patrol routinely do thorough investigations that include accident reconstruction, numerous still photos, witness statements, videotape, and related investigations of the individuals involved. Wrecks involving tractor-trailers might lead to matters that can be obtained from the Department of Transportation or the Federal Motor Carrier Safety Administration ([www.safersys.org](http://www.safersys.org)). The North Carolina Secretary of State's office is the place to go for information if a corporation is involved, and the North Carolina Department of Insurance is a treasure trove of information about insurance companies.

When you are trying to locate a person, such as for a witness or to obtain service, you will want to first try DMV and local tax office. If these efforts are unsuccessful, contacting the post office that serves the last known address for the person can be very helpful.

### **Other Sources**

Television stations, newspapers, and freelance reporters often cover bad wrecks. Copies of their reports provide useful information and can be included as part of your settlement brochures. Staff photographers and freelance videographers often have pictures that make terrific exhibits. Usually they will sell these for a fee, a fee that can often be negotiated. Employers often keep information when company vehicles are involved.

## Internet

The most significant new source of public information is the Internet. In the routine auto case the Internet is particularly useful to locate individuals, find safety standards or compliance records, and research medical issues. However, the sheer number of sites, not to mention their breadth and evanescence, makes a thorough listing of web sites impossible.

Here are some that I like. I have omitted from the addresses below the usual *http://www.* prefix and the *.com* suffix. Therefore, unless otherwise noted, the name given is the name to type in, i.e. Google = <http://www.google.com>

- Search Engines: **google** and **altavista**.  
Good for getting a list of sites on any topic you can think of. Nearly all use some type of boolean search, that is one that locates sites by keywords.
- Person Locators: **switchboard**, **databaseamerica**, **four11**, **anywho**, and **theultimates.com/white/four11**.  
These types of sites are useful for getting white and yellow page information about individuals and businesses. Some allow reverse number looking up.
- Motor Vehicle Records: **knowx**.  
For a fee you can obtain motor vehicle records.
- Government Agencies  
North Carolina Secretary of State: **secstate.state.nc.us/**  
United States Postal Service: **usps**  
North Carolina Dept. of Ins.: **ncdoi**  
North Carolina Dept. of Transportation: **ncdot.org**  
Department of Motor Vehicles: **dmv.dot.state.nc.us/**  
Federal Motor Carrier: **fmcsa.dot.gov**  
Licensing and Insurance System: **fhwa-li.volpe.dot.gov/**  
Social Security Online: **ss.gov**
- General Information about  
Governmental Agencies: **govspot**  
Investigating Everything: **docusearch**  
People: **accurint**  
Personal Injury law: **uspersonalinjurylaw.com**
- Medical Information  
National Library of Medicine: **nlm.nih.gov/**  
North Carolina Medical Board: **ncmedboard.org**  
Medicine Net: **medicinenet**

You do not have to search on the Internet very long before it becomes clear that the ability to find useful information, from general information about almost any subject to more specialized information about an industry or area of medicine, is limited only by your creativity and available time.

### C. Pleadings in the Automobile Accident Case

Drafting pleadings is a combination of plagiarism, creativity, and rule compliance. Very few of us reinvent the wheel every time we draft a new complaint; rather, we usually copy the form of a pleading that we or another lawyer whose work we respect used when last confronted with a similar case. There is not only room for creativity, at times it is essential. Every pleading ought to be tailored for the particular case but cases involving novel theories require originality from beginning to end. The statutory and case law involved and the rules of pleading provide the guidelines and boundaries for such creativity.

#### Rules of Pleadings

The Rules of Pleadings are set forth in the North Carolina Rules of Civil Procedure.<sup>1</sup> The purpose of these rules is to promote a trial on the merits by eliminating formalism and detail and by reducing pleadings to a minimum. William A. Shuford, Civil Practice and Procedure, Sec. 7-3 (3d ed. 1998).

Reduced to their essence, there are three types of pleadings allowed under the Rules: (1) a complaint (whether an original complaint, cross-claim, or third-party complaint), (2) an answer (whether to a cross-claim or third-party complaint), and (3) a reply (whether defending a counterclaim, alleging last clear chance, or replying pursuant to order of the court). In drafting any of these pleadings, the following rules should also be consulted: Rule 9 (regarding pleading of special matters), Rule 10 (for the forms of pleadings), Rule 11 (signing and verification of pleadings), Rule 14 (third-party complaint practice), and Rule 84 (official forms).<sup>2</sup>

#### The Complaint in an Automobile Accident Case

In general, a civil action is commenced by filing a complaint with the court. Complaints (and other pleadings which set forth a claim for relief such as counterclaims, cross-claims, or third-party claims) shall contain (1) a short, plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled. Rule 8.

Rule 8 also provides that all pleadings shall be construed to do substantial justice.<sup>3</sup> This is consistent with the policy behind the notice theory of the present rules, which is to resolve

---

<sup>1</sup>N.C. Gen. Stat. ' 1A-1, Article 3, Rules 7-16.

<sup>2</sup>Rule 7 states that the pleadings allowed shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if the third-party complaint is served. If the answer alleges contributory negligence, a party may serve a reply alleging last clear chance. Rule 7 goes on to state that no other pleading shall be allowed except that the Court may order a reply to an answer or a third-party answer.

<sup>3</sup>N.C. Gen. Stat. ' 1A-1, Rule 8(f).

controversies on the merits following opportunity for discovery, rather than resolving them on technicalities of pleading. *Smith v. City of Charlotte*, 79 N.C. App. 517, 339 S.E.2d. 844 (1986). However, the concept of notice pleading must be reconciled with Rule 9(b), which requires specificity in pleading special matters. These include matters of fraud, duress, mistake, and certain conditions of mind (Rule 9(b)), medical malpractice (Rule 9(j)), punitive damages (Rule 9(k)) and special damages (Rule 9(g)). Matters involving special damages and punitive damages along with matters of capacity (Rule 9(a)) are the matters that most often arise in the automobile accident case but Rule 9 should be consulted to determine whether any other matter is involved in a particular case.

The form of pleadings is covered in Rule 10, a good place to start when trying to outline the framework of a pleading. In general, the structure of an initial pleading consists of the following parts: (1) a caption, setting forth the division of the court, the title of the action, and a designation of the pleading and the name of the parties,<sup>4</sup> (2) the body of the pleading, and (3) a claim for relief. The body of the complaint begins with paragraphs that identify the individual parties and establish personal jurisdiction.<sup>5</sup> I would be happy to provide a sample complaint upon request but you can also find one in the appendix to the General Rules of Practice for Superior and District Courts.

The next series of paragraphs usually address the vehicles involved, the location involved, and the ownership of the vehicles and the relationship between the parties. These set the scene for the substance of what happened in the collision.

The events giving rise to the various causes of should be alleged in discrete and separate paragraphs, first in general terms and then with specificity indicating the particular allegations of negligence. This is consistent with the Rules<sup>6</sup> and makes good practical sense. When you limit each paragraph to one allegation you are in a better position to get a clear admission or denial from the defense when they respond to each paragraph in their answer. This in effect provides you with a free set of Request for Admissions. It is also a good idea to use clear language and a simple style when drafting complaints. Excessive legalese and jargon should be avoided because if pleadings are read to a jury you want them to be easily understood.

The paragraphs that set forth the damages suffered by your client should state with specificity the special damages involved.

Paragraphs setting forth your claims should include requests for costs, interest, and demand a jury trial, along with other specific and general relief to which you are entitled. In all negligence actions, and in all claims for punitive damages in any civil action where the matter in controversy exceeds the sum or value of \$10,000, Rule 8 provides that the pleadings shall not state the demand for monetary relief, but shall state that the relief demanded is for damages

---

<sup>4</sup> See Rule 10(a).

<sup>5</sup>(See N.C. Gen. Stat. ' 1-75 *et seq.*, and in particular 1-75.4), venue (See N.C. Gen. Stat. ' 1-76 *et seq.*, and in particular 1-76, 1-79, 1-80, 1-82, and 1-83).

<sup>6</sup>All averments of a claim shall be made in numbered paragraphs, the contents of each of which [should] be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by numbering all succeeding pleadings (Rule 10(b)).

incurred or to be incurred in excess of \$10,000. The Rule does provide that a party may request a written statement of monetary relief sought, however, and provides a procedure for the same.

Rule 8 also permits pleading in the alternative, which is indispensable when attempting to cover all the bases in complex claims or where several defendants are involved and all of the details about either are not known.

Here are some additional tips and guidelines:

- \$ Keep it simple.
- \$ Be specific but not argumentative.
- \$ Consult statutes, case law and pattern jury instructions and make an outline every time you draft pleadings that involve unusual or newly encountered legal matters.
- \$ In general, do not verify complaints.
- \$ Include pre-emptive language that may avoid or pre-empt filing responsive pleadings such as contributory negligence or gross negligence where contributory negligence is likely.
- \$ Always consult Chapter 1 D before pleading punitive damages and G.S. Section 20B 279.21 before pleading insurance matters, even if you think you know the answer.
- \$ Make sure you have identified all potential defendants.
- \$ Make sure you have reviewed the facts to identify any agency relationships including respondeat superior, apparent authority, liability for nondelegable duties, independent contractor or joint venture, corporate relationships and governmental immunity.
- \$ Make sure you have included unnamed defendants, such as underinsured motorist carriers in your summonses.

§ Have the client review the complaint and the discovery you intend to serve or file. Serve discovery with your complaint and have the summons reflect the fact that you have.

#### **Answers and 12(b) Motions**

In general, answers will follow the general rules of pleading already discussed<sup>7</sup> but are also governed by other rules such as Rule 8(b), (c), (d) and (e) along with Rule 12. Rule 8 in general and Rule 8(b) in particular provide the starting place for drafting an answer. Rule 8(b) specifies in detail the manner in which admissions or denials must be made by a party in responding to the claim of an adversary. In essence, a party can admit an averment, deny an averment based on lack of sufficient knowledge or information, deny part of an averment and admit the remainder, and generally deny all of the averment. Rule 8(b)'s requirement that answering pleaders must set forth defenses in good faith and in short and plain terms that fairly meet the substance of the averments denied contemplates a series of pleadings that reduce a dispute to its essence. In practice, responses that globally deny most averments based on lack of sufficient knowledge or information often impede such high-minded goals. A denial made in bad faith upon a lack of sufficient knowledge or information to form a belief may result in striking of the denial on motion or in a ruling that the allegation in question is considered admitted.<sup>8</sup>

Rule 8(c) requires that an affirmative defense of any matter constituting an avoidance be set forth in a responsive pleading. When in doubt about whether a defense is affirmative or not, it ought to be set out in a responsive pleading as an affirmative defense because failure to raise an affirmative defense in a motion, pleading or at trial waives the defense which can not thereafter be presented on appeal.<sup>9</sup> Rule 8(c) enumerates the twenty-one traditional affirmative defenses that must be specially pled. The last paragraph of the first sentence in Rule 8(c) indicates that list is not exhaustive so you must also include any other matter constituting an avoidance or affirmative defense. Finally, averments in a pleading that are not denied in a required responsive pleading are deemed admitted. Rule 8(d).

A thorough analysis of Rule 12 defenses could constitute an entire seminar far beyond the scope of this paper. In essence, these defenses provide the defense attorney with a potent arsenal to destroy a plaintiff's claim and any practitioner intending to do defense work should spend sufficient time to familiarize themselves with the variety of 12(b) defenses and when to use them. The same is true with other dispositive pretrial motions, such as motions for summary judgment or a motion on the pleadings, which can be asserted at any time even before filing an answer or other motion. See Rule 56(b) and Rule 12 (c). Of course, the previously discussed rules for pleading motions and defenses and General Rules of Practice for the superior and district courts will apply and should be consulted when bringing such motions or pleading such defenses.

---

<sup>7</sup>(See Rule 8 and the other Rules identified above)

<sup>8</sup>See Shuford N.C. Civil Practice and Procedure, ' 8-7.

<sup>9</sup>See G. Gray Wilson, N.C. Civil Procedure, ' 8-5, f.n. 94(1995 2d ed.).

Rule 12(b) defenses can be embodied in a defendant's answer or other responsive pleading where one is required, or in some cases be asserted by motion before filing a responsive pleading. Rule 12(b) enumerates seven specific defenses which may at the option of the pleader be asserted either by motion before filing a responsive pleading or as part of a responsive pleading. No defense other than these seven can be raised by a 12(b) motion but must be set out instead in the responsive pleading.

No defense is waived by being joined with other defenses in a responsive pleading or motion. Rule 12(g) requires consolidation of four of the seven defenses that may be asserted by motion in order to avoid a waiver of certain defenses. Failure to timely raise the defenses set forth in Rule 12(g) and (h) will result in a waiver of the defenses. Accordingly, a careful practitioner will raise any potentially viable threshold defenses in a timely manner in a responsive pleading or motion (at least the seven allowed to be raised by motion).

Rule 12(b) provides that obtaining an extension of time to answer or otherwise plead does not waive any of the seven threshold defenses set out in the rule.

Rule 12(b)(6) allows a party to test the sufficiency of the plaintiff's pleadings. If matters outside the pleadings are considered, the motion will be treated as one for summary judgment under Rule 56. Though often pled casually by defense attorneys as a standard or boilerplate defense, this motion can strike fear in the heart of a plaintiff's lawyer. When you encounter a 12(b)(6) motion you should not ignore it but should at least call the opposing counsel to learn the basis for the motion so you can take steps, if necessary, to correct any underlying defects.

Responsive pleadings must be served within 30 days of service of a claim upon a party,<sup>10</sup> but the rule only requires a responsive pleading within that time period, not necessarily an answer. Thus, a responding party may comply with this rule by filing a Rule 12 motion (at least as to the seven defenses allowed to be filed by motion). Once the motion under Rule 12 is filed, the 30-day time limit for filing an answer or other similar responsive pleading is stayed until the court acts on the motion. Even a Rule 12(b)(6) motion to dismiss fewer than all of the claims extends the time to answer others. If the court denies the motion in whole or part, the responsive pleading must be served within 20 days after notice of such action. Of course, if no responsive pleading is served within the time prescribed by Rule 12(a), a default may be entered.

### **Reply**

Automobile accident cases most commonly give rise to replies in two situations: when a claim of contributory negligence is raised by the defendant or when the defendant files a counterclaim. Rule 7 requires that a counterclaim be denominated as such before a reply is required. The timetable set forth in Rule 12 is incorporated under Rule 14 for third-party pleadings. Similarly, Rule 15 contains separate but parallel provisions for responding to amended or supplemental pleadings. Parties need to respond to a counterclaim or third-party claim within the same general rules and time limits for original pleadings, keeping in mind the same defenses and limitations.

---

<sup>10</sup>Rule 12(a)(1).

When a defendant alleges contributory negligence on the part of a plaintiff, the plaintiff may file a reply pleading last clear chance but does not have to. A reply alleging last clear chance, because it is optional under Rule 7, may be served at any time prior to trial, although last minute assertions of such defense can be objected to on equitable grounds such as delay, harassment, or abuse.

#### **D. Depositions**

Well-conducted depositions can be a potent weapon. If you have amassed the right information and taken the time to develop a theme and plan of attack for each deposition, you will be able to weaken your opponent's case, and strengthen your own. If you have not armed yourself with knowledge about your case, or prepared your witnesses for the depositions your opponent will take, you will be vulnerable and exposed.

##### **1. Witness Preparation**

The first step in preparing a witness for their deposition is to explain the purpose and ground rules for depositions. Next, prepare them for the background and general information questions that usually come during the beginning of a deposition. Explain that this is routinely done. Sometimes, it is helpful to conduct mock question and answer sessions to reassure the client that, at least for this part of the deposition, they already know everything they need to answer the questions. Depending on how they respond in terms of anxiety and eloquence, you can adjust your sample questioning accordingly. If they seem overly glib, too loquacious, or veer off on tangents, you can address the given problem and remind them of the importance of thinking before they answer. If they are fearful or nervous, you can reassure them that you will be there with them during the deposition and remind them that by the time their deposition is taken the two of you will have gone over everything they will likely be asked about. Let them know that everyone gets nervous before an important event but that preparation is the best remedy for anxiety. If necessary, you can meet with the client on more than one occasion to prepare. You should suggest this when you see them reach the information saturation point or when you see their eyes begin to glaze over from fatigue.

At some point you will need to turn the discussion to the critical matters in the case and also address any uncomfortable or sensitive issues they might be asked about. When you do this explain why the discovering attorney will be asking about these matters. Let your client know that these matters are discoverable; explain the relevance of these questions and the importance of honest and forthright answers.

Matters you want to cover in nearly every case include routine background information, criminal history, prior health history, prior accidents, social history matters such as marital and family issues, and employment matters. When you finally direct the client's attention to the accident, if not before then, it is essential to explain that while the client should be truthful at all times, they need only answer the question that has been asked and only provide answers based on what they themselves know. Clients frequently want to be helpful and will often provide missing information even when they do not know the answer from their own personal knowledge. Tell them why they should not guess, speculate or otherwise answer questions they do not know the answers to. Clients should be reassured that when it is a truthful and honest response, "I don't know" or "I do not remember" are appropriate.

Clients should feel free to review an accident report or their discovery responses if it will help them in a deposition. The same is true of their medical records. Attorneys should keep in mind, however, Rule 612 of the North Carolina Rules of Evidence. Rule 612 states, in part, that

when a witness, before testifying, uses “a writing or object to refresh his memory for the purpose of testifying,” and the court in its discretion determines that the interests of justice so require, an adverse party will be entitled to have those portions of any writing or of the object which relate to the testimony produced, if practicable, at the trial, hearing, or deposition in which the witnesses is testifying.

If you have not already done so, or if there is any doubt in your mind about the candor of your client’s previous responses, you should ask the client about their prior medical history, each and every prior automobile accident and each and every lawsuit in which the client has been involved. Each incident must be thoroughly discussed with your client, and they should be aware of the possible relevance and admissibility of these incidents. The importance of candor should again be stressed to your client.

When preparing your client to discuss their injuries and treatment they should be reassured that they are not responsible for remembering each and every visit to the doctor, but your client should be prepared to be questioned about each visit. Clients should also be warned that they could be asked compare their relative recall and note-taking abilities with those of their doctors – or even the police officers. Based on expected questions that will arise from a reading of their medical records, your client should be prepared to generally discuss their injuries, treatment, progress, and the effect of their injuries from their own experience. They should also be able to explain any specific issues that might be raised by portions of their medical records. Depositions are not the time or place to discover that inconsistencies or inaccuracies exist between your client’s recollection and their medical records. Therefore, you should carefully review medical records and discuss any possible discrepancies with your client well before depositions.

Clients should be counseled about how to deal with questions that ask about activities they can and cannot do, and the types of activities that cause them pain or discomfort. This is best approached by emphasizing that all such issues are in essence a comparison of a client’s abilities and usual activities before the accident in comparison to those after the accident. Clients should be urged to be careful about statements that can be misconstrued; clients often say they cannot do certain activities when what they really mean is that they experience pain when they do them.

## **2. Locating and Using Expert Witnesses**

There are a variety of companies that provide expert witnesses for a fee. They can readily be found through advertisements in legal publications and on the Internet. Some lawyers have had good experiences with these services. Many have not. Without question, the best source of experts is by word of mouth referrals, either from other lawyers or from experts in the same field.

The first contact you make with an expert you have never used before is often by telephone or in writing, which is a good opportunity to get their resume and fee schedule. This avoids economic surprises and allows you to do some research about their reputation, credentials and scholarly writings. If they have testified in other cases you can look at a deposition transcript, which you can obtain from other lawyers or from a commercial service such as Depoconnect.

When you first meet the expert -- and you should meet with your expert at least once, and do so well in advance of the trial or their deposition - you should be organized, knowledgeable about your case, and fully prepared with a list of questions or outline of areas to

discuss. This saves your client money and starts your relationship with the expert off on the right foot. Many experts do not suffer fools gladly and will be less favorably disposed to help if you are not organized and do not appear to be on top of your case.

Most important of all, make sure your expert knows about any weaknesses or problems in the case. More than anything else, experts resent the surprise of finding out about problems your case from your adversary. In auto cases, this comes up when your client's doctor (who, based on your client's statements that he never had any prior neck problems, may have just testified that your client's degenerative neck condition was activated for the first time by the wreck) is shown medical records by your adversary that indicate that your client had prior treatment for a neck injury last year. Accordingly, make sure you point out all inconsistencies, inaccuracies, and provide all record necessary to fully inform your expert about all aspects of the case.

When your client appears at trial, or is videotaped at their de bene esse deposition, make sure you have all of the exhibits you will need for their testimony available, including all relevant medical records. Introduce the exhibits as necessary to explain the expert's testimony and to prove your case. Good illustrative and demonstrative evidence at an expert's deposition can make the difference between a powerful presentation and a ponderous one.

#### **E. Key Issues When Working With Medical Records**

There are a variety of issues that come up when working with medical records. Here are a few that I consider important.

##### **Make Sure You Get Each and Every Page of the Entire Chart**

This is to avoid surprises for you and your expert witness doctors. Doctors, or their offices, will occasionally omit certain pages of medical records under the mistaken belief that you do not need extraneous materials, or are only interested in certain parts of the chart. Emphasize in your original medical records requests, and in any follow-up requests, that you want "the entire chart, each and every page." In extreme cases you may even need to re-order the entire set of records to ensure that you get the whole thing. You should personally meet with doctors that you anticipate being deposed, whether by either you or opposing counsel, to review the charts to ensure that you have everything the charts contain. The other side will do the same when they depose the doctor. It helps to know in advance what you do not have, and it is embarrassing if you have not provided all of the records to the other side.

##### **Billing Records**

You should always take the time to cross-reference the billing information with the medical records. This will disclose visits for which there are bills but no treatment records and vice versa. (In certain medical malpractice cases billing records will reveal medical records that are missing.) Billing record descriptions or notations will often reveal treatment you may not be aware of. Both bills and records will often lead you to other treatment facilities involved in the client's care.

##### **Make Sure You Get Legible and Readable Medical Records**

If the copies you have been provided are not legible, request better copies. If you encounter handwriting in the records that is not legible, you can almost always request a transcribed version of the record, usually for a fee. This takes the guesswork out of reading the records and will help the jury understand the evidence better.

##### **Summaries, Charts, and Chronologies**

Once you know you have complete medical records from each of your client's medical providers, it is time to organize them. A chronology (in essence, a spreadsheet that categorizes each treatment visit by provider, date, billed amount, type, and exhibit number) is very helpful in nearly every case. If you create this document in Excel or another spreadsheet or database program, you can then sort the information by any of the categories to create a variety of useful exhibits and cover pages. It will also allow you to chart the treatment in a way that may help you prove disputed issues involving medical causation.

An example of a spreadsheet sorted only by date of visit is below. This is useful to guide you through your client's entire course of treatment. When prior and subsequent unrelated treatment is integrated, it is helpful to sort out proximate cause issues.

Capital Emergency Physicians	12/13/99	MVA - Neck, left shoulder, left hip pain	\$203.00
Raleigh Community Hospital	12/13/99	MVA - Neck, left shoulder, left hip pain	\$418.79
Capital Radiology Associates	12/14/99	Hip, shoulder injury	\$97.00
Cary Orthopaedic & Sports Medicine	12/17/99	Neck, shoulder, back injuries	\$262.00
Cary Orthopaedic & Sports Medicine	12/29/99	Multiple areas of contusion & discomfort	\$70.00
Cary Orthopaedic & Sports Medicine	12/30/99	Possible herniated lumbar disk	\$217.67
Cary Orthopaedic & Sports Medicine	01/05/00	Apparent neuropraxic injury of left lower extremity	\$70.00
Wake Radiology Diagnostic Imaging	12/23/99	Bone & OR joint imaging; whole body	\$603.
Wake Radiology Diagnostic Imaging	12/23/99	Diag radiopharmaceutical	\$40.00
Wake Radiology Diagnostic Imaging	12/29/99	MRI of lumbar spine	\$1,282.00
Cedar Healthcare	01/10/00	Letter from Carnes to Cary Orthopaedic	\$192.00
Cedar Healthcare	01/12/00	Initial visit with Dr. Carnes	\$98.00
Cedar Healthcare	01/13/00	Low back pain radiating to left leg	\$1,190.00
Cedar Healthcare	01/14/00	Ultrasound/therapy	\$57.00
Cedar Healthcare	01/19/00	Ultrasound/therapy	\$97.00
Cedar Healthcare	01/20/00	Trigger point injections	\$125.00

The same information, sorted first by medical provider, and then by date of treatment, would look like this. In this format, you can easily determine what records and bills you have. This also makes a good summary of bills and records to attach to discovery responses.

Capital Emergency Physicians	12/13/99	MVA - Neck, left shoulder, left hip pain	\$203.00
Capital Radiology Associates	12/14/99	Hip, shoulder injury	\$97.00
Cary Orthopaedic & Sports Medicine	12/17/99	Neck, shoulder, back injuries	\$262.00
Cary Orthopaedic & Sports Medicine	12/29/99	Multiple areas of contusion & discomfort	\$70.00
Cary Orthopaedic & Sports	12/30/99	Possible herniated lumbar disk	

Medicine			
Cary Orthopaedic & Sports Medicine	01/05/00	Apparent neuropraxic injury of left lower extremity	\$70.00
Cedar Healthcare	01/10/00	Letter from Carnes to Cary Orthopaedic	\$192.00
Cedar Healthcare	01/12/00	Initial visit with Dr. Carnes	\$98.00
Cedar Healthcare	01/13/00	Low back pain radiating to left leg	\$1,190.00
Cedar Healthcare	01/14/00	Ultrasound/therapy	\$57.00
Cedar Healthcare	01/19/00	Ultrasound/therapy	\$97.00
Cedar Healthcare	01/20/00	Trigger point injections	\$125.00
Raleigh Community Hospital	12/13/99	MVA - Neck, left shoulder, left hip pain	\$418.79
Wake Radiology Diagnostic Imaging	12/23/99	Bone & OR joint imaging; whole body	\$603.00
Wake Radiology Diagnostic Imaging	12/23/99	Diag radiopharmaceutical	\$40.00
Wake Radiology Diagnostic Imaging	12/29/99	MRI of lumbar spine	\$1,282.00

In some cases it may be useful to maintain two working sets of medical records, one organized by provider and the other organized chronologically day by day. This is easier to create once you have taken the time to make a chronology of treatment using a spreadsheet program, because once you have, you can easily generate two separate spreadsheets (one by date of treatment only, the other by provider first and then by date of treatment) to use as a road map to assemble your documents.

These same databases will also allow you to create charts of yearly earnings before and after the wreck. Columns of data can easily be hidden, leaving only exhibit number and medical provider, for example, to create indexes or cover sheets. Inserting formulae into the spreadsheets allows you to tabulate totals and subtotals. This is especially helpful for making changes on the fly, for instance when a doctor's testimony will not support a certain course of treatment. By incorporating all medical records, past and present, related and unrelated, into such a master chronology, you can create exhibits that will be useful for you in preparing for trial, generate exhibits quickly, and tailor them to your particular purpose. It does require more effort initially, but the ounce of prevention will be well worth the otherwise necessary pound of cure.

#### **F. Preparing Exhibits**

Most of a trial involves oral narrative. It is lawyers talking, witnesses testifying, and judges reading instructions or applying the law. But in daily life, most of us take in the majority of our information visually. We watch television, see posters, look at signs and billboards, and are buffeted by ads. And when we do get information through the printed word, we read it ourselves, we do not have it read to us. Most trials more closely resemble story time at a preschool than our daily life; we are read to for long periods of time and occasionally shown a picture or two. After ten minutes (for those with a short attention span) to an hour (for those with good focus), we tune out and our minds wander. I believe that the more you can bring your trial to life with visual exhibits the better your results will be because you will have the jury's attention. If none of the jurors are paying attention you will not be able to persuade those jurors that are on the fence, or reinforce your message to those that are on your side.

There are a variety of simple and reasonably inexpensive ways to prepare useful trial exhibits. Technology has really helped level the playing field in this area. Simple exhibits can be created by taking documents to Kinko's or another copy place and having them enlarged and mounted on foam board. The diagram from an accident report can be used in this fashion, as can medical illustrations and portions of statutes, even outlines of your summation. Scanning x-rays of your client's injuries into a computer and then printing individual copies for each juror or arbitrator is particularly effective.

For example, when using the diagram from an accident report this way, it will first appear when the officer authenticates it, explains what happened, and you introduce it into evidence. Other witnesses can then refer to, and point to, portions of the same exhibit while explaining their testimony. The same principle can also be applied to photographs of the scene or damage to the vehicle. Most of us frequently have a witness make a diagram of the scene or incident. Having one of these blown up can be useful if it supports the theme of your case or undermines your opponent's.

Most cases have some aspect or portion of the case that relies on a chronology or a timeline. Reasonably inexpensive software programs that create timelines, such as those offered by TimeMap II from Ksoft, make useful exhibits when enlarged. Testimony from several witnesses can be tied together and packaged by a good timeline. The events that unfold to create a collision, for example, or one aspect of a client's medical history, can both be made into timelines. Examples of timelines and outlines are attached in the appendix to this manuscript.

Videotaped testimony is now commonplace in trials, most often with expert witnesses and medical depositions. However, it is often very dull and therefore should be carefully edited when possible. Many computers allow for the easy editing of videotaped testimony, particularly digital video. Many lawyers now routinely videotape every deposition. The non-verbal communication that accompanies witness testimony often tells more than the actual words (See My Cousin Vinnie: Where the defendant says during interrogation "I shot the sheriff? I shot the sheriff?" and the transcribed statement -- which neglects to note that he is pointing to himself in amazement and disbelief at the time -- is used as a confession in his murder trial). The rules now allow videotaped depositions in lieu of a transcript in certain circumstances.

#### **G. Determining Damages**

The North Carolina Pattern Jury Instructions provide the starting point for determining damages in cases filed in North Carolina. There are five elements of damages under North Carolina Law: (1) Medical Expenses, (2) Lost Wages, (3) Loss of Use (of a body part), (4) Pain and Suffering, and (5) Permanent Injury. You should determine the amount of each of the first four elements of damage based on the loss your client has suffered to date. If you have an expert opinion stating that the injury is permanent (the fifth element of damages), the other four elements will also need to encompass a future projection of the loss your client will suffer over the remainder of his or her statutory life expectancy. See G.S. § 8-46.

The first two items of damages, often called "special damages," can usually be arrived at with some precision because they are based on actual out-of-pocket losses. There are some traps for the unwary, though. The pattern jury instruction that addresses medical expenses looks simple and is quite short: "Medical expenses include all [medical] bills reasonably [incurred] by the plaintiff as a proximate result of the negligence of the defendant." N.C.P.I. – Civil 106.04 Personal Injury Damages—Medical Expenses. One of the footnotes even leads some practitioners to believe that simply having your client testify about his medical bills gets

you to the jury on the issue of medical expenses. It does not in most cases. You actually need to prove two things to get to the jury: that the bills incurred are reasonable in amount and that the medical treatment is necessary for injuries suffered in the collision. The footnote does say that the amount of the medical bill is presumed to be reasonable.<sup>11</sup> It does not, however, relieve you of the obligation to show that the bills were incurred “as a proximate result of the negligence of the defendant.” In order to show this, you need a qualified expert opinion from a doctor, at least for latent injuries. See Gillikin v. Burbage, 263 N.C. 317 (1965). For example, you will need an expert opinion to prove the necessity for chiropractic treatment for a back injury (a latent injury), but you may get by without an expert to get to the jury an emergency room bill for treatment of a laceration to the plaintiff’s face (a patent injury). Be aware that with both latent and patent injuries, because the presumption of reasonableness it is not a conclusive presumption, your opponent may still challenge the *amount* of the bill as being unreasonable.

The first footnote of the Medical Expenses instruction also talks about two other doctrines that you should be aware of, although they come into play infrequently. The first explains that additional medical expenses caused by the malpractice of a doctor treating a plaintiff for injuries from an auto wreck are recoverable against the auto wreck defendant, unless the plaintiff was negligent in selecting the physician that tended to the injuries relating to the accident.<sup>12</sup> The second touches on the way in which claims of a minor are bifurcated. In general, the parents must bring claims for special damages incurred by the minor through the age of minority, within the parent’s three-year statute of limitations. The minor retains a separate claim for the general damages and special damages likely to be incurred by the minor after the age of minority, to be filed within the minor’s statute of limitation.

Loss of earnings can include lost wages from employment, the inability to perform ordinary labor, or a reduced earnings capacity. In almost every case, you will need to provide (1) documentation from your client’s employer to show the actual time your client missed from work, and (2) support from your client’s physician authorizing this absence from work. The exact form may vary from case to case. With self-employed and salaried workers, begin by getting the client’s income tax returns to see what patterns you can discern. For example, if your client is self-employed, say as a backhoe operator, you will need to show how his earnings during the time period involved are lower than in other years. Look at his profit and loss figures. Examine his Schedule C filings. Review the medical records for restrictions or get a letter from his doctor delineating the particular restrictions that kept him from working during this time.

---

<sup>11</sup> Footnote 2 of this pattern jury instruction states that the jury should be told that: “As to the reasonableness of the expenses, the plaintiff has the burden of proof by the greater weight of the evidence. However, where the plaintiff has testified regarding the amount of such expenses and has provided records or copies of such charges, you may find from this evidence alone that the charges are reasonable, but you are not compelled to do so.” N.C.P.I.—Civil 106.04 Personal Injury Damages—Medical Expenses, f.n. 2.

<sup>12</sup> Footnote 1 of this pattern jury instruction states that additional medical expense caused by the negligence of the original treating physician is recoverable, unless the injured person was negligent in selecting the original physician. *See Bryant v. Dougherty*, 267 N.C. 545, 549-50, 148 S.E.2d 548, 55 (1966); *Bost v. Metcalfe*, 219 N.C. 607, 609, 14 S.E.2d 648, 651 (1941).

Most of the time a disabling injury will be reflected in the numbers, although there may be some lag time. In a small business it can be many months or even years before time out of work translates into income. Look for trends in your client's earnings or business. The pattern instructions allow jurors to consider a variety of factors such as the plaintiff's age, the effect of disability on earnings capacity, loss of profits, and the lost capacity to earn money.<sup>13</sup> If your client is the key person in his or her business, the disability may affect the future of the business or reduce expected growth – even if the client is holding things together for the time being.

Loss of part of the body, such as dismemberment, is such a startling and severe loss that it is never overlooked when assessing damages. Less obvious, however, is the partial loss of part of the body, or loss of use of part of the body that often accompany routine back or extremity injuries. For example, loss or range of motion or loss of strength are items of damage for which compensation should be sought in almost all cases involving permanent injury. In fact, these are the day to day problems that clients sometimes care about the most. Impairments that affect someone's ability to walk, drive, sleep, bend, stoop, and lift may not affect their ability to work – and thus not be considered disabilities – but may very well make someone's life less whole and make them feel less free. For some clients, the inability to engage in certain activities, such as sports or gardening, can significantly sap their life of pleasure.

Scars and disfigurement should also be fully covered in any discussion about damages. Good pictures are useful, even where the scar is visible. It often makes the jury and the victim more comfortable: the jury can get a good look without feeling self-conscious. The way that scars and disfigurement makes a client feel is also important to develop. This can be proven indirectly by asking the client what they have done to minimize or hide the scar. People often go to elaborate lengths to cover up or improve areas of disfigurement, including such things as buying creams, getting surgery, wearing certain types of clothes, avoiding certain activities, and not going to certain places where the scar could be more readily seen. These types of lifestyle modification, especially if discussed by someone close to but other than the plaintiff go a long way toward showing how the plaintiff really feels about the scar.

Permanent injury is the most pivotal element of damages in those cases involving such permanency. No other element alone will so greatly affect the value of the case. This is because all of the other elements of damage are magnified by the person's statutory life expectancy. Although you cannot create a permanent injury where none exists, when one does exist, you can strengthen your case by adequately memorializing a doctor's expert opinion that an injury is permanent and by fully exploring all of the sequelae of the permanent injury. Doctors communicate their opinions in a variety of ways, including letters, medical records, Industrial Commission forms, fill-in-the-blank questionnaires, conferences, depositions, and testimony at trial. Within these broad parameters there are many variations. Selecting the right method to communicate the adequate amount of information requires a careful balancing of cost, efficiency, the doctor's nature, and the stage of the case. A conference with the doctor, regardless of which method is used, is frequently a good idea. However the opinion is memorialized, it should address all significant sequelae and prognoses. Some will be obvious (future medical expenses, future lost wages, future pain), while others will require more

---

<sup>13</sup> N.C.P.I.--Civil 106.06 Personal Injury Damages--Loss Of Earnings.

research or thought (future joint replacements, injury to adjacent areas, increased likelihood of different injury or re-injury). Any such opinion will need to contain all the building blocks necessary to construct your final damage argument.

Communicating someone else's pain or suffering is an art, indeed it is the mainstay of much great art. The jury instructions allow per diem arguments,<sup>14</sup> but provide no road map to discussing the value of daily pain. The instructions state that there is no fixed formula for placing a value on physical pain and mental suffering and simply tell the jury to apply logic and common sense to the elements. Physical pain and mental suffering are intangible, subjective and emotional, and perhaps poorly suited to an application of logic. Regardless, most successful trial lawyers do understand and properly convey a client's pain and suffering by first presenting a logical and sensible argument. They create a foundation of trust by presenting themselves and their client in a credible manner. They build the framework of their case out of special damages, and layer onto that framework the strongest items of general damages –cementing them into place with objective testimony from credible witnesses. Additional witnesses are used to complete the whole, filling in gaps or adding small pieces of information that will present the case in a better light. By the time closing argument comes the jury wants to help the plaintiff because they understand how much your client's life has been affected by their injuries. At this time, you simply need to present medical and testimonial proof that the client has and will continue to have pain and limitations.

The pattern instructions are the place to start and end. In between, you need to explore the whole landscape. Talk to your client, along with his or her family, friends, and medical providers. Such conversations often cause you to see items of damages that are not routine, but nonetheless very powerful. A visit to your client's home or job site is a great way to develop understanding and empathy for your client's case.

## **H. Pre-Trial Motions**

Pre-trial motions are as critical to the success of automobile accident cases as motions made during or after trial. Pre-trial motions affect every aspect of a case, from voir dire to the admissibility of evidence. The purpose of every pre-trial motion is to improve some angle of your client's case. To fully understand the impact of pre-trial motions it is best to look at them one by one.

### **1. Motion in Limine**

The main purpose in filing a Motion in Limine is to exclude any irrelevant or unrelated evidence from being considered by the jury. Your job is to paint the clearest picture possible for the jury with the fewest distractions. At the end of the case every juror needs to believe that the defendant was negligent and owes the plaintiff complete relief for injuries stemming from the negligent act. Any information that could distract the jury from focusing on whether the defendant was negligent or whether the plaintiff is afforded complete relief should be

---

<sup>14</sup> N.C.P.I.--Civil 106.22 Personal Injury Damages--Final Mandate (Per Diem Argument By Counsel).

addressed in such a motion. Even though you can object to inadmissible evidence during trial, the trial will be much clearer without such interruptions, especially since they may involve the jury leaving the courtroom. In addition, even hearing the question to which you object can give jurors ideas about the case in conflict with the law. Motions in Limine give you a chance to deal with these issues in the relative calm of the pre-trial courtroom, rather than during the heat of battle.

The following explains items that need to be addressed through a Motion in Limine:

**a. Criminal or Traffic Charges**

Introducing criminal charges in these cases can be confusing and misleading to jurors who don't fully understand the difference between criminal and civil law. Some jurors will view a defendant who is likely to incur criminal sanctions stemming from the wreck as having already paid his debt to society. Because this information serves as a possible distraction and takes away from proving negligence and damages, keep it out of your case.

**b. Testimony about the Accident from Non-Firsthand Witnesses**

A second purpose is to exclude testimony regarding the speed of the vehicles involved, or about which lanes the vehicles were in, unless provided by a firsthand witness to the wreck. Keep in mind, different rules may apply to accident reconstructionists. Otherwise, make sure that anyone who claims to have been near the wreck is in fact a firsthand witness. Someone who saw the defendant six hours before the wreck is not a firsthand witness and *should not* testify to the speed of the cars involved.

**c. Lay Witness Testimony Regarding Negligence or other Conclusions**

Lay witnesses should be prohibited from testifying to the possible negligence or contributory negligence of any involved parties. Negligence as a matter of law is to be determined by either experts or decided upon by the jury. The purpose of firsthand witnesses is not to say whether the defendant is negligent, but rather to give details about the moments leading up to the accident.

In addition, other conclusions reached by lay witnesses are almost always irrelevant. From character references to driving habits, this testimony does not focus on the wreck at issue or the injuries sustained and it should be excluded.

**d. Collateral Sources/Liens**

Collateral sources of payment to the plaintiff, whether they be in the form of medical bills or lost employment, are to be excluded. Even if a juror is told that collateral sources should not be a part of their decision, a juror who knows that an insurance company has contributed 80 percent to your client’s injuries may feel that holding the defendant completely accountable is unfair.

Additionally, liens that medical providers have against a plaintiff are inadmissible pursuant to N.C. Gen. Stat. § 8C-1, Rule 401, 402 and 403. While it is important for you to know about such liens, they have no bearing whatsoever on the defendant’s negligence or on the plaintiff’s right to complete recovery.

**e. Settlement Offers**

Settlement offers made before or during trial should be excluded. A settlement offer of \$250,000 from an insurance company may sound like a million dollars to a juror when in fact your client’s medical bills alone are well over \$300,000. If jurors know of settlement offers at any point during the trial they could view the plaintiff in a negative light. Statements made during the settlement proceedings or documents created in preparation of settlement negotiations should be excluded.

**f. Evidence or Arguments Before Trial**

Before trial no evidence of any kind should be presented to the court or prospective jurors. Presentation of evidence before the trial may lead to it being inadmissible at a later time. By the same token, legal arguments should not be made before the trial. While voir dire allows the opportunity to ensure prospective jurors will keep an open mind about things such as awards, this is not the time to make legal arguments.

**g. Evidence Plaintiff’s Counsel Has Not Seen**

You should object and move to exclude all evidence of any kind that has not been shown *in its entirety* by opposing counsel prior to trial. If medical records presented by opposing counsel only contain 19 or 20 pages, this is not acceptable. While an incomplete report, file or video may seem innocent on its face, the missing information may prove critical during trial.

**2. Motion to Exclude Evidence**

This motion acts as a safety net to ensure that you have the chance to view any and all evidence before it is presented at trial. This motion includes the following:

**a. Experts not Listed**

Information on experts is provided pursuant to the Rules of Civil Procedure. Experts should be identified to opposing counsel during pre-trial discovery. Only in extenuating circumstances do courts allow experts to testify that were not identified during discovery. In these instances the opposing counsel will receive ample time to ascertain the identity of the witness and prepare for their testimony.

**b. Testimony Taken by Video Tape**

Similar to evidence in the form of videos, any tapes of expert testimony should be made available in their entirety to opposing counsel. It is important to review these tapes before the jury sees them to ensure the testimony conforms to the guidelines set forth by the court. While not seen by the judge or the jury in person, videotaped witnesses can play a huge role in an auto accident trial. Do not underestimate the importance of testimony taken by videotape.

**3. Motion to Sequester Witnesses**

This motion should not only ask that the witness be sequestered, but also seek to exclude them from the courtroom until they are called to testify. Auto accident cases often hinge on things such as the actions of a driver leading up to impact, the road conditions, or the weather at the time of the accident. Because all of these may be seen differently through the eyes of different witnesses, it is almost certain that there will be various different accounts of the moments or even seconds leading up to impact.

Similar to a group of fishermen describing the big one that got away, the more that witnesses hear from one another about a wreck the more their stories can either change or conform. The more a witness can recite from *their own memory* about the accident, the more reliable and accurate their testimony will sound to the jury.

#### **4. Defenses based on Pleadings or Motions**

North Carolina Rule 12 and Federal Rule 12 are nearly identical. Although these motions are purely technical in nature, being able to recognize when and how to use them can save both time and effort in auto accident cases. Just as collecting evidence and reviewing expert testimony is part of preparing for trial, so is recognizing the purposes and limitations of the following motions:

##### **a. Lack of Jurisdiction over the Subject Matter—12(b)(1)**

Without jurisdiction over the subject matter, there is no valid ground for legal decision by the court. North Carolina grants subject matter jurisdiction to its courts through either our state constitution or through statutes. Should there be any question as to whether the court has jurisdiction over the subject matter, a 12(b)(1) should be filed. It does not matter whether this motion is filed before or after the answer.

##### **b. Lack of Jurisdiction Over the Person—12(b)(2)**

In order to challenge a court's jurisdiction over a person named in a suit, it must be done one of two ways. First, if any other pre-answer motions are made under Rule 12, this defense must also be included with these motions. If there are no motions made under Rule 12, the defense may be raised in a responsive pleading.

It is critically important to remember that if the court views your client as having participated in the trial in any way before personal jurisdiction is challenged then the defense of a lack of personal jurisdiction will be waived.

##### **c. Improper Venue or Division—12(b)(3)**

A motion to dismiss because of improper venue addresses whether the case is being heard in the proper county. Remember that jurisdictional issues should be addressed by a 12(b)(1) motion to dismiss. Similar to a 12(b)(2), if a pre-answer motion is made then a motion to dismiss based on improper venue must also be included. If no pre-answer motion is made then this defense may be included in the answer. If this defense appears in neither the pre-answer motion nor the answer then any future defenses based on improper venue are waived.

An objection based on improper division of the court will usually focus on the amount of damages in question and whether the case has been filed in the appropriate court. As a general rule all claims exceeding \$10,000 are heard in the superior court division while smaller claims are heard in the district court. The only exception comes to the administration of estates, which are always heard in the superior court division.

##### **d. Failure to State a Claim upon which Relief can be Granted—12(b)(6)**

Unlike other defenses set forth in Rule 12(b), this motion can be raised even if it is not made in a pre-answer motion or an answer. This defense is raised in a situation where even if everything contained in the plaintiff's pleading is true they would nonetheless fail to recover. In addition, if the court is unable to legally provide the relief requested, a 12(b)(6) motion should also be granted.

Successfully protecting against a 12(b)(6) should not be difficult to do in most auto accident cases but in any event, it's always good to ask yourself whether the complaint that you have written clearly identifies the substantive law that gives rise to a claim. If you have questions about the sufficiency of your complaint, there is a good chance a judge will feel the same way. Therefore it is especially important when writing complaints that deal with multiple or competing claims against different parties to be as clear and concise as possible.

**5. Motion for Judgment on the Pleadings—12(c)**

A motion for judgment on the pleadings can only be made *after* the defense has responded to the complaint. Once this has occurred, if none of the facts set forth by the complaint and addressed in the answer are in dispute, a 12(c) motion should be filed and granted. The court at this point has the ability to address any question of law that remains.

Because this motion is viewed in light most favorable to the nonmoving party, any factual dispute no matter how small between the complaint and the answer will be enough to kill this motion. However, should an improper defense be introduced while admitting all of the facts set forth by the complaint, a court may grant the motion.

The following is a sample motion in limine.

NORTH CAROLINA		IN THE GENERAL COURT OF JUSTICE
		SUPERIOR COURT DIVISION
WAKE COUNTY		_____ CVS _____
_____	)	
Plaintiff,	)	
v.	)	<b><u>MOTION IN LIMINE</u></b>
	)	
_____	)	
Defendant.	)	

Plaintiff, before trial and selection of the jury, moves the Court in Limine, pursuant to N. C. Gen. Stat. § 1A-1, Rule 16, to instruct Defendant's counsel along each witness that testifies in this matter to (1) not mention, refer to, adduce testimony or ask about, or (2) introduce or publish exhibits that contain, or (3) in any way attempt to convey to the jury directly or indirectly, any of the following:

1. The dismissal or adjudication of any criminal or traffic charges brought against the defendant in any criminal matter arising from the collision that is the subject of this lawsuit. This evidence should be excluded pursuant to N. C. Gen. Stat. § 8C-1, Rule 403. Any probative value the evidence may have is substantially

- outweighed by its tendency to mislead or confuse the jury. Further, the filing or failure to file criminal charges, and the ultimate disposition of those charges is not admissible as evidence of negligence in a separate civil action. Beanblossom v. Thomas, 266 N.C. 181 (1966).
2. Any opinion or inference by any lay witness, including the police officer that investigated the underlying collision in this case as to any of the following matters:
    - (a) The speed that either vehicle was traveling at any time before, after, or at the moment of impact, unless it is based on first-hand knowledge.
    - (b) The lane in which either vehicle was traveling at, before, or after the impact, unless the witness qualifies as an expert in the field of accident reconstruction. State v. Purdie, 93 N.C. App. 269 (1989).
    - (c) Statements or opinions from any witness about the cause of the collision. See Mickens v. Robinson, 103 N.C. App. 52 (1991).
    - (d) Statements or opinions from any witness that either party was negligent, or contributory negligent, at fault or responsible for the collision or not. N.C. Gen. Stat. § 8C-1, Rules 403, 701 and 702. See Beanblossom v. Thomas, 146 S.E. 2d 36, 39 (1996).
    - (e) The opinion or testimony of any witness about the point of impact between the vehicles or the final resting point of either vehicle after the collision, unless the same is made with firsthand knowledge. N.C. Gen. Stat. § 8C-1, Rules 403, 602, 701 and 702.
  3. Further that any mention, reference, or notation concerning any of the above matters be redacted from the accident report or any other written exhibit or document which contains such inadmissible testimony before they are introduced by either party to this action.
  4. Any mention of payment by a collateral source of any of the Plaintiff's medical bills or lost wages. Cates v. Wilson, 321 N.C. 1, 5 (1987).
  5. Statements by counsel or any witness concerning the causal relationship between Plaintiff's complained-of injuries and a back condition that Plaintiff may or may not have but which is diagnosed as scoliosis in one of Plaintiff's medical records. Defendant did not inquire about this matter during Plaintiff's deposition of Dr. Patterson, the only expert physician that will provide testimony in this case. Any arguments by counsel that this diagnosis is related in any way to the injuries for which Plaintiff seeks damages is incompetent testimony by counsel, not legally or logically relevant, and must be supported by expert testimony. N.C. Gen. Stat. § 8C-1, Rules 401, 403, 701 and 702. See Gillikin v. Burbage, 263 N.C. 317, 325.
  6. Statements by counsel or any witness concerning the causal relationship between Plaintiff's complained-of injuries and a collision in June of 1995 in which the Plaintiff's vehicle skidded into a parked van at 3-5 miles per hour, and in which there were no injuries to the Plaintiff. Defendant did not inquire about this matter during Plaintiff's deposition of Dr. Patterson, the only expert physician that will provide testimony in this case. Any arguments by counsel that this diagnosis is related in any way to the injuries for which Plaintiff seeks damages is incompetent testimony by counsel, not legally or logically relevant, and must be supported by

expert testimony. N.C. Gen. Stat. § 8C-1, Rules 401, 403, 701 and 702. See Gillikin v. Burbage, 263 N.C. 317, 325.

7. Statements by counsel, or any witness unless based on first-hand knowledge, concerning the intersection that is the site of the collision. In particular statements or opinions about the dangerousness of the intersection, the number of collisions that have occurred there, or the nature of collisions that have occurred there other than if it is based on first-hand knowledge. Such information is not relevant, competent, or admissible. N.C. Gen. Stat. § 8C-1, Rules 401, 403, 701 and 702.