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Anatomy of a Good Personal Injury Case---Part 3#

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Woodland Hills Personal Injury Attorney Barry P. Goldberg was recently hired to represent an 18 year old traffic collision victim who was violently rear ended on the freeway---A very serious accident to be sure. During the initial interview, discussion about expectations with the victim and her family, it occurred to Mr. Goldberg that the topics addressed may give important insight to other injury victims. Moreover, the discussion gives some insight about how an attorney analyzes and evaluates a case.

Mr. Goldberg's initial installment dealt with immediate concerns, medical condition, and client expectations. In Part 2, Mr. Goldberg went through his thought process after receiving an in-depth Traffic Collision Report. In this "Part 3," Mr. Goldberg analyzes the challenges now faced upon finding out that the at fault driver was "grossly" underinsured, caused tens of thousands of dollars in damages, and yet maintained only a "minimum" liability policy.

The at-fault driver's insurer was gracious and contrite. In fact, the adjuster recently concluded a claim with this office and was familiar with the caliber of work generated. However, he felt it necessary to be obtuse about the amount of insurance available for this case. On the one hand, he expressed concern over the amount of property damage claims submitted by the two drivers damaged by his insured. On the other hand, he said that he was not free to disclose the amount of those limits. However misguided the law is, the adjuster was absolutely and "technically" correct. An insured must first provide permission to disclose the



amount of his insurance to a third-party. That permission is required up until a lawsuit is filed. At that point, the insured must disclose policy limits information.

So what to do? Well, first of all, this whole situation raised a giant red flag---- this dangerous driver, in a large, relatively new and expensive king cab truck, probably did not buy sufficient liability insurance. Ugh! But, how “insufficient” are we talking about? The minimum is 15/30/5 established in 1974 and has not been raised since. Even 25/50/10 would not come close to covering this accident. Maybe, 50/100/25 might just do it if the injuries did not get worse. This at fault driver should maintain at least 100/300/50 to be even reasonably protected. [Ironically, the 1974 minimums, adjusted by the cost of living index would today be about 50/100/25!]

An experienced attorney with decent “bedside manner” can discover the likely policy limits with certain well placed questions to the adjuster. In fact, we became alerted immediately that the at fault driver maintained minimum limits with a very strong likelihood. The next day, our office received a letter stating that the at fault driver “refused” to allow his insurer to disclose his policy limit information!

We immediately wrote a strong letter to the insurer “thanking” them for making our job easier! We explained that normally we are torn by the prospect of attempting to collect on an apologetic and unfortunate defendant who “mistakenly” did not buy enough insurance. However, since their insured was not the least bit contrite after literally squashing a young lady in her vehicle after his unsafe driving, we would have no trouble pursuing his assets above a minimum limit. Moreover, his callous indifference to my severely injured 18 year old client by making it even more difficult on us by “refusing” to make us aware of the insurance situation in the claim, virtually eliminates our incentive to be satisfied with his available insurance.



The next day, we received a letter disclosing the minimum policy limits---15/30/5.

It is a harder case now that there is grossly insufficient insurance. The chances that the at fault driver has significant individual assets is small. The chances that the at fault driver will ever voluntarily part with his personal assets is even smaller. If there ever is an “excess” judgment, it is fully dischargeable in Bankruptcy proceedings.

From a personal injury attorney’s standpoint, this is a tragedy for his client. Before we can make any meaningful recommendations on how to proceed, we will order an asset search. We will never be in a position to settle this case unless and until we have a clear understanding about whether some “course and scope” of employment can be implicated.

The next installment will detail analyzing available asset and “course and scope” of the at fault driver, resolving the property damage and loss of use claim, and initial bodily injury evaluation thoughts. Because the NEXT PART of this “Anatomy” is unknown to us, we will provide an update as soon as we learn more. Stay tuned!

For more information about blog author and attorney Barry Goldberg's civil litigation expertise, please visit his web page, [Woodland Hills Civil Litigation Attorney. *http://www.barrygoldberg.com/Practice-Areas/Civil-Litigation.aspx*](http://www.barrygoldberg.com/Practice-Areas/Civil-Litigation.aspx)

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Call Mr. Goldberg today for a free consultation. (818) 222-6994



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