

# MASS TORT CLAIMS EXPLAINED

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## **I. Ten Things to Consider When Choosing an Attorney**

When you or a loved one has suffered an injury, hiring an attorney is one of the most important steps you will take toward seeking compensation from those who are responsible for your injuries. This can be a daunting and complicated process if you have never before hired an attorney and do not know how it all works. It may be helpful to consider the following aspects before making this important decision:

### **1. Communication.**

When working with an injury attorney, communication is crucial for several reasons. You want to feel comfortable knowing that your attorney is a good communicator because that is precisely what you are hiring him/her to do, i.e., communicate and advocate your interest to insurance professionals, opposing counsel, a judge and jury. Your attorney will argue the facts of your case to obtain an outcome in your favor. Choose an attorney who is willing to spend time speaking with you to learn about your case inside and out.

### **2. Cost.**

Understand and obtain, in writing, all fees you will incur by hiring a particular attorney, including fees your attorney will take if your case wins.

### **3. Experience and Background.**

Visit the State Bar of Texas website (<http://www.texasbar.com>) and look up the names of the attorneys you are considering hiring. You will find information such as when he/she became eligible to practice law in Texas, their State Bar of Texas number, schools attended and graduation dates, contact information, which courts they are admitted to practice in, and any disciplinary actions reported by the attorney. Keep in mind that the number of years of experience the attorney has may be less important than the number of years the attorney has specialized in personal injury law. Ask the attorney what types of cases he/she has taken and won and/or obtained a settlement.

### **4. Expertise.**

All personal injury attorneys do not handle every type of injury case. For example, defective drug and medical device injuries, birth injury cases, slip and fall cases, car accident lawsuits, trucking accidents, and boating/lake accidents, just to name a few, are all different types of cases that the attorney may have experience handling. Some attorneys may handle only one type of injury case on a regular basis, and if so, make certain that it is indeed the same type of case you have.

## **5. Attorney-Client Relationship Dynamic.**

Make sure you feel confident and comfortable with the attorney's working style when it comes to your input and decision making about your case. You are hiring him/her and, therefore, you should have control over your legal matters while trusting that your attorney will control the legal aspects of the case. After all, you are hiring the attorney because he/she has the legal knowledge that you do not.

## **6. Professional Network.**

Ask about your potential attorney's professional network of experts. Many, but not all, personal injury cases involve testimony of expert witnesses. Your attorney might call as witnesses one or more doctors who specialize in the area of injuries you sustained as a result of the accident. Your attorney may also enlist experts in various other fields such as trucking standards, accident reconstruction specialists and long-term treatment and costs of your injuries.

## **7. Compare and Consider.**

You will want to consider a variety of factors when hiring an attorney and it should not be a quickly made decision. You may wish to undertake two or three consultations with different injury attorneys to determine who would be best suited for your case. However, if you believe an attorney is a good match for you and your case and that all other decision-making criteria are met to your satisfaction, the first attorney you consult with may very well be the right choice.

## **8. Specialization.**

It is important that you understand what type of case you have so that you can hire an attorney who either specializes in that type of law, or has substantial experience and has obtained successful results on behalf of his/her former clients.

## **9. Technology.**

In today's professional fields, technology can equal power. It enhances the efforts of the attorney and support staff to get things done efficiently, effectively, and thoroughly. Be sure to ask a potential attorney what technologies they employ during the course of handling a personal injury case.

## **10. Support Staff**

Attorneys and law firms employ several types of administrative and legal support staff that allow their law practices to function efficiently and professionally. Ask your prospective attorney about associate attorneys, paralegals, legal secretaries and receptionists you may interface with over the course of your case. It is likely you will interact with these experienced professionals as often as you do with your attorney directly. However, you may only receive legal advice from the attorney and/or any associate attorneys working on your case, as non-attorneys cannot give you legal advice or any opinions they may have about the progress or outcome of your case.

## II. STATEMENT OF A CLIENT'S RIGHTS

- i) If you ever have any questions about these rights, or about the way your case is being handled by your attorney, do not hesitate to express your concerns to your attorney. He or she should be readily available to represent your best interests and keep you informed about your case.
- ii) An attorney may not refuse to represent you on the basis of race, creed, color, sex, national origin or disability.
- iii) You are entitled to an attorney who: is capable of handling your case; shows you courtesy and consideration at all times; represents you zealously; preserves your confidences and secrets that are revealed in the course of the relationship.
- iv) You are entitled to a written retainer agreement which must set out, in plain language, the nature of the relationship between you and the attorney and the details of the fee arrangement. At your request, and before you sign the agreement, you are entitled to have your attorney clarify in writing any of its terms, or include additional provisions.
- v) You are entitled to fully understand the proposed rates and retainer fee before you sign a retainer agreement, as in any other contract.
- vi) You may refuse to enter into any fee arrangement that you find unsatisfactory.
- vii) Your attorney may not request a retainer fee that is nonrefundable. That is, should you discharge your attorney, or should your attorney withdraw from the case before the retainer is used up, your attorney is entitled to be paid for the time spent on your case and any expenses incurred to through that date, but must return the balance of the retainer to you.
- viii) You are entitled to know the approximate number of attorneys and other legal staff members who will be working on your case at any given time and what you will be charged for the services of each.
- ix) You are entitled to know in advance how you will be asked to pay legal fees and expenses, and how the retainer, if any, will be spent.
- x) At your request, and after your attorney has had a reasonable opportunity to investigate your case, you are entitled to be given an estimate of approximate future costs of your case.
- xii) You are entitled to receive a written itemized bill on a regular basis at least every 60 days.

- xii)** You are expected to review the itemized bills sent by counsel, and to raise any objections or errors in a timely manner. Time spent in discussion or explanation of bills should not be charged to you.
- xiii)** You are expected to be truthful in all discussions with your attorney and to provide all relevant information and documentation to enable your attorney to competently prepare your case.
- xiv)** You are entitled to be kept informed of the status of your case, and to be provided with copies of documents prepared on your behalf or received from the court or the adversary party.
- xv)** You have the right to be present at court hearings unless a judge orders otherwise.
- xvi)** You should be engaged in the ultimate decision on the objectives to be pursued in your case, and to make the final decision regarding the settlement of your case.
- xvii)** Your attorney's written retainer agreement must specify under what circumstances he or she might seek to withdraw as your attorney for nonpayment of legal fees. Should your attorney seek to do so, or should you discharge your attorney for any reason, you have the right to obtain the release of your file to you or another attorney of your choosing. If an action is pending, the court may give your attorney a "charging lien," which entitles your attorney to payment for services already rendered at the end of the case out of the proceeds of your judgment. If no action is pending, and your withdrawing attorney retains possession of the file, the attorney must return it to you within 30 days of withdrawal, but may then commence proceedings against you to recover any unpaid fee.
- xviii)** You are under no legal obligation to sign a judgment or promissory note, or to agree to a lien or mortgage on your home to cover legal fees. Your attorney's written retainer agreement must specify whether, and under what circumstances, such security may be requested. In no event may such security interest be obtained by your attorney without prior court approval and notice to your adversary.
- xix)** You are entitled to have your attorney's best efforts exerted on your behalf, but no particular results can be guaranteed.
- xx)** If at any time you believe that your attorney has engaged in unethical conduct, you may report the matter to the clerk of the State Bar of Texas and/or the Appellate Division of the Supreme Court, which oversees attorney discipline.

**xxi)** In the event of a fee dispute, you have the right to seek arbitration, the results of which are binding. Your attorney should provide you with the necessary information regarding arbitration in the event of a fee dispute, or upon your request.



### **III. What To Do If You Are Injured By A Defective Product**

Oftentimes, after discovering you have suffered severe or catastrophic injuries related to a particular defective drug or medical device, you may not know what to do or where to turn for help.

If you experience serious side effects or injury after taking medication, or after receiving an implanted medical device, you should immediately seek medical attention. A doctor can provide you with the necessary examination to diagnosis your injuries. If you or another person is able, you should also take photographs of your injuries, if possible, and document in writing your pain, suffering, physical and emotional state of mind, as well as symptoms you may experience as the result of a side effect of medication or a medical device.

The next step, after you have received the appropriate medical attention, is seeking the representation of an experienced, knowledgeable product liability attorney. You can schedule a free, confidential consultation in which the attorney will ask you questions about your injuries, and will then advise you about whether or not you have a valid mass tort claim.

Once you have hired an attorney to represent you, he/she will thoroughly investigate your case, including conducting a review of your medical records. Your focus will now be taking care of follow up medical treatments, if required, and providing your attorney with any other information he/she may need as your claim progresses.

#### IV. The Mass Tort Lawsuit Process

Mass tort claims are different from other personal injury lawsuits and have at least three distinct characteristics that set them apart:

Mass Torts involve large volumes of claims that concern a particular product or device, such as a type of medication, or a knee or hip replacement device. Although there are large numbers of plaintiffs involved in mass torts, the underlying facts and issues in dispute are similar, if not identical, in all of the individual cases. Each one of the many claims in a mass tort action will have an interdependence in value.

Mass tort claims are an area of tort litigation that stems from advances in modern technology and its production and distribution. When multiple people sustain similar injuries by a single product, the situation is recognized as mass tort claims. This type of litigation allows the injured parties to have their collective claims litigated concurrently in order to benefit from efficiency and economy of scale. Examples of different mass tort litigation cases range from product liability claims, including drugs and medical devices, large antitrust claims against businesses, and man-made disasters of a large scale, such as plant explosions, plane crashes, or multi-family residential fires.

Mass tort litigation requires an enormous amount of financial capital to be expended by the attorneys representing the mass tort claimants, as most of these lawsuits are handled on a contingency fee basis, meaning that the clients do not pay any attorney's fees upfront, and will only owe attorney's fees and expenses if the court awards monetary damages to the injured person, or a settlement with the manufacturer of the defective product is made and money is paid to the injured person to compensate for their medical costs, attorney's fees and expenses, pain and suffering, and ongoing medical treatment.

As a mass tort claimant who was injured by a defective product, your attorney will require your participation in certain aspects of the lawsuit such as:

**Written Discovery:** Your attorney, and his/her legal support staff, will work closely with you to obtain your answers, documents and other information that will be produced to the Defendant party in the stage of litigation called "Discovery". Typically, these discovery documents consist of "Interrogatories", which are questions about your personal history, your employment history, your medical history, what injuries you claim in the lawsuit, a list of your bills, who has paid your bills and other kinds of detailed questions; "Requests for Production", which is a list of informational items requested such as copies of insurance policies and other documents, photographs, business records, etc.; and "Requests for Admissions", which is a series of statements of fact concerning the issues of your case, to which your attorney will submit to the adverse party a response of "admit to" or "deny", according to the facts and evidence.

**Depositions:** After both parties have responded to all written Discovery on both sides of the case, "Depositions" may begin to be scheduled. Depositions are a meeting between a "Witness", which would include you as a mass tort Plaintiff, the Defendant and his/her/their company employees, insurance company employees, etc., the witness's attorney, the Plaintiff's attorney and the Defendant's attorney. Each witness testifies under oath. Depositions are usually videographically and/or stenographically recorded. The Court Reporter recording the deposition testimony will then prepare a written transcript of every word of the Deposition. The answers and statements to questions asked by both Plaintiff's and Defendant's attorneys to all witnesses at each deposition can then be used at trial because it is testimony given under oath, just as a witness on "the stand" would give during a hearing.

There are several purposes for the depositions. One is to find out what a person would say at trial. Another purpose is to find out information that was not covered in the Interrogatories. A third purpose of depositions is to size up the person in terms of how they will be perceived by the jury, in other words, will the jury find favor with a witness, or not?

After depositions, the Defendants may request your attorney to send you to a doctor of their choice for a defense medical examination. This doctor is someone hired by the Defendants' insurance company or its attorney, to examine you, write a report, and testify at trial. This doctor is not on your side and is not hired to provide you with medical treatment, only to give his opinion as an "Expert Witness". His or her task is to find things that will help the Defendant's case. Your attorney will always be by your side at Depositions, and he/she will prepare you for your examination with the Defendant's Expert Witness doctor (s).

After the defense medical examination, if one is done, your attorney and the Defendants' attorney may need to take depositions of the various doctors and other "Expert Witnesses" involved in the case. This is done if there is some question about exactly what the doctor, or another type of expert in the field of pharmacology, for example, doctor would testify to at trial. This is not always done, but is a step that happens frequently in more complex areas of litigation, such as mass tort claims.

After the discovery process is complete most cases proceed to either settlement negotiations or trial.

## **V. How "ERISA" May Reduce Your Claim Recovery**

The Employee Retirement Income Security Act of 1974, known as "ERISA", is a federal law that may allow your insurance company, or your employer's health plan, to recover its costs on your claim, from a settlement or trial verdict award you may receive as a result of an injury lawsuit. This is known as "subrogation", and is considered to be a complex area of law. Potential subrogation interests should be discussed with your attorney after his/her review of any subrogation clauses in your insurance policy or your employer's health plan provisions.

## **VI. Information Your Attorney Will Need From You**

When you or a loved one have been injured by a defective product, such as a drug or medical device, it is important to keep extensive documentation of your injuries and events leading up to them.

Make sure that you gather, and keep in a safe place, the following types of information that your attorney will need to review:

- Your health insurance policy
- Your notes, or those of your family, concerning your physical and emotional pain and suffering
- Medical reports and bills, both paid and unpaid, from all doctors and other healthcare facilities you visited
- Estimated lost wages
- Pharmaceutical medication prescriptions, receipts and empty bottles (for drug claims)
- Over-the-counter medication receipts and empty bottles
- Receipts for any special goods you have purchased at the direction of your doctors or to facilitate your recovery from your injuries

If you are unable to collect these documents, your attorney may be able to gather the information. Your attorney may request other documents and information from you as you receive new medical reports and bills, and updated lost wage records. Keep these incoming documents organized so that you can present them to your attorney on a timely basis. This will allow your claim and/or lawsuit to include all of your damages and will result in a more complete recovery for your injuries and expenses.

## VII. Glossary of Mass Tort Claims Terminology

### A

**Accident and health insurance:** Insurance under which benefits are payable in case of disease, accidental injury, or accidental death. Also called health insurance, personal health insurance, sickness and accident insurance.

**Accidental death benefit:** A form of insurance that provides payment if death of the insured results from an accident, subject to the conditions of the specific policy. Accidental death insurance is often combined with dismemberment insurance in a form called Accidental Death & Dismemberment (AD&D).

**Accumulation account:** An account to which funds are added and from which risk charges are deducted. The balance earns interest.

**Acquired brain injury:** An acquired brain injury is one that is not congenital, meaning that it occurred at a specific time after birth. Acquired brain injury may be the result of physical trauma or various medical conditions.

**Affidavit:** A written and signed statement of facts created under oath.

**Aggregate Limit:** The maximum amount that could be paid under the coverage regardless of the number of people injured or the number of items damaged.

**Anoxic brain injury:** An anoxic brain injury is when a brain does not receive adequate oxygen, usually resulting from a serious accident where heavy bleeding occurs.

**Answer:** A written response to the accusations or charges in the complaint of the plaintiff.

**Aphasia:** Aphasia is a language disorder which is caused by injury to the brain, specifically the cerebral cortex. This disorder causes a person to have difficulty understanding or verbally communicating spoken language.

**Appeal:** A procedure to send a case to a higher court for further examination and review after a lower court's decision was made.

**Appearance:** Participating in court proceedings in person or through an attorney.

**Asbestos:** A mineral fiber found in construction materials that is known to cause mesothelioma.

**Ataxia:** Ataxia is a disorder where a person has difficulty with muscle coordination, which is caused by injury to the cerebellum.

**Axonal Diffuse injury:** An individual who suffers from a contusion may also experience a diffuse axonal injury, which happens when certain nerves in the brain tissue are damaged. Injury to these axon nerves may cause the victim to fall into a vegetative state and can cause death.

## B

**Bacteria:** Tiny, one-celled microorganisms found in the environment. Bacteria multiply rapidly in food under the right conditions, and some bacteria can cause foodborne illness. Helpful bacteria can be used to make yogurt, vinegar and some cheeses.

**Brain stem:** The brain stem controls many important functions of the body including sexual functions and physical growth. The brain stem can be found at the base of the brain.

**Brief:** A printed or written document prepared by attorneys on each side of a dispute that usually includes the facts and legal arguments the attorneys wish to establish.

**By a Preponderance of the Evidence:** This is the standard of proof that is implemented, during a civil proceeding. Unlike criminal matters that require evidence to demonstrate guilt or innocence “beyond a shadow of a doubt,” civil proceedings require that a verdict of liable or not liable be demonstrated by a preponderance of the evidence.

## C

**Catastrophic injury:** A catastrophic injury is an extremely serious injury that may result in permanent disability, long lasting medical conditions, and a shortened life expectancy. It typically affects at least one system of the body and is very painful.

**Cerebellum:** This part of the human brain controls the movement of arms and legs, balance, body position, and posture is positioned under the cerebrum.

**Cerebral hemisphere:** The cerebral hemisphere is either the right or left side of the cerebrum.

**Cerebrum:** This is the largest part of the human brain. It controls behavior, emotions, language, vision, and other important functions of the body.

**Class Action:** A type of civil lawsuit in which a large group of people bring a claim to court collectively.

**Closed head injury:** A closed head brain injury is when there is trauma to the brain that does not result in a skull fracture.

**Coma:** A coma is a period of unconsciousness which may occur following a traumatic brain injury.

**Common Law:** Laws and rules established based on earlier judicial decisions.

**Comparative Negligence:** The amount of balanced fault of each of the groups that contributed to the injury.

**Complaint:** The original, written claim filed in action which begins the lawsuit. The plaintiff usually files a complaint.

**Consumer Product Safety Improvement Act:** A consumer protection law passed by the United States Congress in 2008, largely in response to several high profile recalls involving products made in China during 2007 and 2008.

**Contingency Attorney:** Attorneys who earn a percentage of the money their clients receive after settling or winning a case, rather than charging a flat-fee or "per-hour" rate.

**Contrecoup:** A contrecoup is a contusion that results when the head is forcefully shaken and the brain comes into contact with the skull. This condition has been seen in cases of head trauma and Shaken Baby Syndrome.

**Contusion:** A contusion is when brain tissue becomes swollen and bruised. Blood vessels may break, causing the blood to mix with the swollen tissue.

**Costs:** The amount of money the losing party pays to the winning party after a judgment is made.

**Counterclaim:** A claim brought by a defendant against the plaintiff for a certain amount of money.

**Cross-Claim:** A claim brought by a defendant against another defendant, or a claim brought by a plaintiff against another plaintiff.

## D

**Damages:** This term is often interchangeable with "compensation" (i.e., the judge awarded damages to the plaintiff). This term is also used to describe the losses that have been incurred by an individual, due to negligence (i.e., medical expenses, lost wages, pain and suffering, loss of consortium, etc.).



**Defendant:** The party being sued or accused of wrongdoing in a lawsuit.

**Depressed skull fracture:** A skull fracture where one or more parts of the skull break and come into contact with the brain.

**Direct Loss:** The immediate reduction in value arising from damage to property.

**Discovery:** The process of gathering evidence to support or fight a legal action. This process includes collecting photographs and other physical evidence, interviewing witnesses and, sometimes, speaking with medical and accident reconstruction experts.

## E

**Evidence:** Materials or facts that prove a claim or defense in a lawsuit.

## F

**Fault:** An error or omission that causes injury legal blameworthiness and responsibility in each area of law.

**FDA:** The United States Food and Drug Administration. This federal agency was established to regulate the release of new foods, drugs and other health-related products.

## G

**Gross Negligence:** This term is used to describe the deliberate abandonment of one's duty of care and the enactment of behaviors that demonstrate a total lack of respect or concern for human safety.

## H

**Hazard:** Anything that increases the chance of an accident. (e.g. icy pavement or fog would be applicable).

**Hematoma:** A serious bruise caused by a blood clot.

## J

**Judgment:** The result or final decision of the court at the end of a lawsuit.

## L

**Liability:** This means that a person (or group of people) is legally responsible, or liable, for the injury or damage suffered by another person (or group of people).

**Liable:** A verdict in a civil proceeding that formally declares a party responsible for the damages that were sustained in a personal injury claim.

## M

**Mass Tort:** This term is utilized to describe a lawsuit that has been filed for a defective product or act of negligence that has affected a great number of people. Some of the factors that separate a mass tort from a common tort are: there are many claimants with a common complaint; the plaintiffs in the action are geographically dispersed, and; the verdicts of the individual cases will be interdependent, which means the successes or failures of the mass tort litigation in one jurisdiction will often have an impact upon the successes or failures of the related lawsuits being conducted in other jurisdictions.

**Mercury poisoning:** Exposure to Mercury, a colorless and odorless chemical, can lead to Mercury poisoning causing brain damage, respiratory problems, shaking, and memory loss.

**Mesothelioma:** A rare cancer of the thin lining surrounding the lung (pleural membrane) or abdominal cavity (the peritoneum). Mesothelioma is caused by asbestos exposure.

## N

**Neglect:** Failure to provide a sufficient act or restraint that is necessary.

**Negligence:** Failure to provide reasonable care or protection for others against risk of harm.

**Negligence:** The failure to uphold one's duty of care and ensure that one's actions do not impose negative consequences upon another individual or their property.

**Not Liable:** A verdict in a civil proceeding that formally declares that a party is not responsible for the damages that were sustained in a personal injury claim.

## P

**Personal Injury Attorney:** A legal professional who practices civil law and represents clients who have been injured due to the negligence of another.

**Plaintiff:** The party that is suing or bringing accusations in a lawsuit.

**Pleadings:** The official claim, complaint, accusation, appeal, answer, or reply of each party.

**Product Liability:** The responsibility of a manufacturer or vendor of goods to compensate an individual for injuries caused by defective merchandise. Product liability cases may be brought because (1) the product has a faulty design and/or was manufactured improperly; or (2) insufficient warnings were provided about the product's known dangers.

**Product Liability:** This type of personal injury lawsuit can be filed if a manufactured product has caused an injury due to an inherent defect in its design and/or fabrication. A product liability claim can also be made if a product was mislabeled or lacking the appropriate instructions for proper use.

## R

**Recall:** A product recall is a request to return to the maker a batch or an entire production run of a product, usually due to the discovery of safety issues. In the United States, recalls may be voluntary or ordered by the Consumer Product Safety Commission (CPSC) and the Food and Drug Administration (FDA).

**Respondeat Superior:** A legal rule that holds an employer responsible for the actions of employees.

## S

**Statutory:** Rules created by a law.

## T

**Target risk:** (1) A large risk that attracts unusually keen competition among insurers, agents or brokers, or, (2) A large, hazardous risk for which insurance is difficult to place.

**Temporary insurance agreement:** A separate contract included with a life insurance application providing coverage to eligible proposed insureds during underwriting, which ends when the application is issued or declined.

**Term insurance:** A type of life insurance policy that provides protection for a specified time period; most do not have cash value.

**Term:** Generally, the period of time for which a policy or bond is issued.

**Third party (under a liability insurance policy):** A person, not a party to the insurance contract, who has an alleged or actual claim for injury or damage against the person insured under the policy.

**Tort:** The body of law that allows an injured person to obtain compensation from the party responsible for causing his injury.

**Total disability:** Frequently defined as the inability to perform any of the duties of one's occupation.

**Trust agreement:** A supplemental settlement agreement which distributes the proceeds in a special way, much as a regular fiduciary trust does. Insurance companies cannot enter into trust agreements.

**Trustee:** A person appointed to manage the property of another.

**Twisting:** The practice of inducing a policy owner in one company to lapse, forfeit, or surrender a policy for the purpose of taking out a policy in another company. It is a crime in all states and is typically classified as a misdemeanor.

## U

**U.S. Consumer Products Safety Commission (CPSC):** The federal commission charged with protecting the public from unreasonable risks of serious injury or death from the thousands of consumer products under its jurisdiction.

**UL:** Underwriters Laboratories, Inc.

**Umbrella policy:** A liability insurance policy that takes over where basic liability insurance policies leave off. An umbrella policy usually has a liability limit of \$1 million or more, which is added on top of the limit for any other policy, such as a home owners policy that covers liability.

**Underlying limits:** The limits of liability of the policy(ies) underlying an umbrella or excess policy.

**Underwriter:** In short, one who underwrites. An underwriter decides whether to accept or reject applications based on the insurer's written standards, and their own experienced judgment. An agent is often referred to as a "field underwriter.

**Underwriting:** A systematic process for evaluating risks. It involves evaluating, selecting, classifying and rating each risk, and establishing the standards of coverage and amount of protection to be offered to each acceptable risk.

**Unearned premium:** That portion of the premium which has not yet been earned and which is consequently owed to the policyholder if the policy is canceled.

**Unfair trade practices:** Practices that constitute unfair methods of competition or unfair or deceptive acts or practices. They include misrepresentation, twisting, rebating, deceptive or false advertising, inequitable claim settlement, and unfair discrimination.

**Uniform simultaneous death act:** The act which states that, when an insured and beneficiary die at the same time, it is presumed that the former (the insured) survived the latter.

**Universal life:** A life policy that has flexible premiums and death benefits. Premiums are paid into an interest-bearing account from which maintenance fees, if any, and costs of insurance are deducted.

## V

**Valued policy:** A form of policy in which the amount of indemnity to be paid in case of loss is fixed by the terms of the policy itself and does not depend on adjustment. This should not be confused with a stated value policy.

**Variable annuity:** Similar to a traditional fixed annuity. Retirement payments will be made periodically to the annuitants, usually over the remaining years of their lives. Under the variable annuity, there is no guarantee of the dollar amount of the payments. Payments will fluctuate up and down in accordance with the value of an account invested primarily in common stocks.

**Variable life insurance:** A policy in which the death benefit and cash surrender values vary according to the investment experience of a separate investment account.

**Verdict:** The jury's final decision of innocence or guilt.

**Viatical settlement:** A settlement that enables a person facing terminal illness to sell a life insurance policy for cash to a third party (i.e., a viatical settlement company), who then becomes the beneficiary of the policy upon the death of the policyholder.

## W

**Waiver of premium provision:** A provision in a life insurance policy wherein the coverage continues without further premium payments (premiums coming due are waived) if the insured becomes disabled as defined in the policy.

**Waiver:** The voluntary surrender of a known right.

**Whole life:** A traditional type of life policy (not universal or variable) which provides coverage for the "whole life" of the insured, rather than for a specific term period. The proceeds are paid at the insured's death or at the age specified in the policy, usually age 100 or more, when the insured survives that long.

**Wrongful Death:** This type of personal injury claim can be filed, when negligence (common or gross) has been determined to have contributed to the loss of a loved one. A wrongful death claim can also be filed against individuals arrested in connection with a murder, once their criminal trials have concluded.