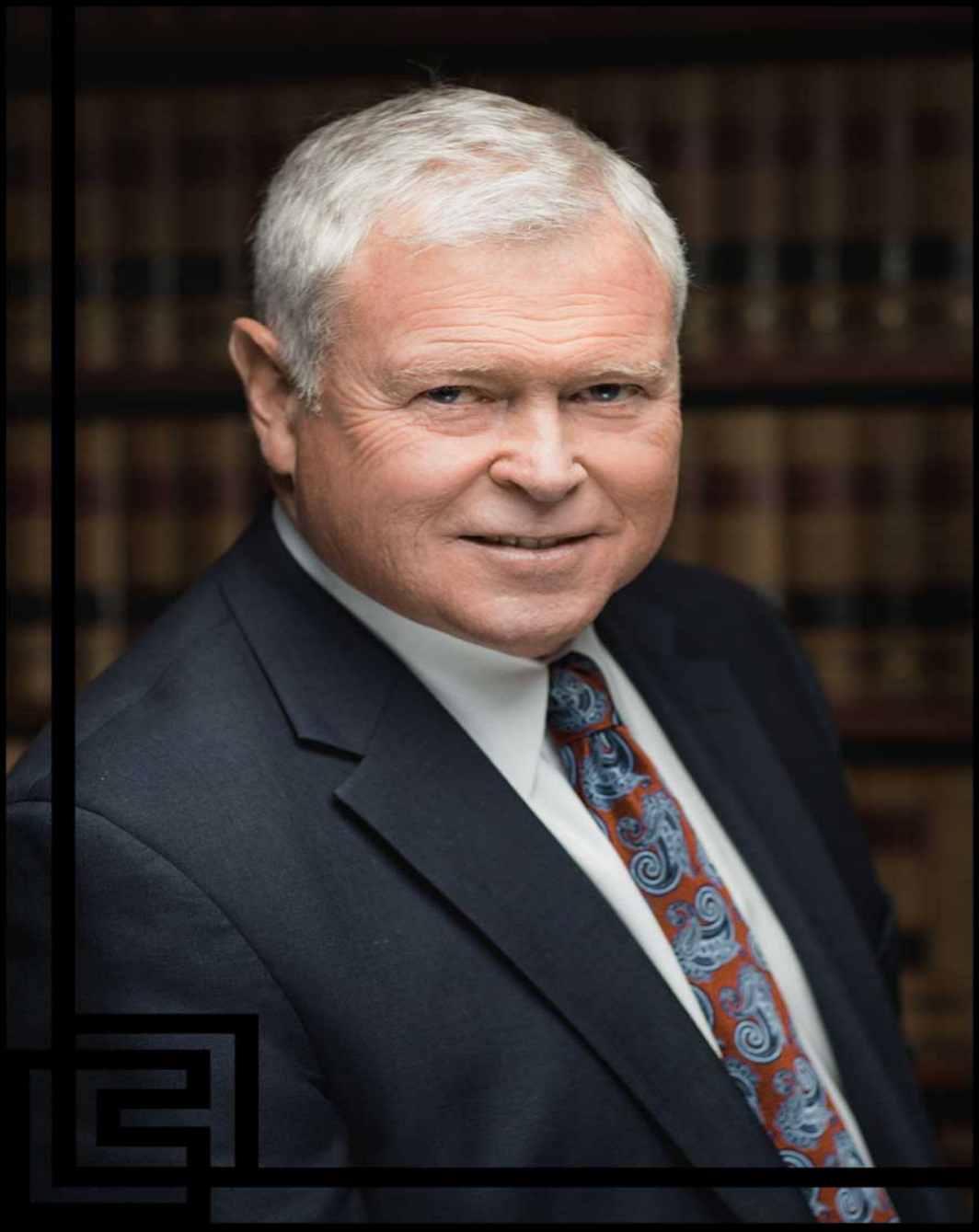
TALK TO MY LAWYER...

Answers to your frequently asked questions



Robert E. Cartwright Jr., Esq.

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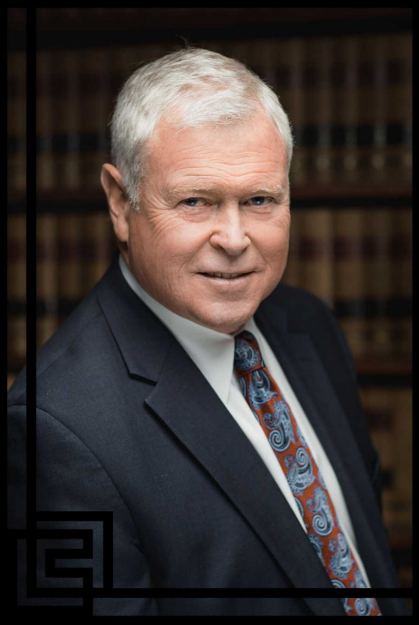

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About the Author

Admitted to practice in California in 1982, Rob Cartwright is the senior Partner of the Cartwright Law Firm, Inc. in San Francisco, with additional offices in Discovery Bay/Brentwood, Santa Rosa and Vacaville California. Mr. Cartwright has served as President of the Western Trial Lawyers Association, the California Trial Lawyers Association (now the Consumer Attorneys of California), the San Francisco Trial Lawyers Association and other bar associations. He is one of the longest serving members of the Board of Governors of the American Association for Justice. He currently also serves as the Honorary Consul General of Iceland.

Mr. Cartwright has been chosen as a finalist for trial lawyer of the year nationally, statewide and locally in San Francisco for his work in various Product liability and negligence cases where outstanding results were achieved at trial, including a case that resulted in a nationwide recall and safety retrofit of a dangerous product.

Mr. Cartwright was chosen as one of the top ten personal injury attorney's in California by Attorney and Practice Magazine for 2020 and has been selected as the Attorney of the Year for California for 2020 by Business and Professionals Top 100 Registry.

Mr. Cartwright has been an invited lecturer throughout the United States to speak on matters of trial practice and has written extensively on these topics. He is the Education Chair for the Western Trial Lawyers Association seminars where the nation's top attorneys gather to learn the latest in trial technique and persuasion.

Rob lives in the Bay Area with his wife of 32 years and their Siberian Husky. He is very proud of his wonderful son Bob who lives in Wyoming.

While Rob's primary interest is in helping his clients in their search for justice, he enjoys walking, hiking, skiing, water sports and reading. He is a former race car driver, marathoner and triathlete.

For Lois, Bob and Emilie, Mom and Dad

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

7th Amendment to the Constitution of United States of America 1789 (rev. 1992)

The Glory of justice and the majesty of law are created not just by the Constitution – nor by the courts – nor by the officers of the law – nor by the lawyers – but by the men and woman who constitute our society – who are the protectors of the law as they are themselves protected by the law.

Robert Kennedy

Peace is more important than all justice: and peace was not made for the sake of justice, but justice for the sake of peace.

Martin Luther

I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.

Thomas Jefferson

In suits at common law, ***trial*** *by* ***jury*** *in civil cases is essential to secure the liberty of the people as any one of the pre-existent* ***rights*** *of nature.*

James Madison, 1789.

Representative government and trial by jury are the heart and lungs of liberty.

John Adams, 1774

A jury consists of 12 persons chosen to decide who has the better lawyer.

Robert Frost

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2nd Edition

Talk to My Lawyer…

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The Cartwright Law Firm, Inc.

www.cartwrightlaw.com

415 433 0444

Chapter One: *Introduction*

After more than three and a half decades of practicing law, there are certain questions that I hear over and over again from potential clients, existing clients, or just people I meet at cocktail parties. I thought it might be helpful to compile these questions into a booklet along with answers I commonly give. For example, when the other side's investigator calls asking for you to give them a statement about what happened, tell them to "**Talk to My Lawyer"!**

Obviously, each particular case is different, and nothing set forth below constitutes any legal advice applicable to your particular issue. It is my hope, however, that these answers will be helpful to anyone who is wondering how a tort lawsuit progresses and how their case will be evaluated and handled should they ever be involved in one. This book can be read cover to cover, or simply go to the chapter that addresses your question. Enjoy!

Chapter Two: *What Should I Do if I Have Been Involved in an Accident?*

If you are reading this book you may have been injured and have questions about how to proceed. If I had the chance to advise you before the accident, I would obviously tell you to do your best to avoid it. If I were able to advise you from the moment the accident happened, there are several things I would advise you to do.

Call for an ambulance if necessary. People often don't realize how seriously they are injured after an accident. In fact, they're often happy to be alive and still have most or all of their body parts still attached. The extreme spike of adrenaline can mask any immediate symptoms of pain, even with very serious injuries. There is often unrecognized shock associated with an accident as well. All of this can lead to confusion and inability to take proper steps to care for yourself and to document the facts and the injuries at the scene of the accident.

As lawyers we look back at what happened and dissect all the details. If someone didn't complain of pain at the scene, it is often argued that, "Well, it couldn't have been a very serious injury." Not true.

If an ambulance wasn't taken often the same argument is made, "If it was a serious injury, they would have taken an ambulance." Again, not true.

In some cases injuries are obvious. Death, dismemberment, and burns are obvious, but for the majority of accidents there are hidden injuries that do not become immediately apparent. These can be serious and life changing injuries that go unrecognized in the immediate aftermath of a collision. The most important thing after an accident is to make sure as many things are documented as possible.

If the police have been called there will be statements taken, perhaps photographs taken, measurements will be made, and a report prepared. A report will not be prepared unless there is some report of injury at the scene. Reports are not usually prepared for non-injury accidents. It is therefore important to be very careful what you say to an officer when asked “Are you injured?” or “Do you need an ambulance?"

Many people, who want to appear stoic, will say, "I think I'm okay." This allows the police officer to fold up his pad and go away.

If a report has been taken and an ambulance called, there will be some documentation which will be helpful to your case. If not, submit your own report after the accident.

If no police arrive at the scene and no emergency personnel are called, it is important to gather all other necessary information yourself. Exchange driver’s license information with the other driver. Take a photograph of the defendant’s vehicle, driver’s license, insurance card, vehicle registration, and license plate. Also photograph all occupants of the vehicles, vehicles at the scene, the general layout of the scene, and in particular any damage done to any vehicles. Lastly, make sure to take a photograph of any debris at the scene, or physical injuries that are visible.

Document immediately afterwards any conversation you had with the other party where any admission of fault was made. Document the identity of any other witnesses or passersby who said they saw something. Get their name, number, address and email if possible. Make notes afterwards as to what they told you.

If the injury or accident was from a dangerous condition such as water spilled on a floor, a crack in a sidewalk, a pothole, et cetera, take photos of it, document it and gather the same witness information as above.

The police often make mistakes in reports, leave out crucial details, leave out witness information and reach wrong or improper conclusions regarding fault. In other words, the reports are unreliable. We need to take a fresh look at every case and verify all facts and conclusions.

Since you are probably reading this after the incident has already happened, we just have to do the best we can with whatever information you have. We often send out an investigator to try to get this information after the fact.

How do I document my case?

Photograph or video the scene, the conditions, the vehicles and any injuries. While it's still fresh in your memory, write down any statements made at the scene, and the name and phone number of anyone who may be a witness. Take photographs of your injuries every few days as they heal.

Notes:

Chapter Three: *Talk to My Lawyer.*

If you have been involved in an incident, you will typically be contacted soon after by a representative of another party's insurance company, or their attorney. It is important that you do not give any statements to anyone about the case without having spoken first to an attorney. Things you say may seem fairly innocent but can come back to hurt you later. If you have retained an attorney, obviously you need to tell the insurance person that you are represented and that they should **"Talk to My Lawyer!"**. If you are not yet represented, simply tell them you are not comfortable yet speaking with them and that you will be happy to do so in the future. It is best to then consult with an attorney immediately before speaking with any representative associated with the wrongdoer.

If your own insurance company calls you, for example, to discuss repair of your car or payment of your medical bills, it is important that you cooperate with them. Be careful what you say, of course, as everything is likely being recorded. Things that are commonplace such as responding to a question, "How are you today?" with a response, "I'm fine." when played back later at a jury trial can be troubling. In fact you were not fine at that time and were at home in bed with a broken leg. It is generally best if you <u>let your lawyer do your speaking for you</u> throughout the process.

You also need to remember that anything you say to anyone, including a doctor, a friend, a relative, a co- worker, can become evidence in the future. So be careful what you say to anyone regarding how an accident happened, or how your injuries are progressing. People in the many circles of your life are potential witnesses to your injuries and damages. Feel free to talk to your lawyer. But be careful what you say to everyone else. Tell everyone else to **"Talk to My Lawyer!".**

Chapter Four: *Be Truthful with Your Lawyer.*

Everything you say to your lawyer is privileged and confidential. Your lawyer will not only need to know all of the good facts about the case, but even more importantly all of the bad facts, as all of the warts and wrinkles must be thoroughly explored. There are no perfect cases any more than there are any perfect people. People bring all kinds of things to a lawsuit and it is important for the lawyer to know everything so that he or she can deal with the problem appropriately. In the past three and a half decades, there is no problem we have not faced in a case. *We know how to handle any problem as long as we know about it.* The only problems we can't handle are the ones that we don't know about, or that come as a surprise.

It is always disappointing when we find out a client has concealed some issue or problem when we are well into the case. Often it is something that we could have dealt with head on, but by the time we find out it is too late and has already sabotaged and destroyed the case, and the client's credibility. The case is only as good as the truth. The truth of the case will always win out. You cannot make a case better by being untruthful, you can only ultimately hurt the case.

Notes:

Chapter Five: *How do I Know if I Have a Case?*

How do you know if you have a case? You don't. Talk to a lawyer. We can help you evaluate whether you have a case and how strong your case is based on many criteria, but **six** in particular. These are the **plaintiff**, the **defendant**, **liability**, **causation**, **damages**, and **collectability**. Let's discuss each.

1. The Plaintiff

That's you, the injured person who brings a claim against another. We know that cases are evaluated by our opponents based on how they perceive you as the plaintiff. While not every case will go to trial, every case is evaluated as though it might go to trial. The defense lawyers and their insurance company will investigate you as a person and evaluate you as a witness in order to make an assessment of how you might come across to a jury of your peers. We know that some people come across well, and some don't, and this is based on many factors. When you meet someone at a party you might say, "Gee, I like that person, but I'm not sure why?" or, "I don't like that person, but I can't put my finger on it."

These intangibles are hard to evaluate, and unfortunately in light of what social scientists understand to be subconscious prejudices that we know many jurors have but will not admit. These come under broad categories such as your age, whether you are attractive or unattractive, have good hygiene, etc., are someone who is trying to do the best that you can with your life, in other words, are you someone who has made the best of what you have? Have you worked hard, are you motivated, are you honest, do you try your best to accomplish what you can with what you've been given?

Conversely, are you someone who thinks that they are entitled to something for nothing, that life owes you something, that you are a victim and everyone is out to get you, that you want your piece of the pie from the

American tort lottery system that the courts have become, do you think that you can make a relatively minor injury accident into your gravy train for life. Do you have a criminal record, a lot of prior injuries and accidents or lawsuits, are you a generally mean, abrasive person, or are you kind, generous and likable?

All these many intangibles go into the mix of how we look at a particular plaintiff. After many decades of experience, we can tell who is going to be a likable and articulate plaintiff, versus the plaintiff that we are going to have to do a lot of work with in order to make them presentable. This is a huge factor in the value of your case. In other words, two people with the same injury could be evaluated very differently and receive damages from a jury in vastly differing amounts.

2. The Defendant

The defendant is the person, persons or entities that cause your injury. It could be another driver, a product manufacturer, or someone who has maintained a dangerous condition, et cetera. The defendant is the one or ones that we sue.

Were you hit by a elderly nun on her way to take care of the sick and dying or to feed the poor, or were you hit by an ExxonMobil tanker truck, whose driver was speeding through a red light because he was late for a delivery after having stopped over for too long for a couple of beers at lunch, at his favorite watering hole. The value of the case varies tremendously depending upon what type of defendant you are suing. Some defendants will be very sympathetic, like a mom taking her kids to school. Other defendants are not likable or are perceived to be a faceless entity with such deep pockets that nobody is afraid to award money against them if the case should go to trial.

At trial, jurors are never told about the amount of insurance that is available. Accordingly, cases where defendants will be perceived to have deep pockets are cases that will likely result in a bigger verdict for the plaintiff.

With corporate defendants it can get quite complicated in unraveling what entities are actually involved in the case and what their role was. This can significantly increase the expense and time to be expended in the case, all of which must go into the evaluation of your case. Some cases will be so complicated and expensive to prosecute that lawyers will turn them down even where you may have a legitimate injury and claim. Unfortunately, the case would be more expensive to prosecute than the case is worth. *In short, the type and number of defendants in a case will have a lot to do with the value of your case, and whether or not an attorney wants to prosecute it.*

3. Liability

Liability means responsibility. In other words, who is at fault in the accident, and who is therefore responsible, or "liable" for the damages caused. In every case, plaintiff must prove liability, or legal fault, against the other party. Various legal standards are set forth in the law for different types of cases. Most of these standards boil down to the breach of some sort of duty owed. In other words, each of us owes a duty to others to be reasonably careful in our actions so as not to cause harm to others. If we fail to exercise due care, and cause harm to others, we are held responsible.

There may be more than one cause, or multiple causes, for a particular injury. After being presented with the facts of a case, we at The Cartwright Law Firm, have to carefully evaluate liability in each case, and identify all potential defendants and sources of recovery for the plaintiff. It can be complicated in some cases and fairly straightforward in others.

The potential contribution to the injury by the plaintiff (that's you) must also be evaluated. This means that you may have been partly responsible for causing an accident. This is true whether it is a slip and fall, a dangerous condition, a product liability case, where maybe you were not using the product in exactly the intended way, or in a vehicular case where maybe you were speeding, but the accident was still primarily the other person's fault. This analysis can become complicated and often ultimately requires the use of expert witnesses.

Where expert witnesses will be required, the expense of prosecuting the case goes up exponentially, and accordingly whether or not it is a case a

lawyer wants to pursue will depend upon the severity of injuries and ultimate value of your case. Stated differently, a case of smaller value is not one that a law firm is going to take if the case is going to require the expenditure of tremendous sums on experts and the investment of vast amounts of time on behalf of the law firm.

All of these things can be explained to you in your particular case when you meet with an attorney from The Cartwright Law Firm.

4. Causation

In addition to proving liability, the plaintiff must also show that all of their injuries were actually "caused" by the particular incident. This is sometimes the biggest battle in a case and typically involves the use of experts. The defendants will usually say that the injury was pre-existing, subsequent, or just not caused by the particular incident. All of this must be sorted out by medical experts and treating doctors and can get quite complicated.

We frequently see, for example, that a person who says they're okay at the scene of an accident, goes home, thinks they're going to be okay even though they are in severe pain for a day or two, and eventually check into an emergency room. There they complain that their neck is killing them, but they neglect to mention that they have a severe headache, that their low back also hurts, that their knee hurts, and that they're having other problems. They're simply complaining about the most serious problem at that time. Their neck hurts. Since there is now no documentation of these other complaints in any medical record, for all practical purposes they don't exist.

The argument made by the defense at trial is always that if the injury was serious, the plaintiff (you) would have complained about it and it would have been well documented. Since clients don't go to a doctor for the purpose of trying to document injuries for purposes of a lawsuit, but rather to get treatment for something that's bothering them, it makes the process very difficult for us as attorneys to prove a case.

To the extent that each injury is documented quickly, early in the lawsuit, and with regularity, it is much easier to prove injury and treatment consistent

with the incident in question. As I said previously, there's no perfect case, or perfect client and we do the best we can with what we have. *To the extent that a client can report each and every symptom that they have been having, as soon as possible to a medical provider, and consistently do it each time that they go, these things will be properly documented and provable later.*

5. Damages

The next factor in evaluating your case is called damages. "Damages" is the legal term for the economic and non-economic losses that you incur as a result of the incident. Damages are the losses that flow directly or indirectly from the wrong committed. Courses taught to lawyers on damages extend over many days. I will try to simplify.

You are entitled to your economic loss resulting from an incident.

Economic loss is the out-of-pocket expense actually incurred such as property damage, medical expenses and lost income incurred *in the past, and more likely than not to be incurred in the future*. In some cases loss of earning capacity is alleged where your ability to earn a living in the future is impaired. We use experts to prove future losses, whether they be medical expenses, loss of earnings, or earning capacity.

Non-economic losses (also called general damages) are what lawyers often consider to be the most difficult part of the case, but also the most important part. *Non-economic damages include pain, suffering, emotional distress, shock, outrage, upset*, loss of love, comfort, care, society with our loved ones when they are injured, and *all of the things that make life worth living on a day-to-day basis*. We know that no injury to a human being occurs without injury to that person's ability to feel whole, feel complete, to enjoy their life to the fullest, and to engage in the normal activities they would otherwise have been able to. These losses are intangible and have no standard of measurement under the law. Jurors are given broad discretion to determine what a fair value is for these losses.

There is no yardstick or measuring tool to calculate the value of these types of damages. Each human being is unique, and each case is unique, and

therefore this is where the skill of a particular trial lawyer comes into play, as well as their experience and record of success at trial. It is truly an art form for lawyers who have become adept at developing these elements of damages and presenting them to jurors and achieving verdicts for these types of losses.

This loss is directly proportional to the percentage of fault which can be attributed to the defendant versus you yourself. In other words if your loss is 100, but you are 25% at fault and others are 75% at fault, you'll recover only 75% of the 100. This reduction is called “comparative fault”.

For all these reasons it is important to select a high caliber lawyer to represent you. Many lawyers can do an adequate job in preparing your case. There are only a handful of lawyers in each geographic area that have a proven record of success at trial in recovering damages for pain and suffering. It is relatively straightforward with regard to calculating economic loss, but it is proving the non-economic loss where the talent of the trial lawyer comes in.

During our time together before the conclusion of the case we will spend a lot of time discussing precisely how your life has been changed or altered. We need a complete understanding of what this has meant to you as a human being to properly prepare for trial and present your story to others. As I said, there are multi-day seminars for experienced lawyers to discuss these things in detail, but suffice it to say it is a complex area and the value of your case can vary tremendously depending upon the nature and extent of your particular injury, the permanency of it, how it affects your life and the lives of those around you.

6. Collectability

Last but not least in our case evaluation is the issue of collectability. Over the many years I have been doing this I have seen some horrific cases involving terrible injury or death, where there was absolutely clear liability, but unfortunately, little or no collectability. What is collectability? Collectability is the term I use to describe the issue of whether we ultimately will recover any funds if we are successful in your case.

California requires that each motor vehicle driver have $15,000 in insurance. Unfortunately many drivers still drive uninsured or underinsured. Typically they are uninsured because they have no money and no assets. Therefore, when they cause an accident, and you are injured, there is really nothing to collect from them. They have no money, they have no insurance, and they have no assets.

Fortunately, if you have insurance you have some level of underinsured coverage. In fact, all people have a minimum of $15,000 of underinsured coverage if they in fact have coverage at all. Unfortunately, $15,000 of insurance coverage is really nothing by the time you pay your attorney's fees and costs and recover something for yourself. If it is immediately determined that the only amount of money available is in fact $15,000, many attorneys who are honest will tell you that you can probably do better without an attorney and you can recover most of your money yourself. Some people would still rather have an attorney process that claim even if it costs them several thousand dollars.

If a claim is worth taking by an attorney, and by our firm in particular, it typically has to be worth more than $15,000. We also need to identify that there is in fact more than $15,000 coverage available. Fortunately, most responsible people have coverage in excess of $15,000, and we advise that all people have underinsured covered in an amount for as much as they can afford. Underinsured coverage can be added on to your policy relatively inexpensively and it protects you in the event you are hit by an irresponsible uninsured or underinsured defendant. It is perhaps the most important, but often overlooked, portion of your insurance policy.

Where there are multiple defendants there may be different avenues of recovery. Often we have to become creative at trying to find a “deep pocket” where we can collect additional insurance proceeds for you. We will look to peripherally liable parties such as public entities, other corporate entities and those who may have vicarious liability such as employers, manufacturers, retailers, contractors, et cetera. It can become quite complicated and, again, is an area where lawyers go to class for days on end discussing these issues and learning how to “find the money”.

Finally, clients often think that because a person is wealthy that makes it easy. The fact is that pursuing personal assets against anyone, even a wealthy person is extremely difficult. People will go to extreme lengths to protect their property and make it nearly impossible to collect anything should you get a judgment against them. That is why we always look to insurance first and, if no insurance can be found, sometimes there simply is no case. As with the case I previously described, where there were massive injuries but no insurance, is an example of one of those unfortunate tragedies that we are unable to help you with.

Over the years we have become experts at finding avenues of recovery in very difficult cases. We can discuss this more with you if you choose to meet with us regarding your case.

Notes:

Chapter Six: *Buy Your Own Insurance! Now!*

Hopefully you have purchased underinsured coverage before an accident has happened. If not, it is too late, but it is better late than never as it will be helpful in your next accident. If you are reading this and you have not been in an accident, please check with your insurance agent to see that you have as much underinsured and uninsured coverage as you can afford. If you own a home you can also extend underinsured coverage under your homeowner's umbrella policy.

Chapter Seven: *How Much is My Case Worth?*

Inevitably in almost every initial interview with a potential client the question comes up, "How much is my case worth?" For some reason clients seem to be very anxious to know how much money they're going to get at the outset of the case. My response to them is usually something along the lines of, "If I told you, I'd have to kill you."

Is this because I don't know the value of a case when I hear it? No. The reason I will not tell a client at the outset what the reasonable range of value is because it would be clearly irresponsible to do so based on a single interview with the client. There are an incalculable number of variables that arise during the investigation and prosecution of a case that will ultimately affect the value of a case. My personal evaluation changes from the first interview, through the investigation phase, through depositions, through hearings at court and maneuvering by both sides, by the assignment of the judge, picking of a jury, hearing of witnesses, making of argument and deliberations by the jury, post-trial rulings of a judge, the possibility of an appeal, et cetera. These are just a small sampling of some of the issues affecting value.

There are many lawyers who will throw out a number to a client in their initial interview because they are worried that that client is going to "lawyer shop". In other words they're not confident in their firm's ability to prosecute the case, or they don't have a great reputation, and in order to make sure the client stays with their firm they will be less than honest and give an inflated value of the case. This then creates unrealistic expectations on the part of the client, and disappointment at the end of the case, when those expectations can't be met.

Most cases either get better or get worse after they come into the office. As we locate witnesses, get statements, and collect evidence the facts can change subtly in one direction or the other. Testimony can go well, or not.

Doctors can support your injuries, or not. Experts can be helpful to our case, or not. Opposing counsel can be highly skilled and aggressive, or not. We can be assigned a great trial judge in a great venue, or not. We could luck out and get a great jury panel from which we can pick 12 jurors, or not. The variables are endless and no specific value can ever be placed on a case.

Ultimately the value of the case is going to depend upon what seems fair to you, and what you can live with. By the time we get into any serious settlement discussions with the other side, we will have sufficient information to make a reasoned evaluation of potential range of value in the case for purposes of settlement. If an offer is made, we can then advise you whether or not it makes sense to take it, or whether you should hold out for more. It is your decision, and you decide based upon our advice and your tolerance for risk. Ultimately that could well be what determines the value of the case.

In other words, it will be your, and only your fully informed and reasoned judgement and your willingness to risk it all for what is “behind door number three”. At some point a sum of money will be offered where you will say, "I'll take my chances and go to trial," or you'll say, "Gee, I think I can live with this settlement and I'd rather not risk getting less at trial." That is ultimately what the value of the case is, your tolerance for risk based upon our advice as to the potential outcomes after significant workup of all of the facts and circumstances and documentation of your injuries. We won't know what that is until we get there.

There are no shortcuts in this business and every case is different. A broken leg for one person can be vastly different than the same broken leg for another person. This depends upon the person's age, occupation, income, whether they support others, and many other factors. *If you have met with a lawyer who has given you a value based on a single interview, run, don't walk from that law firm. They are not legitimate.*

Notes:

Chapter Eight: *How do I Select a Law Firm?*

One of the most important decisions you will make in your case is which attorney will represent you. There are a number of very excellent and accomplished attorneys in the United States, and in particular in Northern California. Any one of a dozen or so firms in the Bay Area could probably do an excellent job on your case. Your choice of lawyer will boil down to identifying which of those firms are indeed the highest ranked and most respected firms in the area, and which one will work best for you.

Researching a firm for reputation would require seeing how their peers rank them through publications such as Martindale-Hubbell, whether persons have been elected to positions of honor and authority in various trial bar organizations, whether they belong to the American Board of Trial Advocates (ABOTA) which is limited to only a handful of top level trial advocates in each area, and whether the lawyer has a proven track record of success at trial. Lawyers that have been nominated multiple times for *"Trial Lawyer of the Year"* would fit this particular description. Also, important to consider is the location of the firm, whether it's convenient not only to you, but to where the litigation must be filed, the size and resources of the firm, and their experience with your particular type of case.

After you have narrowed down the potential candidates that are the most qualified, it doesn't hurt to interview with a few firms. Ultimately, you may be spending a few years working with certain individuals, and there are just some people that are easier to work with than others. You might find that you have a connection with one lawyer but not another, one firm but not another, you like the particular approach that a firm takes but not the approach of another. These are ultimately going to be decisions made upon how you feel, rather than through what your research shows.

If you look to the reputation of our firm you will see that The Cartwright Law Firm has always been a leader locally, state-wide and

nationally, and has enjoyed a great reputation for outstanding results and service to our clients for the last fifty years.

Chapter Nine: *How Long Will It Take to Settle My Case?*

This question is one that is very difficult to answer. Some cases settle relatively quickly, and some don't. Perhaps the shortest amount of time in any case might be a few months. Even in the most simple, straightforward case the other side will want detailed documentation of all injuries and losses. It is not good to settle a case within two months if a person has not already recovered from injury.

It is important to document your injuries from your first visit up until the time your doctor releases you from his or her care. For example, you may have been in an accident, had an injury, recovered in two to three weeks and are 100% recovered. However, a more serious injury will take more serious time. you do not want to hastily settle your case without being sure that your injuries have fully resolved.

You have two years in a typical personal injury case to file your lawsuit. You have six months if the defendant is a public entity such as a city, state, or government body, and one year in the event of a medical error and in some other types of cases. Even within this two-year period it may be difficult to settle your case. We at The Cartwright Law Firm will try to work up your case and negotiate with the insurance company or other defendants during this two-year period to see if there is any way to resolve your matter in an amount that makes sense.

While sometimes a case can be settled, oftentimes if we want to receive full value for the case, it becomes necessary to file a lawsuit. Insurance companies often don't take you seriously unless you have filed a lawsuit. At that point they must retain a law firm to represent the defendant and that law firm will take a fresh look at the entire case. It is important for us to have already adequately documented your losses so the defense lawyer can assist the insurance company in setting an adequate reserve on the insurance file. The reserve is the money that the insurance company sets aside to potentially

pay a future claim. If the reserve has been set low from the outset of the case then it will become very difficult to ever settle the case without going to trial.

If a proper reserve has been set, there is a good chance that after filing a lawsuit we will be able to work with opposing counsel to settle a case. Usually, however, after filing a lawsuit the defense lawyers will want to do some "discovery".

Discovery is the phase of the case where the other side gets to exchange information with you. They can ask written questions, demand that you produce documents, request that you make certain admissions, and can take depositions, or oral testimony just as though it was given in court, in order to see what kind of a witness you will make. Often doctors and other witnesses are deposed (give testimony) as well. After this preliminary work is done the defendants may be willing to engage in mediation or an informal meeting to see if the case can be settled. If the case can't be settled at mediation the court will set the case for trial and off we go.

This process can take as little as a year after filing suit, or 10 years or more if there are appeals. It is difficult to predict at the outset how long a particular case will take, but on average a simple personal injury case will take between 18 months and two years. More complicated cases that go into litigation may take longer, and it often depends upon the court's calendar, to determine how long the whole process will take. It is in our interest, as well as yours, to move the case as expeditiously as possible so that you can be financially compensated, and so that we can be paid. *To a large extent the length of the process is out of our control and unpredictable from the outset.*

Notes:

Chapter Ten: *Will I Have to Go to Trial?*

Clients often tell me in the initial interview that they don't want to have to go to trial. Most people are afraid of appearing or speaking in public and the thought of a trial gives them the willies. This is perfectly understandable.

The fact is, to get full value for your case, every case at the Cartwright Firm is prepared as though it may have to go to trial. If you are simply trying to settle a case you're not going to get full value. The way to get full value is to go for it, let the other side know that you are serious, ready, willing and able to take them to the mat and kick them into the dust. If you're not willing to do that, they will see that, and they will pay less than full value. This does not mean that every case goes to trial. In fact, probably more than 97% of cases will settle either long before trial, or by the eve of trial.

The reason so many cases settle is that there is a tremendous amount of pressure from the court to settle each case. By the time we get to trial the case has been thoroughly worked up and very little is unknown about the case from either side. In other words each side is in a position to make a realistic analysis or evaluation of their risk and exposure in the case. If a case was unable to be settled at a private or court settlement conference , called a "mediation", often the court will make a last ditch effort right before trial in assisting the parties to settle the case. *Unfortunately, there are a small percentage of cases where differences can't be resolved, and issues must be determined by a jury.*

If that is the case you have nothing to fear. We will thoroughly prepare you for what lies ahead; you will be prepared for the entire experience, from how you should behave in the courtroom to how you should answer questions on the witness stand, and all other facets of the trial. We will make the experience as painless as possible for you. We do understand your fear of having to be in trial, and we will do everything we can to accommodate you through this process.

Chapter Eleven: *What is the Process of Handling My Case at The Cartwright Law Firm*?

Every case is handled differently, depending upon the type of case and what is required. Every law firm has its own particular approach that they have developed over time which best suits them and their personalities.

Here at The Cartwright Law Firm we have employees who have been here for two or three decades or longer. We have learned over the years to streamline certain processes and have developed a team approach to our cases. Certain lawyers have particular experience in one type of case, and some in another. Part of what I do as the senior partner of the firm is act as a team leader for all cases. If you are represented here at the Cartwright Law Firm I am in some form or another managing your case. We have regular case meetings with a particular attorney assigned to assist me with the prosecution of a case. Regular strategy sessions are had and checklists created for things to do in your case. Follow-up meetings are scheduled to see what has been done, and how well it has worked.

We also have experienced paralegals and staff that assist as part of the team. There are people responsible for calendaring, working with you on your medical issues, gathering data, investigating, doing legal research, and these tasks are set up between different people. You will work with one or more persons over the course of time on different parts of your case. I will personally be there if necessary for important aspects of the case such as mediation, deposition and/or trial. I will be kept abreast of important developments in your case.

The case is worked through several phases. The first is investigation.

During the **investigation phase** we may have our investigator gather information or we may do it ourselves. This may include getting additional statements, photographs, retaining objects, products, or debris, taking

measurements, doing Internet research or anything else that we deem necessary depending upon the particular case. Often there may be security videos of an incident that will only be available for hours, days or weeks that must be retained immediately. We undertake to do so if it is not too late by the time we become involved.

The next phase of the case is the **workup of damages**. During this phase we monitor your medical treatment and recovery and make sure everything is getting documented. We want to know how your job is affected, how your relationships have been impacted, how your activities have been limited and what your treatment looks like now and into the future.

Following this a determination is made as to the **possibility of settlement**. This becomes the **negotiation phase**. If the case is "ripe", meaning it is ready to be evaluated for past and future losses, we will create a package of documents and evidence to present to an insurance company and begin discussions about possible resolution of the matter. Sometimes these discussions are fruitful, and sometimes not. In a more significant case the main purpose of this is simply to have the insurance company set a proper reserve. Often in a more significant matter we must engage in litigation to get full value.

Next comes the **litigation phase**. Litigation occurs once a lawsuit is filed. After being filed it must be served on the defendant or defendants. They then have some time to file an answer or other pleading in response to the lawsuit. Once this happens the case is officially in litigation. Sometimes defendants try to knock the case out with a motion or other legal maneuver. We then have to respond to those legal pleadings appropriately. After this phase comes discovery.

The **discovery phase** of the case is where both sides exchange pleadings (legal documents) which ask the other side to provide certain information, including written answers to written questions, production of documents, request for admissions where we admit or deny certain facts, and depositions, which are the opportunity for each side to get the oral testimony of witnesses and/or parties. A deposition is testimony just as though it were given in court, except that it's done in an informal setting with a court

reporter present and under oath, meaning under the penalty of perjury. This testimony becomes binding and ultimately can be used in court.

The discovery phase is a very important phase of the case and can take from three to six months, or more, depending on the complexity of the case and the number of witnesses. After this phase of the case the expert witness phase begins. However, we may face a dreaded summary judgement motion first.

The **summary Judgement phase** comes next. A Summary Judgement is a motion by one party (usually a defendant) to have the court decide the case before it gets to a jury trial. It is essentially a trial on paper. It is usually brought by the defendants for the purpose of knocking the case out of court short of trial. These are extremely time-consuming legal motions where all of the evidence in the case is presented to the court and the court is asked to determine if there is sufficient evidence to support the plaintiff's case. If there is sufficient evidence we win, and we can proceed to trial. If not, the case is over. We lose.

The **expert witness phase** occurs some months before the first trial date and both sides exchange the identity of who the experts will be. For example your doctors might be declared experts so they can testify as to your injuries. There may be an accident reconstructionist, an economist, a vocational rehabilitation expert, a product liability expert, a premises liability expert where required, et cetera. The identity of these experts is exchanged, and each side has the opportunity to take the deposition and/or get reports from the other side. Oftentimes there is a desire to have mediation before the expert witness phase of the case in order to save the expense of expert discovery.

The **mediation phase** of the case is usually voluntary between the parties and sometimes required by the court. It makes sense oftentimes to mediate after discovery is largely completed but before the expert witness phase begins. That is because each side will already know quite a bit about the other side's case, but will not yet have spent a fortune on experts. The savings can be passed on to you. In order to mediate each side has to agree to a neutral mediator. Once a mediator is selected a date is set and we try to get

all important decision-makers into a room for at least a day. Some mediations last two to three days over a period of months.

The large majority of cases will ultimately settle at mediation. It is a very important process and we prepare very diligently for each mediation. We try to make sure all of the facts have been documented and proven before we get to meditation. We prepare detailed briefs or presentations for persuasion of the decision-makers at mediation.

If we cannot settle at mediation the **case proceeds to trial**. This does not mean that the case will go to trial but the chances are it may. Right before trial the court will typically bring us in for a final opportunity to resolve it short of the actual trial. At this point all expert depositions would have been completed, all other work done and everything is literally ready to go so that we can start picking a jury and trying the case. If the case cannot be settled, trial begins.

A trial can last anywhere from a couple of days to a couple of months depending upon the complexity of the case. We try to move the case as expeditiously as possible but a trial is a very serious, expensive and time-consuming process for all concerned, especially for the jurors who get paid very little and have to take time off work to be there. Accordingly, we do not take going to trial lightly. It is only done in the event a case truly cannot be settled. *It is a very serious matter to use the resources of the state, of the court and of many individual's time to resolve an issue that should be resolved informally. Nonetheless, some cases must be tried.*

I have tried many cases through the course of my career, often in very difficult situations, and have managed to have extremely successful outcomes on behalf of our clients in very challenging cases. This has resulted in me being nominated as a local, state and national finalist for trial lawyer of the year. *There are many lawyers for one reason or another who simply fear going to trial, and/or are not very good at it. It is important to be with a law firm with experienced trial lawyers with a good track record.*

The reason this is important is that defense firms and insurance companies know who those firms are and are willing to pay a premium to settle a case against law firms with a good track record. That's just a fact.

Chapter Twelve: *How Much Time Will I Have to Devote to My Case*?

One of the advantages of hiring a law firm versus handling the case yourself is it is much more time- consuming than one realizes to properly work up and document your case for purposes of settlement or trial. It would be, in fact, very difficult for a layperson to properly do this without making a serious mistake that jeopardizes the value of their case. Oftentimes we have clients that come to us who have tried to handle it themselves but have made mistakes that affected the overall value of their case and prejudiced our ability to get them full value. Even lawyers hire lawyers to represent them in lawsuits. It has been said "he who represents himself has a fool for a client!".

One of the great benefits of hiring an attorney is it does take a tremendous amount of stress off you. You focus on getting well and getting back to your normal life, while we focus on documenting your losses and damages and handling everything for you. Nonetheless, your presence will be required for certain key aspects of the case.

First, after the initial interview we will need to stay in touch with you to see how you are doing in terms of your medical condition and your employment situation. Additionally, if the case cannot be resolved without litigation you will be required to answer certain written questions called interrogatories. We will assist you with these and prepare the bulk of it but we will need some information from you, much of which we can get over the telephone or by email. There also may be a request for certain documents to be produced and you will need to, of course, look through your files to see what you have to document certain losses.

Much of the documentation is for things that we can get independently of you but we may require your assistance. For example, we may need photographs of you from before the accident, videotape and the like, or

names of family and friends that can be supportive witnesses as to how your life has changed.

At some point you may be required to make a court appearance or two, for example if there is a summary judgment motion or some other hearing we may need you there, and we certainly will need you if we are going to have a mediation. This will be a day or more out of your life.

A deposition will require between one and three days of preparation before you testify. Preparation will be in one to two hour increments each time. The deposition itself will likely require a full day of your time by the time you get there, are deposed, and go home, even if the deposition only lasts for a couple of hours.

Obviously if the case goes to trial it could be days or weeks, or potentially months out of your life in a very serious case. These are big commitments and you need to make the decision whether you want to pursue a lawsuit at the outset, because once you are in it, it will be very hard to get out. We will do everything we can to minimize the burden on you and to make this as easy as possible.

Chapter Thirteen: *What is My Role as a Plaintiff in this Case*?

After you have hired The Cartwright Law Firm your main job is to take care of yourself. You need to do all that you can to get well. In fact, you have a legal duty to "mitigate" your damages. This means it is your job to make sure that whatever damage was caused by the accident is not made worse by your actions or inaction.

Accordingly, it is important that you get immediate treatment for any injury that you think you have. After getting treatment it is important to follow all doctors' instructions and get all recommended follow-up treatment. This includes attending all doctor follow-up appointments and all recommended physical therapy.

Why is this important? One of the obvious reasons is that it will help you to get well! Another critical reason is that for purposes of a lawsuit, unless your injury is documented in a medical record, for all practical purposes your injury doesn't exist. The mere fact that you say, "Oh, my back was killing me," means nothing if it's not also reflected in a medical record. It would be argued that “if it was bad enough to be complained of in a lawsuit, it should have been bad enough that you would actually go to a doctor to complain about it as well. If you didn't complain of it to a doctor it couldn't have been that bad and therefore it should not be compensated.”

It is therefore extremely important that each time you go to a doctor you think of all of the injuries that you have from head to toe and that you make sure that every injury that you have at that time is mentioned. When the doctors asks, "How are you doing today?" You should say, "Well, I'm still having problems A, B, C, D, E, F, G". If you neglect to mention D on a particular visit, it will be assumed that you're no longer having that problem, even if you are.

It is the natural tendency when we go to a doctor to only discuss the particular complaint that hurts the most on that particular day. This is a big mistake when you are treating for purposes of documenting your injuries in a legal claim. Each injury must be mentioned on each occasion even if it's not bothering you on that particular day. In other words, "How are you doing?" asks the doctor. "Well, I'm the same as I was last time", or "I'm improved but I'm still having problems with A, B, C, D, E, F, G". The doctor might then ask, "Are you having problems every day?". You might say, "No. C bothers me twice a week, D, once a week, B every other week". The important thing is that there's a documentation of each of these things, so we know that a year from now that the injury was real and existed at that time. We have a written record from a medical professional. If it is not documented, it didn't exist for purposes of the case.

Sometimes we have seen in medical records someone has really bad knee pain which goes away in six months and then for the first time we see a complaint of ankle pain. It's now six months after the accident and the plaintiff says, "Well, my ankle was hurting the whole time, but my knee hurt so bad I never complained about the ankle. After the knee healed my ankle never went away and it still hurts". At this point it becomes very difficult to prove that the ankle was related to the original accident. It never got mentioned because it seemed less important at the time. Remember, every injury is important, and it may become more serious if in fact it becomes permanent.

The only way to document your injuries is through regular medical follow-up and appropriate treatment of your injuries. If you treat too much they're going to complain that you over-treated. If you don't treat enough they're going to complain that you under-treated and you would have been better had you had treatment. There's really no winning these arguments.

The important thing is to use common sense and get all the treatment you need to get well and to fully document all of your losses. You also need to contact us if you have been referred to another doctor or if you have been discharged from care so that we can order your records and properly document your treatment and bills.

It's also important to photograph and/or otherwise document any injuries that you have and to save photographs and other documents that may become important later in trial.

Your job will also be to identify witnesses who can testify as to how you were before the accident, and how your life has been changed now. These would include friends, family, coworkers, et cetera.

We at The Cartwright Law Firm will do all we can to minimize the burden on you during the case, but we will need your help at key junctures in order to work up your injuries and losses. We are always here to answer any question you have.

Chapter Fourteen: *What About* Social Media and *Surveillance*?

Once you have brought a claim you should be aware that you could be seen anywhere at any time, including on social media. You should be sure to set all of your social media accounts to private in order to try and limit this exposure. If you are going to be claiming that you have limitations, such as you can no longer do a particular job or engage in a certain activity, but then are seen on video dancing at a party while chugging a beer, it's not going to look so good. We see this all the time. Defendants will sometimes actually hire investigators to follow you around for days, videotaping you surreptitiously from vans, from hidden cameras and so forth. They will be outside your home often and for example, we've had multiple cases where people say, "Oh, I can't lift or bend anymore and therefore I had to change jobs," and then there's a video of them carrying their garbage out and emptying it themselves, or bending over in their yard and playing with their dog.

I've had cases where people seem to limp into the office every time they meet with me, holding a cane, have attended the deposition that way, and gone to court that way, only to be seen on surveillance video taken by the defendants walking perfectly normally without a cane around the park with their spouse. This obviously has a terrible impact on the case, destroys the plaintiff's credibility, and can totally submarine the value of a case altogether.

The best way to combat this is to be **truthful** about what your problem is and to be **aware** that you could be watched anywhere you go, and even if you're not videotaped, people can be witnesses to your behavior. This is particularly true with social media, which we didn't have a problem with a decade ago. Even if your social media accounts are set to private some people feel compelled to put pictures of themselves and friends doing stupid

things on the Internet. Even if you don't post things other people might. In other words, if you are out and about and doing things that you shouldn't be somebody may be photographing, or filming and they may post it on their social media. We just have no privacy anymore and you need to be aware of it. Whatever you say ultimately must be the truth because believe me the defendants in this day and age will know more about you than you know about yourself.

Therefore, as long as you are always **truthful** about what it is that you can do and cannot do and what you have done and have not done, there will not be a problem. It's only when you get caught lying, or with your pants down, that there will be trouble. This does not mean that you cannot post on social media, it's just that if you testify that your life has been ruined and then you have nothing but happy cheerful photos of you in social situations every week for the next year it makes it a tough case. I'm not suggesting you should post anything untruthful on social media, just be careful what it is that you project to the public as that may ultimately be used as evidence in court against you.

Chapter Fifteen: *Why Should I Choose to Work with The Cartwright Law Firm?*

We recognize that you have many choices in legal representation. I had the tremendous privilege and experience of working with one of the greatest trial lawyers in the United States, and who in fact was the very first inductee into the American Trial Lawyers Hall of Fame for lawyers in this country. His name was Robert. E. Cartwright, Sr., my father.

Around the dinner table growing up I heard stories of cases and trials and as a young man watched my father in court. I began attending legal lectures at the age of 10, and as a result of all this I told my father I never wanted to become a lawyer, because I saw how hard he had to work, and how he seemed to be all-consumed with his passion for the law. I didn't see myself in that role. Little did I know that I was absorbing all of this like a sponge, and while as a young man I explored other avenues such as architecture, being a drummer in a band and other things, I ultimately decided to go to law school, graduating in 1982 and I have never looked back in fact, I can't imagine anything I would rather do!

I have served as President of the San Francisco Barristers Club, the San Francisco Trial Lawyers Association, the California Trial Lawyers Association, the Western Trial Lawyers Association, and I'm one of the longest serving members of the Board of Governors of the American Trial Lawyers Association or what is now called the American Association for Justice. I have served on many other boards and have been privileged to be elected to numerous other positions. In 1996 I was appointed by the country of Iceland to serve as the Honorary Consul General of Iceland for San Francisco and still serve in that capacity.

I've enjoyed many years of success as a trial lawyer and have taught all over the country on various aspects of trial technique and law. I now help run

two seminars a year to teach other lawyers how to process cases to get justice on behalf of their clients and the public.

As I've gotten older, I cannot think of anything I would rather do than practice law and represent you, the client. It's been my great privilege to represent many thousands of clients over the course of my career and obtain justice and make positive changes in society as a trial lawyer.

As president of the California Trial Lawyers Association in 2002, now called the Consumer Attorneys of California, I was successful in spearheading legislation in California to expand the rights of consumers in this State. These new laws included extending the Statute of Limitations from one year to two years, and extending the time to oppose a summary judgement motion from 28 days to 75 days. Both of these changes have benefited injured consumers in California.

The Cartwright Law Firm has enjoyed a national reputation for over 50 years. We have a terrific local and state-wide reputation, and this is an important thing to consider when choosing a law firm. The reputation of a firm is looked at by a defendant's insurance company as well as opposing counsel. There are some firms that insurance companies are not afraid of and there are other firms that they know will take them to the mat and make them pay. They must know that you are ready, willing and able, and have the resources, talent and ability to beat them, and beat them badly at trial. *If they don't fear you, they don't respect you, and they will not pay what they should in order to resolve a case.*

While I've tried to be tough and aggressive in my approach to each case, I'm also very professional and courteous in dealing with opposing counsel and everyone I come into contact with. Integrity is everything. I like to be a gentleman whose word can be trusted and work honestly with all concerned in the case. Through my life experiences, I have developed the care, compassion and concern for my clients and understand how even relatively small injuries can have a big impact on the quality of someone's life.

At one time I was a marathoner and triathlete and through various injuries can no longer engage in those activities. It was psychologically devastating to me at first and helped me to fully understand what it means to have

physical limitations. I can still do most things that I need to do, but having any limitation at all can be devastating. I have dealt with so much tragedy over the last 35 years in the cases I've worked on, that it has given me tremendous insight into how people's lives are broken, destroyed and devastated through loss. Helping people to gain back dignity, respect and a lifestyle that they deserve has become the most important thing to me that I do in my life. It has been extremely satisfying over the past three-and-a-half decades and I hope to continue doing it for as long as I can.

I have assembled a team of top- notch staff and attorneys to assist in the prosecution of each case. Each of us has particular talents and abilities and I try to best utilize the talent of each person on our team to maximum advantage for your benefit. I never cease to be impressed by the quality of young attorneys that come through this office, and how dedicated, hardworking and capable they are. Some of them in fact put me to shame with their ability to quickly research on the Internet and find answers to problems in a matter of minutes or hours that would have taken me days just a few decades ago. It is great to see the passion of these younger lawyers and I am privileged to help fan the flames of their desire to achieve justice on your behalf in each and every case.

We obviously cannot take every case that comes through the door, but we promise to give you a fair evaluation whether that be over the course of a few minutes, hours or days. If your case is one that we believe is viable we will prosecute it to the best of our ability.

You should choose us because we will give you the unvarnished truth. You may not always like to hear it, but we are not going to hype your case or overinflate the value untruthfully just to keep you as a client, only to have you be disappointed later. Your satisfaction at the end of the case is very important to us, and your understanding of how the case resolved and why it resolved is critical to your future peace of mind.

Notes:

Chapter Sixteen: *How Much Private Information Will I Have to Disclose?*

Many clients are concerned about certain issues of their past. Perhaps you have prior arrests, divorces, affairs, money you have taken under the table, perhaps you are not a legal citizen, et cetera. There's literally nothing we have not dealt with; however, you should be advised that once you file a lawsuit, your privacy is waived as to most issues that may be relevant to the lawsuit. For example, if you've been getting paid and not paying taxes, we may not wish to make a loss of earnings claim. If you have been engaging in other immoral or illegal behavior it may in fact come out in some way during the course of the litigation. This does not mean, however, that it will be admissible at trial.

Once litigation is filed defendants have the right to discover just about anything that they want. Fortunately, the court will decide what relevant evidence can be admitted before the jury and therefore much of it can be kept private even though it becomes known during the course of a lawsuit. *It's important that you disclose to your attorney at your initial interview any issues which you believe might become of concern to you regarding anything that is embarrassing or private or confidential.*

The attorney-client privilege will protect any communication in this regard and if we as your attorneys do not know about it and are surprised, it could be devastating to the outcome of your case. If we know about it, we can advise you how we will deal with it, and you will have to make the ultimate decision whether it is worth going forward in the case if the disclosure of this information will be personally devastating to you.

If you fail to disclose something to us that you knew or should have known you should have disclosed, because it could affect the outcome of the case, we are going to have a serious issue. In fact, it is in our contract that we would be able to recover from you all of our costs expended in the case to

date, as well as potentially some reasonable attorney's fees put forth should a client be intentionally untruthful with us in the case. This of course would never happen so long as you are honest with us from the outset.

It has been said “cheaters never prosper”. We know what happens to liars, their “pants catch on fire!”. Your credibility in a case is paramount. If you are caught in a lie, or even a small untruth, the case may be over. A jury may not believe anything else you say.

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Chapter Seventeen: *What if I Have had Previous Lawsuits?*

So long as you disclose to us that you've had previous lawsuits and we are not surprised, it is usually no problem if there has been a previous lawsuit, even if that lawsuit has been for a similar type of injury or condition. The important thing is that we know about it so we know how to deal with it. It is rare to find a person over 30- years-old that hasn't had some prior injuries or accidents. *As long as we disclose prior lawsuits to the other side we can keep those out of evidence unless they're highly relevant*. The same is true of any subsequent lawsuit.

Chapter Eighteen: *What if I Have Previous Injuries?*

It's important that you disclose to us any preexisting injuries. Often people forget that they've complained of back pain to a doctor some years ago. We can forgive that, but it would be tough to forgive that you forgot your broke your back, for example, five years ago and have been treating for the past two years. We will of course ultimately have all your medical records as will the other side going back at least 10 years or more and will be able to examine your records to make sure we don't leave any preexisting injuries out. At some point you will be asked by the other side to list all prior injuries to that body part you are now claiming is injured.

It's important that we be very thorough in disclosing everything because if we leave out an appointment four years ago for the same injury that we forgot about they will claim we were lying and it can be very harmful to your case. It's therefore important to carefully examine your records, and for you to examine your own memory, regarding any previous injury or complaint to any medical practitioner or caregiver regarding any portion of your body that has been complained of prior to the incident, especially if it involves the same body part you are now complaining about.

Preexisting injuries are not harmful to the value of your case in most instances as the law says that the defendant in your case is responsible for aggravation of any preexisting injury.

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Chapter Nineteen: *What if I've had an Injury, After the Date of the One I'm Now Complaining of?*

Injuries that happen after you've filed a lawsuit can be troublesome especially if they involve the same body part. Sometimes this will require us to open a separate claim regarding the new injury if someone else is at fault. If no one else is at fault it can be difficult to prove that your future injury or pain and suffering is 100% related to the original incident, and not partially the result of your subsequent incident. If the subsequent injury is from another accident and you are not at fault we might be able to sue an additional defendant and then combine the cases together and let the two defendants fight it out as to who was responsible for what portion of the injury.

Depending upon the nature of the subsequent injury we may be able to claim that you would not have had the subsequent injury but for the original injury. In other words, the original injury left you in a weakened condition such that you wouldn't have had the subsequent injury, were it not for the preexisting injury which left you in a weakened condition! Just like preexisting injuries, it is important to be truthful about any subsequent injury, so we, as your attorneys, can deal with it head on.

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Chapter Twenty: *What if I've had Criminal Convictions?*

If you have been convicted of a misdemeanor it should not be admissible in evidence. The defendants may however find out about it. Accordingly, it only becomes admissible if you lie about it and then they find out you lied about it. The exception is a felony that has been committed within the last 10 years. If you are convicted of a felony more than 10 years ago it's typically not admissible in trial so long as we don't lie about it. If it was within the last 10 years, it's typically admissible but may or may not be harmful depending on what the crime was and what the total circumstances are. *The important thing is that we know about these things so we can determine how to deal with it and minimize the impact.*

(See **Chapter Four**: *Be truthful with your lawyer*.)

Chapter Twenty-One: *How do I Deal with the Other Side's Insurance Company?*

The best way to deal with the other sides insurance company is to tell them to "**Talk to My Lawyer**!" Once you do that they cannot ask you any further questions and they will have to refer all their questions to us. It is dangerous to deal directly with them as you may inadvertently damage the future value of your case.

Chapter Twenty-Two: *How do I Deal with My Own Insurance Company?*

It is okay to deal with your own insurance company with regard to your property damage claim. We typically cannot get you any more money for your car than your insurance company would offer you and there's no reason to pay an attorney fee in getting your own property damage covered. Additionally, you may have med-pay coverage under your own policy which can cover medical expenses, and they should pay for that without the necessity of dealing with an attorney. They will likely have a right to be reimbursed for both property coverage and med-pay coverage from the third party.

If you're having a particular problem with your property claim or vehicle storage you of course can always call us for help, but these are usually fairly straightforward. Sometimes if you have a collector automobile or something of unusual value we do need to get involved and perhaps even need to get expert opinions regarding full compensation for a vehicle or other property loss.

Notes:

Chapter Twenty-Three: *Why Can't I Settle the Case Myself; Do I Really Need a Lawyer?*

The answer is you might be able to settle the case yourself. We can't guarantee we will always get you a better result than you can do on your own. In fact, for cases of less than $15,000 value, you might actually do better without an attorney. I have seen a few cases during the last 35 years where clients have come to me after having worked on the case for a long time with a settlement offer that was actually very close to what they would get if they'd had an attorney. *[1]

In those cases, the client would have to have done substantial work, not made any serious mistakes, worked up all the documentation, and essentially done a lot of what a lawyer would do. Once in a while an insurance company does offer a reasonable amount to make it a fair settlement for the client.

More often than not, however, I've been presented with cases where clients have fiddled around in their case for a year or more, and done a number of things which have prejudiced the value of their case and made it very difficult to move forward, if not impossible. We've had to turn those cases down. *Those were cases where we certainly would have gotten a much better result for the client had they not jeopardized their case by trying to handle it themselves. It has been said that "Those that represent themselves have a fool for a client."*

Most people just do not want to take the time and have the hassle of representing themselves in their own case, and that's why they hire a law firm. Ultimately the choice is up to you. While we can't guarantee you'll do better hiring an attorney, it is far more likely than not that you will. Even lawyers hire lawyers to represent themselves in a lawsuit.

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[1] In other words, the amount being offered by the insurance company is close to what a client might net after they paid attorney's fees and costs to a firm. For example, if it were a $99,000 value case, and the attorney's fees were $33,000, and the costs were $5,000, (costs are the amount expended out-of-pocket by the law firm to prosecute the case), and the offer made by the insurance company directly to the client without a lawyer was $58,000. In this instance with an attorney they may have settled for $99,000 but would have netted $61,000 after attorney fees and costs. However, they're so close to what they would have netted in the case with a lawyer that you can't tell them they would be better off hiring an attorney. In other words, an attorney might be able to settle the case for $99,000, but by the time the client paid legal fees they would be getting close to the same amount.

Chapter Twenty-Four: *What is a Contingency Fee and How Does it Work?*

The contingency fee has been called the “key to the courthouse” for the common man. There have been many attempts over the years to eliminate the contingency fee and to prohibit people from hiring lawyers on a contingency. This is because the contingency fee allows any citizen to take on the most powerful interests in the land. Corporations and insurance companies do not like that any citizen can get an attorney on a contingency fee. But the average person could not pay the $500 to $2000 an hour that big law firm attorneys get that defend the kind of cases that we bring.

The contingency fee means just that, your lawyer’s fee is "contingent" upon the outcome of the case. In other words, if there's no outcome or zero result, the attorney gets nothing. In addition, firms like ours advance all of the out-of-pocket expenses. These can be substantial. For example, in a small case just getting prepared to file a case could be $3,000 to $5,000 for various filing fees and court fees, records and reports. To try an even moderately substantial case could be easily in excess of $50,000 out-of-pocket and in a more complicated case could well exceed $200,000 in out-of-pocket expense through trial.

These expenses are not fees. These are actual out-of-pocket costs. Law firms take great risk in expending these costs because if they lose the case they get none of that back, nor do they get paid for any of their time. They would have been better off to take the $200,000, put it in the bank and do nothing for a few years.

The contingency is a percentage of what is recovered in a case. Firms vary in how much they charge but the average is between 33 1/3% and 40% of the gross recovery, plus out-of- pocket expenses. In other words, there are fees, plus costs, to be incurred in a case. *Clients sometimes get confused between what is a cost and what is a fee. The fees are for the time and*

resources that the law firm invests in the case and the costs are what are reimbursed for out-of-pocket expenses at the end of the case.

Any client can also offer to pay by the hour instead of paying a contingency fee. In 35 years, I've never had a client opt to pay by the hour. It seems that everyone prefers to pay a percentage rather than an hourly fee. *The other benefit of the contingency fee is it puts me in partnership with you. I am invested in the success of your case. The more successful your case is the better that I can do personally. I want to win, and I want to be paid. It works for both of us.*

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Chapter Twenty-Five: *Are the Attorney's Fees Negotiable?*

The answer is... maybe. The standard attorney's fees charged by the vast majority of reputable law firms is 33 1/3% to 40% depending on various benchmarks in the case. I have seen firms charge 50% and even 55%! There are also firms that will discount attorney's fees substantially. Be wary of such firms. Nearly all reputable firms charge the same percentage. In certain cases, the fees are set either by law or by the court, for example, in the case of an incompetent or a minor. In the case of a minor regardless of what the contract is with the attorney, the court will typically set a fee between 25% and 40% depending upon the particular case. The standard is 25% unless substantial work was done and/or the case required particular skill, involved particular risk or had to go to trial.

The Cartwright Law Firm's contract provides for a 33 1/3% attorney fee if the case can be settled before it goes into litigation, or in other words up until we have to file a lawsuit. We have up to two years to file in most cases and will make every effort to settle if we can.

Our fee goes to 40% after litigation is commenced, because substantially more resources have to be invested in a case, as well as time and financial risk, if it cannot be settled before litigation. When we initially sign you up as a client, we never know if your case will settle fairly quickly, or take five or 10 years. Each case seems to take its own course and there may be many twists and turns that are unpredictable. Unfortunately that's the nature of the contingency fee practice. We spread the risk among many cases.

We take risk on virtually every case. Sometimes we do well in a case and sometimes, though we do well for the client, the firm itself loses money, given the investment of time and resources required to obtain the result. Our time is our only resource and it is our money. We have to pay rent, salaries, insurance and case costs, all of which is extraordinarily expensive, and would calculate out to over $900 per hour if we were charging you on an

hourly basis. This is because we have an entire team of people working for you and we devote significant financial resources to each case, because *in each case we must win your case or we do not get paid.*

An attorney on the defense side of the case is charging by the hour. They can put as many hours in as they want, and in fact lawyers on the other side like to bill as many hours as they can so they can make more money. This creates more work for us, for which we are not getting paid, unless we win. *We risk everything in each case. If we lose, we lose not only all time invested in the case, but also all of our out-of-pocket expenses, which depending on the case, can be in the tens or even hundreds of thousands of dollars.*

Contingency fees have allowed regular people like you and me to hire the best lawyers in the land to represent them in their case. The average person, even someone making a six-figure income, could not afford a top-notch lawyer in a typical case. That is the beauty of the contingent fee. It allows you to hire the most accomplished lawyer to represent you and to take on the biggest and most powerful entities in the land, whether they be insurance companies, manufacturers of defective products or huge corporations, or even the US Government. It gives the average person the big stick to have some equal power in the United States against the most powerful corporate and governmental interests there are.

The answer is yes you can negotiate your attorney's fees. Often in a particular case I will offer to reduce fees if it seems like a fairly straightforward matter and there is sufficient money involved in the case that we know we will be paid. Unfortunately, we often do not know that until we are well into the case.

There's no doubt that you can always find a law firm that charges less than the next firm. The question you will have to ask yourself is whether you want to pay a discounted fee, on a discounted settlement or pay a full fee on a much larger settlement. At the end of the day it matters what you put in your pocket and not what you pay your attorney.

Only the most skilled attorney will be able to get you full value for your case, and that attorney has earned their fee. *That fee is earned not only by*

the hours that have been put into your particular case, but by the years and decades building their reputation, gaining trial experience and achieving success at trial. The same qualities that allow you to get the result that you desire in your case. You are paying a premium to that attorney for that reputation. Discount attorneys are not going to get you the same result.

Nonetheless, we will consider discounting our fees in certain cases, usually after learning more about the case and having worked on it for some time. Our goal is to have a very satisfied client at the end of the process and all factors are considered at the conclusion of each case.

Notes:

Chapter Twenty-Six: *What are "Costs" in a Case and How are They Handled?*

Case “costs” are what the law firm expends out-of-pocket for things like investigation, consultants, filing fees, document production, expert witnesses, deposition and transcript expenses, jury fees, et cetera. An accounting is kept of all of the out-of- pocket expenses which can in some cases be substantial. Our firm advances all of these costs and takes all of the risk associated with them. If we are unable to make a recovery for you, we charge you nothing for either our fees or our out-of-pocket expenses.

If we do make a recovery, we take a percentage for our time, and we are also reimbursed all of or out-of-pocket expenses. We do our best to carefully determine what we need to spend money on and do not needlessly spend money on things that we think will not be helpful to your case.

However, we will not hesitate to spend money if we think it will potentially advance your cause or enhance the value of your case. Costs can range from a few thousand dollars to many hundreds of thousands depending on the case. We have to make a smart decision, at all intersections of the case, to determine what more needs to be done and how much more we should spend, or not. These are important judgment calls and some firms tend to overspend on your case, which ultimately comes out of your pocket. While they might get a bigger overall settlement in a case as a result of what they spend, you actually get less in your pocket. We do try to use our best judgment and I've been very successful in doing so in the past.

Notes:

Chapter Twenty-Seven: *Is there Any Financial Risk to Me in Bringing a Case?*

There is financial risk to you in bringing a case but it is very remote. While we don't charge you for our fees or costs if we lose a case, if we actually go to trial and lose, or we lose at summary judgment, the court can sometimes award costs to the winning party, meaning the other side. The defendants can then produce a cost bill for all of their out-of-pocket expenses which could be very substantial in some cases. In my three- and-a-half decades of practice, thus far no defendant has successfully collected costs against any of my clients, but the risk is always there that should we lose a case at trial, a defendant would have an order to recover costs, and they may aggressively pursue you for potentially tens of thousands of dollars or more in out-of-pocket expenses.

We will of course always explain all risks to you as the case progresses forward and keep you informed. This risk is remote but it's important that you know that it is there.

Notes:

Chapter Twenty-Eight: *Are there Time Limits Within Which I Must File My Case?*

Yes. Various time limits referred to as the "statute of limitations" apply in different types of cases. For example, in a case against any public entity, such as a city, county or the state, you must properly file your claim within six months. For cases against professionals, such as a case involving medical negligence, a 90-day letter is required, and the case must be filed within one year. For most other personal injury actions the statute of limitations is two years. (As president of the Consumer Attorneys of California in 2002, I successfully extended the statute of limitations for Personal Injury actions from one year to two years. This was signed into law by Governor Davis and became effective in January of 2003.) These are just some examples and it depends on the case.

Failure to file your case within the statutory period will result in you being **forever** barred from bringing your claim. *That is why it is important to not delay in "talking to your lawyer" as soon as possible.* The earlier you speak to an attorney the better as the attorney can begin investigating your case while evidence is still fresh and can advise you regarding how to proceed and how to document your losses.

Notes:

Chapter Twenty-Nine: *Will I Have a Right to a Jury Trial?*

Will your case be heard before a jury of your peers? It depends. The answer is... maybe.

Under the 7th Amendment of our Constitution of the United States, contained within the Bill of rights, the right to a jury trial in a civil case where the damages exceed twenty-five dollars is guaranteed. While this is one of the most important rights in protecting our freedom as American citizens, perhaps second only to the right to vote, it has been under attack for many years and unfortunately has been limited.

It has been limited by politicians and judges who are politically appointed for the purpose of protecting corporations and special interests so that they may not be held responsible for the harm that they cause. We see this in the form of limits on damages, such as the $250,000 cap on non-economic loss in medical malpractice cases. We see it in protections for drug manufacturers where something called the "learned intermediary doctrine" applies, which can serve to insulate a company from liability. We see it in a number of other legal protections and immunities that have been granted to various industries that pollute, that harm, that maim, and kill our citizens.

And most insidious of all, has been the move toward binding arbitration agreements in the small print of nearly every contract. When you buy a phone, buy a home, hire a contractor, and in so many contexts that we could not list them all here, you waive your right to a jury trial by signing an arbitration clause in the contract, or by clicking “I agree” on the “terms and conditions” section of a webpage. This means that an arbitrator, usually a former retired judge or attorney, will be selected to judge the case, and the result will be final and binding, and not subject to appeal. Unfortunately, we know arbitrators typically favor the defendant in most cases or will work to hold the amount of damages to a very low number if possible.

We at The Cartwright Law Firm do what we can to fight these arbitration agreements in order that you may get your day in court before a jury of your peers.

The juror is the ultimate protector of our freedoms, the sentinel that stands between the common man, and the tyranny of absolute power. Jurors hold corporations accountable, they hold the government accountable, they provide justice to individuals and make our society a safer place. They ultimately wield more power than the individual voter in an election. Jurors change the way that corporations and governments do things to make society a better and safer place for all of us.

Perhaps you have seen the lady of justice (depicted on the back cover of this book), who stands holding the scales of justice in her left hand, blindfolded, and a sword in her right hand. She is symbolic of the role of the juror in society. The scales represent the duty of each juror to weigh the evidence in the case. In a civil case the scales must tip in favor of you, the plaintiff, in order to prevail. The blindfold represents the juror's duty to fairly judge the evidence free from all bias and prejudice. The sword in her right hand represents her duty, and more importantly her power, to dispense justice in a case. It is a truly awesome power that the jury has in our system of justice.

While it's unlikely, from a statistical averages standpoint, that you will actually have to try your case before a jury, the fact that you are able to go before a jury, is what allows the case to be settled, as wrongdoing defendants don't want to be held accountable before 12 average citizens who will be in judgment of all of the facts of the case. Wrongdoers fear a jury, they fear the point of the sword, they fear the "sting of the shilling", and it is the right to a jury trial which allows us to achieve justice on your behalf, even if we don't actually have to try your case.

Chapter Thirty: *Summation*

The foregoing have been many of the common questions that clients have asked over the past three-and-a- half decades I have been in practice. I have answered these questions many times and thought it might be helpful to put them all in a booklet for you as a potential or existing client to review at your leisure. I hope that we have answered many of your questions, and if not please feel free to contact our office with any further questions or comments.

Remember, when in doubt; tell them to **"Talk to My Lawyer..."**

We at The Cartwright Law Firm remain committed to achieving justice on behalf of each and every one of our clients for the betterment of your life, and of society in general. Without justice, there can be no peace. May you find both.

Notes:

Acknowledgements

Thank you to my wife, and to my son, Bob, who has revealed to me the miracle of the circle of life and the meaning of everything important.

Thank you to my late father Robert E. Cartwright, Sr. who by example taught me the importance of hard work, dedication, honesty, integrity, and instilled in me an appreciation for the beauty of the law, the critical importance of the civil justice system and the right to a jury trial. Although he has now been gone for thirty –two years he is still my hero and inspiration.

Thank you to my mother Dottie, who just passed December 2019, for teaching me how to have fun. She was never afraid of being a little outrageous and bold. When in doubt "go for it!"

Thank you to my wonderful and dedicated staff and Attorneys who day-in and day-out toil in the vineyards of justice on behalf of our deserving clients. I am blessed to have the best team of dedicated professionals anywhere and I am honored to work with them.

Special thanks to Ligia McDonald and Victoria Rungo who have been with me for three decades or more. Ligia runs the show and Vicki makes every case better. They make me look good and I couldn't do it without them. Special thanks to Vicki Rungo, Karla Sanchez, Maurice Fitzgerald, David Yen, and Andrew Ratto for helping me with edits to this book.

Contact us:

The Cartwright Law Firm, Inc.
Serving all of Northern California with Offices in San Francisco, Santa Rosa, Vacaville, and Discovery Bay.

www.cartwrightlaw.com

(415) 433 0444