

**MOTOR VEHICLE COLLISION SUMMARY ADVICE FORM**

TO:

FROM:

NAME: \_\_\_\_\_



LAWYERS

*Catastrophic Injury and Wrongful Death Claims™*

1716 10<sup>th</sup> Avenue S.W.

Calgary, Alberta T3C 0J8

ADDRESS: \_\_\_\_\_

HOME: \_\_\_\_\_

**WALTER W. KUBITZ, Q.C.**

CELL: \_\_\_\_\_

**RYAN P. LEE**

WORK: \_\_\_\_\_

**PETER TRIEU**

DATE OF COLLISION : \_\_\_\_\_

This Summary Advice Form provides general information about your rights resulting from a motor vehicle collision injury or fatality. Because of its general nature, it is not intended to provide legal advice. Specific legal advice about your situation should be sought from one of our lawyers.

1. **NON-RETAINER** – We are not your lawyers unless you and we sign a Contingency Agreement, or we send you a signed Retainer Letter. Unless you formally hire us, we will **not** open a file, or do anything to protect your interests in this matter.
  
2. **TWO YEAR LIMITATION PERIOD** – You must sue within two years of the date of the accident. If you fail to do so, your claim is statute-barred and you will not receive any money from the person or insurer responsible for the collision. **Make a note of this very important date.** For children, this limitation period is suspended until they reach 18 years of age.
  
3. **PRACTICAL STEPS TO TAKE**
  - a. Take photographs or videotape of the vehicle damage, the accident scene and any visible injuries.
  
  - b. Attend upon your family doctor **immediately**, and give him or her regular updates every two or three months until you have either healed or your claim has been resolved. Discuss with your doctor, physiotherapist or chiropractor whether the October 1, 2004 Treatment Protocol regulations apply to your injury. If they do, ensure that your doctor, physiotherapist or chiropractor treats you pursuant to the Protocols, otherwise you may be deemed to have a minor injury.

- c. Focus on function. The best way to avoid the cap on general damages is to keep track of the day to day activities that you have trouble doing. Keep a record of how your injuries impair your ability to work, go to school, or do your normal activities of daily living. Give your doctor a copy of this record as you update it.
- d. **Within 10 business days of the collision**, notify your own auto insurance company that you have been in an injury collision. Obtain and complete benefit application forms from your or your spouse's work health plan, from Blue Cross if applicable, and from your auto insurance company (Section B benefits).
- e. If you are suffering from nightmares, anxiety, stress, impaired memory or concentration, or avoid driving past the accident scene, ask your doctor for a referral to a psychiatrist, psychologist or a neuro-psychologist for an assessment. If you are having problems doing your day to day or work activities, ask for a referral to an occupational therapist.
- f. Do not provide any statements or authorization forms to the insurance adjuster for the person that caused the collision (the Defendants).
- g. If you have symptoms for more than 1 year that interfere with your work, education or activities of normal daily living, retain a lawyer.

#### **4. BENEFITS YOU CAN CLAIM NOW**

You should claim any benefits available to you either through your work or through your own car insurance. These are called "No Fault or Section B" benefits. Please refer to the Addendum for additional details. Speak with your own benefit provider and ask what benefits are available to you (often the benefits provider will not volunteer this information unless you specifically ask).

#### **5. BENEFITS AVAILABLE WHEN YOU SETTLE OR AFTER JUDGMENT**

You can claim for:

- pain and suffering (this may or may not be subject to the cap);
- past and future income loss net of deductions and taxes;
- out of pocket expenses and future treatment expenses;
- loss of ability to do your house or yard work; and
- other losses (please refer to the Addendum).

**6. THE CAP**

The claim for pain and suffering for “minor injuries” was capped at \$4,000.00 for motor vehicle collisions that occurred between October 1, 2004 and December 31, 2006. The cap is adjusted for inflation each year after January 1, 2007. (See below for the amounts for the past five years.)

<u>Effective Year</u>	<u>Minor Injury Amount</u>
2011	\$4,559.00
2012	\$4,641.00
2013	\$4,725.00
2014	\$4,777.00
2015	\$4,892.00
2016	\$4,956.00
2017	\$5,020.00
2018	\$5,080.00

**7. MINOR INJURY REGULATION**

For collisions that occurred after October 1, 2004, your medical team have to determine whether it is a “minor injury” or a “non-minor injury.” If the injury is to something other than muscles, tendons, or ligaments, then it is not a minor injury, and pain and suffering is not capped, but you are entitled to full compensation. If it is an injury to muscles, tendons or ligaments, then unless the injury results in a substantial impairment in your ability to work, pursue an education, or perform your normal activities of daily living, then the pain and suffering may be capped. Remember that the other categories of losses are in addition to this cap. The most important thing you can do is to see your doctor regularly and keep him or her up to date on the restrictions caused by your injury on your pre-collision normal day to day activities (further details are in the Addendum).

**8. RECORDS**

Open a file for yourself. In it, place copies of **all** paperwork including photographs, forms signed by you, all bills, receipts, and invoices, as well as details of the amounts involved, the dates incurred, and the reason for incurring the expense. (This information should be kept on a separate sheet of paper. Do not write on the original document). If you give any documents to anyone, keep a copy for your records. Insurers and the Court usually insist upon receipts being provided for any item claimed.

Track all time that you are off from work.

**9. THIRD PARTY ADJUSTER**

You should deal with your own insurance adjuster, but do not deal with the at fault party's insurance company or adjuster (called the "Section A Third Party Adjuster"). He or she is working for the insurance company of the person that hurt you and will do his or her best to minimize your recovery. If you hire a lawyer, then tell the Third Party Adjuster to deal with your lawyer. If you do not hire a lawyer, then do not deal with the Third Party Adjuster until you are ready to resolve your claim (just remember that there is a two year limitation period). Third Party Adjusters sometimes hire private investigators to conduct video tape surveillance or speak with your friends or neighbours.

**WE ALSO CONFIRM THAT:**

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**KUBITZ & COMPANY**

\_\_\_\_\_  
DATE PER **WALTER W. KUBITZ, Q.C. / RYAN P. LEE /  
PETER TRIEU**

I confirm receipt of a copy of this document on this ____ day of _____, 20__.	
[NAME]	

## ADDENDUM

### 1. BENEFITS AVAILABLE BEFORE SETTLEMENT OR TRIAL

#### A. PRIVATE BENEFITS:

For any collision that occurs after January 26, 2004, the insurance company of the person that caused the accident (the Defendant's insurer) is the payor of last resort. This means that you must first claim any private medical or income loss benefits available to you through your or your spouse's work plan, Blue Cross, Alberta Health Care, Canada Pension Plan, Workers' Compensation Board, Employment Insurance, etc. In addition, you must apply for Section B No Fault Benefits (see below) from your own auto insurance company. [If you were a pedestrian or a cyclist then you apply for Section B benefits from the insurer of the vehicle that struck you.] If you would have qualified for any such benefits, then whether you claim them or not, the Defendant can deduct them from your claim, so it is important to pursue all benefits that you qualify for from other sources.

It is important that you review your benefits booklet and speak with the benefit provider to obtain, complete, and return the application forms as soon as possible, as there are time deadlines to do so. If the time deadlines are missed, you may lose the right to claim those benefits and the Defendant's insurer would be able to deny paying for any such benefits that you could have received.

Kubitz & Company usually does not become involved in applications for or actions to enforce the payment of private benefits, unless you require assistance and a separate retainer arrangement is made. We are always happy to answer any questions or to review the forms before you submit them.

#### B. SECTION B NO-FAULT BENEFITS:

The insurance company of the vehicle that you were in (or the car that struck you if you are a pedestrian or a cyclist) must provide Section B No-Fault benefits. These Section B benefits are paid to top up any private disability benefits (discussed above) or treatment expenses, and cover net medical expenses, funeral expenses, bereavement benefits, housekeeping expenses, and loss of income.

The amount available depends on whether the claim involves a fatality or an injury, and in the case of an injury, whether it is a so called minor injury or a non-minor injury.

**If you have problems obtaining your Section B benefits or have specific questions, call the Section B compliance officer at the Superintendent of Insurance Office at 310-0000, and then (780) 427-8322. It is their job to help you with questions or problems dealing with Section B benefits.**

**C. INSURANCE ADVANCE (*Insurance Act s. 581*):**

The Defendant's insurer can be asked to voluntarily provide an advance against the value of your claim (for example, for treatment costs or for lost income). This is discretionary and is sometimes made.

An application to court can be made under the Fair Practices Regulation, and the court can order an insurer to make an advance if, as a result of your injuries you are "unable to pay for the necessities of life" or the payment is "otherwise appropriate."

**D. MOTOR VEHICLE ACCIDENT CLAIMS FUND:**

If there are no private benefits and if the Section B benefits have been exhausted, or two years have passed since the collision, then an application can be made to the Motor Vehicle Accident Claims Fund for a loan for treatment costs. This is rare.

**2. DAMAGES AVAILABLE AFTER YOU SUE AND YOUR CLAIM SETTLES OR AFTER TRIAL**

The following claims are available from the Defendant's Insurer ("Section A") when your claim settles or after trial:

- a. Pain and Suffering. This amount is based on your injury, on how long it takes for you to heal or plateau, and whether it is permanent. The dollar amount depends on the medical reports received, so it is crucial you update your doctor regularly and follow his or her treatment advice. If you have a minor injury, your pain and suffering is subject to the cap for pain and suffering. Items (b) to (g) are on top of the cap. If you have an injury that falls outside the definition of a minor injury, it is not capped.
- b. Net Past and Future Loss of Income (after deduction of income tax, CPP, EI contributions, private disability benefits and Section B benefits which were paid or payable, whether or not you claimed them). Use a calendar to keep track of any days or hours missed from work because of your injury.
- c. Out of pocket expenses and future treatment expenses.
- d. Loss of ability to do your house or yard work.
- e. Volunteer Services provided by family or friends (such as nursing services). Have them keep a timesheet with details of who did what, what days, and for how long.
- f. Loss of Opportunity (for example, loss of an opportunity to pursue a promotion or better career path).
- g. Your spouse may have a loss of consortium claim (loss of care, guidance, companionship, and sex).

### 3. MINOR INJURY REGULATIONS

For automobile collisions that occur on or after October 1, 2004 the benefits and amounts available to you will depend on whether or not your injury is classified as a minor injury, as a non-minor injury, or as a combination of the two.

**Non-minor injuries and “minor” injuries that result in serious impairment are not subject to the cap on pain and suffering.**

#### 3.a. Non-Minor Injuries Examples

Examples of “non-minor injuries include: brain injuries, injuries to bones, injuries to nerves, injuries to cartilage or disc, injuries to skin, and psychological injuries.

#### 3b. Muscle, Tendons, and Ligaments

For automobile collisions that occur after October 1, 2004, for EACH injury ask; “Is the injury to muscles, tendons, or ligaments?”

- i. If no, then you have a non-minor injury (for examples see Non-Minor Injuries above in paragraph 3(a)), and:
  - A. Your pain and suffering is NOT capped.
  - B. You are entitled to the specified dollar limit treatments (see paragraph 5), with up to \$50,000 worth of treatment if the Section B doctor agrees. (See paragraph 5 below).
- ii. If “yes, then:
  - A. You may have a minor injury and your pain and suffering for that injury may be capped unless it results in long term serious impairment as defined below, or you have a neck WAD 3 or 4 injury. “Chronic pain” is likely not capped.
  - B. You are entitled to 10 or 21 treatments, with up to \$50,000 worth of treatment if the Section B adjuster agrees. (See paragraph 4 below).

#### 3c. Minor Injuries Definition

A **minor injury** is defined as:

- a sprain (including a complete tear) to **tendons or ligaments**;
- a strain to **muscles** (including a complete rupture): or

- a **Whiplash Associated Disorder (WAD) category 1 or 2 that does not result in a “serious impairment”**.

**“Serious impairment” is defined as a substantial inability to perform the essential tasks of your employment, training, education, or the normal activities of daily living, that is not expected to substantially improve.**

**In summary, “focus on function”, and not just your pain, when you report to your medical team.**

Non-minor injuries, or a WAD injury category 3 or 4, are not capped, and get full compensation. (WAD 3 injuries are those that exhibit neurological signs. WAD 4 injuries involve spinal fractures or dislocations. The Superintendent’s Information Bulletin 02/05 defines WAD injuries.)

Minor injuries are subject to the cap for pain and suffering. In addition, you can still claim net past and future loss of income, past and future expenses, loss of housekeeping capacity, loss of opportunity, volunteer services, and loss of consortium.

### **3d. Combination Injuries**

If your injury is a mixture of a minor injury and a non-minor injury, then you would receive the cap amount for pain and suffering for the minor injury, plus full compensation for the non-minor injury. However, if both injuries are each under the cap amount, then the cap would apply as a total for both injuries.

## **4. SECTION B BENEFITS AND TREATMENT FOR PROTOCOL INJURIES**

Depending on the categorization of your “minor” injury (grade WAD 1, 2 or 3), you would be entitled to either 10 or 21 treatment visits, such as physiotherapy, chiropractic, or other adjunct therapy. Thereafter, if the Section B insurer consents, they can pay for more treatments. You can still treat if the Section B insurer cuts you off, but you may have to pay for this treatment yourself depending on a number of factors. Your physiotherapist, chiropractor, or family doctor may send you to an Injury Management Consultant (“IMC”) for advice in the treatment of your injury. You may be entitled to more treatment under the “Protocols”, or after the “Protocols” end after 90 days after the collision (up to \$50,000.00 for up to 2 years). This is a confusing legislation, and specific advice should be sought by calling the Section B compliance officer at the Superintendent of Insurance Office at 310-0000 then (780) 427-8322, or from a lawyer who is experienced in this area.

If you are disabled, you would be entitled to claim up to \$400.00 per week income disability benefits for 104 weeks. If you were unemployed at the time of the accident and are unable to perform any of your household duties, then you can claim \$135.00 per week for housekeeping costs for up to 26 weeks.



If after 90 days from the date of your accident your injury has not resolved, or if before 90 days your doctor requires advice in diagnosing or treating your injury, then your doctor may send you to an Injury Management Consultant for advice on the treatment of your injury. Any treatment after 90 days requires the approval of the Section B insurer before they will pay for it, even if the Injury Management Consultant has recommended it.

If you or the Defendant's insurer disagree about whether your injury is or is not a minor injury, either of you can pay for an assessment by a Certified Medical Examiner ("CME") after 90 days have passed since the accident. The Certified Examiner's opinion about whether or not your injury is, or is not, a minor injury results in a presumption as to whether or not you have a minor injury. The CME is usually sought by insurers, as it tends to favor the Defense. This presumption can be challenged through your own medical experts.

**If, without reasonable excuse, you fail to follow the Treatment Protocols in the Regulation, or if you fail to attend a Certified Medical Examination, or if you fail to answer relevant questions, etc., then your injury will be deemed to be a minor injury.**

**The "Protocols" end after 90 days, and after that you can treat as a "Non-Protocol" injury.**

## **5. SECTION B BENEFITS AND TREATMENT FOR NON-PROTOCOL INJURIES**

If your injury is a non-minor injury (see paragraph 3 above) or if the "protocols" have expired after 90 days, then you are entitled to claim from the Section B insurer all reasonable expenses incurred within 2 years from the date of the accident as a result of your injuries for necessary medical, surgical, chiropractic, dental, hospital, psychological, physical therapy, occupational therapy, massage therapy, acupuncture, professional nursing and ambulance services, and, in addition, for other services and supplies that are, in the opinion of your attending physician and in the opinion of the Insurer's medical advisor, essential for your treatment or rehabilitation, to the limit of \$50,000 per person. However, chiropractic services are capped at \$750.00, massage therapy services are capped at \$250.00, and acupuncture services are capped at \$250.00.

If you are disabled, you would be entitled to claim up to \$400.00 per week income disability benefits for 104 weeks if you were employed at the time of the collision. If you were unemployed at the time of the collision and are unable to perform any of your household duties, then you can claim \$135.00 per week for housekeeping costs for up to 26 weeks.

The Section B insurer has the right to have you assessed by their own doctor after 90 days after the collision as to whether or not, in his or her opinion, you require further

treatment. You should talk to a lawyer before you attend a Section B medical examination.

## **6. PRACTICAL STEPS FOR MINOR INJURY CLAIMS**

If you are fully healed within 90 days, than you can negotiate a settlement with the Third Party Adjuster, or sue the Defendant in Small Claims Court. We would recommend that at a minimum you wait for 12 months after the collision to ensure that you have in fact healed. Remember that you have a maximum of two years to sue.

If after 90 days you are not healed then:

- If there is a dispute as to whether or not your injury is or is not minor, you can request and pay for a Certified Medical Examination (if the Defendant's insurer does not do so). We usually do not recommend this option;
- If your injury is clearly a non-minor injury at the outset, or if the certified examiner determines after 90 days that it is a non-minor injury, then you should retain a lawyer and sue for full recovery; or
- You can wait 1 year, and if the injury continues to impair your work, schooling, or normal activities of daily living, then you should retain a lawyer to prosecute your claim.

We would recommend that while you wait for the determination to be made as to whether your injury is minor or not, you do not deal with the Defendant's Insurance Adjuster, but only with your own Section B adjuster.

If you are caught by the minor injury cap, and if you think that the Minor Injury Regulations are unfair, please contact your member of the Legislative Assembly of Alberta and complain. Your MLA can be contacted through 310-0000.

**The Alberta Government website for the Minor Injury regime is: [www.autoinsurance.gov.ab.ca](http://www.autoinsurance.gov.ab.ca).**

## **7. COLLISION DAMAGE**

If your own vehicle has been damaged or destroyed, and you have collision coverage (called Section C coverage), then your insurance company will pay to repair or replace your vehicle. You must file a "Proof of Loss" document with your insurer no later than 60 days after it has been provided to you. Any claim against your own insurer for Collision coverage must be settled, or a lawsuit commenced, no later than one year from the date of the accident, failing which your claim would be statute-barred, and

you would be unable to affect any recovery thereafter. (In some circumstances this limitation may be two years, but we recommend that you sue within 1 year.) There is also an “appraisal” remedy available, where each party hires an appraiser, who can hire a third appraiser, to try to resolve the issue of the value of the vehicle.

**8. UNDERINSURED MOTORIST PROTECTION “SEF 44”**

If either you or any immediate family members own vehicles, and if you think it is possible that the claim or claims arising from the accident will exceed \$200,000.00, then you should retain a lawyer who will advise your own insurance company of the particulars of this accident, and provide them with such information as they may require. Advising your insurance company NOW will ensure that you preserve any rights that you have, including a right to prejudgment interest. As a general rule, you will need to sue within 2 years of the accident, but there is an exception (talk to your lawyer).

**9. WORKERS' COMPENSATION BOARD (W.C.B.) BENEFITS**

If you were injured during the course of your employment, then you are entitled to Benefits from the Workers' Compensation Board. You have a duty to contact the W.C.B. immediately and advise them of your claim. If you are covered by WCB at the time of your injury, then the WCB owns your claim and you need their consent before you can sue anyone. The WCB will not let you sue anyone that was also covered by WCB at the time of the injury. In that case, your only recovery is from the WCB. The WCB Appeals Advisor is an independent and free service that does a great job in pursuing the WCB for benefits ((403) 517-6220 or [www. appealsadvisor@wcb.ab.ca](mailto:appealsadvisor@wcb.ab.ca)). You usually have to get to the 3 person hearing stage in front of the WCB Appeals Commission before you get a true hearing.

**10. CANADA PENSION PLAN (C.P.P.) BENEFITS**

If you have been permanently disabled, then you and your Dependents may be entitled to Benefits under the Canada Pension Plan. Contact Health and Welfare Canada and determine whether or not you qualify for these Benefits. You will likely have to appeal your matter upward to the hearing phase before you get satisfaction. Kubitz & Company does not become involved in applications for or actions to enforce the payment of these benefits. Applying for and obtaining such benefits is your responsibility.

**11. DISABILITY BENEFITS**

If you are covered by a private health or disability plan, you should apply for these benefits immediately. There are lawyers that focus on long term disability claims that are worth hiring if you have a problem.

12. **DIARY/JOURNAL**

We recommend that you write down in great detail how the collision occurred, who said what, and what happened after the collision. In particular, make a note of your initial injuries. **Thereafter, we suggest that you keep track of any daily activities you have trouble doing, and of any important dates (such as days missed from work etc.).**

REMEMBER - the diary may be reviewed by other people as your claim progresses, and what is not included may become as important as what is included. Be discreet and professional in your entries. Do not make unkind comments about other people nor use profanity. You are likely to be examined on the details of your personal life if you include them in your diary, if the diary is produced at the Questioning. We suggest that you start any diary with the words "To my lawyer".