

TABLE 6

PERSONAL INJURY SCENARIO

1. Henry and his wife Wendy had just finished having dinner at a restaurant in Manchester. As Henry was pulling his car out of the parking lot they were struck by an oncoming pickup truck, driven by Darren. Both vehicles sustained substantial damage. Henry suffered minor injuries. Wendy was taken to the emergency room; she was admitted for observation and treatment and was discharged the next day in good condition. (Including follow-up care, her medical bills total \$27,000; Henry's medical bills total only \$4,000, but he misses several days of work to assist Wendy.) Darren was unhurt.

2. The police appeared promptly at the accident scene and conducted field sobriety tests of Henry and Darren, which both drivers passed. Henry and Wendy both tell the police officer that Henry brought their car to a complete stop and checked in both directions before turning onto the highway ("we never saw him coming"). Darren was issued a citation for speeding; Henry was not cited. A subsequent report by the police accident investigator concluded from the length of the skid marks on the road that Darren's vehicle was travelling at least 53 mph (in a 35 mph zone) before striking Henry's car.

3. Henry contacts Leonard, an old fraternity brother who is now a sole practitioner/criminal defense attorney, to discuss the possibility of bringing a lawsuit against Darren. Leonard agrees to handle the case for a 30% contingency fee. He meets with Henry and Wendy in his office the next day. He explains there is a possible conflict between Wendy and Henry because Henry was driving, but in this case the possibility for conflict is small since it seems clear that Darren was solely responsible for the accident. Leonard asks Henry and Wendy to sign a conflict waiver, which they do. A few weeks later, Leonard files suit against Darren on behalf of Henry and Wendy.

4. Initial discovery reveals that Darren has a single policy of automobile liability insurance with limits of \$50,000 per person and \$100,000 per accident. Hoping to limit expenses, Leonard decides to rely on the police investigative report and does not retain an independent expert. Darren is represented by in-house counsel for his insurer. He discloses an accident reconstruction expert whose report says Darren was driving only 38 mph before the accident. The defense also identifies an eyewitness (not mentioned in the police reports) who will testify that Henry failed to slow down or stop before pulling onto the highway.

5. Leonard promptly calls Henry to discuss this newly received discovery. Henry comes to Leonard's office after work and eventually admits that he momentarily checked his cell phone as his car was approaching the exit of the parking lot. He

insists, however, that he stopped and looked before turning onto the street (just as he and Wendy told the police). Nevertheless, Leonard urges Henry to seek a settlement. Henry calls Leonard back a few days later and says that he and Wendy have discussed the matter and are in agreement to settle the case, provided that Leonard can get at least \$75,000.

6. Leonard calls Darren's attorney and demands the policy limits (\$100,000). Although the insurance company has authorized defense counsel to offer up to \$80,000, defense counsel tells Leonard "the carrier will never pay more than \$75,000." Leonard accepts the offer on behalf of his clients. Unbeknownst to Leonard, the eyewitness identified in the defendant's discovery answers advised defense counsel (before the settlement discussion) that she is having second thoughts about her recollection and no longer wishes to get involved in the case.