January 1, 2011

John Smith
123 First Street
Nowhere, NS B0N 2T0

Dear Mr. Smith:

Re: MVA – January 1, 2011
Claim for Personal Injuries

Further to our recent correspondence, I am pleased to enclose for your records a signed copy of each of your Contingency Fee Agreements.

I would like to take this opportunity to thank you for retaining me to assist you with this matter. I would also like to set out some steps we may need to take in your case which will be of significance to you.

At some point, if it has not already occurred, we may need to start a lawsuit in relation to your claim. Limitation periods (the date by which a lawsuit must be started) vary depending on the type of claim and defendant. However, eventually it may be necessary to start a lawsuit on your case, either to preserve your right to claim or to force the other side to respond. Before that happens, we need to get instructions from you on how you want us to proceed with your case.

First off, I should say that generally I do not like to file lawsuits unless I believe we cannot settle the case with the other side without doing so, or unless we have to in order to meet a limitation deadline. The reason for this is that, as you will see below, there are a number of risks when we start a lawsuit and also, a number of restrictions on us and inconveniences for you which I would prefer to avoid if at all possible. It is usually preferable if we can settle a claim by dealing with the insurer without ever having to start a lawsuit.

Most personal injury actions are started in the Supreme Court. There are basically two different types of claims that can be made – (1) claims over $100,000 and (2) claims under $100,000. The choice depends upon whether the total claim will exceed that threshold. If we decide your case will likely be worth more than that amount, we can start it as a normal action for more than $100,000. If we think it will involve a lesser amount, we can start it as

claim under $100,000. The procedures are streamlined for under $100,000 claims – there are no jury trials (only judge alone), there are fewer and more restricted rights for both sides to investigate and it moves along faster than the over $100,000 action. However, your claim is capped (i.e. limited) to $99,999.99. If we claim the case is worth more than $100,000 and it turns out not to be (i.e. the award is less than that), there is a risk that the judge could penalize you for making the wrong choice. They do that by refusing to award you costs or awarding costs to the other side. As litigation can get quite expensive, the effect of that decision on costs can have a big impact on your claim. So the choice of which type of action to pursue is very important, which is why I am raising it now.

Later on, you will need to carefully consider whether you believe the total of your claim will be more than $100,000. I will give you advice on that as we near the deadline for filing the lawsuit, as the value of the claim can change as time passes. Based on that advice, you will have to decide whether to limit your claim to less than $100,000 or try to secure an award in excess of that figure. Most claims will clearly be for less than $100,000 and some with significant loss of income will be clearly in excess of that figure. It is the ones that are somewhere in between that involve some careful guesswork. I will provide you with my opinion on the strength of the claim and the likelihood of it being in excess of the threshold. You will need to make the final decision on which type of claim to pursue.

Once the lawsuit has been filed we will have to exchange documents with the other side. This has to be done within 45 days of the time the Defence is filed. The other side will send us copies of all relevant documents in their possession that are not privileged and we will do the same. Privileged documents are ones that pass between us as lawyer and client. Other documents (i.e. between you and your doctor, employer, therapist, friends, co-workers etc.) are not generally privileged and are potentially subject to production. So you should be careful about repeating what advice I give you – telling your doctor may turn the communication into a note that has to be produced to the other lawyer.

All relevant documents must be produced to the other side attached to an affidavit that is sworn by you. Relevant documents are ones that relate to the subject matter of the proceeding. You have a duty to seek out and familiarize yourself with all relevant documents and produce copies. I will assist by gathering relevant documents in the hands of such third parties as family doctors, therapists, specialists and hospitals. If there is a claim for loss of income, we will also likely need income tax documentation, which I can also assist in gathering for you. I will, however, need your input on the names of the treating professionals and authorization forms signed by you to allow us to gather the information.

If you are not sure whether a document in your possession or control is relevant, ask me and I will advise you. Do not destroy any potentially relevant documents. If you have lost a document that may be relevant, please let me know. Once we have gathered all the relevant documents together, we will organize them in an affidavit format to send to the other lawyer.

You will have to attend at our office to review and sign the affidavit before a lawyer or commissioner of oaths.

Our Rules also require you to swear a second affidavit relating specifically to electronic documents in your possession or control. The obligations for this are similar to the duties for paper documents. For most personal injury claimants, there may be little or no relevant electronic documents. E-mails are the most common electronic documents. Other electronic information may be found on the internet (e.g. Facebook pages). I will need you to advise me whether you have any such documents that are relevant to your injury claim. Obviously, if you can avoid using electronic media to deal with issues involved in your injury claim, that will simplify the disclosure process. In other words, other than in communication with me (which would be privileged) you should not use e-mail or other electronic media to correspond with others regarding your injuries, losses, condition or claim or anything relating thereto if you can avoid it. If you do, know that it will likely need to be copied and produced in your affidavit at some point.

As you must swear both these affidavits to disclose documents, please ensure that you keep me advised of your current address and contact numbers. There have been occasions when clients have moved or changed their contact information which can make producing the required affidavits within 45 days of the filing of the Defence extremely difficult. If we are not able to meet these deadlines, there could be cost consequences or in some situations, the claim could even be struck out. Accordingly, it is very important that my office be able to reach you when necessary.

I will be in touch in due course. Hopefully, we can avoid having to start a lawsuit in your case and much of the above will not apply to you. However, you should proceed on the basis that a lawsuit may be necessary and keep the above information in mind as we go along. As always, if you have any questions or concerns please do not hesitate to contact me.

Yours truly,