

SIMPLIFIED/ORDINARY PROCEDURE

TO: CLONFERO LAW FIRM

Prior to starting your lawsuit, you must consider whether or not you wish to have the action proceed under the new simplified Rules of Civil Procedure. As of March 11, 1996, the court introduced new Simplified Rules of Procedure for certain actions. In particular, claims of \$50,000.00 or less, exclusive of interest and costs, must proceed under the new Rules.

The new Rules were adopted in order to allow Plaintiffs to proceed through the court process in a less costly and more expeditious manner. As a result, the following changes are noted in comparison to the regular Rules of Civil Procedure: There are no Examinations for Discovery under the new rules. Examinations for Discovery normally take place after the Statement of Claim and Statement of Defence of each party has been filed, and they provide an opportunity for both the Plaintiff and Defendant's counsel to investigate the other party's position. Under the new Simplified Rules, parties will be required to list all persons who might reasonably have knowledge of the matters in issue at the commencement of the action. This will allow parties to contact witnesses prior to trial in order to get a full understanding of the case.

After 60 days from the close of pleadings, under the Simplified Rules a settlement conference is required. At the settlement conference, the solicitors for the parties shall consider the possibility of settlement either by way of a meeting or a telephone call. Under the Simplified Rules, although there is a pre-trial conference before a judge, a Pre-Trial Conference Memorandum is no longer required. Under the ordinary rules, each party is required to file a detailed Pre-Trial Conference Memorandum with the Pre-Trial Judge prior to the Pre-Trial Conference.

As noted above, the court process under the Simplified Procedures is streamlined and substantially reduces the amount of costs each party incurs in bringing the action to trial.

Although the Simplified Rules are mandatory for claims of \$50,000.00 or less, one is provided with the opportunity of opting in and out of the new procedure where the claim exceeds \$50,000.00. When deciding to opt in or to reduce your claim to \$50,000.00 or less, one must seriously consider the cost consequences arising from such decisions. Under the ordinary procedure, costs are normally awarded to the successful party, subject to any offers of settlement made between the two. With the new rules, the following changes have taken place in the awarding of costs: If a Plaintiff makes a claim of \$50,000.00 or more, and elects to proceed under the Ordinary Rules of Civil Procedure, he must ensure that at trial he receives judgment in an amount greater than the \$50,000.00. If the Plaintiff fails to obtain a judgment for an amount greater than \$50,000.00, and the Plaintiff is unable to convince the Trial Judge that it was reasonable to have commenced and continued under the Ordinary Procedure, the Plaintiff will be responsible for the Defendant's entire costs (those costs actually

incurred between the solicitor and client). Therefore, if the matter were to proceed under the Ordinary Rules, and a claim was made for an amount over \$50,000.00, and you were awarded only \$40,000.00, not only would you not be compensated for your own legal costs, but you could also be responsible for the entire costs of the Defendant. These costs could easily wipe out the entire \$40,000.00 award if the matter went through the entire trial process under the Ordinary Rules.

If you elect to proceed under the Simplified Procedures, you may still make a claim in excess of \$50,000.00. However, if the Defendant objects, then you will be forced to make a decision as to whether or not you wish to abandon those amounts in excess of \$25,000.00, or to proceed with the action under the Ordinary Rules, subject to the severe cost consequences mentioned above. If the Defendant does not object to the matter proceeding under the Simplified Rules, than the ordinary costs consequences will result.

At the present time, the nature and extent of your injuries are not fully known and we are not able to provide you with an estimate of the damages that you might be awarded.

AFTER CAREFUL CONSIDERATION, I HEREBY INSTRUCT YOU TO BRING MY ACTION IN (choose *one* of 1, 2, or 3):

1. _____ The Ordinary Procedure (please initial)
2. _____ The Simplified Procedure, limiting the claim to \$50,000 or less (please initial)
3. _____ The Simplified Procedure, claiming in excess of \$50,000. In the event that the defendant objects, however, I instruct you to:
_____ Proceed in the Ordinary Procedure
_____ Proceed in the Simplified Procedure and abandon any claim in excess of \$50,000.

Name: _____ Signature: _____

Date: _____