

**Welcome to the Information Podcast Series brought to you by the
Lerners Injury Law Group.
This podcast has been designed to help answer some questions that
you may have as you make a decision to hire a lawyer.**

Now here is Bill Simpson and Nigel Gilby.

Determining Future Loss of Income

Bill: Well welcome to the second episode of our Lerners Injury Group Podcast. You know Nigel when we go out on speaking opportunities which we do quite a bit of, we almost always take an opportunity to talk to people about something called an umbrella policy or a personal liability umbrella policy which is sometimes known as a PLUP for short. Why do you think it's important to have that and let's use the podcast as an opportunity to give people some helpful advice.

Nigel: Sure. We do go out and speak to a lot of people and we're talking not just people that are injured but we speak to groups of doctors, we speak to groups of healthcare professionals, we speak to different organizations like the Brain Injury Association, Paraplegic Associations and conferences and really it is amazing to me that even people that work in this area all of the time, including lawyers, don't often understand or know that there are benefits that they can get through their insurance company if they know about them and they literally don't know about them. So, an umbrella policy is essentially a policy that covers you, it covers your partner or spouse, it covers any children that live within the household and covers you wherever you go; whether you're out for a walk, whether you're driving your car, or you happen to own a boat, if you're operating your boat or just around your home.

Bill: Well that's where the umbrella policy part comes from, so if you think of it as an umbrella over your head in a rainstorm, and it's following you everywhere to keep you dry, I think what you're describing is the policy works the same way.

Nigel: Right that it basically covers you and covers you wherever you go to keep you dry, like an umbrella, in this case it's to keep you safe from being exposed in the event that something happens and you cause injury to somebody else.

Bill: Now I am a much better golfer than you, but in theory (Nigel: yeah, right... laughter) if you were on the tee block and you hit your drive and caused an injury to the player ahead of you, your umbrella, even in those circumstances, protects you.

Nigel: See they're going to know right away that we're not telling the truth on this show because he said he was a better golfer than me. There's not a hope of that happening and I want you to know right off the bat, but, yes, it's a situation where really it works two ways. It works to protect you in the event that you cause an injury to somebody else whether it's in a car accident, whether somebody slips and falls on your property or whether Bill, with one of his poor golf shots, goes far left and hits another golfer in the head and causes them an injury. It also acts to help you in the event that you're injured by somebody else in a motor vehicle accident and how that works is simply this. If the person that injured you has less insurance than you do and if your injury is greater than the amount of insurance they have, then you are allowed to look to your own insurance company to make up the difference between what their policy limit is and what your policy limit is. So in other words, the person that hit you had a \$1,000,000.00, you had an umbrella policy for \$2,000,000.00, then you would have available to you potentially another \$1,000,000.00 in the event your injury was worth more than \$1,000,000.00 and up to \$2,000,000.00. Now, what's interesting is that because it covers your home and your person and your car, it's not written under your automobile insurance it's actually written under your homeowners insurance and so the cost is really not great considering the additional benefits and coverages that you get.

Bill: In fact as I understand it, the cost to buy an umbrella policy which attaches to your homeowners insurance or your apartment rental insurance is actually, in most cases, less than the cost to increase your auto insurance coverage from \$1,000,000.00 to \$2,000,000.00. So we sometimes see that, somebody will say well I've increased my auto insurance, I have \$2,000,000.00 and they've done that but the premium increase they pay is likely more than it would have been if they kept their auto insurance at a

\$1,000,000.00 and they increased their umbrella coverage and attached it to their homeowner's policy.

Nigel: Yeah, not only is it more expensive often, but it only covers you when you are in your automobile. (Bill: Yeah) The umbrella policy covers you anywhere, in regards to anything that you may be doing at the time.

Bill: You know one of the things that we've been noticing lately in our work with clients is that a \$1,000,000.00, when you are not in an accident and you haven't maybe had experience with somebody who's been in accident, sounds like a lot of money and maybe particularly for parents and or young adults, I think you and I can say without any reservation that \$1,000,000.00 never goes as far as you think it's going to go when something bad happens to you or a family member because of an accident. And we are obviously living in a time when costs of everything are going up and a \$1,000,000.00 just doesn't go as far as I think a lot of people think. Is that fair?

Nigel: Yeah, I think that's fair and I think that there's something else that's as important and perhaps even more important and that is that many accidents occur where the person that's injured is actually at fault for the accident. It could be a scenario where that momentary inattention and you're off the road and hit a tree, you fall asleep at the wheel, you might be on a snowy road where you go off the road and get injured, and then you have to rely upon these so called no fault benefits which means certain benefits you're entitled to receive even though no one else was at fault for the accident. The way things now work is your no-fault benefits are limited, unless you have what's considered to be a catastrophic injury, to \$50,000.00 over 10 years. I can tell you that goes by when somebody even has a significant fracture to a leg, it can go by very, very quickly. You can actually pay for increased benefits and you can, for about \$100.00 or so a year, take those benefits from \$50,000.00 to \$1,000,000.00 and in all of the years of my practice where most of the money gets spent is in the medical and rehabilitation needs of that individual, so look at the insurance coverage you have not only in terms of how much insurance you have, but also look at some of these additional benefits you can buy and if you are only going to buy one, in my opinion the one to buy is the increase in the medical and rehabilitation benefits and it is not that expensive.

Bill: Well I think that's very good advice and you know somebody listening to this may say, well where do I go to get this kind of information, and you pick up the phone and call your insurance company. If you're buying through a brokerage, they should have no difficulty giving you all of the options and setting them out for you to look at and if your insured direct with a major company you can call them and ask them and you can make those changes at any time, you don't have to wait until your premium renews.

Nigel: Yes, and just sort of a funny story, when I was in law school I remember, because I was starting to learn a little bit about this stuff, phoning my insurance agent and saying that I wanted to increase my insurance. I think back then I might have had \$500,000.00 and I said I wanted \$1,000,000.00 and the insurance agent said to me oh no, you don't need that you have got plenty and I said, well I don't know I am starting to read some cases where there's lots of money involved. Oh no, no those things aren't going to happen, and so on and so forth, and I said well how much is it going to cost me to go to a \$1,000,000.00 and he said \$14.00 for the year and I said, well for \$14.00 I can afford to be stupid and of course today we see many, many, many claims that aren't just a \$1,000,000.00 or \$2,000,000.00, they can be millions of dollars so it is worth getting that additional insurance if you can afford it.

(Music) Bill: Stay tuned, we'll be right back.

Once again, here's Bill and Nigel.

Bill: Nigel, I'm really pleased to have on the podcast with us today one of our rising stars in the practice group, Alfonso Campos Reales. Alfonso thanks for coming on.

Alfonso: Thanks for having me.

Bill: So this is an opportunity for listeners to get to know a little bit about some of the people that are on our personal injury team here at Lerner's. Tell us a bit about your background.

Alfonso: I devote my practice to plaintiff personal injury but my background is I was born in El Salvador. I came to Canada as an immigrant, as a refugee, when I was 11 years old. We essentially came to Canada for, you know it's going to sound cliché but,

for a better life. We were running away from war, and a war torn country, and we are very fortunate to be here.

Bill: So when you came to Canada did you come directly to London?

Alfonso: We didn't come directly to London. We came, I actually lived in Glencoe for one year because that is where the church that had sponsored our family was located. After the one year we moved down to London where our family resides, at least the family that is in Canada.

Nigel: Okay, did you speak any English at all before you came to Canada?

Alfonso: No English. None of us did.

Nigel: So did you start into school right away then or did you have to go to English as a second language classes first?

Alfonso: Yeah, so we had to take English as a second language and the nice thing about being in Glencoe was that there is literally nobody that speaks Spanish there. So at school me and my brother were forced to speak English right away and if we didn't, we really couldn't communicate so I actually think that it was beneficial that we were in Glencoe for that one year because English was really, you know, put in to us very, very fast because of that.

Nigel: Have you kept up your native language skills?

Alfonso: Yes, I've kept them up. I can write Spanish as well. The nice thing about when I came was I had started my grade five so I had gone through a bit of sufficient schooling that I could write Spanish pretty decently, at least and I obviously spoke it so, and I keep the language because I speak it at home with my parents and my family.

Nigel: So now I know that Spanish is spoken obviously in different countries, one being El Salvador, is saying that somebody is Hispanic does that simply mean they're a person that comes from a country whose principle language is Spanish?

Alfonso: I think that is accurate, yeah.

Nigel: So then one of the things you would be able to do is you could deal with what I will call then the Hispanic community because you would be able to speak their language?

Alfonso: Yes, correct. I'm in a very unique position to service the Hispanic community because of that language barrier that is often there.

Bill: What about the Hispanic community in London and South Western Ontario. Is it an active community? Are there events and programs that many Londoners may not recognize or appreciate are happening that are actually out there?

Alfonso: Yes. It's actually our community here in London, it's very active. It's actually quite large and I do think that a lot of people don't realize that but in London alone we are nearing 40,000 people of Hispanic decent that speak the language. It's actually second most common mother tongue spoken in London homes.

Bill: Is that right?

Alfonso: Yes and going along with that we do have, you know, we're active in the community and one of the organizations that I'm part of, that I'm the Vice President in, is the Canadian Latin American Association, and the purpose of that organization is essentially to promote our community to the wider community so we do have various events.

Nigel: So are all Latin Americans Hispanic then or is it sort of you're actually crossing over different cultures there?

Alfonso: Yes, I guess how I would see it and it's likely, you know, the correct way is that Latin Americans are individuals from Central South America whereas Hispanic is yes anybody that their native tongue is Spanish including people from Spain and Europe.

Bill: You said that you arrived in Glencoe at age 11 which is difficult to fathom in a lot of ways, what that must have been like for you and your family. How old where you when you started in law school do you remember that?

Alfonso: Yes it was 2006 so I would have been 25.

Bill: Alright so 14 years go by from your arrival in Canada until your first day of law school. What path or trajectory did you put yourself on to be able to do that and what led you to become a lawyer?

Alfonso: What led me to become a lawyer was an initial interest in high school in law, specifically, my grade 10 law class. That's when I got the motivation to be interested in law but I can tell you that in terms of overall motivation to me it has always been, frankly, the fact that we came over, my parents made tremendous sacrifices and so I almost find it as a motivation that I need to prove to them that what they did was worth it. So once I kind of locked into law, I mean it was very easy to just keep a focus on trying to achieve my goal and since grade ten, that's when I wanted to become a lawyer.

Nigel: So do your mom and dad and your brother still live in the London area?

Alfonso: Yes, all three of them live in London.

Nigel: And is your brother older or younger?

Alfonso: My brother is older, almost two years older than me.

Nigel: And what does your brother do?

Alfonso: He is a construction worker. A bricklayer.

Nigel: So did you interview at other law firms other than Lerner's for an articling position?

Alfonso: Yes I did.

Nigel: And why did you choose to come to Lerner's?

Alfonso: I chose to come to Lerner's because first and foremost I knew of its reputation. But once I interviewed here and I spoke to other individuals here it became apparent to me that this is where I wanted to be. One of the nice things where I found that out was the reception. I was able to speak to other lawyers here and what attracted me to it was the very structured articling that is offered here in terms of there is various rotations, I

believe there is four rotations. One is the advocacy rotation, which I found great because the firm allows the articling student to essentially tag along with lawyers that they are interested in tagging along with on advocacy opportunities and that is essentially what we are responsible for during that rotation, and it doesn't necessarily mean we have to do work, we just have to tag along and watch and I found that very, very helpful.

Nigel: So when you were in law school, did you have any idea of what area of law you wanted to practice or were you sort of open to seeing what it was all about once you got out in what I will call the real world?

Alfonso: I can tell you that I had initially an interest in corporate commercial work. I always wanted to do litigation but here at Lerner's we have a very strong reputation for our personal injury group and so we're exposed to that quite a bit and that's where I found I really enjoyed personal injury work.

Nigel: You've been with the firm as a lawyer for how long now?

Alfonso: Almost four years. I started as a lawyer with the firm in late July of 2010.

Nigel: And has the law so far met your expectations?

Alfonso: Yes it has actually. I feel that, I actually feel very fortunate that I enjoy what I do and I very much enjoy it.

Bill: There may be somebody listening to this podcast, Alfonso, who's trying to understand how they may be more comfortable working with you as their lawyer. Can you talk a bit about how your practice is either tailored or maybe more approachable for somebody who is Hispanic or comes from a Spanish speaking home?

Alfonso: Yeah, I think it's definitely more accessible at the outset because of the language. Newcomers of course they have their mother tongue in Spanish so just the sheer ability to communicate their issues is the most important one. We also share cultural similarities and so we have those similarities that essentially, you know, if I can use them as common ground to speak to the respective clients, I think that it does help.

Nigel: And there may be some people that might have some concern about the fact that you've only been practicing for four years but I know that you work with other lawyers and, in fact, you and I have been working together on a case in which my clients are Hispanic and you've been very helpful and involved in that file. So you do work with other senior lawyers as well with clients in the community depending upon the nature or the degrees of the injury?

Alfonso: Yes, so while I understand that a potential client might have some reservations about the fact that I am into my fourth year of practice, it is nice here at Lerner's that we are essentially a team and as you mentioned I can always count on the experience of lawyers around me to move a case forward.

Bill: There may be, as I said earlier, somebody listening to this who might like to hear from you in Spanish. Anything you want to tell them in your native language?

Alfonso: I would like to tell you that my services are always available to the community. I speak Spanish and if you need my help, all you have to do is call me – I'm here.
(translation of Spanish)

Music - Once again here is Bill and Nigel.

Bill: Alfonso in your life outside of being a lawyer here at Lerner's, what kind of things do you do for fun or do you enjoy that listeners might be curious to learn about you?

Alfonso: Well outside of work I am quite busy. I have a two year old son who is a handful. He is quite fun and I have another son coming in April of this year.

Bill: Congratulations.

Alfonso: So the family definitely keeps me busy. Aside from that I do like basketball in terms of sport.

Bill: Now the listeners cannot see you but you are about 5'7" so are you, what position do you play?

Alfonso: I play shooting guard and actually that is a very good question because where I come from soccer is obviously the main sport. And I always ponder back thinking why didn't I stick to that sport especially because I'm short and I entered a sport where literally height is an important factor. I played through high school but sure enough that's where my basketball career ended, but I play shooting guard.

Nigel: So do you just play pickup leagues or an industrial league now?

Alfonso: I play in the PUC league here in London which is quite competitive and I actually just started playing back in October of this year.

Nigel: And is there a Hispanic team that you play with or for, or is it just a mix of all kinds of people?

Alfonso: It is a mix of all kinds of people, friends that I've played throughout the years. I don't think that we would be able to put together a complete basketball team if it was just Hispanic people. We definitely would have a hard time finding a centre.

(laughter)

Nigel: I don't know they did not do too badly at the Olympics.

Alfonso: Yeah they are pretty good.

Bill: That's great. Alfonso thanks for joining us it was fun.

Music - Once again here is Bill and Nigel.

Bill: Nigel, you know one of the segments of the podcast is we're taking questions from listeners. If you have questions for us, you can email us at podcast@lerner.ca, and we're going to receive those questions and try to give the answers in each of our podcast episodes.

We have two questions today. The first one is from Ron in Owen Sound and he says this. I've been in an accident and my insurance company is offering to come to the hospital and setup my rehab and put into place the treatment providers that I need. Should I be concerned about this? What do you think?

Nigel: Good question. The short answer would be yes, but of course short answers aren't always the right answers or easy answers aren't the best answers. There are a number of things you have to consider and of course one is the extent of the severity of your injury and what rehab is going to be involved. One of the concerns that you should always have is when the insurance company has offered to do things for you is, what is it that they want from me in return. Insurance companies often are trying to get their insureds better, back to their life and back to work as quickly as possible, but they're also trying to get information that they can potentially use against you down the road. If they're going to come to the hospital to see you, often they'll ask you to sign a release form so they can obtain information from your family doctor. And that information won't be just about the injury you suffered but they're going to ask for information before you were injured which may disclose information that you may not want them to know about. They're going to ask you to see their rehabilitation people and, of course, you have the right to pick your own rehabilitation people and the question really is are the people that the insurance company are picking the best people for the type of injury you have, and are they really going to do the best job for you.

Bill: Let me just emphasize something you said, Nigel. The law, Ron, as Nigel and I know it, is that you have the absolute right to select the treatment provider who you think is best qualified and best suited to help you in your situation. You don't have to have forced on you a person that the insurance company puts forward as a possible therapist.

Nigel: All insurance companies aren't the same, even individual adjusters within the insurance companies aren't the same so we're not suggesting that insurance companies in every case or every situation are out to do something improper at all, but it's just a situation where, again, you're far better off to at least get some advice from a lawyer beforehand who can advise you on your particular facts and circumstances, on your particular insurance company, on the particular rehabilitation people they're suggesting, so even if they've called and said they want to come in and see you, find out who it is that wants to come in, who the people that they're suggesting look after you provide you with your rehabilitation and before saying yes come on in, say, let me get back to you, and seek that advice and then you can decide after you have been given

that advice whether you want to proceed forward with your insurance company in that way or perhaps in another manner that may be suggested in that the meeting with the person giving you legal advice.

Bill: And just lastly Ron, while you didn't put this in your question explicitly, the reality is that all the lawyers here at Lerner's are very well connected with rehabilitation therapists and the medical community at large and so one of the benefits is that when you hire a Lerner's lawyer you also essentially hire a team and so if you are uncomfortable with the idea that your insurance company is going to put together your treatment team, the reality is that your lawyer can, as Nigel says, give you some advice about that and can make recommendations on individual therapists who might be best so you don't have to fumble trying to find people to help you all by yourself.

Nigel: That again, of course, leads to if you are going to speak to a lawyer it's important again that you not call your family lawyer. You may have a family lawyer that's looked after your last house sale or done some work like your Will. Calling them is probably not the best thing because this area is very complex and unless you are dealing with somebody who specializes in the area that deals with this type of law day in and day out, they're really not going to be able to give you the information you need to have in order to make an informed decision. That lawyer could possibly suggest somebody else but what you really need to do is make sure that whoever it is that you're looking to hire has an expertise in this area and as Bill indicated, at our firm there are a number of lawyers who do nothing but this type of work and have expertise in this particular area of law, and that is very important.

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Bill: Nigel, we also have a question from Linda in Bell River, which is down near Windsor, and her question is this. She's been in an accident and there were three other vehicles where other people were also hurt and she says that none of those vehicles, including her own, were at fault. The question is what happens if the vehicle that actually caused the accident doesn't have enough money or insurance coverage to pay all of us in full. What happens then?

Nigel: Basically, what happens in the Province of Ontario is anyone driving an automobile in this Province is required to have no less than \$200,000 worth of insurance. No insurance company in Ontario sells policies anymore that have less than \$1,000,000. I don't know the specific facts of your case but let's put together a scenario and let's assume that the person that was driving the car that was at fault only has \$500,000 worth of insurance, and let's assume that three people are injured, including yourself, and each of you has an injury that's worth \$1,000,000. Now you have \$3,000,000 worth of injuries but there is only \$500,000 worth of insurance to cover that. Basically the law says this. If you have an insurance policy where the amount of insurance you have is greater than the insurance of the person that caused your injury, and your damages are greater than the amount of insurance they have, then you can go to your insurance company and seek the difference between the insurance that they have and the insurance you have. To try and go back to the analogy for a minute, what that would mean then is that if you have a \$1,000,000 injury, there's \$500,000 that the other driver has. That money, unfortunately, gets split equally between the three people that were injured - yourself and the two other people so you split the \$500,000. You then go to your own insurance company and unfortunately, you don't get the difference between what you actually got and the \$1,000,000 from your own insurance company, because the law, and what I consider to be a very bizarre position and decision, says that the law treats it as though each individual person was injured by the driver of the at fault car without anyone else being involved. In other words they treat it as though you got \$500,000 from the other person, the other two people got \$500,000 from the other person, even though they didn't, and so in that case you would actually be able to collect from your own insurance company \$500,000 because your injury was \$1,000,000 but yet you wouldn't actually realize the full \$1,000,000. What that's called is something, the name of which is, under insured coverage and every automobile policy written in the Province of Ontario has to have that in the policy. One of the things that people really need to do and look at is determine how much insurance do I have. It's not there just to protect you in the event that you injure somebody else but in your case it's there to protect you in case somebody else injures you. Taking my example, if your injury was in fact worth \$2,000,000 you would have only received \$500,000 from your own insurance company. Had you had a \$2,000,000 insurance policy, then you

would have been able to receive \$1,500,000 from your own insurance company after collecting your share of the \$500,000 from the person who caused the accident. Long answer but that's because it's a very complex area of the law.

Bill: Linda, it was a really good question and Nigel and I thank you for sending it to us. If other listeners want to send questions in please use email, podcast@lerner.ca and we'll try to get to as many questions as we can in upcoming episodes. Thanks very much.

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