When the subject of pursuing litigation comes up, most people I meet while evaluating their claimed damages in a lawsuit tell me they never intended to do so but felt they had no alternative. They explain that, if their damages had been acknowledged and dealt with fairly from the outset, they would have been more than happy to settle their cases and move on with their lives. But that didn’t happen, and, lo and behold, they find themselves in the midst of a contentious lawsuit fraught with events they only superficially understand and, regrettably, over which they feel they have little control. They tend to further assert that they never asked for their damaged status and, likewise, never sought litigation.

In some cases, claimants—a descriptor, like litigants, with a connotation most people have difficulty incorporating into their self-identities but, nonetheless, have ascribed to them once they begin pursuing recourse for their injuries—realize unforeseen and unwelcome lifestyle changes after becoming disabled. These changes can include job loss, financial difficulties, problems in relationships with significant others, diminished independence, and psychological difficulties associated with disability adjustment. Again, most people say they never asked for any of this and they are just seeking fair compensation for their damages, often offering that they would much prefer to “have their lives back” as they were before the injury—something they realize cannot occur.

When initial settlement negotiations fail, claimants essentially have two alternatives that summon their primeval instincts: fight or flight. The former involves pursuing a lawsuit; the latter involves abandoning damages claims.

A Claimant’s Guide to Understanding and Presenting Injury Damages: A Damages Expert’s Perspective aims to guide people who (a) legitimately acquired injuries through no or little fault of their own, (b) seek fair compensation for acquired disabling problems, and (c) are pursuing litigation with concomitant damages claims. This book does not provide legal advice.

My perspective as an expert witness with thirty years’ experience evaluating several thousand damages claims undergirds this book’s bases.

Two major premises—products of my frame of reference—permeate A Claimant’s Guide to Understanding and Presenting Injury Damages: A Damages Expert’s Per-
spective. These premises reflect my perspective. Unless my views comport with your beliefs, I implore you not to invest your money and time into this book.

First, contrary to generally held public beliefs, the U.S. judicial system is configured primarily to promote advocacy rather than to find the truth. Once in a lawsuit, the opposing lawyers become vested in advancing their interests and the interests of those they represent (the sources of their compensation). Their allegiances, I believe, take precedence over finding and fully disclosing the truth. A lawyer defending a multimillion-dollar damages claim you may be pursuing, for example, is motivated to minimize—or, preferably, in a best-case scenario from his or her perspective, entirely negate—your claim rather than pay every cent you legitimately deserve.

Second, this book assumes you really are “damaged” and thus seeking fair recompense—nothing more. It does not intend to provide tips on how to beat the system; that is its antithesis.

Many people, unfortunately, exaggerate the extent of their disabling problems, and some outright attempt to defraud the claim recovery system. This breeds cynicism among those evaluating and awarding damages claims. I appreciate the due diligence those defending claims must employ to fully evaluate a claim’s merits. Conversely, I loathe when those empowered to elicit the truth abuse processes the judicial system affords them.

Our judicial system is imperfect, and anyone who trusts its process will ultimately elucidate wholly and fairly the truth is, in my opinion, naive. Your lawyer advocates for you; the opposing lawyer advocates for his or her client. Disputes over claimed damages transpire in an adversarial environment in which both sides have a financial incentive to prevail. When your lawyer’s views on your damages conflict with the opposing lawyer’s views, the truth underlying your damages becomes vulnerable to a number of tactics the opposing lawyer can employ to disprove your presentation. 

A Claimant’s Guide to Understanding and Presenting Injury Damages: A Damages Expert’s Perspective aims to help you understand the process your claim will undergo and to enable you to present your damages as effectively as possible.

The book’s first chapter provides context about the truth-finding process from my perspective as a damages expert. Topics addressed in Chapter 2, Pursuing a Claim, include managing your expectations, having patience, and assessing damages.

The next two chapters provide foundational information about the litigation process and those with a stake in it. Chapter 3 outlines the evolution of a claim, and Chapter 4 identifies the parties (and their interests) that may analyze your claim. Recommendations on presenting your claim appear in Chapter 5.

Chapters 6 (Plaintiff’s Counsel’s Perspective) and 7 (Defense Counsel’s Perspective) focus on strategies lawyers typically employ. Although presented in separate chapters, I encourage you to consider them in tandem since plaintiff’s counsel and defense counsel often apply common strategies. To close, in Chapter 8, I provide final words of advice on how to manage your way through the claim resolution process.
The legal system has its own lexicon. To facilitate your understanding of some of the most common terms you will likely encounter, I have included a glossary.

I wish you well.
Michael Shahnasarian, Ph.D.