

Informed Consent Regarding High-Low Settlement Agreement Offer

_____ (Law Firm Name) _____ has advised you that the defense has offered to settle your case by offering a High-Low settlement agreement controlling the amount of money you will receive.

A High-Low agreement substitutes a High-Low range for the arbitrator's award (if your case will be decided at arbitration) or the jury's verdict (if your case will be decided by a jury at trial). For the purposes of this agreement, it will be assumed that your case will be decided by a jury at trial but the information below is also true if your case will be decided by an arbitrator at arbitration.

The High-Low settlement offered in your case is \$_____ low and \$_____ high.

How Does a High/Low Agreement Work?

The "Low" provides a minimum amount of money the insurance company will pay if you lose your case or a decision, judgment or verdict is less than the "Low".

The "High" is a cap or maximum amount of money the insurance company will pay even if you obtain a decision, judgment or verdict for more than the agreed amount.

If you accept the High-Low settlement offer, your case will go to trial and the jury will issue a verdict. There will likely be no possibility of a settlement offer for a sum certain prior to the jury issuing its verdict because a High-Low agreement removes any incentive for the insurance company to do so and all of the risk that the insurance company has.

If the jury issues a verdict in the defendant's favor (against you) and awards you \$0, you will still receive the "low" amount of \$_____.

If the jury issues a verdict in your favor which is above the "high" amount of \$_____, you will not receive any more than the "high" amount of \$_____.

If the jury issues a verdict within the High-Low range, you will receive that amount.

Example:

Assume the defendant's insurance policy has a liability limit of \$300,000 and you enter into a High/Low agreement of \$40,000/\$200,000 with the defendant.

If the jury or arbitrator awards \$0, you receive \$40,000

If the jury or arbitrator awards \$475,000, you receive \$200,000

If the jury or arbitrator awards \$150,000, you receive \$150,000

Reasons you might not want to agree to a High-Low agreement

Because this High-Low agreement is a settlement, it is most likely that you will lose your right to appeal an unfavorable jury verdict if you agree to this High-Low agreement. For instance, you will lose your right to appeal if the jury finds you comparatively negligent or even 100% at fault for causing the accident (the jury will not determine fault if we already won Summary Judgment on liability); the jury did not award enough money; and other reasons.

If we won Summary Judgment on liability in your case, you are entitled to receive 9% interest from the date the judgment was entered with the County Clerk. If you agree to this High-Low agreement, you will lose the right to receive 9% interest unless the defendant signs High-Low agreement in which it is agreed that interest will be paid. It is highly unlikely that the defendant will agree. If you provide your consent here, you agree to waive the 9% interest payable if the defendant refuses to agree to pay it.

If there is more than one defendant and the High-Low settlement agreement is offered by one defendant, we must disclose the agreement and its terms to the other defendants and to the court.

How does a High-Low agreement at trial benefit you?

If you are concerned about the possibility of a jury verdict less than the low amount of the High-Low agreement, then a High-Low agreement will eliminate that concern by providing you with a minimum amount you can receive.

How does a High-Low agreement at trial benefit the insurance company?

The High limit or cap has *extreme* value to the insurance company because it:

- Guarantees their insured will not be liable for any money out of their personal assets which is not good for business, if the verdict is above the insurance policy;
- Guarantees the insurance company won't become liable to pay a verdict above the insurance policy. A verdict above the insurance policy can subject the insurance company to "bad faith" making the insurance company responsible to pay the amount above the insurance policy;
- If the "High" limit is lower than the insurance policy limit, it can save the insurance company money;
- If the plaintiff won summary judgment on liability, the insurance company would have had to pay 9% interest. A High/Low agreement will allow the insurance company to escape liability to pay 9% interest unless it's included in a written agreement or on the record; and
- If the insurance company has to pay money above the insurance policy, it is paid from corporate profits and someone will be fired. Claims representatives and defense attorneys have been fired on some of our cases.
- If there is an umbrella insurance policy, there is a very substantial Benefit to the insurance company with the underlying insurance policy because without a High/Low agreement, the

underlying insurance company could be subject to a bad faith action from the umbrella insurance company.

When should you never agree to a High-Low agreement?

- When you have a case which you think will evoke extreme sympathy.
- If the "Low" limit of the agreement does not leave you enough money after deduction of attorney fees, trial expenses and other case expenses.
- When the "High" limit is substantially lower than the value of your case.

I have read this disclosure, discussed it with you and understand it. I hereby authorize you to accept the High-Low settlement agreement offered with the parameters mentioned above and on the conditions mentioned here.

I have read this disclosure, discussed it with you and understand it. I understand the risks of going to trial and that I could receive nothing. I hereby decline to accept the High-Low settlement agreement offered with the parameters mentioned above and on the conditions mentioned here.
