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Rewards and Incentives To Purchase Consumer Products

I recently experienced a nightmare when purchasing one of the new cell phones. If you are older than 15 years of age, you are under the burden of not having grown up using technology. You may not have the experience and skills to operate the new cell phone and you may also become overwhelmed by the **exact conditions** required to receive the rewards or incentives offered for free with your purchase from the manufacturer.

1. Before purchasing an item, ask for the documents. If the retailer at a store or over the Internet will not provide you with the documents you are to sign, I strongly recommend that you not purchase the item. On the assumption that you have the documents, read them to understand the content. Consideration should be given to consulting with an attorney. Often salespeople will characterize the document as "our standard contract". You still have the right to modify the contract. However, some companies, particularly large ones, often will not modify their contract.
2. In advance of your purchase, read any documents relating to rewards or incentives and look for the fine print that contains disclaimers expressing that the rewards are subject to conditions and availability. My experience was that the salesperson gave me a large number of documents and referenced a link described on paper and said that all I had to do was go on-line. I should've read the entire document which I did not. I was given over 12 pages relating to the cell phone, contract, transfer agreement, accessories with explanations of their prices and description of each accessory. Finally I was given a receipt that was almost a yard long. Interesting is that the telephone number on the receipt does not ring at the local retail location, but rings at retail stores 10 to 20 miles away from the purchase retail store. I suggest that you ask the retailer in advance of your purchase what the phone number is for that particular retail store and that you write that number down and dial it from your cell phone, while you are in the store, to be certain that number actually rings into the retail store where you are.
3. Always obtain the reward that is offered at the store from which you purchased the item. The difficulties of using the Internet are many fold. I could neither enter my first name without getting an error message nor could I speak to a customer service representative to remedy my registration of the cell phone. In advance of your purchase, you may want

- to call the 800-number of the manufacturer of the consumer good that you wish to purchase to see how much of an effort it takes to reach someone and prepare some questions and evaluate whether or not the individual responds to your questions.
4. Not getting what you bargained for from customer service. Always get the name of the person that you have spoken to and place in writing confirmation of your understanding. Most customer service departments have limitations in place as to what a customer service representative has the authority to say or do. Therefore, you have to talk with supervisors and move up the organizational chart to speak to someone who has authority.
 5. Depending on the amount of the purchase price, you may want to take advantage of free services offered by the Office of Consumer Affairs for the State of Maryland. Typically what you do is fill out a complaint form and it may take several weeks before a response from the consumer protection office reaches you. Another possibility is to go to a local county office of consumer affairs or go to the Better Business Bureau. Consider seeking the advice and counsel of a private attorney. For individuals who have limited resources, you may contact the Maryland State Bar Association's Pro Bono project which is staffed by lawyers who volunteer their time for individuals who are of low income.

After exhausting all of the above resources, if your claim is less than \$30,000 you may go to your local Maryland district court. Recognize that for a small claim of \$5,000 or less, the technical rules of evidence are not strictly applied. However, it is possible that you may run into an incident where those rules are applied.

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What Happens in a Personal Injury Trial in the District Courts of Maryland

[In this article, I refer to "I" and "we". "We" refers to me and co-counsel.]

If you were my client and we filed a lawsuit in your personal injury case for damages up to \$30,000, here is what you might expect to happen.

We file in the district court because there is a special rule that permits medical records to be introduced to prove your damages. The rule requires providing the opposing party, called the defendant, with the medical records and bills. The benefit of proceeding under this special rule is that you do not have to bring medical experts to court. In the circuit court system, which has almost an unlimited level of damages, you must bring your medical expert to court by way of live testimony or a DVD which is shown either to the jury or to the judge or both. Utilizing the special rule can save our clients thousands of dollars. An additional benefit for cases seeking damages of \$30,000 or less is that you get to court sooner.

The plaintiff, meaning our client, provides direct testimony first. Here are the elements of what must be proved on direct testimony:

1. That the plaintiff was driving his or her vehicle in a safe and cautious manner on a specific date and at a specific place.
2. That the defendant, the opposing party, failed to meet the standards of care and was negligent, thereby causing the accident, which resulted in physical and mental injury and medical damages. Negligence may also include, if you were rear-ended, that the defendant drove too closely to the rear end of your car (called following too closely), was sending a text, or was speeding. Any one or more of these elements (as well as others not described here) are required to prove negligence.

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REWARDS AND INCENTIVES TO PURCHASE CONSUMER PRODUCTS--- CELL PHONES

Here is one example of my experience purchasing a new cell phone.

Before purchasing the phone, I visited three retail stores. Two had good incentives and rewards. I asked questions particularly with regard to features and ease of transferring data from my current phone to the new phone. I made my selection based on features, cost, training either one site or through webinars, and on how knowledgeable the sales persons were to assist me in the operation of the phone.

My first major difficulty was on the day I picked up the phone and accessories. The sales person lacked the knowledge to transfer my service. After two hours, the manager arrived and knew how to transfer service providers. I was given about twelve pages of documents including a page which I was told had a link to obtain either Reward A or Reward B. I expressed that I wanted Reward B. The day before, B was sold out and the retailer knew it. In my view, the retailer committed fraud. I can either sue the retailer or file a complaint with the Maryland Consumer Protection office.

My next episode was with attempting to register the cell phone on-line. Over several weeks, I tried but my first name created an error when attempting the registration. The manufacturer's on-line system did not register my phone until I decided to add two additional C's to Fredric, my first name. I then was able to register my cell phone. The first time I sought to register my new cell phone and could not, I called the manufacturer, asked for Customer Service, was placed on hold for 35 minutes and then could no longer remain on hold. This continued for several weeks until the last day of the availability to receive the reward. That day I was on hold for 1 hour and 17 minutes and no one picked up my call. In the future I will never leave the retailer with coupons, links, mail-in rebates or registering on-line to obtain the Reward. Also, the sheet that the sales person gave me suggested that the reward was available but the fine print said "supplies are limited". With the sales person explaining to go to the link, you may not realize that supplies are limited and, therefore, you will not ever get the reward.

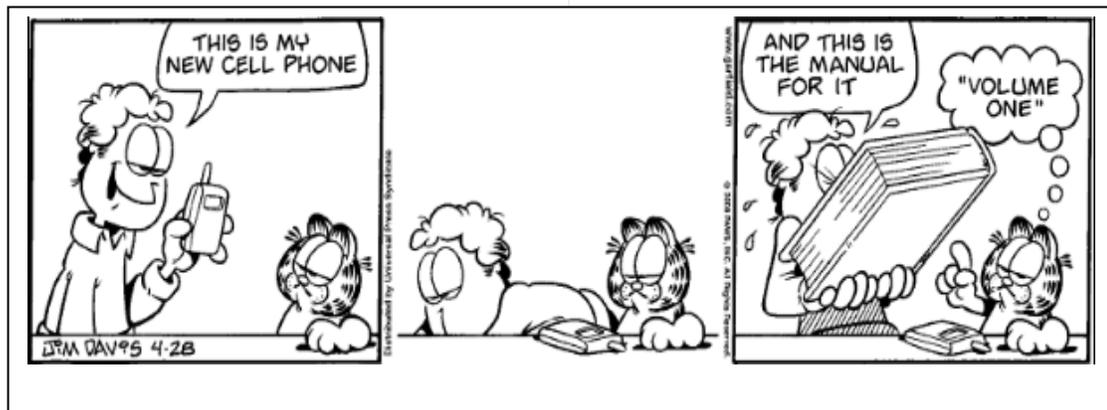
I am persistent and obsessive about what I bargain for so I continued calling the manufacturer over the months of May and June. I spoke to Technical Assistance numerous times and registered a

complaint. Three weeks after registering the complaint, I still had not been contacted. Finally, one of the technical people told me that although I could not receive Reward B, I was still eligible to receive Reward A. I was then connected to a Reward's person who obtained my information and told me I would be contacted in three to five business days. I asked if I would then be told either way—approved or disapproved—and the Rewards person would not answer my question.

Time passed and then I got an email asking for the same information. I decided to write an email setting forth that Reward A was not satisfactory and explaining that I wanted Reward B. By then I had registered my cell phone and I thought that I would try to talk with people in the technical assistance area and possibly in the legal department. I spoke to a representative in the rewards department who said that there was no other option so I asked for the contact information of the legal department. I was transferred to a number of departments and each department representative said either he or she could not help me. The last person with whom I spoke happened to be in the appliance department and person gave me the mailing address of the president of the cell phone manufacturer as well as the email address of the president. I emailed the president and asked that my letter be forwarded to the legal department as I could not communicate with the president. As an attorney, I recognized that a large manufacturer would have lawyers either in-house or on retainer and therefore I should only speak with their lawyers. In the email I expressed the fact that before filing a lawsuit, I would like to talk with their lawyers.

I then received an email from the manufacturer's president's paralegal. That individual indicated that I would receive Reward B. I also explained to the paralegal that I had already received Reward A and asked if they would like me to return it. I was told to keep it.

You might say that all my efforts were worthwhile in that I ultimately received what I originally sought plus an additional reward. In my view, however, the amount of time I spent exceeded the benefits of the two rewards.





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3. How the plaintiff received medical treatment -- Did the plaintiff get to the hospital by ambulance? How close in time did the plaintiff receive treatment either at the emergency room, or a physician? Did the plaintiff describe all of his physical complaints? Likewise, do the medical records express from the first treatment date all of his or her physical complaints? In court, does the plaintiff, on direct testimony, describe all of the physical complaints? Do the medical records state that the plaintiff's injuries are causally related to the accident and that all of the treatment was reasonable and necessary? Are the injuries suffered by the plaintiff permanent? Unfortunately, if the records do not provide the details that are needed and/or if the plaintiff has not adequately prepared (in some instances), the plaintiff must remember all of his or her physical complaints.

Often when giving their decision, judges will comment on their reasons for a high verdict or a lesser verdict in monetary damages.

4. There also may be other damages claimed, including for time off from work. After direct examination is made by me or co-counsel as your lawyers, the defendant, typically by the lawyer assigned by the defendant's insurance, is able to cross examine the client. The methods used include asking leading questions wherein the client needs to answer "yes" or "no". We instruct the client that although the response is "yes" or "no", the client has the right to additionally provide an explanation. Preparation for cross-examination is very important. The lawyer representing the defendant will often attempt to show that the client caused or contributed to the accident. Before trial, we go over with the client the client's explanation of how the accident occurred. The next area of cross-examination typically goes into the client's first medical treatment. This may involve treatment in the emergency room or at a

clinic or at the primary care physician's office. Many times, the medical records do not show all of the client's physical complaints and we prepare the clients to be prepared for those questions where medical records do not include all of the client's complaints. As we work with the client before filing suit, we encourage the client to meet with us or have a conference call on the telephone to review the client's physical complaints. Many clients take the view that "once I have explained my physical complaints to the physician, I no longer have to express the same complaint". Judges and juries will view an opposite interpretation of why the medical records do not list all the physical complaints. Here a judge or jury may provide the client with lesser damages because of the absence in the medical records of all physical complaints at each visit.

5. The next important part of the case is redirect examination of our client. Although we can't predict in advance the exact questions that were offered during cross-examination, we can readily determine subject areas. There may have been questions on cross-examination dealing with prior injuries. Often, redirect examination covers the clarification of the client's statements on cross-examination.

6. There may be other witnesses such as police officers to whom the defendant made a statement against his or her interest. An example would be where the defendant admitted fault or, at trial, makes a statement opposite to what he told the police officer at the scene and on the date of the accident. Typically, under the special rule, we do not have to bring in physicians, either live or in a video, who have treated our client. That is not the case in circuit courts.

7. At the conclusion of the plaintiff's case, (our client's), the defendant will be examined by his defense attorney. We are permitted to cross-examine the defendant or any witnesses who have testified.

8. At the conclusion of each side's presentation of testimony, written evidence, medical records and bills, lost wages, and diminished value of automobiles, each side argues why they should prevail and demand a financial amount of damages.

9. Often in district courts, the judges give an immediate decision, although they may recess and return to their chambers and then return to the courtroom with the decision.

10. If either side is dissatisfied with the result, they may file a written request for retrial. This must be done within a specific time. Also, either side may appeal their case to the circuit court. Cases above \$5000 are not retried at the circuit court level, but the record, meaning a transcript, is submitted to the circuit court along with reasons for the

appeal. Each side is permitted to give an oral argument, most often provided by each attorney.

11. If either side is dissatisfied with the circuit court's decision, either side or both may appeal to the Court of Special Appeals. Thereafter, if either side is again dissatisfied, then a request to appeal can be made and the Court of Appeals decides whether or not it will grant the appeal.

Fred Antenberg and co-counsel have positive achievements in both the district courts and circuit courts in Maryland as well as appellate courts. Previous success is not a guarantee that your case will result to the degree of your expectations.

Halloween Horrors

With Ghost and Goblins approaching, take a tour at some terrifying attractions in the area.

Anne Arundel County

Station 7 Terror Trail - Family friendly attractions and haunted trail.

Baltimore County

Fort Howard Haunted Dungeons - walks through haunted woods, military bunkers and more.

Frederick County

Screamland Farms - Hayride of Horrors, Barn of Bedlam, escape Room and Zombie Paintball

Harford County

Legends of the Fog - Haunted hayride, scary haunted houses, games, a twisted carnival, food and more

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HOPE YOU ENJOYED YOUR SUMMER!!!!

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