

FIVE DEADLY SINS THAT CAN WRECK YOUR INJURY CLAIM

*The Ultimate Guide To Accident Cases
in Tennessee and Georgia*



Avoid them and you may have
a shot at winning.

**Dennis +
King Law**

If you can answer YES to these six questions, we may be the injury law firm for you.

1. Do you have total expected medical bills and lost wages (not just out-of-pocket expenses) of at least \$2,000?
2. Is there visible property damage to your car?
3. Was the accident someone else's fault?
4. Did you get prompt medical treatment after the accident?
5. Have you followed the recommended course of treatment of your doctor?
6. Did the accident happen less than 9 months ago (if in Tennessee) or less than 18 months ago (if in Georgia)?

If you can answer YES to each of these questions, give us a call at

423-892-5533.

**DENNIS AND KING
ATTORNEYS AT LAW
125 LEE PARKWAY DR., SUITE B**

Five Deadly Sins That Can Wreck Your Injury Claim

*The Ultimate Guide To
Accident Cases in Tennessee and
Georgia*

Avoid them and you may have a shot at winning.

This Book is NOT Legal Advice!

The Tennessee Board of Professional Responsibility and the Georgia State Bar requires us to inform you that nothing in this book is legal advice to you. We aren't your lawyers until you enter into a written agreement for our firm to represent you. We know the arguments the insurance company will make----and so should you----before you file your claim. We can offer general suggestions and let you know the pitfalls to avoid, but do not take anything in this book to be legal advice about your case. Every case is different and without knowing the unique facts of your case, we could not possibly give you legal advice.

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We aren't a personal injury settlement mill.

You won't see us on TV during every commercial break standing on trucks or telling you to trust us. We don't rely on spending millions of dollars on TV or billboards to get cases. We don't handle every type of law you can think of. We don't do divorces, bankruptcy, or corporations. We don't want to and we don't have to.

That means, every year, we only accept a limited number of injury, accident and disability cases from hundreds of people who ask us to represent them. How are we different from "personal injury settlement mills"? In many important ways. Here are just a few:

1. We do not allow paralegals and assistants to negotiate your case with the insurance company.
2. We do not allow assistants and paralegals to write our demand letters for settlement to the insurance company. One of us does that personally.
3. If you let Dennis and King handle your case, you know who will handle your case? That's right. Ms. Dennis or Mr. King---not some associate who just graduated from law school---or even worse---a paralegal
4. We don't work with chiropractors who take what is left after the lawyers get through taking their fee. We get you to a real physician if you don't have one or can't afford one. We get you to a real physical therapist whether you can afford one or not.
5. ***And, we take a few cases a month---not hundreds a month. . . .***

Fewer cases mean more time for you and your case. We think more time on your case means a better result in your case.

Since 1974, Mr. Russell King has represented accident, injury and disability claimants throughout Tennessee. Since 1987, Ms. Tricia Dennis has represented accident, injury and disability claimants throughout Georgia and Tennessee.

Satisfied former clients, other attorneys and health care professionals refer most of our clients to us. If we accept your case and you are not local to us, we will come to you, anywhere in Tennessee and Georgia.

When you are thinking about a lawsuit after you have been injured, you need to know if a lawyer can help, you get a good settlement or win your case. If that is the case with your claim, we will tell you straight up. We will also tell you if we think you would get more money by handling the claim yourself---without an attorney taking a fee.

However, if your case is the kind of case that we think we can make a difference and we can get a better result than you could get on your own, and we accept it, you will get our personal attention. We will be loyal to you, aggressive with the insurance company, keep you well informed, and give you plenty of advice and information on whether you should settle or go to trial.

We are the “no surprise” law firm. We will explain all fees and costs to you fully before we start working on your case. We will work for you, not the other way around. Together, as a team, we will decide what is best for your case.

Dennis and King---We Take Care of Everything

*Tricia Dennis
Russell King
Chattanooga, TN*

Foreword

WHY DID WE WRITE THIS BOOK?

This is probably your first accident. If you are like most people, this is a confusing time. Insurance companies are calling you. They want to ask you “just a few questions”. They sound so helpful and nice. You don’t know whether you should trust them or not. They want you to sign their forms, “just so they can get things started”. They may have even offered you a little money to settle your claim.

You may be thinking that you need to - at least talk to an attorney, but it is hard to know whom you should choose. Attorney TV advertising sure doesn’t help give you any *useful information about how to find the right lawyer for your case*. All the ads say the same thing: “Hire us---free consultation---no fee unless we get you money.” Heck---In all fairness, our ads say that! The TV commercials are amusing, if not helpful: lawyers standing on trucks---fake clients with showers of money raining down on them---lawyers claiming they will “strong arm” the insurance company for you. Then there are the ones that **look** so sincere: Trust Us---Your Case Matters. These ads are 100% meaningless. (Don’t you expect to be able to trust your attorney --- Shouldn’t any case an attorney takes, well, **matter?**

Here Are Some Other Meaningless Headlines You Might See on TV or the Internet (Ask yourself: Does this headline help me figure out if this is the right law firm for my case?)

- No Out-Of-Pocket Costs. Seasoned **Lawyers**.
- Aggressive Representation. Working for You. No Obligation.
- Get the Qualified Help You Need From a Tennessee **Personal Injury Lawyer**. Available 24/7.

- We are committed to fight for you. That is why we offer our No Recovery, No Fee Guarantee. (Big Deal---Every Personal Injury Law Firm Has A “No Fee Guarantee”---That is how a contingency fee works.)

And here is one of ours:

- Don't Settle for the Insurance's Payout. Take Advantage of a Free Legal Consultation Today.

Here is the awful truth: You can't tell much about a firm from its web blurb or TV advertising. You need a lot more information.

That is why we wrote this book. We wrote it for **you**. That way, you will have plenty of information that you can think about and talk over with your family BEFORE you hire a lawyer and before you talk to an insurance adjuster and **DEFINITELY** BEFORE YOU HAVE SIGNED ANY FORMS!
YOU MAY NOT EVEN NEED A LAWYER TO SETTLE YOUR CLAIM!

SOMETIMES YOUR FRIENDS, NEIGHBORS AND RELATIVES ARE WRONG

Our friends, neighbors and relatives want the best for us. However, if they are telling you any of the following, they're probably wrong:

- If you write the insurance company a letter and you are reasonable, the insurance company will make you a reasonable settlement offer.
- You have to give an insurance company a recorded statement. If you don't, the insurance company will not settle with you.
- All lawyers who advertise that they handle accident cases have the same ability, tools, resources and experience to handle your case.
- The insurance company for the person who injured you has to pay your medical bills as soon as they are due.
- All lawyers charge the same fees in injury cases.
- The court system is a lottery that will help you get rich.
- If you were injured in an accident that wasn't your fault, there is always going to be an insurance company to pay for your bills, lost wages and injuries.
- Juries in Tennessee and North Georgia are generous and hand out big verdicts.

- There is a formula for determining settlement value that all lawyers and insurance companies use.

Devious Insurance Companies, Meaningless Lawyer Advertising and Silly Lawsuits

Devious Insurance Companies

It infuriates us the way insurance companies take advantage of people before they have a chance to talk to a lawyer. One major insurance company, for years, use to tell injured victims that if they talk to an attorney they would get less money! They lied and said that just by ***talking*** to a lawyer; the lawyer would take one-third of whatever paltry amount that insurance company was trying to get its victim to accept.

Well we are here to tell you the truth free. You know what? You may not need us or any other attorney to represent you in your case! But, you should never settle your case with or without an attorney unless you understand how the “system” works. For instance, the nice adjuster you are talking to probably is not going to tell you that you ***may*** have to take the check the insurance company just gave you, turn around, and give it all to your health insurance company. (The ways insurance companies take advantage of consumers is truly endless.)

And why won't the adjuster give you such an important piece of information? Because, the adjuster wants to close the file and release all of your claims.

Here are some other tactics we have seen insurance companies use just to wear you out and make you go away:

1. **Deliberate delay.** Accidents and injuries put a lot of people in a financial bind. Insurance companies love that fact and boy, do they take advantage of this. Even if you have good health insurance, if

you are not working how are you going to pay the co-pays and deductibles? Since the wrongdoers insurance company never “pays as you go” in Georgia or Tennessee, the insurance company knows you are getting late pay notices and collection calls from the doctors and hospital who treated you. So, the wicked insurance company takes its time while your credit is getting ruined and you stress over your bills. The pressure mounts and you become frazzled and exhausted---people fold and take what they can get.

2. **Requesting Unnecessary Information.** Insurance companies love making you into their “runner”. They will make you track down seemingly random pieces of information before they “can evaluate the claim”. It doesn’t matter if the information would add a dime to their offer; they will insist they need to wait another month while you track down the requested information. Meanwhile, the insurance company is earning interest on the money that should be going to settle your claim---so they’re happy.
3. **Disputing Medical Treatment.** I have never met an adjuster that went to medical school—but many of them certainly act as if they have an M.D. behind their name. They know just what treatment you should and should not be getting. They know exactly what the wreck caused and didn’t cause. These adjusters, and there are so many of them out there, will tell you that you are treating too much. How do they know this? Because their computers told them so!
4. **Refusing to Pay the Full Medical Charges.** The adjuster will say, “our computer says X hospital’s charges should be 10% less than they are charging so we are going to reduce the amount we pay you by that amount.” Imaging. If they take 10% off everybody’s medical charges, how many millions of dollars richer will they be?
5. **Misrepresenting Insurance Benefits.** In Tennessee, insurance companies have such a lock on the legislature that Tennessee law forbids the injured victim from finding out how much insurance there

is. This is outrageous but it is the law. In Georgia, we can find out how much insurance there is on the auto policy, but the insurer often “forgets” to mention there is a \$1 million dollar “umbrella” policy. We don’t find this out until we file suit.

6. Acting Like Your “Good Neighbor” and Making False Promises.

Beware of the adjuster that acts like your new best friend and promises to pay your future medical bills if you will just sign on the dotted line now. This is one of the lowest down tactics insurance companies pull and they do it just to keep you from talking to a lawyer. (Believe me, they will not be your best friend once you have a lawyer.) Those future medical bills? Well, they will pay them until about five minutes after you sign the release or until their computer starts screaming: “too much, too much---shut this down”!

THE ALLSTATE HORROR STORY

Allstate figured out accident victims with attorneys were getting a whole lot more in settlement than accident victims without attorneys. So, how did it go about getting victims to stay away from a lawyer’s office? With something called the “Quality Service Pledge”. Here is what they sent to the newly victimized injured claimant:

THE PLEDGE: “Because you have been involved in an accident with an Allstate policyholder, we will provide you with quality service. . . . Your claim representative is dedicated to carrying out this Quality Service Pledge.” Allstate’s inside rules told the adjuster to act like she or he was the individual’s “claim representative” for claim victims who had no attorney. Of course this was just a way to get victims to settle for way less than the value of their claim, until the Washington Supreme Court stepped in and hammered Allstate. Here are the facts:

An injured woman settled her case with Allstate for way less than her case was worth and not enough to begin to cover her medical bills. Why? Because based on the Pledge and on the fact that the adjuster gave her extensive “help” in settling her claim, she trusted the adjuster. Later, when

she realized just how underpaid she was, the woman tried to return the \$25,000 Allstate had paid her and continue pressing her claim for more money. Allstate's response was "no, you signed a full release."

The poor, injured woman sued Allstate for bad faith. Allstate said, "What bad faith? We tried to help her." The Court said, not so fast. The Court agreed the poor victim (victimized twice—once by a careless driver and once by Allstate) should proceed with her bad faith lawsuit against Allstate, because Allstate had a stated goal of reducing attorney involvement in the claims process to achieve a higher rate of return on settlement claims. The Court said:

"Here, Allstate's claims adjuster's conduct fell below that standard when she advised the Joneses to sign a release of liabilities, did not properly advise the Joneses that there were potential legal consequences of signing a settlement check and a release of all claims or refer them to independent counsel, and did not fully disclose the conflict of interest she presented.

Jones v. Allstate Insurance Co., 146 Wash. 2d 291 (2002)

Meaningless Lawyer Advertising

Look, most attorneys advertise to some extent. Not all advertising is bad. Heavens, we do it.

But, we are sick and tired of outrageous lawyer advertising where lawyers with a reputation for handling hundreds, even thousands of cases at a time make promises that can't be kept or liken your injury to "cash, cash, cash." Did you notice that almost all the attorneys advertising on the web and on TV claim personal injury expertise? Yet, most of these lawyers NEVER go to court, settling each case for pennies on the dollar. The insurance companies know who they are, *and so should you*.

We are also tired of lawyers who file ridiculous lawsuits that are baseless. Why? Because these frivolous lawsuits hurt, everyone by delaying real claims from getting to court. So, if you are looking for a lottery win, look elsewhere---we are not the firm for you. If you are looking to never having

to work again because someone barely tapped you at a red light, we can't help you. We handle legitimate claims for legitimate claimants who need their claim personally handled by us, not a paralegal.

What You Should Expect From Any Lawyer BEFORE You Make An Appointment For That “Free Consultation”

Before you make an appointment with any lawyer, you should ask them to send you their package of written information that should include, at least the following:

1. A sample fee agreement;
2. A listing of sample verdicts, settlements and testimonials from former clients;
3. A full written explanation of the steps involved in a personal injury lawsuit;
4. A written assurance that they carry errors and omissions (“malpractice”) insurance in the amount of at least one million dollars (you would probably be surprised to see how many lawyers carry NO insurance.) Ask for this representation in writing.
5. A full explanation of fees and costs, the difference between the two, and how the percentage fee is calculated;
6. A professional biography that outlines at least how long they have been actually going to trial in personal injury cases.

Please Note: Our policy is not to take your case if you are already represented. If an attorney already represents you, this book may raise questions for you. Ask your current attorney these questions. Everyone does things a little differently and we do not accept cases in which another local attorney has already been involved. If you are currently represented, use this book to increase your knowledge and to ask questions, but please don't ask us to take on your case. We won't.

WHAT IS A PERSONAL INJURY CASE?

A personal injury, car accident, or wrongful death case, quite simply, is any case where a careless person injured or killed someone. If the only thing that happened when you encountered a careless driver is your car been banged up but you was not injured, well, you do not have a personal injury case. Instead, you have a property damage case. We do not handle property damage cases. However, if both you and your car suffered an injury, then you have both a property damage claim and a personal injury claim. If the accident wasn't your fault, your insurance company or the careless driver's insurance company will take care of the property damage claim.

A "wrongful death" claim is where someone's carelessness or "negligence" causes the death of another. The law of each state or jurisdiction differs significantly, regarding what the victim's loved ones can recover in a wrongful death case. You need an attorney who understands the specialized wrongful death laws of Georgia and/or Tennessee.

When You Make an Injury Claim---You Are At War---It's Just That Simple (But You Can Win It)

The day you decided to make a claim against the insurance company of the person, who injured you, you went to war. You see, insurance companies and even some people in the state and federal government have declared war on injured people and their attorneys. They wage war against injured people in media and their made up lies about injured people has had a devastating impact on juries and their verdicts. This is called "tort reform", but there is nothing reformative or good about it. It is all about hurting people who already have been hurt, just so big insurance companies can save some money. It is truly shameful, but that is the reality an injured claimant enters. The success that the insurance companies have had in poisoning the minds of jurors against injury claimants has convinced insurance companies that they don't have to offer

fair settlements until you prove to them you are ready, willing and able to “World War III” your claim against the insurance company and go to trial.

It is okay to admit it. Before you or a family member were injured, you too, may have thought all of us personal injury lawyers are “ambulance chasers” and helping fakes steal from society. Why would you not believe this? Insurance companies spend billions on their media minions and advertising to convince you this lie is true.

What Must You Prove to Win Your Case?

You don't get money just because you were hurt. You must show that a person's carelessness caused your injury. If you can't show this link, you lose. If you sue the wrong person, you lose. If you wait too long, you lose. If you had a condition BEFORE the accident that causes the same kind of pain you are having after the accident, the insurance company only has to pay you for the aggravation of that injury.

In Tennessee and Georgia, if you are more than 49% at fault for the accident you lose. This means that if the other guy was 50% at fault, you get nothing.

Before we accept your case, we must be confident that we can prove you were not more than 49% at fault.

DO YOU REALLY NEED AN ATTORNEY TO SETTLE YOUR CASE?

You definitely do not need an attorney for every small injury case. In fact, our office does not even accept cases where there's little or no property damage or the injuries are minor. Why not? Because we cannot add anything to your case. In the small case, the attorney fee and costs might

leave little or nothing for you after your medical bills are paid, and we don't think it would be fair to you.

If you aren't sure whether your case needs an attorney, we are a phone call away. We can help you decide whether an attorney is going to give "added-value" to your case.

Before you decide whether to hire an attorney

Did you know that a 1999 study found that insurance companies pay higher settlements to injured people who use an attorney than those who do not?

It is true. In 1999, the insurance industry performed a study to find out if people who had accident claims received more money in settlement by using an attorney than those people who settled on their own. The study was performed by the Insurance Research Council [IRC], a non-profit organization that is supported by property and casualty insurance companies across the United States. The IRC found that people who used an attorney received, on average, 3.5 times more money in settlement than those individuals who settled on their own.

No wonder insurance companies want to keep you away from a lawyer!

FINDING A QUALIFIED PERSONAL INJURY ATTORNEY

Choosing an attorney to represent you is one of the most important decisions you will make about your case. It is a difficult decision, and it is not one you should make just based upon TV or internet advertising alone.

All of the TV ads say the same thing. Anyone can buy a slick commercial and spend millions to make you watch it---and many have.

So, how do you find out who in your local community is the best for your case? There are certain questions to ask that will lead you to the best person for your case---no matter what type of claim you have. You will have to invest some time, but it will be worth it. After all, which attorney you choose may make the difference between a fair and bountiful settlement or verdict or you receiving little or nothing.

We believe the field of personal injury claims and law is very specialized. If an attorney doesn't specialize in the field of personal injury, he or she is just not going to get as good a result as lawyers who do specialize in personal injury law. Too many times, we have seen good cases with bad results because a general practitioner, tax lawyer, or family law lawyer tried to manage them. Get a specialist.

You should also be aware that the insurance companies who defend personal injury and accident cases know whom the attorneys are in your area who actually go into court to try cases and who do not. The insurance companies use that information to help evaluate their risk. One of the first questions some insurance adjusters will ask when a serious claim comes in is: who is representing the plaintiff? We have heard insurance defense lawyers laugh in delight as they head for trial against one of the non-personal injury attorneys or worse---one of the personal injury settlement mill attorneys! It is like shooting fish in a barrel for the defense lawyer but not so much fun for the poor injured claimant.

If this information is important to the insurance company, should not it be important to you?

But, How Do You Find Out Who Is Good In Your Area and Who to Avoid?

Here are some tips:

1. Get our book, [The Truth about Lawyer Advertising](#). It will teach you how to “read” the ads.
2. Get a referral from an attorney that you know. He or she will probably know someone who does specialize in your area of need. If you need an attorney in an area of practice that we don’t do, call us. We’ll help you find the right lawyer for your case.
3. Your local bar association probably has a lawyer referral service. Understand that lawyers have signed up and paid a fee to be listed in certain specialties. Their names come up on a rotating basis. This is another good source for an initial appointment. Just take the questions we talk about here to that interview. Call and ask for the written information that I mentioned above.
4. Interview several attorneys. Ask each attorney who else handles these cases in your area. If they won’t give you any names, leave. Ask this question of each attorney. The names you see showing up on various lists of recommendations are probably good bets for attorneys doing these cases in your area on a regular basis.
5. Be careful about any attorney who rushes you to sign a contingent fee agreement. A contingent fee is not the right fee for every type of personal injury case. You should take the agreement home, read it and understand it. We have heard of instances where fee agreements are delivered electronically within hours of the time you first call the attorney’s office. That is right, before you even have had a chance to meet with the attorney. This is outrageous.

6. Run from any attorney who calls you first.
7. Beware of “runners.” A “runner” hangs out at the police station or listens to police radio to “run” to accident scenes or hospital rooms to encourage victims to sign contracts with attorneys. Outrageous does not begin to describe this practice!
8. Beware of any attorney who contacts you in writing just after you have had an accident for the sole purpose of soliciting your claim. If you are contacted “cold,” it should be for the sole purpose of providing you free information that you can study in your own home, on your own time, not soliciting your case.
9. Beware of any attorney who has a list of chiropractors he wants to refer you to. Whether you like them or not, chiropractors just don’t carry the same weight with a jury and insurance company as a physician and physical therapist (who is supervised by a physician). Chiropractors tend to charge accident victims outrageously, so by the time the lawyer and chiropractor have finished, the injury victim is left with very little. If your injury claim is valid, an experienced personal injury attorney will be able to get you to a real physician, even if you lack health insurance.
10. Here are the factors and good points to look for and question your attorney about. Note that not every attorney will meet all of these criteria, but the significant absence of the following should be a big question mark.
 - Experience---obviously, the longer an attorney has been practicing a particular area of the law, the more he or she will know. Experience can be a big factor in many cases.
 - Experience actually trying cases---ask the attorney how many cases he or she has actually tried.

- Has he or she achieved any significant verdicts or settlements? Does she or he have a list of verdicts and settlements available that you can look at? Don't accept the "All my cases are confidential" line! The greater the number of cases the attorney actually tried and substantial verdicts and settlements achieved, the more likely the insurance companies will respect a particular lawyer. Past results do not guarantee the future, but past results do demonstrate some level of experience and success.
- Respect in the legal community----does the attorney teach other lawyers in Continuing Legal Education courses?

11. Ask your attorney if he or she is licensed in the state where your case will be filed. We believe that an attorney who is not licensed in the state where the case will be filed is at a disadvantage when it comes to negotiating with the insurance company. The insurance companies know who is not licensed and thus cannot actually try the case. We also recently ran across a horror story involving an out-of-state attorney who evaluated a pretty severe car wreck case. The attorney kept the file for nearly a year and gave it back to the client two weeks before the statute of limitations was expiring in Tennessee. Tragically, the attorney told the client that he had one more year to file his case, but this was based on the statute of limitations in his own state. The client was then unable to file his case in Tennessee. Just stay away from any lawyer, especially the ones advertising a lot on TV, who doesn't live and practice in the state in which your accident occurred.

Once You Have Decided on an Attorney, Make Sure You Both Agree on Goals and How Your Relationship Will Work

How will your attorney keep you informed about the progress of your case? Many attorneys send a copy of every piece of correspondence and pleadings in the case to the client. Your attorney should also take time to explain the “pace” of the case and in what time frames the client can expect activity to take place.

Make sure the attorney you are impressed with and want to hire is the attorney that will be working on your case. With personal injury settlement mills, you may think the attorney you are meeting with is the attorney that will handle your case, only to learn your case is assigned to a paralegal! Don't let this happen to you. Make sure that you and your attorney have a firm understanding as to who will be handling your case. There are a lot of things that go on in a case that do not require the senior attorney's attention. On the other hand, if you are hiring an attorney because of his or her trial skills, ability to evaluate and manage a case, or closely involved in settlement/negotiating ability, make sure that person is your case.

What Does an Experienced Personal Injury Attorney Do for You in a Case?

Here is a more or less complete list of the tasks your attorney may need to perform in your case. Remember that each case is different, and that not all of these tasks will be required in every case. They are:

- Initial interview with the client
- Educate client about personal injury claims
- Gather documentary evidence, including police accident reports, medical records and bills

- Analyze the client's insurance policy to see whether there are any coverages which the client has that may pay all or a portion of the medical bills while the claim is pending
- Analyze the client's insurance coverages and make suggestions as to what coverages should be purchased for future protection
- Arrange for medical care if the client doesn't have a physician, lacks health insurance or doesn't have the ability to pay
- Interview known witnesses
- Collect other evidence, such as photographs of the accident scene
- Analyze the legal issues, such as comparative negligence and assumption of the risk
- Talk to the client's physicians or obtain written reports from them to understand the client's condition fully
- Analyze the client's health insurance policy or welfare benefit plan to determine whether the client will need to repay them for their wreck-related care.
- Analyze the validity of any liens on the case. Doctors, insurance companies, welfare benefit plans and employers may assert that they are entitled to all or part of the client's recovery.
- Contact the insurance company to put them on notice of the claim in writing and that the attorney is now representing the client and to contact only the attorney
- Help the client decide if he or she wants the attorney to attempt to settle the case or file suit

- If the attorney files suit on behalf of the client, prepare the client, witnesses and healthcare providers for depositions
- Prepare written questions and answers and take the deposition of the defendant and other witnesses
- Give the defendant all of the pertinent data for the claim, such as medical bills, medical records, and tax returns
- Go to court to set a trial date
- Prepare for trial and/or settlement before trial
- Prepare the client and witnesses for trial
- Organize the preparation of medical exhibits for trial
- Organize the preparation of demonstrative exhibits for trial
- Prepare for mediation and/or arbitration
- File briefs and motion with the court to eliminate surprises at trial
- Take the case to trial with a jury or judge
- Analyze the jury's verdict to determine if either side has good grounds to appeal the case
- Make recommendations to the client as to whether or not to appeal the case

The ERISA Lien Monster

If your employer's health plan paid your wreck related medical bills, the health insurer will insist that you reimburse it from your verdict or settlement for your accident related medical care. So, your "insurance" turns out not to be insurance after all. Instead, it is a loan. That health insurance that charges you month-in and month-out, will hire a lawyer to claim you should pay back the money it spent on your accident related care out of your settlement or verdict. This area of law is known as "subrogation law" and it is governed by a federal law called ERISA (The Employee Retirement Income Security Act of 1974). Your attorney must understand the implications of ERISA on your case.

There are other liens that will affect your total recovery in the case. If your bills were paid by Medicare, Medicaid, the United State Government (including "free" military care) the government will force you to pay back a portion of your settlement or verdict.

Therefore, it is really important that you hire an attorney who understands "subrogation law" and knows how to negotiate with health insurance providers as well as he or she knows how to negotiate with a car insurance company.

11 Questions to Ask The Insurance Company Who Wants You to “just Sign a Few Forms and Give Us a Statement”:

1. Will you put in writing that the accident was not my fault?
2. Will you tell me how much insurance the person who hit me has?
3. If I give you a recorded statement, will you give me a copy of the recorded statement that you already got from the person who cause the accident?
4. If I sign this medical release, will you immediately forward me a copy of everything you get using my release?
5. Will you tell me how much money you have set aside in “reserve” to pay my claim?
6. Will you give me copies of the recorded statements that you have taken from any witnesses?
7. Will you tell me now whether there is any “umbrella” insurance coverage available to cover my claim?
8. Will you tell me whether you have already done video surveillance of me?
9. Will you give me a copy of any “index” information that you have already gotten from your computer system?
10. Will you give me a copy of any financial information that you may have already obtained on me?
11. Will you tell me which of my neighbors you have already

Good Luck! Our experience is that the information sharing with insurance companies is a “one-way” street.

More Insurance Company Tricks

- Wrongly telling their own insureds that they have to go through the careless driver's insurance company to get their car appraised/fixed since it was "the other guy's fault" is a favorite trick in Tennessee and Georgia. This simply is not true. You paid your insurance company a premium for service. It is often quicker to go through your own insurance company to get your car fixed. Yes, you will pay the deductible up front but your insurance company should get that back from the other insurance company and reimburse you.
- Entering a secret "side agreement" with the careless driver's insurance company to get reimbursed for medical bills it paid and never telling you about it.
- Secretly videotaping you and talking to your neighbors about you just to get some "dirt" on you to use in settlement negotiations.
- Insurance companies and their investigators troll YouTube.com, Google and other Internet social networking sites for your postings and videos of activity and sometimes attempt to be a "cyber-buddy" to get you to admit to certain facts.
- Insurance companies put their own insured at risk of financial ruin by failing to settle claims fairly and fail to tell their insured of settlement offers. In several cases, we have seen one of the largest car insurers in the world subject their own customer to a large verdict and record judgment against him because they refused to settle the case fairly. Suppose a negligent driver has only \$100,000 in insurance (a very low number, considering the cost of medical care) but the case is legitimately worth several hundred thousand dollars. The insurance company makes a low-ball offer that is rejected. The jury returns a fair verdict of several hundred thousand dollars. The insurance company only has \$100,000 to pay, leaving their own customer with a recorded judgment of several hundred thousand dollars. Try getting a car loan with a judgment like that against you!

The Legal Process in Personal Injury Cases

After gathering all of the facts and medical records and after your medical treatment has ended, your attorney will discuss a settlement strategy with you and try to get your case settled with the insurance company. There are many reasons to settle a case, including the fact that we are living in a very conservative part of the country as far as jury verdicts go, your attorney fee will be less if your case can be settled, and your costs will be a **lot** less than if the case goes to trial. Your attorney will help you analyze the insurance company's best offer and compare it to what you might net by going to trial. Of course, you must know that every case (even "obvious" cases) can be lost.

Sometimes, attempting to negotiate with the insurance company before filing suit is pointless. Insurance companies sometimes use pre-suit negotiation only to attempt to find out as much about you, your lawyer and your doctor as they can. It is generally a dangerous practice to wait until the statute of limitations has almost expired to file suit. I have seen other attorneys do this, only to find that the defendant they sued is either not the correct defendant or is now blaming someone else.

While there are legitimate reasons to delay filing suit, there is no excuse for the practice whereby an attorney waits until the last moment to see if the insurance company will settle your case. Sometimes out-of-state lawyers attempt to represent people with Tennessee or Georgia claims. When the claims do not settle, they often try to find an attorney to file the case on time. (We have received plenty of those last-minute calls. We reject them. We don't need to take on problems other attorneys have caused by their delay in taking action.) Some accident victims are ill served by hiring attorneys who don't live and aren't licensed in the jurisdiction where the suit must be filed.

Once the lawsuit is filed, both sides engage in the legal process called discovery. Tennessee and Georgia law allows each side to investigate

what it is the other side is going to say at trial. The law give the defendant access to your medical and work history, including your income records. You may have to give a deposition under oath and the defendant has a right to have his or her own physician examine you. The defendant is also subject to the same process of discovery as you. The defendant must answer written and oral questions about his own background and he will have to give sworn testimony about the incident at issue.

THE FIVE DEADLY SINS THAT CAN WRECK YOUR CASE

1. The Client Is Referred By The Lawyer To A Chiropractor.

Jurors are suspicious of chiropractors and even more suspicious of lawyers and chiropractors who refer to each other. While the client may not know how many of that lawyer's clients have been referred in the last 12 months to a particular chiropractor, you can bet that the insurance company knows it or will find out about it. How credible do you think that chiropractor's testimony will be when the jury finds out that he treated 50 patients from the same lawyer last year?

What about referring to a medical doctor or a medical specialist?

You may have need for real medical care by a primary care physician or a specialist. It is perfectly legitimate for the attorney to make that suggestion/recommendation.

2. Hiding Past Accidents From Your Lawyer.

Once you begin a case, the other side will be interested in knowing how many past accidents you have been in. The reality is that they probably already know the answer or have easy access to that information. All insurance companies subscribe to insurance

databases and often the only reason they ask you this question is to find out if you are an honest person.

If you have been in other accidents, your lawyer can figure out if this is going to be a problem. For instance, if your past accident happened five years before your present accident and you had no more problems after the past accident---it is probably no big deal. On the other hand, if your past accident happened three months before your present accident---you have a problem. If you do not tell your lawyer, however, and you lie about your accident history to the insurance company, you will probably lose your case.

Remember, much of the time we can fix things if we know about the problems beforehand.

3. Hiding Other Injuries

You should always tell your attorney about any serious injuries that occurred before this accident. You should be honest with him or her about any surgeries or other conditions that affected you before the accident. You can bet that if you saw a healthcare provider about an injury or condition, there is a medical record and the insurance company will find it. If your lawyer knows about this, and he or she is good, she can deal with it. If you keep this information from your lawyer, you both are going to get ambushed and the case is over. There is no privacy when you make an insurance claim.

4. Not Having Accurate Tax Returns

In almost every case, a claimant will have lost income because of the accident. You will only be able to claim that lost income if your past tax returns are perfect. If you have avoided paying taxes or you have failed to file your tax returns, you cannot file a wage lost claim. It is that simple. Juries hate tax cheats. They will give you zero.

5. Lying About The Effects of Your Injury

Insurance companies hire private investigators to videotape accident victims all the time. Insurance adjusters routinely look at social media to see what the claimant is up to. If you claim you can't walk, run, bend, or carry and reach and you are filmed on video partying like it was 1999 or you decide to repair your own roof, you can forget about getting anything for your claim. The camera does not lie and the jury

Insurance Companies Will Do Whatever They Have To Do To Destroy Your Claim

If it seems like we are trying to convince you that insurance companies will do almost anything to destroy your claim, it is because we are. Here is an example that is almost too awful to believe.

Progressive Insurance Company has admitted that it hired private detectives to JOIN A CHURCH in order to discredit a couple suing Progressive.

Progressive Chief Executive Glenn Renwick later apologized for the using the private detectives in this way:

“What the investigators and Progressive people did was wrong, period”, Renwick, head of the third-largest U.S. auto insurer, said in a statement. “I personally want to apologize to anyone who was affected by this.”

Apparently, the Progressive detectives worked their way into and taped support group sessions.

Outrageous, yes. Unusual, no. Victims of car wreck cases must be on their guard, constantly, until their case settles or goes to trial, because the insurance companies will stop at nothing.

Progressive has been sued over this conduct and based upon the admission of the CEO; a jury should award this poor couple a significant amount of punitive damages.

What Cases Do We Refuse To Take?

- Cases involving minor impact. Bumps and scratches on your rear bumper are worth little to nothing in Tennessee or Georgia.
- Cases with less than \$2000 of expected total medical bills and lost wages. If your damages are \$2000 or lower than you can either settle case yourself or use a less-experienced attorney. In calculating your medical bills, look at the full amount charged by your doctor, not the smaller amount actually “allowed” by the insurance company.
- Cases with significant pre-existing injury in the same body part. If you have had three back surgeries before this accident and you are claiming the accident caused you back pain, then the chance of a jury awarding you a substantial amount of money for your back injuries here is very low.
- Cases where the statute of limitations will soon run.
- Cases where the police found you at fault in the accident.
- Your case has already been filed by another attorney. We like to do things our way because they work. We can't fix what another attorney has broken.
- Cases where you have a significant prior criminal history.

We hope this book is a tool for you to use in the event of you being in an accident. If you have any questions, we are here to answering them. Feel free to call us: 423-892-5533. We are here to help.