

Chapter 1

THE SCENE OF THE ACCIDENT

At the Scene

The client's actions at the scene of any accident are of utmost importance in determining the course of the personal injury litigation. Whether your client was injured in a car collision, in a slip-and-fall accident, as the result of equipment failure, by a doctor's negligence, or in any other way, the client must, during the very earliest stages, take great care with everything said and done. Memory of key events will never be as fresh as they are on the day of the injury, nor will the most crucial pieces of evidence be as available. Therefore, the client must focus entirely on what has happened. At the scene of the injury, the client should gather all the necessary information so that it can be preserved for use throughout the litigation. If you publish an e-newsletter or use direct mailings, you can let prospective clients know all of this.

After an Accident

The events that occur immediately after an accident can determine whether the injured person receives reasonable and timely compensation. This person should avoid discussing anything that could later be interpreted as an *admission of fault*. During this stressful time, an insurance company lawyer can twist an apology into an admission. At the same time, the injured person should listen carefully to what others say and write down key admissions as soon as possible. Often, people make statements at accident scenes, during the heat of the moment, that are helpful to your client's case.

Chapter 2

HANDLING YOUR FIRST PERSONAL INJURY CASE

Some types of cases should not be pursued without using an experienced personal injury attorney. Many other cases can be handled by an energetic young lawyer who is willing to learn. This book will help a great deal. This chapter presents an overview of what is involved in handling a personal injury case. Attorneys with years of personal injury litigation experience know how to obtain full settlements from insurance companies. They know how to investigate and value cases, and so much more.

Simple cases, in which the injury is minor and the fault is obvious, can often be settled quickly by any competent general practitioner. Since the insurance company's expense of going to court may be higher than the cost of settling, it may offer a fair settlement prior to the filing of a lawsuit. Complicated cases, such as those with disputed liability or involving an accident causing death or serious injury, are best handled by an experienced attorney. Medical malpractice cases and products liability cases should almost never be handled by attorneys without years of injury litigation experience.

Achieving the desired outcome may not be the only reason for referring a case to a more experienced attorney. The emotional strain of taking on a case that is beyond your competence can be overwhelming. The fear of committing malpractice or achieving sub-optimal results is unsettling, to say the least.

Chapter 3

THE PERSONAL INJURY CLIENT AND YOU

This chapter explores a variety of ways clients find personal injury lawyers and what lawyers can do to attract clients. The selection of a lawyer may be the most important decision the client makes throughout the entire process of *Winning a Personal Injury Claim*. By understanding more about the thought processes of those in search of legal counsel, you can position yourself favorably. Some of the other subjects covered in this chapter are the initial consultation with a personal injury lawyer, the fee agreement, referring cases to other lawyers, unhappiness with and changing lawyers, and the crucial role the client plays during the litigation of a personal injury case.

Attracting Clients

An individual who decides to hire a PI attorney must find an attorney they can trust. The search should focus on the reputation for success and the principles and ethics possessed by any lawyer considered. You, therefore, must similarly focus on building a reputation of professionalism, achievement, and integrity.

Recommendations

The best way to find a good personal injury lawyer is through the recommendation of close friends or family members. This is also the best way to find good clients. Potential clients who come to you because of a favorable recommendation from a “satisfied customer” are the most loyal of clients, and generally have relatively good cases. “Word of mouth” is a lawyer’s best advertising, and it is absolutely free.

Chapter 4

THE VARIOUS KINDS OF INJURY CASES

There are many different kinds of injury cases. These cases are sometimes referred to as tort cases. The word *tort* comes from the French word meaning *wrong*. The wrongdoer is known as the *tortfeasor*. Sometimes injury cases are called negligence cases. *Negligence* is defined in injury law as the failure to exercise the care for the safety of another that a prudent person would ordinarily use.

Negligence is an inadequate label, since some types of injury cases involve more than mere negligence. An example would be an intentional injury, like assault.

The concept of fault runs throughout any examination of injury cases. *Fault* must be proven before the injured party can obtain a legal remedy. The concept of *no-fault* refers to a system of payment of lost wages and medical bills resulting from an accident. No-fault was created to allow compensation without the need to fight over who was at fault. Even if they caused the accident, people who are injured in auto crashes are entitled to no-fault benefits.

This chapter reviews some of the different types of injury cases. Medical malpractice cases are discussed in Chapter 5.

Chapter 5

MEDICAL MALPRACTICE

Medical malpractice litigation involves injuries suffered as the result of careless medical practice. There are two important points to understand about medical malpractice.

First, not every bad result from medical care or a medical procedure constitutes malpractice. Doctors are not guarantors of the medical care they provide. Your client cannot collect from their insurance company simply because an injury occurred. It must be proven in a legally sufficient way. Many people seek legal redress for a bad medical result for which there is no legal blame. The patient may feel the doctor was disrespectful and wish to file suit to seek revenge. Or the patient may receive bills from the doctor or hospital after a bad result. It does not make economic sense to pursue a medical case unless the damages are severe and the liability is fairly clear. The law does not provide a remedy for hurt feelings.

Second, even if your client was the victim of medical malpractice, there are numerous factors to explore. The doctor's negligence is only one of many considerations. This is not the type of litigation that should be pursued by a general practitioner, or even by most personal injury lawyers, as many complex issues comprise a medical malpractice case.

Does Your Client Have a Case?

To make a determination concerning whether a patient has a case, you should have more than a basic understanding of the anatomical, physiological, and other practical medical issues involved in the case.

Chapter 6

SPECIAL MEDICAL CONCERNS

This chapter explores the crucial questions involved in selecting the doctors and other medical providers who will treat your client's injuries. Also discussed is the importance of keeping records of the treatment to assist you in gathering the medical information needed for the case.

Choosing Doctors

After an accident, it is desirable if your clients choose their doctors themselves. This helps avoid the appearance that the medical care was undertaken merely to build a legal case. Often, though, clients will want you to make a referral. Do not hesitate to do so. You must begin building a list of reputable doctors who will cooperate in litigation. Your trial lawyers e-mail discussion list is an especially valuable resource for finding such doctors. But watch out for the docs whose practice is litigation-focused. The ideal medical expert is a doctor first and a witness second.

The choices are generally between a chiropractor, a medical doctor, and an osteopathic physician. Insurance companies *and their lawyers* are often very skeptical about the severity of the claimed injuries. The opinion of a medical physician is generally viewed as more credible than that of a chiropractor or an osteopath. Regardless of who provides the better treatment, initially selecting an MD may be in the client's best interest.

Chapter 7

DAMAGES

Some people simply object to compensating those injured in accidents with money—for any reason. As a matter of principle, some may feel injured persons should be strong and bear their losses. After all, their no-fault insurance should cover their medical bills and lost wages. It is a good bet these people have never been seriously injured in an accident. And it is unlikely that anyone in their family has suffered such a fate. If a Conservative is a Liberal who has been mugged, perhaps a skeptical insurance adjuster whose mother is injured through gross negligence may become a passionate injury lawyer. Regardless, it is fair to debate the issue of translating pain directly into dollars. This debate involves *damages*.

Some may feel it is demeaning to human suffering to place a financial value on it. Yet that is the only method our legal system offers to rectify injurious acts committed by negligent motorists, shop owners, corporations, or others. As long as this method of compensation is available, those injured in accidents and their attorneys will seek to maximize injury settlements and verdicts.

Others point to the added costs of doing business they feel are generated by injury lawsuits. They believe these added costs are passed on to the consumer in the form of higher prices. As a matter of social policy, however, our legal system reflects the view that the cost of accidents should be spread among consumers and that the right of injured individuals to claim and receive compensation should be preserved. Not only can financial compensation help to make the accident victim whole, the threat of lawsuits keeps companies accountable for their errors.

Chapter 8

THE SETTLEMENT PROCESS

The vast majority of personal injury cases are ultimately resolved through settlement, rather than through trial. There are various stages at which personal injury cases are most likely to settle. Knowing this will allow you and your client to concentrate your settlement efforts around these opportunities.

The first chance for settlement occurs shortly after medical treatment is completed. After gathering the medical bills and reports, you will evaluate the case and provide the insurance company with a settlement demand. An offer hopefully follows. Sometimes that is all it takes to wrap up the litigation. To gather your client's medical bills and reports, send a written request to your client's doctors and therapists, and any hospitals that treated your client. You usually have to pay for these records. Using a HIPAA confidentiality authorization will help to avoid delays. I have provided the authorization I use in Appendix 13. It is rarely rejected.

Settlement Demand Letter

It is essential that you prepare a comprehensive and professionally written settlement demand letter. Three sample settlement demand letters can be found in Appendix 5. The settlement demand letter summarizes the strengths of the case and alerts the insurance company to its potential financial exposure. As with other stages of the case, you are trying to create a positive impression. In the eyes of the insurance company, if the settlement demand letter is not close to perfect, the settlement value of your claim drops.

Chapter 9

THE LAWSUIT PROCESS

This chapter explores the initial stages of the lawsuit process. It examines statute of limitations deadlines, choice of trials, choice of venue, and the initial legal filings you can expect from your opponent.

Statutes of Limitations

One of the most difficult calls a personal injury attorney can receive is when a potential client says he was badly injured and the statute of limitations is about to expire. Busy attorneys will often decline taking such a case because they do not want to take the risk that the suit cannot be filed on time. It takes time to know whether a case has the merit and value to justify litigation.

Statute of limitations deadlines are legal time limits that control when lawsuits must be filed. If the lawsuit is not filed before the deadline, it is subject to dismissal by the court. It is extremely important that you find out the deadline for the case and keep it in mind during the litigation.

Statutes of limitations vary from state to state and are occasionally changed by legislatures. The following pages provide deadlines for negligence cases, along with the statute citations. To be sure of your deadline, you should research the law for your state.

This list applies *only* to negligence cases. If you represent someone who has been injured in a motor vehicle or slip-and-fall accident involving negligence, you can use this list for the statute of limitations deadline.

Chapter 10

THE DISCOVERY PROCESS

In the old days, trials were even more akin to war than they are now. Modern discovery rules have put an end to the sneak attacks that once characterized litigation. These days, each side is required to respond to the other side's requests for information concerning the case. If one fails to voluntarily do so, the court, upon the motion of the requesting party, will order the recalcitrant party to provide discovery. If the attorneys do their jobs properly, 90% of what happens at the trial can be anticipated and planned for.

The discovery process involves four stages:

1. Interrogatories and exchange of documents
2. Depositions
3. The "independent" medical examination
4. Request for admissions

Interrogatories and Exchange of Documents

The first stage of discovery consists of answering written questions (*interrogatories*) and the exchange of relevant documents. Each side submits a written request for all relevant documents, and for answers to these interrogatories.

You will find sample sets of *Interrogatories* in Appendices 8 and 9. These written questions generally do not yield much useful information. Lawyers typically answer them vaguely to avoid having these answers used against their clients later in the litigation. What you do not say cannot hurt you.

Chapter 11

THE TRIAL

If the case does not settle shortly after the depositions, get ready for *trial*. You and your client must meet in advance to prepare. All lawyers prepare their witnesses. At the meeting, you and your client will run through the possible questions and answers. You will want to hear how your client will answer these questions so that you will know which to ask and which to avoid. The prep session helps to refresh your client's memory and suggests additional areas of inquiry that were not originally considered.

You also need to know which questions to expect from opposing counsel. Good lawyers prepare exhaustively in hopes of accurately forecasting these questions. The fewer surprises the better. Witnesses testify more compellingly when they are confident that the other lawyer will be unable to surprise them with unexpected questions. Preparation helps to ensure this confidence. You must be willing to put enough time into your preparation to ensure that your clients receive the representation they deserve.

Some clients think it is unnecessary to prepare for trial. They resist taking the time and insist that everything will work out if they simply tell the truth. Although having the truth on your side is critical, it is not enough to ensure success at trial. Careful preparation helps your client (*or any other witness*) relax so they can offer testimony in an organized, thoughtful, and convincing way. This helps the jury understand the testimony, relate to it and your client in a positive way, recall the testimony accurately during deliberations.

Chapter 12

INSURANCE FRAUD AND OTHER PROBLEMS

People wonder about the extraordinarily high cost of auto insurance, particularly in big cities. There is blame for the people who bring fraudulent claims and their lawyers as well as for doctors who knowingly over-treat plaintiffs to build personal injury cases.

The insurance industry and its lawyers also deserve a large share of the blame. They frequently refuse to offer fair compensation until the parties reach the courthouse steps. Insurance companies and their lawyers force extended delays, while exhaustively investigating every possible suspicion of fraud. This often unnecessarily increases everyone's litigation costs. Although a certain amount of skepticism is understandable, everyone loses when meritorious cases are treated as fraudulent. Everyone also loses when reasonable settlement efforts are made only after all of the time and money was spent preparing for trial.

The widespread public perception of fraud in personal injury cases harms average, honest citizens and the reputable lawyers and doctors who work to help them achieve medical and financial relief for their injuries. Jurors who read in the newspaper about allegations of fraud can be expected to return lower money verdicts.

Insurance industry political action groups have propagandized that injury litigation and juries are out of control. This message has served as a grassroots form of tort reform, which instills in potential jurors a bias in favor of defendants.

Chapter 13

THE POWER OF THE INTERNET

The Internet has changed all of our lives. It has touched the legal profession in profound ways and revolutionized the practice of law. Lawyers and litigants must take advantage of the resources available on the Internet, or risk being left behind. There are countless uses of the Internet for litigation attorneys. Find the websites that work best for you. I hope this list of favorites helps.

Weather Conditions

Weather conditions are important in many situations. Personal injury lawyers obtain weather reports for slip-and-fall cases. Since you will have to prove that the ice your client slipped on was present long enough for the defendant to have cleared it, the weather report for the date and location of the injury is crucial. If the weather is relevant to a car crash or any other injury-producing event, you should obtain a weather report.

They are available at:

www.wunderground.com

www.ncdc.noaa.gov

www.weather-consultants.com

There are six regional U.S. climate centers:

Midwest: <http://mcc.sws.uiuc.edu>

West: www.wrcc.dri.edu

Northeast: www.nrcc.cornell.edu

South: www.srcc.lsu.edu

Southeast: www.dnr.state.sc.us/climate/sercc

Chapter 14

GUIDANCE FOR RECENT LAW SCHOOL GRADUATES

According to the National Association for Legal Career Professionals (NALP), the employment rate for new law school graduates is at a 15 year low. The depressed economy is a big part of the problem. Recent grads now have to compete for jobs with the many experienced lawyers who have been laid off by law firms suffering from financial strain. Since the job market is so competitive, an experienced lawyer may be willing to accept an entry level salary. This creates a tough market for a young graduate to compete in.

One approach to finding employment is to offer your services, free of charge, to a law firm. If you are able to shadow an experienced attorney as she goes through her day, you will learn many things. You will see how she handles the stream of problems, hassles, annoyances, pressures, bureaucratic pettiness, delays and demands from clients, opposing counsel, insurance companies, judges and doctors. You will see how this attorney makes decisions on the fly. And you will learn when and how she takes time to ponder and strategize key litigation moves.

If you were to shadow me through my day, you would see me putting together letters, emails, faxes, motions, pleadings, and on and on. If the phone rings, everything stops. Unless what I am working on is time-sensitive, I immediately turn my attention to the caller. A phone call is an opportunity to get things done on a case. And clients really, really appreciate that you take their calls. So does everyone else.

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