



FRANK HARTMAN'S GUIDE ON HOW NOT TO WRECK YOUR CAR ACCIDENT CLAIM



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By Frank Hartman

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ABOUT THE AUTHOR

My name is Frank Hartman and I am an accident attorney here in Charleston, South Carolina. I grew up on the Isle of Palms, earned my undergraduate degree at the College of Charleston and attended the Florida State University School of Law for my J.D.

I have practiced for a number of years, focusing on representing injured individuals against insurance companies. I am a member of the South Carolina Association of Justice (formerly the South Carolina Trial Lawyers Association) and the American Bar Association.

My firm, Hartman Law Firm LLC, is different. We accept only a limited number of injury cases each year. This policy allows our firm to provide more undivided attention to each case and, we believe, provide better results overall. For us, it is People over Profit.

Hartman Law Firm, LLC has represented collision victims and injured claimants throughout South Carolina. Most of our cases are referred by satisfied clients. If we accept your case and you are not local to us, we will come to you.

If we hear the details of your situation and believe you do not have a case, we will tell you. Likewise, if we believe you are better off representing yourself, we will tell you so. At Hartman Law Firm, every case we accept is pursued aggressively and to the best of our abilities.

Note that our practice is limited to collision and injury cases, but if you're looking for a family law attorney or need a will, call us anyway. We're happy to refer you to a qualified South Carolina attorney to handle your case.

WHY I WROTE THIS BOOK

I wrote this book to help South Carolina injury victims. If you are like most people, you have never been seriously injured before and are not certain what to do or what to expect. You may be getting calls from the insurance company with questions or they may be asking you to sign paperwork you really do not understand. They may have even offered you a check to settle your claim before you even know whether your injuries are permanent!

It is my hope that this book:

- Answers some of your basic questions about what to do and what to expect if you have been injured as the result of someone else's negligence;
- Helps you to understand how insurance companies operate;
- Gives you some pointers about when you need to hire an attorney;
- Explains ways to determine how to choose the RIGHT attorney for your case.

If you have additional questions after you've finished reading this book, please give me a call at (843) 300-7600 to schedule an appointment and I'll be glad to answer your questions. If you decide you don't need this book after you've finished reading it, please pass it along to a friend or family member to read.

IMPORTANT NOTES

I am not allowed to give legal advice in this book!

While I have significant experience in handling accident and injury cases, each situation IS different. I can provide you with basic information about injury cases and offer suggestions on ways to identify potential problems, but the South Carolina State Bar does not permit me to give legal advice in this book. Please do not take anything you read as legal advice unless I have met with you to discuss your specific case, you have decided to hire me, and I have agreed in writing to accept your case.

If you are currently represented by another attorney in this matter, please read this:

If you have previously hired a lawyer to represent you in this matter, we need to know this. We normally do not take cases away from other attorneys after they have begun to work them. If you have a specific issue with the attorney handling your case, we recommend that you sit down with him or her and discuss your concerns. In many cases, problems that arise are due to miscommunication and can be cleared up with an honest and open conversation. If you both agree that the relationship is not working out and you would be better off with another lawyer, we would be happy to speak with you.

What is Personal Injury Law?

The field of personal injury covers various types of cases, from automobile accidents to dog bites. Essentially, if you have been injured as the result of another person's negligence, your case is likely covered under personal injury law.

What is negligence?

If an individual, business or the government is aware of a safety issue and does nothing to prevent it, they are said to be negligent. Likewise, if the person, business or government does something they should not do, it may also be considered negligence.

Some examples of negligence might include:

- A retail store with a broken walkway that results in a customer falling and being injured;
- A dog owner who allows the animal to roam free, resulting in a child being bitten;
- An elderly person does not receive proper care at a nursing home, resulting in bedsores or infections;
- A manufacturer who imports toys that are painted with lead-based paint, causing injury to a child;
- A food processing plant whose poor safety practices result in tainted meats, sickening hundreds.

Obviously, these are just a few examples of negligence. If you are seriously injured as a result of another person's negligence, you deserve to be compensated!

Types of Injury Cases

There are many ways that people can be injured, from common injuries like car accidents that can happen to any of us to less-common cases that impact narrow groups based on their jobs or activities.

When the accident is fatal — results in death — it is generally referred to as a wrongful death case.

Some of the more common types of injury cases are described in the following chapters.

Auto Accidents

Unfortunately, many of us have been or will be in a car, truck or motorcycle accident at some point in our lives. The good news is that many of these accidents are relatively minor, resulting in only property damage or sore muscles for a day or two.

If you have been in a minor accident, you probably do not need an attorney and can deal with the insurance company yourself. If, however, your injuries are severe or a loved one is killed in the accident, you will probably want to speak with an attorney to learn your rights BEFORE you talk to the insurance company.

When you are in an auto accident, an insurance adjuster will be assigned to your case. If another person was also involved, his or her insurance company will also assign an adjuster. The role of the insurance adjuster is to investigate and resolve the accident claim AND PAY OUT AS LITTLE AS POSSIBLE TO THE CLAIMANTS.

It is critical that you understand that the adjuster does not work for you. He or she works for the insurance company and does not necessarily have your best interests at heart.

How do insurance adjusters save their employers money? Here are some of the “tricks of the trade”:

- Push for a quick settlement many times offering you a small amount to cover your property damage and injuries before you even know whether you will have any permanent disability from the accident! In most cases, accepting this settlement bars any future claims against the insurance company in this case;
- Drag their feet — at the opposite end of the spectrum, some adjusters will force as many delays as possible, hoping you’ll get frustrated and give up or accept less compensation than you are really due;
- Dispute medical charges or require additional “proof” of your injury through their approved doctors;
- Investigate you — insurance companies have access to large databases with tons of information about you, including criminal and public records and prior accident claims. They may hire a private investigator to check on your activities, or they may go online and learn more about you on the Internet or through social media sites. Why? They are looking for any excuse not to pay your claim;
- Misrepresent insurance benefits — they may tell you on the phone that the policy limit is only \$100,000. But when a lawsuit is filed, they “discover” an umbrella policy that adds additional coverage.

The reality is that if you have been seriously injured, you need to understand the way the insurance companies operate and take action to protect yourself.

Many law offices (mine included) offer a free initial consultation on your accident case. After the lawyer hears the specifics of your case, he or she should be able to help you understand your rights and tell you whether or not you have a case.

Dangerous Drugs

We've all seen the cycle: a new drug is released by the pharmaceutical companies after some basic testing and approval by the Food & Drug Administration (FDA). The ads run on TV, in magazines and on the Internet, generating "buzz." And then all of a sudden we hear on the news that the drug has been recalled after causing illness or death in those who have used it. While many of these are prescription drugs, others are over-the-counter drugs or supplements. Some of the better known cases include Accutane, Lipitor, Celebrex, Vioxx, Cold-Eeze, Ephedra, and Zoloft.

If you have received permanent damage to your health or a loved one has died as the result of taking these drugs, you should speak to an attorney. DO NOT LET THE DRUG COMPANIES GET AWAY WITH THIS!

Food Poisoning

The Centers for Disease Control & Prevention (CDC) estimates that every year 76 million Americans get sick from tainted foods; more than 300,000 are hospitalized; and more than 5,000 die from tainted foods that they consume. While the CDC reports a decline in cases of food borne illness (www.cdc.gov) in the past few years, there have been some recent highly publicized reports of tainted foods and related recalls.

As consumers, when we buy food at the grocery store or eat out at a restaurant, we have certain expectations about the quality of the foods that will be used. When foods are improperly cleaned, cooked or stored, we can become ill. While some of these illnesses cause short-term problems, others can cause permanent damage to our bodies or death, especially in those who are more susceptible or less able to fight off disease like children and the elderly.

If you or a loved one has been injured as the result of consuming improperly handled food, especially contaminated pre-packaged food, you should speak to an attorney to learn your rights.

Harmful Products & Recalls

How many times in the past few years have we heard about recalls issued on everyday products due to faulty design, poor manufacturing quality or dangerous materials or ingredients? In June of 2010 alone, the Consumer Product Safety Commission (www.cpsc.gov) listed 42 product recalls. These recalls included bikes with steering that could break and cause falls, bathrobes that were not fire retardant, laptops that could overheat and cause burns, and several instances of children's toys or accessories containing toxic lead or cadmium.

Consumers expect that the products they purchase will be safe. In cases where these products cause injury or death, victims or their families should expect to be compensated for their injury or loss or any damage to property. Whether the product is harmful or dangerous due to a design defect or dangerous materials, the victim usually has a stronger chance of winning against the manufacturer, who is typically at fault.

If you are injured by a harmful product, talk to an attorney who has experience handling cases involving harmful products or recalls. He or she can investigate the incident and determine where fault lies.

Slip and Fall

Slip and Fall (or "trip and fall") injuries are extremely common; these cases are a type of premises liability case. In many instances the person who falls receives minor injuries and

suffers some embarrassment when others see them slip. But if the fall results in more serious injury and is due to negligence of the property or business owner or manager, the victim should expect to be compensated.

You may ask, “what constitutes negligence in a slip and fall case?” Generally speaking, to be considered negligent, the business owner or manager would have to have known about the dangerous situation and failed to act to prevent injury. Examples of slip and fall cases might include a broken walkway that has not been repaired or roped off to protect customers; a wet floor that is not marked with caution signs; or a broken chair that has not been removed from use.

If you slip and fall, report your injury to the owner or manager of the business even if you do not think you are injured! As with many types of accidents, some injuries are not immediately evident. Pain and swelling may increase over time, resulting in a visit to the doctor for diagnosis a day or two after the accident. A few other suggestions:

- If you are in pain or your injuries appear to be serious, have the manager call paramedics;
- Ask the manager to fill out an incident report. Most businesses have a process in place that he or she should follow;
- Request a copy of the report;
- Get witness names, addresses and phone numbers;
- Ask the manager to save a copy of any security tapes the store may have showing what happened;
- When you get home, immediately write down everything you remember about the incident.

Premises liability cases can be hard to prove, so the more information you have about your fall, the better your chances will be to prove your case.

Property Liability & Unsafe Premises

In addition to slip and fall injuries, there are several other categories that fall into premises liability. Examples of property liability and unsafe premises cases might include situations where a gym patron is injured due to damaged exercise equipment that was not promptly removed by management; a customer is mugged in a parking lot where the lights are all broken; or a swimmer is injured in a pool that does not meet the current government safety requirements.

Follow the same guidelines as listed in the chapter on slip and fall injuries, making sure you start by reporting your injury to the business manager or property owner. Again, these cases can be hard to prove, so the more information you have, the stronger your case will be.

Roadway Accidents & Improper Road Design

While most highways and roadways go through an extensive design review process before they are built, sometimes traffic flow patterns due to an improper design lead to an unusual number of accidents.

We have seen cases where the best design option required a significantly higher investment. This is common in congested areas where construction of new roadways or ramps require the government to buy and condemn expensive buildings and property — so ultimately, a less expensive design option is implemented. If the government has approved a roadway design that is unsafe, they are responsible for compensating those injured in related accidents.

Unfortunately, proving this type of case requires proving negligence. The design and specifics of the accident must be reviewed by an impartial team of engineers with the necessary experience. They will review the roadway design and any traffic or other conditions (like weather) to determine whether the roadway design caused or contributed to the accident.

Mesothelioma

Mesothelioma is a relatively rare form of cancer that is most commonly associated with exposure to asbestos. Beginning in the late 19th century, builders began to use asbestos to strengthen building materials, absorb sound, and act as a fire retardant. In addition to its use in construction, asbestos has also been used in insulation, cement, brake linings and certain floorings. The U.S. Environmental Protection Agency did not recognize the health issues and didn't issue an initial ban on asbestos until the late 1980's.

Many people have been exposed to asbestos without knowing it. Mesothelioma was first associated with workers mining the material. Over time, more cases appeared involving those working in demolishing or refurbishing old buildings. There have been some cases of secondary exposure documented, where family members have become ill due to inhaling asbestos fibers from the clothing of others.

Mesothelioma most commonly affects the lungs, though it may also start in the abdomen or other areas. Symptoms of the disease may not appear for 20 to 50 years after exposure to asbestos.

If you or a loved one has been diagnosed with this disease, you should speak to an attorney to learn your rights.

Medical Malpractice

Doctors attend school for a longer time than most of us. They must complete a residency period before they are awarded their degrees. And specialists have even more training on top of that. As patients, our expectation when we visit with our primary care physician or a specialist is that we will receive the appropriate care and treatment. Most of the time, we do. There are, however, cases where the doctor, nursing staff, laboratory personnel, pharmacist or hospital staff do not provide the treatment that we need, resulting in injury or death. When we are harmed and there is either a preventable error or negligence involved it is referred to as medical malpractice.

While we periodically hear of extreme cases of medical malpractice on the news, many cases are never publicized. And when the media does report a huge jury verdict award in a malpractice case, they seldom report the "adjusted" amount once the case is appealed or the award overturned.

In point of fact, South Carolina law does not allow you as a plaintiff to file a lawsuit against a negligent doctor without filing a Notice of Intent and Affidavit of Malpractice provided by an independent reviewing doctor. I would also add that the cost of obtaining the Affidavit by the reviewing doctor is paid by YOU. Additionally, once you have paid for the Affidavit, South Carolina law requires you attend a mandatory mediation (non-binding discussion of the facts and value of the case) before you can actually file your lawsuit. If your case settles in mediation, it is likely that the details of the malpractice and the settlement will never see the light of day. In other words, the public will never know that the doctor who operated on you did a bad job.

If your lawsuit goes to trial, the plaintiff (you) must prove that his or her doctor or hospital (defendant) deviated so far from what is accepted as a reasonable standard of care from a doctor in that position that the law should consider them to have been negligent. The plaintiff is also required to prove that the hospital or doctor's negligence was the primary cause of the plaintiff's injury. As an example, just because the doctor diagnosed cancer later rather than earlier does not necessarily mean malpractice can be proved.

Size matters. The judicial system is not set up to handle small malpractice claims. A tremendous amount of effort is involved in trying each malpractice case, including bringing in expert witnesses who will testify that the treatment you received was outside accepted standards. In general, most attorneys agree that the monetary damages related to the injury suffered by the plaintiff (medical bills and lost wages) must exceed \$500,000 or you must have suffered a significant permanent disability or disfigurement to warrant the expense and risk of prosecuting a malpractice case.

Burn Injuries

Approximately half a million people receive treatment at a hospital, urgent care center or through a private doctor each year for burn injuries; of those, 4000 die from their injuries. An estimated 87% of those deaths occur in residential fires; the remaining deaths are from fires during vehicle and plane crashes, electrical or chemical burns, scalding with hot liquids or other sources. The majority of deaths occur at the site of the fire or during transport to a burn center.¹ These statistics also include inhalation injuries related to fires.

Burn injuries are extremely painful and are one of the most expensive injuries to treat. We frequently find that those injured do not have insurance or are underinsured for such significant medical bills and potential loss of income. In cases where the injury is severe, the victim may expect years of treatment, including multiple rounds of surgery, reconstruction, or scar resission (necessary to repair scars that do not heal properly). Burn victims, especially those with disfiguring injuries, may find their quality of life is diminished.

Does every burn victim have cause to speak to an attorney? No. Many burn injuries fall into the category of accidents that are not attributable to negligence. But if you or a loved one has a burn injury due to the negligence of another, you need to speak to an attorney with a solid understanding of the long term challenges and expenses related to treating this type of injury.

Dog Bites

When it comes to dog bites, South Carolina is a statutory liability state, meaning that with certain exceptions outlined in the law, the animal's owner is responsible for the dog's behavior and is legally liable for injury caused by the animal. Dog bite statutes vary widely from state to state. South Carolina is considered a "one bite" state, so the prior behavior of the animal is not considered.

There are some exceptions to the law, including provocation. This means that the owner may not be held liable if the dog was provoked with physical abuse.

Over 850,000 people are treated each year for dog bites and the Centers for Disease Control estimates that over 3.5 million more are bitten but do not receive treatment. Children and adult males are at highest risk for being bitten.²

Some dog bites can be very serious or result in death. In 2006, over 30,000 people required reconstructive surgery to repair damage from dog bites.³ Other people must undergo a series of painful rabies vaccinations when the dog owner cannot prove the dog has been immunized.

¹American Burn Association, www.ameriburn.org/resources_factsheet.php

² & ³ Centers for Disease Control & Prevention, www.cdc.gov

Even bites that are less serious can cause emotional trauma to the person bitten or those who may have witnessed the attack. And children who are bitten may require long-term reconstructive surgery or treatment.

The laws governing dog bites can be very complex and each case can vary significantly. Bite victims may be able to recover financial costs like medical expenses, lost wages, replacement cost of items damaged in the attack (clothing, glasses, etc.), and counseling sessions with a psychiatric professional to deal with the emotional trauma of the attack. In addition, the victim may be able to recover damages for pain and suffering or, if a loved one died as the result of the attack, receive damages for "loss of consortium."

If you or a loved one has been injured in a dog attack, you should speak to a knowledgeable attorney to learn your rights.

Child Injuries

The Centers for Disease Control & Prevention (CDC) estimates that 9.2 million children (0-19 years old) visit the emergency room each year for unintentional non-fatal injuries. An additional 12,000+ children die from these injuries.⁴

Children are particularly susceptible to many types of injuries. While the types of injury vary by age group, the largest numbers of deaths in all age groups are the result of motor vehicle accidents. In the U.S., falls were the most common reason for emergency room visits for non-fatal injuries, followed by injuries from being struck by or against an object, and transportation injuries. Other injuries tracked include bites, fire and burns, non-fatal poisoning, bicycle accidents and pedestrian injuries.

It is heartbreaking when a child dies as the result of another's negligence. It can be just as challenging to see a child go through painful treatments for a serious injury. Because children have not finished growing, many injuries can require additional treatments or surgeries through the years, resulting in huge medical bills and potentially impacting the child's quality of life.

Nursing Home Neglect

The National Center for Elder Abuse estimates between 1 and 2 million Americans over age 65 have been "injured, exploited, or otherwise mistreated by someone on whom they depended for care or protection."⁵ Unfortunately, many cases of abuse are never reported, so these statistics are likely lower than the reality.

While most residents of nursing homes are elderly, others may be adults with developmental disabilities or even younger adults with injuries requiring in-facility care.

Types of abuse and warning signs may include:

- Physical: bruises, abrasions, burns, or broken bones;
- Sexual: bruising on the breasts or genitals;
- Emotional: withdrawal from normal activities; more quiet or reserved;
- Financial Exploitation: any change in monetary concerns;
- Neglect: bedsores, poor hygiene, weight loss.

It is important when your loved one is in a nursing facility or receives care from a third-party that you visit regularly and watch for any warning signs that might indicate abuse or neglect. Do NOT depend on your loved one to tell you they are being abused; they may not feel comfortable talking about the situation or their abuser may have threatened them with reprisals if they complain.

⁴ CDC Childhood injury Report, dates 2000-2006, www.cdc.gov/isafechild/images/CDC-ChildhoodInjury.pdf

⁵ www.ncea.aoa.gov

The State of South Carolina adopted the federal standard with regard to the rights of residents in long term care facilities. You can find the relevant federal statute at CFR Title 42: Vol. 3, Chapter 4; Part 483.

In brief, residents of long term care facilities are entitled to:

1. Quality of Life:

The law requires long term care facilities to “care for the residents and provide an environment that will promote maintenance or enhancement of the life of each resident. An emphasis is placed on dignity, choice and self-determination for nursing facility residents.”

2. Provision of Services and Activities:

The law requires each long term care facility to “provide services and activities that will result in or maintain the highest level of practical physical, mental and psychosocial well-being of each resident in accordance with a written plan or care which...is initially prepared, with participation to the extent that is practical of the resident or the resident’s legal representative.”

3. Participation in Facility Administration:

The law makes “resident and advocate participation” a criteria for assessing a facility’s compliance with administration requirements.

4. Assuring Access to the Ombudsman Program:

The law grants immediate access by ombudsmen to residents and reasonable access, in accordance with state law, by ombudsman to records. It also requires facilities to inform residents how to contact the ombudsmen to voice complaints or in the event of a transfer or discharge from the facility. State agencies are also required, by this law, to share inspection results with ombudsmen.

SPECIFIC RESIDENT’S RIGHTS

1. Rights to Self-Determination

Residents have the right:

- a. To choose their personal physician;
- b. To full information, in advance, and participation in planning and making any changes in their care and treatment;
- c. To reside and receive services with reasonable accommodation by the facility of the individual needs and preferences;
 - i. To voice grievances about care or treatment they do or do not receive without discrimination or reprisal, and to receive prompt responses from the facility; and
 - ii. To organize and participate in resident groups (and their families have the right to organize family groups) in the facility.

2. Personal and Privacy Rights

Residents have the right:

- a. To participate in social, religious and community activities as they choose;
- b. To privacy in medical treatment, accommodations, personal visits, written and telephone conversations and meetings of resident and family groups; and
- c. To confidentiality of personal and clinical records.

3. Rights Regarding Abuse and Restraints

Residents have the right:

- a. To be free from physical or mental abuse, corporal punishment, involuntary seclusion or disciplinary use of restraints;
- b. To be free of restraints used for the convenience of the staff rather than the well-being of the residents;
- c. To have restraints used only under written physician's orders to treat a resident's medical symptoms and to ensure his/her safety and the safety of others; and
- d. To be given psychopharmacologic medication only as ordered by a physician as a part of a written plan of care for a specific medical symptom, with annual review for appropriateness by an independent, external expert.

4. Rights to Information

Long Term Care Facilities Must:

- a. Upon request provide residents with the latest inspection results and any plan of correction submitted by the facility;
- b. Notify residents in advance of any plans to change their rooms or roommate;
- c. Inform residents of their rights upon admission and provide a written copy of the rights, including their rights regarding personal funds and their right to file a complaint with the state survey agency;
- d. Inform residents in writing, at admission and throughout their stay, of the services available under the basic rate and of any extra charges for extra services, including, for Medicaid residents, a list of services covered by Medicaid and those for which there is an extra charge; and
- e. Prominently display and provide oral and written information for residents about how to apply for and use Medicaid benefits and how to receive a refund for previous private payments that Medicaid will pay retroactively.

5. Rights to Visits

Long Term Care Facilities Must:

- a. Permit immediate visits by a resident's personal physician;
- b. Permit immediate visits by representatives from the licensing agency;
- c. Permit immediate visits by a resident's relatives; with the resident's consent;
- d. Permit visits "subject to reasonable restriction" for others who visit with the resident's consent; and
- e. Permit ombudsmen to review resident's clinical records if a resident grants permission.

6. Transfer and Discharge Rights:

Long Term Care Facilities "must permit each resident to remain in the facility and must not transfer or discharge the resident unless":

- a. The transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met by the facility;
- b. Appropriate because the residents' health has improved such that the resident no longer needs nursing home care;

- c. The health or safety of other residents is endangered; or
- d. The resident has failed, after reasonable notice, to pay an allowable facility charge for an item or service provided upon the resident's request; and
- e. The facility ceases to operate.

7. Notice Must Be Given To Residents and Their

Representatives Before Transfer:

- a. Timing: At least 30 days in advance, or as soon as possible if more immediate changes in health require more immediate transfer;
- b. Content: Reasons for transfer, the resident's right to appeal the transfer, and the name, address and phone number of the Ombudsman Program and protection and advocacy programs for mentally ill and developmentally disabled;
- c. Returning to the Facility: The right to request that a resident's bed be held, including information on about how many days Medicaid will pay for the bed to be held, the facility's bed-hold policies, and the right to return to the next available bed if Medicaid bed-holding coverage lapses.

8. Protection of Personal Funds

Long Term Care Facilities Must:

- a. Not require residents to deposit their personal funds with the facility; and
- b. If it accepts written responsibility for resident's funds:
 - i. Keep funds over \$50.00 in an interest bearing account, separate from the facility's account;
 - ii. Keep other funds available in a separate account or petty cash fund;
 - iii. Keep a complete and separate accounting of each resident's funds, with a written record of all transactions, available for review by residents and their representatives;
 - iv. Notify Medicaid residents when their balance account comes within \$200.00 of the Medicaid limit and the effect of this on their eligibility;
 - v. Upon a resident's death, turn funds over to the resident's trustee;
 - vi. Purchase a surety bond to secure residents' funds in its keeping; and
 - vii. Do not charge a resident for any item or service covered by Medicaid, specifically including routine personal hygiene items and services.

9. Protection Against Medicaid Discrimination

Long Term Care Facilities Must:

- a. Establish and maintain identical policies and practices regarding transfer, discharge and the provision of services required under Medicaid for all individuals regardless of source of payment;
- b. Not require residents to waive their rights to Medicaid, and must provide information about how to apply for Medicaid;
- c. Not require a third party to guarantee payment as a condition of admission or continued stay; and
- d. Not "charge, solicit, accept or receive" gifts, money, donations or "other consideration" as a precondition for admission or for continued stay for persons eligible for Medicaid.

If you or a loved one has been the victim of abuse or neglect, speak to an attorney immediately—DO NOT ALLOW IT TO CONTINUE. There is no excuse for this type of abuse!

Do I Really Need an Attorney?

There are a few questions you can ask yourself to determine whether it's time to take the next step and talk to an attorney:

1. Did the incident result only in property damage? If the answer is yes, you probably do not need an attorney.
2. Was the injury severe? If the answer is no, you do not need to hire a lawyer.
3. Was someone else at fault? If the answer is no, an attorney may not be able to help you.

If your injury was due to another's negligence or if you are not sure, you SHOULD at least speak to an attorney to learn your rights. This is especially true if your injuries were more serious, resulting in lost wages, high medical bills or any permanent impairment or ongoing pain.

If your injury is not serious, do not expect to file a lawsuit and get rich. The legal system should be used as it was intended — to protect the rights of those with legitimate cases. There are firms out there that file frivolous lawsuits — making it look like they are working hard for you when in reality they are hurting everyone by clogging the court system with cases that shouldn't be there.

What to Expect if You Hire an Attorney

When you hire an accident and injury attorney, he or she will work to represent you and protect your rights. You should be completely truthful with your attorney and answer all questions honestly. You should also expect your attorney to be honest with you. This is a two-way relationship and requires the input of both parties for it to work best.

Once you have decided on an attorney, discuss your goals and expectations to make sure you are "on the same page." Find out how the attorney will keep you informed about progress on the case and ask what he or she needs from you to get started. You may also want to ask for an approximate time line so you will understand how long it takes (on average) to handle each activity.

Here is a list of the tasks your attorney may be called on to do in your case. Remember that each case is different, so not all of these steps will apply to your situation. These tasks are:

- Initial interview with the client;
- Educate client about injury claims;
- Gather documentary evidence, including accident reports, medical records, and bills;
- Collect other evidence, including any photographs or videos that show what happened;
- Analyze all insurance policies to see what coverage is available;
- Interview known witnesses;
- Analyze the legal issues, such as contributory negligence and assumption of risk;
- Obtain medical reports to understand the client's condition;
- Analyze the client's health insurance policy to ascertain whether any money they spent to pay your bills must be repaid;
- 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 and put them on notice of the claim;
- Decide with the client whether negotiation will be attempted or a suit will be filed;
- If suit is filed, prepare the client, witnesses and healthcare providers for depositions;
- Prepare written questions and answers and take the deposition of the defendant and other witnesses;
- Produce to the defendant all pertinent data related to the claim, including 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 all exhibits for trial;
- Prepare for mediation or arbitration;
- File briefs and motions with the court to eliminate surprises at trial;
- Take the case to trial with a judge or jury;
- Analyze the jury's verdict to determine if either side has grounds to appeal the case; and
- Make recommendations to the client on whether or not to appeal the case.

While not all steps will apply to your case, you can see that there is potentially a lot of work involved in negotiating a settlement of your injury claim or taking your case to court!

How to Choose an Attorney to Handle Your PI Case

Understand that while most attorneys offer a free initial consultation on your case, not all law firms are the same. Many attorneys claim they handle hundreds of accident or injury cases each year. But when you look more closely, you might find that they settle almost all of these cases for pennies on the dollar. The insurance companies know who these attorneys are and will push to settle for less than you deserve.

Before you hire an attorney, do some research to make certain the law firm you hire has the right kind of experience to handle your case. Law firms that specialize in personal injury law generally have a roster of skilled investigators, medical experts, and other resources they utilize in handling personal injury claims. General practice firms don't always have quick and easy access to these specialists. Again, insurance companies will recognize the lack of experience and act accordingly.

You also want to find an attorney you feel comfortable with, one who will take your case seriously and treat you as an individual. Do not just pull a name out of the Yellow Pages! Take some time to find a good "fit."

Some suggestions:

- Find and interview several attorneys. In addition to asking the questions in the next section, ask each attorney for names of other attorneys in the area who handle personal injury cases. They should provide you with several names. When these names show up on more than one of your lists, they are probably good bets to speak with;
- Look for a specialist —the attorney who wrote your will may be an expert in probate law, but you need a lawyer who has tried personal injury cases and knows the ins and outs;
- Ask for a referral from an attorney you know or from a friend or neighbor who has had recent success in a personal injury case in your area;

- Use the lawyer referral services available through the state bar association;
- Be wary of any attorney who contacts you immediately after your accident to solicit your business. It's one thing if they send you free USEFUL information and do not pressure you; it is another thing entirely if they push you to sign a contract to hire them.

Questions to Ask Each Attorney

It's always a good idea to ask each attorney you interview the same questions and then compare the answers before you decide which firm to hire. Here is a list of sample questions you may wish to ask. You may want to add a few of your own that address your specific case and concerns.

1. How many years have you practiced personal injury law?
2. Approximately how many personal injury cases do you handle each year? How many of those are my specific type of case (i.e., auto accident, dog bite, medical malpractice, etc.)?
3. How many of those actually go to trial?
4. Can you provide a list of recent verdicts and settlements in your cases?
5. Who will be working on my case? In some cases, paralegals or junior attorneys may do some of the case work and preparation. You DO want be sure that the attorney you hire will be the one to try the case if it goes to trial.
6. How will you keep me updated on the progress of the case? What information will you require from me?
7. Are you a member of any trial lawyer associations? In our area, the South Carolina Association for Justice (SCAJ) and the South Carolina Bar Association provide education and networking opportunities for trial lawyers. Membership is a good indication that the attorney takes continuing legal education seriously.
8. Do you teach any Continuing Legal Education (CLE) classes for other attorneys or have you been asked to speak at legal conferences?
9. Have you written any articles that have been published in legal journals? This can be a sign of respect in the legal community.
10. Do you have a blog I can read?
11. Are you licensed to practice law in the state where my case will be filed? Note that if the answer is "no", you may want to continue your search as the insurance companies will know the attorney cannot try the case.

5 Biggest Mistakes Injury Victims Make

When you've been seriously injured, you are not always thinking clearly. You may be in shock or afraid of a future that may seem uncertain. Add the stressors of a trip to the emergency room, missed work and lost wages, ongoing medical tests or physical therapy and many of us just want it all to "go away."

There are some things you MUST know to protect yourself and your family. If you do nothing else, PLEASE read this section carefully and DO NOT MAKE THESE MISTAKES. Some things cannot be undone, and I do not want to see you give up your rights or damage your case in any way.

Mistake #1: Talking to the Insurance Adjuster Before Talking to an Attorney

If you are injured as the result of another's negligence, insurance companies will generally be involved. For example, if you are hurt in a slip and fall incident at a retail store, the store's insurance company will become involved. In the case where you sustain permanent damage to your health from inappropriate care while hospitalized, the insurance carrier for the hospital will assign an adjuster to investigate. In a vehicle accident where another car was involved, both your insurer and theirs will require information about the accident. You must use CAUTION when dealing with the other party's insurance adjuster as your statements and actions can be used against you. In most cases, you should NOT TALK WITH THEIR INSURANCE ADJUSTER BEFORE YOU SPEAK WITH AN ATTORNEY!

Many people believe that if they cooperate with the insurance carrier, they will be treated fairly. Remember that the insurance companies are in business to make a profit — not to make sure you are fairly compensated!

I have had cases where the injured party gave a recorded statement to the insurance company representing the person who caused the accident. This statement was then used against my client after we filed suit to recover damages. Do NOT allow the other person's insurance company to record your statement.

[Note that you do need to cooperate with YOUR insurance company.]

If your injury is anything other than very minor, it cannot hurt to speak to an injury attorney and learn your rights — it can save you a lot of long-term headaches!

Mistake #2: Accepting an Early Settlement & Signing a Release

There are some insurance adjusters out there who will push you to settle your case quickly. If they flash a check for a few thousand dollars, you might be tempted to do this — especially if your injury has resulted in financial hardship for you and your family. But consider this: that check comes with strings attached — if you accept the money, you are GIVING UP ALL FUTURE RIGHTS to recover more money from this case.

I have seen many cases where the insurance adjuster will push the injured person to settle early in the process. But if you have been seriously injured, sometimes the full extent of your injuries or disability is not known for months or years. As an example, take the case of a child who is bitten by a dog. In some cases, this type of injury will require additional surgeries as the child grows to repair scar tissue or other damage.

Before you sign anything, you should speak to an attorney. He or she can advise you on how best to proceed.

Mistake #3: Waiting too Long to Speak to an Attorney

I have three words for you: Statute of Limitations.

With very few exceptions, all criminal-and-civil legal actions have a limited time under which the case must be filed. In the majority of injury cases, the Statute of Limitations in the state of South Carolina is three years. If you bring a lawsuit against a government entity, (such as a state sponsored hospital i.e. the Medical University of South Carolina) you have a two year statute, with the option of a third if the proper paperwork is filed within the first year.

This means you must have your evidence put together and case filed with the court before that time line has passed.

Compiling an injury case takes time. The longer you wait to speak to an attorney, the less time he or she will have to investigate the claim, locate witnesses, discuss potential settlements with the insurance company, get complete copies of your records, etc. The attorney must gather critical and relevant evidence and identify medical problems related to the incident. The investigation process frequently involves third-parties which can further add to the time line.

Many attorneys, including myself, will simply not accept cases that are near the Statute of Limitations. If you believe you have a legitimate case, DO NOT WAIT TO TALK TO AN ATTORNEY!!

Mistake #4: Failing to Preserve Evidence and Get Witness Information

When you are seriously injured through the fault of another, it's always a good idea to preserve as much evidence as possible. The more witnesses and documentation you have to support your case, the better your chances of winning your case or obtaining a just settlement.

The evidence needed to support each type of injury case will vary. In a case of severe food poisoning, for example, your medical records and reports from the local Health Department documenting your case would be collected as evidence. A nursing home neglect case might include a medical report from your loved one's personal physician and dated photos documenting the injuries.

I have seen vehicle accident cases where the injured party did not immediately realize he or she was hurt and therefore did not take down witness names or take photos of the scene. When the injuries became apparent the next day, it was too late to capture the evidence to support the claim.

If the police were called to investigate, you will want to obtain a copy of the report. Many police agencies now have reports stored online for easy access. You will also want to write down all the details you recall about the incident; it's human nature to forget things over time, so do this while it's fresh in your mind. Take pictures or video, or draw a diagram. Keep copies of all medical treatment information and bills. If you miss work, document the number of days missed and any lost wages (or lost vacation or sick days). Document any other related expenses.

Again, the MORE EVIDENCE YOU HAVE TO SUPPORT YOUR CLAIM, THE BETTER OFF YOU WILL BE.

Mistake #5: Assuming the Insurance Company Has Your Best Interests at Heart

I have said it before and will say it again: THE INSURANCE ADJUSTER DOES NOT WORK FOR YOU! He or she is paid by the insurance company — a company that is in business to make money for its shareholders or owners.

In most injury cases, there will be insurance companies involved. In a car accident, the auto insurers for both parties will become involved. In the case of a dog bite, home owner's insurance policies typically come into play. In a case of premises liability or nursing home neglect, the business should have liability coverage. In some cases, the negligent party may not have sufficient insurance to cover damages. It's important in these cases to understand other recovery options.

YOU ARE RESPONSIBLE for making sure you are getting the medical care and benefits you deserve. Do you have to do it on your own? NO! For any serious injury case where another party is at fault, you should talk to an attorney to make sure your rights are protected and you are indeed getting all the benefits you deserve.

SUMMARY

I have covered quite a lot in this book and you may have found some of the material a bit overwhelming. But I believe it's important that you have this book to use as a resource and refer back to when you have questions about your injury case.

While you probably do not need to hire an attorney if the only damage was to property or if your injuries were minor, you may wish to consult with an attorney if your injuries were more severe.

For many of you reading this book, it may be the first time you have been seriously injured or the first time you have considered hiring an attorney. Many accident and injury victims believe that if they cooperate with the insurance company they will get a fair and timely settlement. Unfortunately, it's WAY TOO EASY TO BE PUSHED INTO WAIVING YOUR RIGHTS for a settlement that doesn't even cover your medical bills and lost wages.

Injury law can be very complex. You must have a basic knowledge of how the process works so that others do not take advantage of you. DO NOT MAKE THE MISTAKES I HAVE LISTED IN THIS BOOK!

If you have been seriously injured, DO NOT WAIT—schedule an appointment with an injury attorney and learn more.

Free Newsletter & More Information

If you are reading this book, you probably already receive our monthly newsletter. If not, sign up now! Our newsletter provides tips on how to deal with insurance company denials; ways to find the best lawyer to handle your case; read the "inside story" about frivolous lawsuits and get some practical advice about buying insurance from someone who doesn't sell it.

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