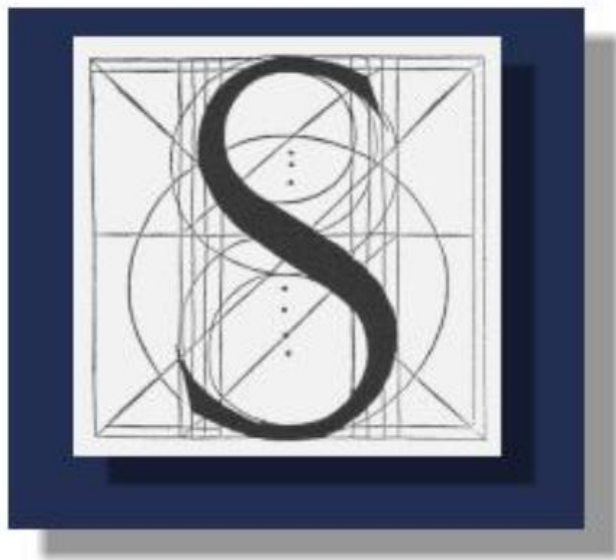


Handling Auto Accident Cases:



Chris Simon

Simon Bridgers Spires, ALC

First make sure your financial house is in order.

- What is your average fee per case? Is it where you want it?
- What steps can you take to improve those numbers?
- What Can you Do to become Better at Case Selection
- Reject the fallacy that any work is good work. Busy is not always better.



A Changing Industry

What's Changing in the Industry for the Better?

\$\$\$The Costs of Defense Is Up Substantially

Along with the Workload

What's Changing for the Worse? Collateral Source

When the bill passes, it's is an evidence rule and it will be retroactive to every single case that you have. Be very careful about how many of those cases are in the que.

What's the Easiest Thing to Tweak?

Improving Your Case Selection Skills



Whether you keep the case or not should follow the 5 second rule. If it has these problems, it's been on the floor for more than 5 seconds.

- Beware cleaning up other lawyer's cases.
- If the property damage is light be very, very careful.
- If the client has prior injuries and especially other cases within 3 years. Definitely if within 1 year.
- If the client did maintenance care with the same chiro, cheaper billing
- If the client does not work they will run you ragged and ask for loans
- If the client is on disability
- If there is more than a 10 day gap before initial treatment. (PD can drastically affect)
- If this is the second collision and were already treating for another.
- If it becomes a bookend case while you have it, make a quick decision.



Be Better Screener Means Knowing Who is Coming Through the Door

- A great number of you have intake systems where no lawyer speaks to the client until months into the cases. Your case managers over focus on getting the client to sign up.
- That can work if the case managers are very experienced and excellent at customer service but there is no substitute for having a lawyer review every file within a week of it coming into the firm.
- Whether it is a lawyer or a case manager, danger signs are the same.



Attach a photo of the PD to the Physical Folder or Make it the First Item you See in Case Notes

In large part the success or failure to obtain value for your client will flow from the severity of the impact. Because the property damage photos ultimately decide whether juries get behind a claim or not, those photos can either magnify or diminish the value.

It's the first thing the adjuster sees, it's the first, middle and last thing the defense will show to the jury when you try the case. High property damage can get you past a 30 day gap in treatment.





- When the medicals seem almost complete and it's time for a demand, you and the client need to agree on the value target including reimbursement estimates on liens. Put it in writing to the client and in your case notes.
 - Make your Assistant prepare a medical chronology. You can review this at a glance and immediately see whether prior care is going to affect you, whether gaps in care exist and how long your client treated, which informs your jury arguments.
 - If and when suit is filed, communicate to the defense lawyer what you are fighting about. Get them a demand. No demand, no reason to do anything other than litigation, file motions, send Rule 6.4 letters. More importantly they have to report to the adjuster on their estimate of value and what they think you are looking for. Why make their job harder.

Stop Sending Dumb Demands



With limited exceptions on personal lines policy case why would you ever demand more than 10x on the specials. 1) You are inviting ridicule, not real offers. 2) Your clients will also read the number and value it unless you totally disclaim.

- Send Offers of Settlement if you know the lawyer is reasonable and especially if they are on a flat fee arrangement.
 - For people you don't know give them the option on what kind of demand they want to see. Tell them it can have a lot of fluff, some fluff, or very little if any.
- Do not expect that the defense can pivot and reevaluate your case at mediation when you show up with new medical bills. They can't because the evaluation has already been done.
- Learn to be biblical; have the client deny prior medical care three different ways to be sure. "I don't want you to filter any of your answers to me. If I ask you about whether you have been in a car accident, don't assume I only want to know about ones where you remember being hurt. I want every stinking fender bender.

What My Lawyer Wants to Know is... Stop them From Editing the Answers

- Ask, have you ever hired a lawyer before for anything. Has a lawyer ever gotten you a settlement before for anything?
 - Have you ever been in an MRI machine before, describe the machine.
 - Ever had a chiropractor work on you, even if it was a one time free thing.
 - Ever had a minor injury before that you didn't get much medical care for.



Common Case Types

IS THE JUICE WORTH
THE SQUEEZE?

Fruit Stripe



Tastes pretty good so long as you don't chew it for more than 20 minutes

These are low merit, low drag cases between \$1,000 and \$6,000 in value

usually with chiropractic care.

They have no health insurance and no med pay.

They can pay the bills and in volume can make for a thriving law practice.

They are the kind of girl you won't take home to mother so try not to put too many of them in litigation but if you have the staff and the patience for these high maintenance clients, go for it.

Tara Reids-



These are a blend of chiropractic and orthopedic care or straight ortho and some PT.

They either have health insurance or at least \$5,000 in medpay. They will usually run with \$9,000 to \$35,000 in medical specials.

To the right adjuster, they can look pretty good. There are some problems and don't take them on a date in the bright sunlight. She was so good in Van Wilder.

Halle Berrys–



- These cases are great and you are going to have a happy client every time.
 - High Impact
 - real medicals
 - no gaps in care
- it's a bonus if it's a commercial defendant.

Kanye Wests -

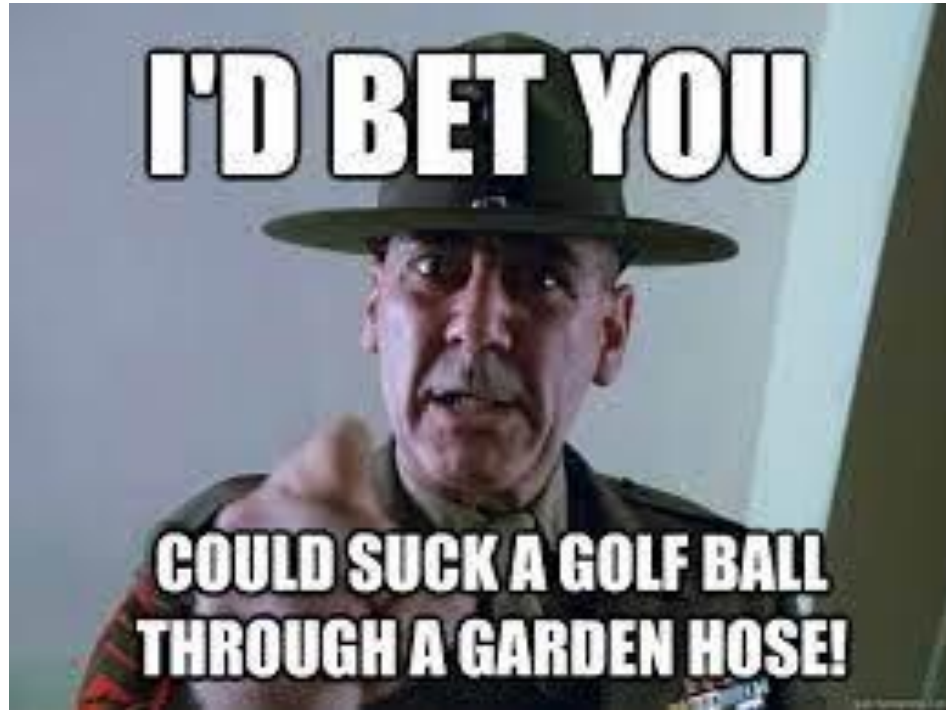


They have great medicals, maybe a surgery, good property damage, great insurance limits but they are flat out 5150.

They call and text nonstop.

Their lives are absolutely ruined by the collision (but should not be)

Their case is rarely worth less than a half Milli in their mind and they are a mediator's nightmare.



Case Intake

A. Getting Clients is a topic for another day. Today we focus on the intake process:

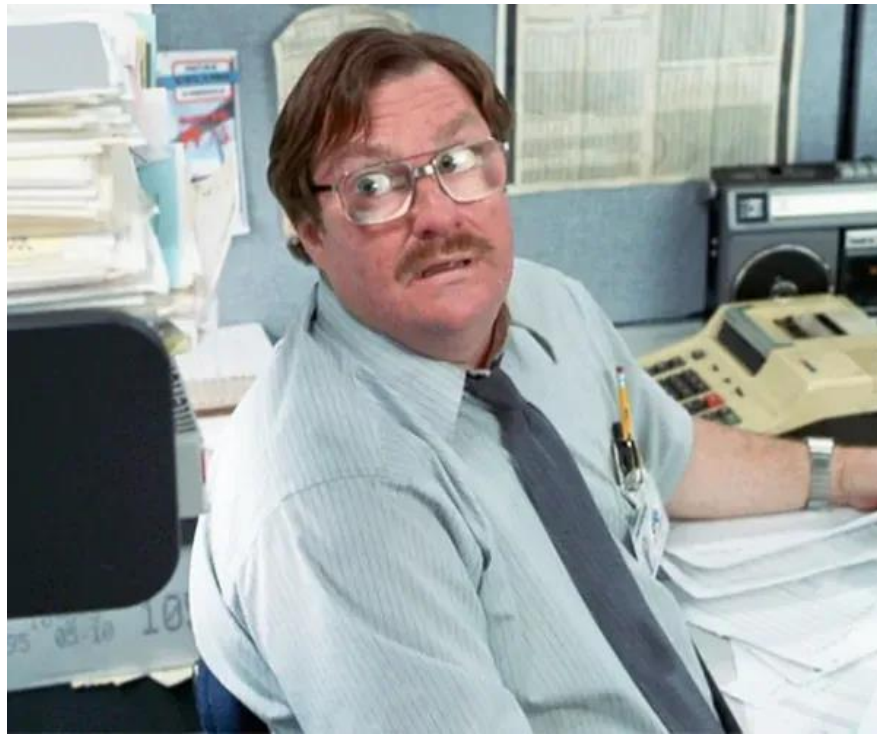
A. For **Fruit Stripes and Halles**: **YOU MUST DO THE INITIAL INTAKE MEETING YOURSELF**. I know many of you have slid into the habit of sending investigators to do the initial sign up. This is stupid for several reasons:

- 1) **CLOSING**: Higher closing percentage
- 2) **CALLS**: Spend extra time with the client up front and they won't feel insecure and call you needlessly during the pendency of the case.
- 3) **RETENTION**: Meeting you and establishing personal relationships reduce the possibility of attrition.

- C. **Police report: Take the time to really read it carefully.** Just because the cop put down a 4 on the damage to vehicles does not mean the Property damage sucks. Ask detailed questions of the client, have them text the photos over and then call the adjuster on the pretense of dealing with your client's own property damage and feel them out on the repairs to the other car.
- D. **Contract:** Double check your contract and make sure it provides for you getting your contract percentage once an offer is on the table. What if the client fires you after you send the demand but before you get an offer? That is the sweet spot where you are vulnerable to being forced into a quantum meruit fee posture instead of getting your contingency fee.

THINGS FROM INTAKE THAT KEEP YOU UP AT NIGHT:

- **MAKE ABSOLUTELY SURE YOU WRITE ALL POSSIBLE UM CARRIERS WHEN YOU GET THE CASE IN.** It is a huge malpractice trap.
- **Ante Litem Notices.** Triple Check it
- **Bankruptcy-** Ask em three times. No fun doing all the work only to find out hosed later.
- **Kiss of Death: Multiple car accidents.** Be on the ball when the client has a recent prior, numerous old priors or has another crash in mid care. If it happens in mid care, you need to have a long talk with the client to determine whether you can get over the obstacle.



File Organization

Each file should have a quick reference sheet listing

1. Client contact and personal information (SSN, DOB) Etc
2. **Property Damage photo**
3. Adjuster information on TF and UM policies. Enter adjuster name into database
4. Demand and Offer history with notes section
5. Notes about case strengths and weakness. PD, gaps in care, etc.

The Case File Should Include Subfolders:

1. Client Information: contains the quick reference, HIPAA
2. Accident Report: Police report, photos, liability notes, witness data
3. Medical Records: In the front have a medical chronology table from word
4. Pre-suit and Post Suit Correspondence Section
5. Intake letter, UM notice letter, Lost wages letter, demand package, etc.
6. Pleadings and Discovery

Keep track of your referral sources and make sure you send them copies of the closing documents so their trust in you is reinforced.



Be a Good Medical Shepherd

For Fruit Stripes and Taras Especially!

If you want to make a lot of money and have happy clients, you better be a good medical shepherd. For Juicy Fruits, you verify that there is enough property damage such that your case will not be a MIST(Minor Impact Soft Tissue) or the equivalent then leave it up to the doctor and patient's judgment

For Tara, it takes a little more work. You have to make sure that the client and/or their doctor don't run amuck with expensive testing of questionable value. What is the client's tipping point where there is too much expensive care and not enough insurance coverage. The medical decisions should be made by the patient and the doctor but you know to keep an eye on some of the Doctors.

Doctor's Holding Lien Care Personally is Dangerous

Furthermore, Dr. Chappuis' financial interest in the outcome of the case is highly relevant to the issue of his credibility and potential bias, as Dr. Chappuis has become an investor of sorts in the lawsuit. If Castano receives a large verdict amount, then Dr. Chappuis has a near certain chance of fully and quickly recovering the costs of the treatment provided to Castano at no initial cost. On the other hand, if Castano does not recover at trial, Dr. Chappuis' chances of being fully reimbursed are more doubtful. Thus, the expert witness has a financial motivation to testify favorably for Castano, and the probative value of this testimony outweighs its prejudicial effect. See *Lloyd v. State*, 40 Ga. App. 230, 231, 149 S.E. 174 (1929) ("The intent or motive of a witness is a legitimate subject of inquiry, and the fact that a witness, in his connection with any pending litigation, is influenced by financial considerations may affect his credit and diminish the weight of his testimony." (citations and punctuation omitted)). Consequently, the jury should consider the relationship between Castano and Dr. Chappuis when assessing the credibility of that physician's testimony.⁴ See OCGA § 24-6-622 ("The state of a witness's feelings towards the parties and the witness's relationship to the parties may always be proved for the consideration of the jury."); *Chrysler Group, LLC v. Walden*, 303 Ga. 358, 360 (I), 812 S.E.2d 244 (2018) (evidence of a witness's compensation package from defendant company made existence of bias in favor of that defendant more probable).

Stephens v. Castano-Castano, 346 Ga. App. 284 (2018)

What if there is only \$25,000 in liability coverage, no UM and the client's medical bills are already at \$12,000.00?

You must advise them of the financial danger because orthopedic care is not like chiro care where the doctor will write the bill down substantially.

For your Tara and Halle Berry cases, you need to stay on top of the client's medical progress. Be attuned to their concerns, the fact they may be stressed out financially because they are out of work.

Danger Zones

Runaway care, minimum limits policy, minor Damage? But the Client said it was totaled-

When you get back the policy limits disclosure and the UM disclosure, check with the client on how the medical care is going and what the prognosis is. Keep pushing for the photographs.

**Hospital Files a Lien on a Case With Health Insurance.
6 Month Deadline**

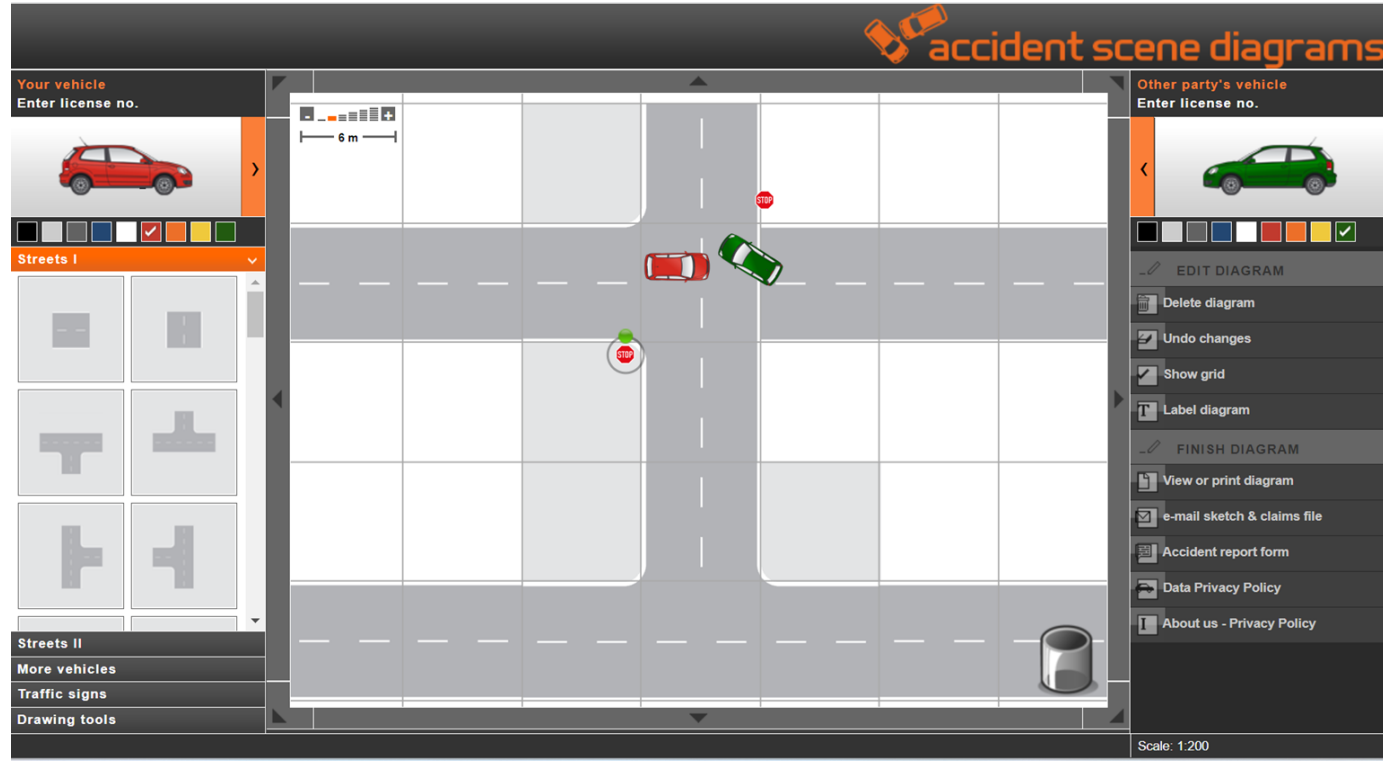




Google Maps and Street View

Chapter 4: Accident Diagramming for the Demand

Use: <https://draw.accidentsketch.com/>



Pull the Google Street view and then use the snipping tool in Windows to capture the perspective of the cars and paste it into the demand.

Florida, along with many other jurisdictions has now codified judicial acceptance of Google Maps evidence and most Georgia Courts will as well. For example...

Section 90.2035, Florida Statutes:

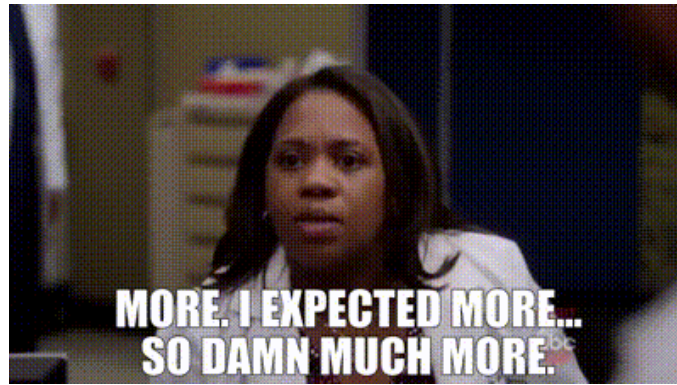
will now allow permissible judicial notice of an image, map, location, distance, calculation, or other information taken from a widely accepted web mapping service, global satellite imaging site, or Internet mapping tool," as long as the image, map, etc. "indicates the date on which the information was created.

Do anything that shows you will go the extra mile on the Paris and Brooklyn files so the adjuster knows they are not facing a lazy opponent.

Here is an in depth treatment of how to use Maps at trial https://www.verdict-digital.com/gtlq/0119_winter_2019/MobilePagedArticle.action?articleId=1466283#articleId1466283

THE OPEN RECORDS ACT IS BASICALLY FREE! Use it to your heart's content. Order 911 tapes, order dash video cameras that have juicy audio files.

Client Expectations



Expectations need to be managed to build a healthy lawyer client relationship. For most cases these conversations happen at a few checkpoints:

1. Consultation
2. When Dec Page Comes In
3. When Key Medicals are In.
4. Demand Package Going Out: **Make sure you review the demand package with the client before it goes out and explain that the demand number is not a real world number.**

Multiple Vehicle Collisions: Tell the client from day one that these cases are a headache and almost always end up in litigation. Be prepared from the start. Take a firm position sending a demand package out jointly that identifies how much blame you assign to each tortfeasor. See if you can find out who paid the property damage and in what percentage. Sometimes they will make a BI adjusting decision along the same percentages.

Chapter 6: Speed Pays

For the first few months of your practice, **get in the habit of clipping a \$20.00 BILL to each file waiting on you to make a demand.** Time is money and if you are sitting on a demand you are wasting money.

Focus on increased speed and efficiency.

What are the roadblocks to settling the case or filing suit on it?



What are the roadblocks to settling the case or filing suit on it?

- A. **Tortfeasor and UM policy Limits.** Critical Obviously. Communicate ahead of time to the client what low limits can mean for the case
- A. **Medical records and Bills.** Start ordering from providers where care is already completed early in the case. That when whenever treatment is concluded, the ER records are already in and you just need to wait on the most recent doctors.
- A. **Health Insurance Reimbursement Numbers or Negotiated Lien Amounts Known:** If your client has health insurance, make sure you at least have a good operational view of what the reimbursement claim will be in the worst case scenario. It may take longer to get their verification of whether it is an ERISA plan with bulletproof language and whether it is self-insured but this way you can tell the client at the time of the demand what their worst case takeaway number is. With lien amounts, be working on these long before the offer comes to you. I realize that for Tana cases, it is case by case. I will leave it up to lawyers with more experience with chiros as to whether to do this or not.
- A. **Demand Draft:** Have an assistant drafting a shell of the demand as the medical records come in along with a medical records table so that you can evaluate your client's case in a pinch if they call in. Once your practice is running past 30 cases or so, it is impossible to remember all but the Brooklyn's

Demand Drafting: Use a Template, But Make Unique Modifications Describing this Client

- A. Copy the Demand to the Client:** You should of course be sending a copy of the demand letter to the client so make sure that when they read the letter, they can see that you or your staff took the time to learn a little something about them. It gives the client confidence that you are not:
- **Illiterate**
 - **A Mill operation**
- A. For policy limit demands, best practices are rapidly shifting so keep reading:
- B. Insert a photo of the client, ask, go online whatever.

Confirm Settlement in Writing and Deal with Indemnity Issues and the UM Carrier:

The biggest pain in the butt for an average car wreck case is dealing with health insurance, Medicare, Medicaid, workers compensation subrogation and reimbursement issues. You have to be very careful in settling a case so that the release does not come back to bite you or the client .

Most Auto insurers have a brutal indemnity clause in the release these days that asks your client to indemnify the insurer and their insured against any and all claims. Even scarier, they put the lawyers name on a signature bar on the release as well. (see State Farm standard Release)

What's the big deal, these people cannot sue me or my client directly and even if they could, they never do.

Things change.

Let us assume that Blue Cross decides to start recouping losses on \$15,000 payout type cases and hires a collections firm that then files suit against your client, the tortfeasor and their insurer for not reimbursing them from the settlement.

IT DOES NOT MATTER WHETHER THAT LAWSUIT IS MERITORIOUS OR NOT.

The insurer , will promptly contact you and your client and demand your client indemnify them and pay for their defense pursuant to the Release. If you were foolish enough to sign the release as the lawyer without noting that you are not an “undersigned” then you might also be on the hook for the defense and indemnity.

IT DOES NOT MATTER THAT THE CLAIM MAY BE SPECIOUS; YOU MAY BE ASKED OR SUED FOR A DEFENSE!

Negotiations:

Keep a cheat sheet on the big insurers so you get familiar with their recent habits. Get on it quickly. Communicate with the client and get their permission to negotiate down to a particular floor.

When to File Suit: As soon as you confirm with the client that the final offer is too low in both of your opinions. There is no reason to wait.

It Should Take You Only Two Days to File a Car Accident Suit: You should have the forms ready to rock and roll. Do not send a courtesy copy to the adjuster unless you have no intention of continuing with the case anyway. Why? The defense lawyer may file an immediate motion to dismiss for failure to effect service.

If the tortfeasor is proving hard to serve and their insurer is a low grade company, then serve by publication and play with the UM carrier instead! But...



Staff Motivation: Pay for Performance



I learned from my days with Morgan that you are a fool if you do not compensate your employees and contract labor on a bonus system related to either their performance or firmwide performance. The bonus should be paid out on a monthly basis. Annual bonuses or random bonuses that come from settling great cases do you NO GOOD.

Why?

People forget your generosity in 30 days, they will never love you for 11 months

Cause, Effect and Control. Human beings get stressed out when they cannot affect their own situation through their own behavior. What is the point in killing yourself gathering medical records for a boss that will pay you \$2,500 at Christmas? The result is frustration.

Suggestion for Paralegals, Case Managers or Whatever You Want to Call Them:

1. Tie the employee's bonus to monthly net from cases they worked on. For example \$200 per \$10,000 in net income over a baseline of operating costs. They get paid the very next month.
2. Bonus the employee based on the number of demand packages they prepare in a month.

Get the Service by Publication Done Right for UM Coverage

If you cannot find the defendant and you have UM coverage, document your skip traces, hire a PI to pound the pavement and document it all in affidavits. Then file a **Motion for Service by Publication**.

The UM Act provides for service by publication upon the owner or operator of an uninsured vehicle, where either the owner or operator is named as a defendant in the action but resides out of the state, has departed from the state, cannot after due diligence be found in the state, or conceals himself to avoid the service of summons. O.C.G.A. § 33-7-11(e).

A plaintiff must exercise due diligence in locating a missing uninsured motorist to effect service. The correct standard of due diligence for serving an uninsured motorist by publication after the statute of limitations expired and obtaining a nominal judgment against her was diligence in determining that she was residing out of state or avoiding service and not the standard of diligence for personal service to relate back to the date of filing of the complaint, i.e., attempt to serve the uninsured motorist as soon as possible. *Vaughn v. Collum*, 236 Ga. 582, 224 S.E.2d 416 (1976); *State Farm Mut. Auto. Ins. Co. v. Harris*, 207 Ga. App. 8, 427 S.E.2d 1 (1992).

Getting a Better Offer in Litigation When Nothing Has Changed

One of the biggest frustrations is getting to deadlock with the pre-suit adjuster when you know you are right on value. Opposing counsel is either A. Busy (in house) B. Hungry to Bill (outside). It is your job as the plaintiffs lawyer to make them give you a better offer early on.

1. Send an unliquidated damages demand not a OCGA 9-11-68 Offer of Settlement. Why? An Offer of Settlement will do nothing more than get a bad offer thrown back in your face in anger and retaliation. If it is that kind of case, great. But if you are \$7,000 dollars apart, you want progress, not war. An Unliquidated Damages demand is old school, shows the client you are using all of your tools AND
1. An unliquidated damages demand forces defense counsel to report directly to the adjuster what you think your case is worth AND more importantly makes the lawyer evaluate the case. For outside counsel, this is devastating. They have to tell their client in writing that they can beat the spread between the unliquidated damages demand amount and their number plus litigation costs. This is a pucker factor moment and is one of your best weapons.

Handling Auto Accident Cases:



Chris Simon

Simon Bridgers Spires, ALC