

The Truth about Your South Carolina Injury Claim

*Protecting Your Family and Your Future
After an Accident*

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Disclaimer

This Book is Not Legal Advice.

This book is written for information purposes only based upon the law of South Carolina at the time this book is published. I am not your attorney until we have entered a written contract. This book is not legal advice. Every case is different and advice will vary depending on the exact circumstances of your case.

Why Did I Write this Book

One day you are minding your own business, living your life, and in a heartbeat, a drunk; a texting teenager; a reckless driver or just someone not paying attention, comes into your lane and changes your day, your year and sometimes, your life....with no warning. If you are like most people, this has never happened to you before. All of a sudden:

You are being contacted by insurance companies;

You are being asked to sign medical releases;

You are being asked to give a recorded statement;

You are being asked to take a quick settlement;

You can't work;

Your bills are adding up;

Creditors are calling;

You need more medical treatment;

You can't afford the treatment you need;

Adjusters are smiling and being friendly and companies are telling you that you can trust them because they are the “*good hands people*”, “*a good neighbor*”, or “*on your side*”.

Your friends and family are warning you to be careful;

You see lawyers on billboards, on TV, in the Yellow pages and all over the phone book who say:

They are Personal Injury Lawyers,
They really care for you,
They are aggressive, and
They will see you without a fee.

You **need information quickly** so you won't make a mistake.

You **don't know who to trust** and you don't want to receive a sales pitch from a fast talking lawyer.

I wrote this book for you to have good information in your hands prior to talking to an insurance adjuster, prior to making a mistake and prior to hiring an attorney.

Why Should You listen to Dirk Derrick About Injury Claims?

For over 29 years, I have been representing people who have been injured or the family of those killed in serious car and truck accidents, motorcycle wrecks, as well as those injured or killed in jet ski and boat accidents.

The great majority of my work is against insurance companies. This book represents what I have personally learned throughout those 29 years as a Civil Justice Attorney.

Go to www.thelegaltruth.com, to view our “Areas of Practice,” “Case Results,” “Blogs,” and “Library Articles” discussing our experience and results.

The Derrick Law Firm has office locations in Myrtle Beach, North Myrtle Beach, Conway, Charleston, North Charleston, and Mt. Pleasant, South Carolina.

What is a Personal Injury Claim?

A personal injury claim is a legal right a victim has if he or she is injured by the negligence, recklessness or intentional act of another.

These claims arise from numerous circumstances, including but not limited to; car wrecks, truck accidents, motorcycle crashes, pedestrians or bike riders being hit by a vehicle, jet ski and boat accidents, defective products causing injuries and intentional assaults or actions that lead to injuries or death.

In South Carolina, negligence is defined as: “the absence of due care or ordinary care. It is the failure to exercise due care as a person of ordinary reason and prudence would exercise in the same circumstances.”

Recklessness means “the conscious failure to exercise and observe reasonable or due care. Recklessness implies the doing of a negligent act knowingly.”

In order to recover for personal injuries sustained due to someone else’s conduct, you usually have to prove:

1. At least negligence on the other person’s behalf;
2. Damages sustained by you; and
3. That the damages were caused by the other person’s negligence.

Things To Do After an Accident:

1. Call 911 to report the accident and get medical help.

2. Get examined by EMS if you are hurt.
3. If anyone claims to be a witness, ask them to talk with and leave name and number with the investigating trooper or policeman.
4. If you are injured, go get checked out at the hospital.
5. You will get an FR-10 report from the trooper, take it to your insurance company.
6. Unless you understand auto insurance coverages and how they work with other coverages, contact an experience insurance/accident attorney to make sure you don't waive valuable benefits. (The Derrick Law Firm provides a free service of looking at your insurance policy and advising you regarding your coverages.)
7. If you are hurt, seek follow up medical care with a physician who has experience in treating your type of injuries.
8. Don't go to a doctor arranged by a law firm. Some attorneys send clients to certain doctors. We don't. A doctor who is working for a law firm has very little credibility with insurance companies or in court.
9. Be completely honest with everyone who treats your injuries. Let them know of any and all existing medical problems you have had. Let them know how the wreck occurred and each and every problem you have due to the wreck. Make sure you report everything, even if it seems to be a minor problem at the time. Additionally, be completely honest about the degree of your pain and limitations.

Biggest Mistakes Made by Injured Victims:

1. Not being evaluated by EMS if you are injured to any extent.
2. Not seeking medical attention at the Emergency Room immediately after the wreck if you are hurt.

3. Not being totally honest with doctors regarding past medical history. Tell them everything!
4. Playing tough and not telling troopers, EMS personnel and doctors each and every location of your pain.
5. Talking with your doctor about legal stuff, instead of focusing only on the medical part.
6. Not keeping all medical appointments.
7. Only talking about the worst symptoms and keeping quiet regarding other symptoms.
8. Not telling doctors about inability or limitation in working and not getting a work release if needed.
9. Not doing exactly what the doctor says to do.
10. Stopping medical treatment without doctor's consent.
11. Not treating emotional injuries if they arise after the accident. If you experience symptoms of depression and anxiety that you believe are being caused by your pain and disability, it is important for you to tell your doctor.
12. Not consulting with an experienced personal injury attorney about your case if you are injured. Be totally honest with him concerning the accident, your injuries and any prior medical problems you had before the wreck.
13. Thinking insurance adjusters are looking out for your family's best interest. (See Next Chapter)

14. Failing to preserve all evidence regarding the cause of the accident. When a wreck occurs, we look for all evidence as to the cause of the accident. That includes: photos of both cars, photos of the highway, measurement of skid marks, measurement of gauge marks, statements from witnesses, and because of technology, we can download data from the black box on newer cars which tells us the speed the vehicle was driving for the last 3-5 seconds prior to the accident. These pieces of evidence are important because the trooper's conclusions as to who's at fault is not controlling to an insurance company and is inadmissible in court. Therefore, every piece of evidence which shows the fault of the other driver should be preserved quickly after an accident.

Biggest Mistakes You Can Make With Insurance Adjusters

1. Signing Medical Authorizations for the Adjuster

Adjuster says: "Please sign these couple of papers giving us permission to get your medical bills regarding the case so that we can pay this claim."

The truth is...

These medical authorizations allow the insurance company to look at your entire lifetime medical history. They then use what they find years ago to deny your present injuries.

2. Giving a Recorded Statement to the Adjuster

Adjuster says: "I need to get a recorded statement from you before we can pay this claim."

The truth is...

The adjuster knows the law and the legal consequences of you making certain statements. Innocent statements can be used against you because of your lack of knowledge.

3. Signing a Release of Any Kind

Adjuster says: "We can pay you our policy limits but you need to sign this release."

The truth is...

If you sign a release, you are prevented from obtaining underinsured motorist coverage and perhaps some additional liability coverages even when you would have otherwise been entitled to them.

4. Accepting an Offer Based upon the Adjuster Saying the Amount Offered is all the Liability Insurance on the At-fault Car

Adjuster says: "This is all the liability insurance available on the at-fault vehicle, you can have the money if you will sign this release."

The truth is...

That may be true, but not entirely, in that the driver may have umbrella coverage or coverage under his/her own automobile policy if he/she was driving another person's vehicle. Additionally, you may be entitled to insurance benefits from another policy if the driver was working at the time.

5. Believing that insurance adjusters are looking out for your best interest just because they spend millions telling you they are “Good Neighbors” or “On Your Side”, and that “You Are In Good Hands”

Adjuster says: “You can trust us and keep more money if no attorney is involved.”

The truth is...

According to www.ircweb.org, insurance companies pay those people represented by attorneys 3 1/2 times more than those unrepresented.

If an adjuster says he is looking out for your family's best interest ask him or her the following questions:

1. Will you acknowledge, in writing, that the accident was the fault of your insured and that I was not at fault?
2. How much insurance does the at-fault driver have?
3. Have you investigated to make sure the at-fault driver does not have insurance coverage on other vehicles or on other insurance policies?

4. If I give you a recorded statement, may I have a copy of the recorded statement of the at-fault party?
5. If I sign this medical release, will you ONLY request information concerning medical treatment I have received because of this wreck? Will you send me a copy of everything you receive?
6. Will you tell me how much money you have set in “reserve” to pay my claim?
7. Will you give me the transcript of the recorded statements from the eye witnesses?
8. Will you give me a copy of any “index” information that you have already received from your computer system?
9. Will you give me a copy of any financial information that you may have already obtained on me?
10. Will you tell me if you have talked to any of my neighbors, my coworkers, or my enemies in an effort to find something in my past which will hurt my case?
11. Will you acknowledge in writing that you will do everything possible to make sure I receive the maximum benefits allowed by law from all possible insurance policies and other sources, even if it hurts your company financially?

If they are in fact, *good neighbors* and *on your side*, and *you are in good hands* with them, the insurance company should have no problem giving you this information and promising to give you guidance to insure you receive all benefits to which you are entitled.

Instead you better expect their normal methods to get you to take less.

Methods used by insurance companies to get you to take less than the value of your case:

1. Offering quick money before you know the extent of your injuries because you need to pay your bills.
2. If you don't take quick money: Delay, Delay, Delay to wear you down.
3. Requesting unnecessary information.
4. Objecting to your medical treatment prescribed by your doctor.
5. Dragging your case out beyond the time period to bring the action.
6. Either misrepresenting or failing to explain the insurance coverages available.

If you want proof of insurance companies' tactics in delaying, denying and defending claims, watch **CNN's 360 with Anderson Cooper** special on auto insurance located on www.youtube.com at the addresses listed below:

www.youtube.com/watch?v=pSj3FLO3IXA
www.youtube.com/watch?v=pkq-CX17aO8
www.youtube.com/watch?v=lvPW087RiJ8

What does an experienced personal injury attorney actually do to help your case?

While every case is different and trial lawyers come into the case at different times after a personal injury has occurred, an experienced personal injury trial attorney should be experienced and capable of doing the following:

- Initial interview with the client to obtain facts concerning the accident and the injuries.
- Educate the client about the process.
- Obtain the police report and any special investigative reports which were performed regarding the accident.
- Obtain medical records and bills from all the doctors the client has seen and continues to see during the process.
- Contact and interview any potential witnesses which were disclosed by the client, by the accident report and by any additional witnesses.
- Get a copy of the client's insurance policy and determine the amount of coverage the client has which is or could be applicable to the wreck.
- Obtain photographs of the accident scene and the vehicles.
- Talk to client's physicians and/or send them physician questionnaires which answer the necessary legal questions to make their opinions admissible in court.
- Obtain the client's lost wage information and salary verification from his/her employer.
- Review the client's health insurance policy or the ERISA policy to

determine the amount of money the plan should pay and to what extent the health insurance company or the ERISA plan is entitled to be reimbursed out of the settlement proceeds.

- Determine the amount and the validity of liens which may be claimed by medical providers, health insurance carriers, Medicare and Medicaid or any other entity claiming an interest in the proceeds of the claim.

- Put the liability insurance carrier on notice of the claim and if applicable, put the client's own insurance carrier on notice of any potential med-pay, underinsured motorist coverage or uninsured motorist coverage claims.

- Decide if the personal injury claim is a case that will be developed and a claim will be made prior to a lawsuit being filed or whether a suit needs to be filed immediately. If it is a case in which a settlement will be attempted, the attorney must accumulate all the evidence proving liability and damages against the at-fault party. They must evaluate the case based upon all the facts and all the damages.

- Contact the client and meet with the client and discuss the analysis of the value of the case.

- Analyze the legal issues such as comparative negligence and assumption of risk.

- File any necessary claim forms.

- Analyze the client's own health insurance or governmental benefit plans to see whether any money must be repaid.

- Analyze and address the validity of any liens asserted against the client's settlement recovery. Various healthcare providers, insurers, government agencies, etc. may file liens seeking reimbursement for benefits already paid to or on behalf of the client.

- Conduct negotiations with an insurance adjuster in an effort to settle the claim.
- Make a recommendation as to settlement value.
- Obtain authorization from the client to make a first offer. If the case does not settle, determine each and every Defendant needed to be included in the litigation.
- Determine the best venue to bring the action.
- Prepare a Summons and Complaint and initial Discovery Request including Interrogatories and Request for Production of Documents and serve on all the Defendants in the case.
- Take the deposition of the Defendant and any other pertinent witnesses.
- Prepare the client for his/her deposition.
- Name any applicable expert needed at trial and decide whether to bring the expert into the court live or take a video deposition to be played for a jury.
- Prepare any applicable pre-trial Motions.
- Prepare the client for mediation.
- Prepare for mediation.
- Prepare the client and witnesses for trial.
- Prepare and organize records and other documents for evidence intended to be introduced at trial.

- Research, write briefs and file motions to keep out or let in certain evidence at trial.
- Try the case.
- Analyze the jury verdict and discuss the validity of appealing by either party with the client.
- Write briefs or motions following the verdict to obtain post trial relief. Including motion for attorney fees or to overturn the verdict.
- Negotiate subrogation claims asserted by the client's insurance company, worker's compensation carrier or governmental agency that provides benefits to the client.
- Negotiate medical bills for the client.

How to Pick the Right Attorney

If I receive a call for a matter that I do not handle, I try to lead the individual to an attorney based upon the following factors:

1. Experience in that specific area of the law.

I don't care how long someone has had a law license. Experience in the particular area of the law is vital to get the best result for a client.

If someone needs a bankruptcy lawyer, I am not going to send that person to an attorney with 30 years' experience in real estate closings. If the attorney does not have a lot of experience in the area of the law needed by the client, he/she is in fact, inexperienced.

2. Experience with the process.

Reading law books in law school makes you no more of an experienced lawyer than reading cookbooks makes you an experienced chef. You must have experience with the process. The process includes:

Getting vital information from your client, from witnesses and from doctors;

Hiring the right experts;

Filing the suit, if and when it becomes necessary;

Causes of action which should be listed;

Defendants which should be sued;

Process leading up to trial;

The trial itself;

And the appellate process in the event an error of law is made during the trial of the matter.

It may shock you that if you look through the Yellow pages at the number of attorneys who handle personal injury and automobile accident cases, there is no way to tell if they have handled one in their lifetime or 500.

3. Experience with the fact finders

Notice I say experience with and not influencing the fact finder. No attorney should have influence over potential jurors, or judges. When this happens, our entire legal system falls apart.

However, if a case is being tried by a jury in South Carolina or may be tried by a jury in South Carolina, it is advantageous to have an attorney who knows the people of South Carolina.

This includes what the people believe are important; what they believe is right; what they believe is wrong; etc. Any trial attorney can tell you that after months of preparation and after presenting the case to a jury, a lot of times the verdict comes to the beliefs and attitudes of the twelve people on the jury.

4. Past success with your type of case.

Has the attorney taken a case to a jury and obtained verdicts in excess to what the insurance offered?

Is the attorney an experienced successful trial lawyer?

Someone who will pursue the case all the way to a jury in order to get fair compensation if needed.

In South Carolina, the big insurance carriers, Allstate, State Farm, Nationwide, Geico and others have several law firms that they use to defend actions against their insureds.

The lawyers in those law firms know me and the other attorneys in this area. If the adjuster and the defense attorneys know the particular attorney will not take the case to trial, or lacks the ability to win at trial, then that attorney lacks the ability to get a fair settlement.

On the other hand, if the attorney has proven his ability to be successful, the client is more likely to get a fair settlement offer before trial.

Why The Derrick Law Firm is Different

1. I do not take hundreds of cases a year in all types of practice areas. I do not handle criminal cases, divorce and custody cases, traffic tickets, bankruptcy cases, etc. **I have chosen to place an emphasis on representing individuals “when their health and livelihood are on the line”.** In a heartbeat, your health and livelihood can be placed on the line by a truck or car accident.

If so, I can help you in filing your claim and taking the matter to court if necessary. Additionally, your health and livelihood can be on the line because of a work related injury.

I have handled workers' compensation cases for over 29 years. I can assist you in making sure you receive the proper medical care, temporary disability benefits while you are out of work and permanent benefits if the injury leaves you with a permanent impairment.

2. **If I take your case, you will have access to my experience. I have over 29 years of expertise in handling automobile accidents, wrongful death accidents, personal injury and worker's compensation claims.**

I have over 57 years experience in my life with the people of South Carolina and the way they think, what they like, what they dislike and what is important to them. I believe this experience is important if and when you pick a jury from South Carolina for trial.

3. **I have proven Success in Court.** I take cases to court if necessary to get the full legal benefits for my clients. That does

not mean that I recommend trial in every case. It means that I will not allow an insurance adjuster to evaluate your claim for me.

I have obtained a wrongful death verdict against a national appliance manufacturer for a defective stove that killed a 15 month old child. I was successful against Lloyd's of London in a bad faith insurance case.

In my first case ever tried, I successfully obtained a verdict in Federal Court against Jim Walter Homes for fraud. Success in the court room is absolutely necessary to obtain fair settlements outside the courtroom.