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6 More Inexcusable Mistakes Personal Injury Attorneys Make!
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Woodland Hills Personal Injury Attorney Barry P. Goldberg recently published an article entitled “5 Inexcusable Mistakes Personal Injury Lawyers Make.” For some reason, the reception was overwhelming! The article chronicled the assumption of another lawyer’s file due to inactivity and lack of communication. Well---there is more!

It is now becoming a major concern that some younger lawyers are not receiving the “mentoring” some of us “old dogs” received when law jobs were plentiful. Accordingly, many lawyers are forced to “hang out a shingle” and announce themselves as “personal injury” lawyers. Let’s face it, in concept, being a PI lawyer can be easy and profitable. There are many sources of information on how to handle a PI case. Moreover, this “younger generation” of lawyers is much more adept at internet marketing and social media---they know how to get cases. What are missing are the finer points of practice that come with mentoring and experience. So, more inexcusable mistakes made by personal injury attorneys.

Recently, I was called by some potential clients that were seriously injured in a head on collision. They were already represented by counsel. I urged them to continue with their current counsel, increase the communication and get their important questions answered. After hearing about their limited communication, it became painfully apparent that their attorney could not adequately answer their questions. So, I reluctantly substituted into the case because they needed real help and real answers.

In reviewing the prior attorney's file, I discovered 6 more inexcusable mistakes made by personal injury attorneys, in addition to the 5 mistakes listed in my prior article. To be sure, some of the 5 were painfully present in this case; the former lawyer failed to take or promptly return the client's phone calls; and, the former lawyer neither signed the Retainer Agreement nor gave the client a copy of the Agreement. After review of the file and meeting with the clients, it became clear that her former counsel committed additional Inexcusable Mistakes that may have prevented the client from being upset and looking elsewhere for legal representation.

The Lawyer Did Not Appreciate That the Client's Injuries were "Life-changing" and that they needed Real Answers to Important Questions.

The former lawyer in this case did not spend enough time with the clients to understand that they were out of work, needed full time assistance and a vehicle replaced as soon as possible. These nice clients had already spent about two months recuperating without adequate answers to these important situations. The clients needed to know what benefits would be available to them. Leaving it to the clients to "find their own way" is a big mistake. They feel like they have been abandoned.

Mistake Number Six: Explaining How the Property Damage Will Be Handled.

Many lawyers avoid this topic because they do not receive a fee for fighting to get the highest property damage recovery possible. The former lawyer never discovered that the clients owed more on their vehicle than it was worth. He never asked for the "payment coupons" or book and never independently investigated the actual cash value of the vehicle. He was never in a position to explain to the clients that they would be receiving no replacement vehicle.

This is a tough pill to swallow for a client. Lawyers should not beat around the bush on difficult topics. It may seem easier to be vague and positive about the case. However, clients want the truth! Avoiding important topics that the lawyer should know about is similar to a "lie." Had this lawyer explained the property damage situation early on, the clients would not have been wondering, speculating and getting angry about the situation.

Mistake Number Seven: Not Obtaining "Loss of Use" Damages.

Even experienced lawyers miss this one. Just because the injured clients could not drive and could not rent a car, does not mean that they are not entitled to "loss of use" damages---they are. It is fair to use the value of a comparable rental car to set the loss of use damages from the time of the accident until payment of the total loss. The clients are entitled to have their shiny new car sitting in the driveway or loan it to family and friends. In this case, the loss of use period is around 45 days. At $50 per day, the clients could be entitled to as much as $2,250. This would be enough for them to make a full mortgage payment at a time when they need it the most.

Mistake Number Eight: Explaining the Possible Bodily Injury Recovery.

The former lawyer never explained the "universe" of possible recoveries to the clients. The clients did not understand that their recoveries might be limited by the amount of available liability insurance. In fact, they mistakenly believed that they would receive whatever is necessary and fair for their serious injuries, loss of income and permanent damages. Although this is another difficult subject, the lawyer must tell the client early on that, in most cases, the adverse driver's insurance is all that they will ever recover in the case. The lawyer must endeavor to discover the available liability insurance policy limits immediately---and communicate the progress and results of that investigation immediately.

The former lawyer never explained to the clients how their Uninsured Motorist Coverage worked and the possibilities of recovering "Underinsured Motorist" damages. He never explained that the UM/UIM coverage could not be "stacked". He never explained Medical Payments Coverage. He never explained how health insurance reimbursement claims would work.

After two months, the former lawyer was unaware of the amount of liability coverage available to the adverse driver. Although there was a "cryptic" request for that information in the initial representation letter, there was no follow up. The insurer never requested permission from its insured to disclose that information. Although it is possible that the insured may initially refuse to provide that information, it is not difficult to force the issue.

If an insurer informs you that the insured refuses to disclose that information, you request in writing that the insurer explain that if it is not disclosed that you will immediately file suit and then the insured has no choice but to disclose the information. This works most of the time. If the insured still refuses to provide policy limit information, then you must file suit, serve the insured and obtain the information through discovery.

Mistake Number Nine: Telling the Clients That You Will Never File Suit and Go to Court.

The former attorney "tipped his hand" early that he was only interested in a quick "insurance-only" settlement without regard for the clients. He told the clients that it is "always better to settle for what the insurance company offers" and that he would never go to court on their case. This may have been a poor attempt to prime the clients to accept an early settlement to their detriment and the attorney's advantage. Obviously, this is wrong and, at best, poorly communicated.

Clients with serious injuries want and deserve just the opposite---an attorney that is willing to fight for them. Clients are intuitively aware that the insurance companies know which lawyers will file suit. In fact, the insurers know which lawyers will actually take a case to trial. Clients intuitively know that lawyers who are not afraid to file suit and go to court are likely to receive more favorable settlements than lawyers who are looking for quick settlements.

Remember, these are clients with serious injuries. While the attorney may have many cases, this is this client's only case---and it needs attention and a willingness to fight. Before a settlement is possible, they need to know that their attorney exhausted every possibility to maximize their recovery. Never tell your client early on that you will not fight for them!

Mistake Number Ten: Failing to Investigate Completely.

The former lawyer's file said it all---there were no photos of the incredible property damage, no photos of the substantial injuries and no photographs post-surgery and recovery. Photographs are easy to obtain and tell the story better than any "lawyer letter." It is inexcusable not to have substantial photography in a case like this.

In this particular case, the biggest potential mistake was that the attorney never investigated other sources of recovery. Within one hour of obtaining the file I was able to obtain the adverse driver's employment information and the fact that he may well have been in the course and scope of his employment at the time of the subject crash. In fact, his employer had an "open claim" with its commercial liability carrier that the former lawyer knew nothing about.

Even if "course and scope" was not a possibility, the former lawyer should have conducted a preliminary asset search to determine whether the adverse driver had other assets available. This is especially the case where that lawyer wanted to be in a position to recommend an early "insurance only" settlement.

Severely injured clients should never authorize a settlement without being reasonably satisfied that there are no other sources of recovery or significant assets available.

Mistake Number Eleven: Scrambling to Boost a Fee After Being Subbed Out.

This conduct by the former lawyer is shameful. After he received notification that he was being replaced and not to do any further work on the file----he did work anyway. His file contained objective evidence that he faxed an unauthorized demand for settlement to the liability insurer one day after he was discharged. Not only is that a pitiful attempt to create a fee, it is probably malpractice. The failed logic was that the former lawyer actually secured a settlement and thus, a substantial fee for the client irrespective of the subsequent representation.

The “so-called” Demand for Payment of Policy Limits was a single page with some of the substantial medical bills enclosed. The single page demand also asked for some verification of what policy limit the insured actually maintained. When I received the file, I immediately withdrew the unauthorized demand.

The worst part about trying to “trump up” a last minute fee was that the clients never authorized the former attorney to settle their case for a policy limit or any other amount. In fact, the clients were unaware of the amount of insurance available, other sources of recovery or what their net settlement would be, if any.

Obviously, trying to settle a case without the clients’ express authority is wrong. If the occasion ever arises where the clients are asked to accept a policy limits settlement, it is proper to obtain a written authorization from the clients with a disclosure that no other sources of recovery were found. That way, there is never a question about the attorney’s actions which could be second-guessed---or worse---become the topic of a legal Article or Blog!

For more information about blog author and attorney Barry Goldberg's civil litigation expertise, please visit his web page, Woodland Hills Civil Litigation Attorney. ***http://www.barrypgoldberg.com/Practice-Areas/Civil-Litigation.aspx***

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Call Mr. Goldberg today for a free consultation. (818) 222-6994

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