

Common Myths About Personal Injury and Wrongful Death Cases¹

By B. Keith Williams

There are several myths about accident cases and the attorneys that handle them. It is important to keep these “myths” in mind so as to avoid falling into the traps that can result when you base your decisions on the misconceptions spread by the myths.

Here are my ten favorite myths:

1. *Juries are generous and the court system is some sort of lottery that will make you rich.*

Those who beat the drum of “tort reform” love to spread this myth, making it sound like juries are out of control and can only be held in check by passing new laws limiting the rights of injured citizens. In truth, however, it has been my firsthand experience that juries, if anything, are hesitant to award huge numbers. Over the years, I have seen many jurors who themselves believe in the “tort reform” myth and think most plaintiffs only sue in an attempt to get rich off the system. While most jurors want to do the right thing, many unfortunately believe that doing the right thing often means avoiding sizeable awards—even where sizeable awards are justified and completely appropriate.

And, having to resort to the legal system is never “hitting the lottery” anyway...after all, you only do so because you have been injured in some way. Any money you recovered is only to compensate you for your injuries...while that compensation is important and necessary, it never truly gets rid of the injuries you’ve suffered or returns you completely to the way you were before being injured.

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2. *The insurance company adjuster's job is to do the right thing.*

Never forget that what constitutes “the right thing” is a matter of perspective. What you and I think is the right thing (paying you the full amount to which you are entitled) is not necessarily what an insurance company thinks is the right thing. The insurance companies are in business, after all, to make a profit. One way to maximize their profits is to pay as little as they can get away with paying on each and every claim submitted. That is the insurance adjuster’s job. It is a Personal Injury Attorney’s job, on the other hand, to make sure you get paid everything to which you are entitled.

3. *You have to give the at-fault driver's insurance company a recorded statement or they won't settle with you.*

Every word in your statement you give them about what happened can be used against you in order to try and shift blame to you or otherwise minimize liability of the other driver and his or her insurance company. Don’t give them this opportunity, especially without having first consulted with an attorney. If your accident ends up in a lawsuit, they’ll get their opportunity to question you about what happened...but only with your attorney present.

Chances are that the at-fault driver has already told them what happened, so they more than likely already know what they need to know to decide whether to settle with you. If you give them a statement that hurts you, however, they will either lower the settlement amount or refuse to settle altogether—and you’ve now made your court case more difficult to win.

4. *If you submit a reasonable settlement demand to the insurance company you will get a reasonable settlement offer in return.*

Once again, an insurance company is in business to make money. The insurance company therefore wants to pay out as little as possible on every claim. The insurance companies establish their range of settlement authority in a case based on what they perceive as their potential exposure (the possible amount a jury would award) and the chances they will lose at trial. Because they want to pay out as little as possible, they will usually begin their negotiations on the lowest possible number that you might for some reason accept, whether reasonable or not. At the same time, they expect you to do the opposite by starting out as high as possible. If you begin negotiations with what you perceive as a “reasonable” settlement offer, the insurance company will usually come back with a much lower offer in the hopes you will take it. Even if you do not accept their offer, you have already begun your negotiations at a “reasonable” amount.

The insurance company will now expect *your* next offer to them to be lower than the “reasonable” amount you previously offered.

5. *The at-fault driver’s insurance company is required to pay your medical bills as they become due.*

The at-fault driver’s insurance company is only required to pay your bills if either you settle the matter and they agree to do so, or it is proven in court that the other driver was at fault and liable for those medical bills. Therefore, recovery from the at-fault driver’s insurance company will usually come only after settlement or a verdict at trial.

6. *If you submit a claim to your own insurance company, they will not defend the at-fault driver.*

If it sounds like a recurring theme, well it is...You simply cannot forget that the insurance companies are in business to make a profit, and that the less they pay out, the better their profits. To understand how this concept again comes into play with this myth, think about why most people submit a claim to their own insurance company—most people do so when the other driver is either underinsured or, even worse, has no insurance whatsoever. In a situation like this, the more liability that is placed on the other driver, the more *your* insurance will have to pay to you. Therefore, in situations like that your own insurance company has a vested interest in keeping as much liability away from the other driver as is possible.

Your insurance company will hire an attorney to defend the uninsured motorist. Rather than simply pay you for your injuries, which is what you probably assumed would happen when you signed up for Uninsured and/or Underinsured Motorist, your insurance company instead will hire big-gun attorneys to fight on the side of the person who hit you!

7. *A lawyer who is good at “DUI” cases, divorce cases, or real estate will also be good at personal injury cases.*

If you found out you had brain tumor and needed surgery, would you want your family physician to perform the brain surgery? Probably not, and with good reason. It’s nothing against your family doctor, who might be the finest family doctor in the country. As good as the family doctor may be, he or she may not have the years of specialized training and experience needed to perform brain surgery at the level you would want for the doctor performing your surgery.

The same is true for lawyers. Different areas of the law involve different legal knowledge, skills, and areas of practice. While all lawyers go to law school—just like all doctors go to medical school—lawyers develop expertise and skills in different areas of the law after they

graduate. For example, a lawyer might be an excellent real estate lawyer but may not have even thought about the legal requirements to prove a “negligence” claim since graduating law school, nor even stepped foot in an actual courtroom, much less actually tried a case in front of a judge or jury. (Of course, this usually goes both ways, as a good personal injury attorney would not necessarily make a good real estate lawyer who you’d want to go to when buying an expensive piece of property). The bottom line is, experience and training in the specific area of law is an important quality to look for in an attorney no matter what type of law is involved.

8. *Just because a lawyer can afford to advertise on TV, he must be a good personal injury lawyer.*

Many lawyers have to advertise on TV precisely because they are *not* what I consider good lawyers. I say this because many attorneys you see on TV do not follow the same strategy that most reputable attorneys do in terms of the cases they take. Many TV attorneys rely upon a high volume, low attention strategy in which they try to take in as many cases as possible—regardless of whether they are good ones—so that they can settle the cases quickly, obtain their attorney fee on those cases, and then move on to the next case. By churning as many cases as they can through this cycle, those attorneys make a lot of money through the *volume* of the cases they settle without having to go through the effort and additional time and expense of going to trial.

In order to keep this strategy going, these attorneys need to continually bring in a large number of cases...and that’s where the TV advertisements come in. The TV ads bring in huge numbers of calls, which turn into a huge number of cases (some of which should never be filed as lawsuits) that the attorneys then settle as early as possible for whatever they can get without putting too much time and effort into the case.

Not only do many of these attorneys rarely, if ever, actually see a courtroom, but this strategy hurts the settlement value of the TV attorneys’ cases. Defense attorneys and insurance companies know who these lawyers are—and they know this strategy and that the attorneys are not willing to take a case to trial if needed to get a good result. Knowing this, why would they pay top dollar to settle a case with one of those attorneys? Well, they won’t—that is why the track record and reputation of the attorney you choose is so important.

9. *A personal injury lawyer that never goes to trial can get just as good of a settlement as one that goes to trial when needed.*

Again, the insurance companies run a business, and they want to maximize profits and minimize losses—that’s why they want to pay as little as possible on every claim or case. With this in mind, it is easy to see that the amount an insurance company will pay to settle a case is directly related to the risk of losing at trial and the potential judgment amount involved. In considering this risk, there is a much higher risk to an insurance company of losing at trial (and losing by a larger amount) against a personal injury lawyer who goes to trial when needed than there is against an attorney who never goes to trial. Insurance companies and defense attorneys know which plaintiff attorneys are willing—and able—to take a case successfully to trial and which are not. Thus, insurance companies have a higher risk and are therefore willing to pay more to settle a case when it is against an attorney who they know can and will successfully take the case to trial.

10. *All personal injury lawyers have the same training and certifications.*

Even within different areas of the law, not all attorneys have the same training and certifications. Some attorneys might practice in personal injury law, but never receive specific training on relevant topics. Generally, attorneys are not required to have training or continuing education in a particular area of the law. For the most part, so long as they fulfill a certain number of hours in any number of potential subjects, they have met their continuing education requirements to remain licensed as attorneys.

For this reason, it is important to select an attorney who focuses not only his practice, but also much of his training in subjects that are particularly relevant to a personal injury case. For example, to satisfy continuing legal education requirements, an attorney can attend conferences about new real estate law developments. While attorneys might find that real estate related topic fascinating, it probably will not help with your personal injury case. Instead, you want to look for an attorney who focuses his training in areas of the law that are related to personal injury cases.

Similarly, certifications are an important factor to look for. While an attorney must be “licensed” to practice law, an attorney does *not* have to become “certified” to practice a particular type of law. As a result, an attorney who has no experience or knowledge about the intricacies of personal injury lawsuits or actually going to trial with a case can call himself or herself an “injury” attorney and take on your personal injury case

That is why Board Certification of an attorney is so important.² Generally, those attorneys who are Board Certified have had to pass a rigorous examination in the particular field in which they are certified, as well as pass an ethical review prior to becoming “Board Certified.” In addition, Board Certified attorneys are usually required to perform substantially more continuing education each year and pass a review of their continuing ethical status.

Board Certification is therefore an important qualification to look for as an indication of whether the attorney is experienced, knowledgeable, ethical, well trained and up-to-date in the latest legal developments.

² In Tennessee, there is no “Board Certification” for “personal injury” law. However, attorneys can become Board Certified as Civil Trial Specialists. Again, an attorney’s knowledge and experience in taking cases to trial is an important quality to look for in a personal injury attorney.