



Risk aversion: Evaluating the auto-collision case

Research a potential client's background and avoid nasty surprises that turn a winning case into a loser

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Why does a case that appeared to be a “winner” at the beginning turn out to be a “loser” at the end? The answer is simple – lawyers often do not screen potential clients carefully enough and as a consequence do not recognize those cases which they should not accept.

Starting point: Client intake

Assume that potential clients come to your office as they would to a potential employer for a job interview – they want you to take their case, so they only give you the “positives” about their potential case and themselves. Potential clients will not divulge what might be the facts that will sink their case (and your time and money) unless you ask them the right questions. Don't be afraid to ask personal and tough questions – you *must* ask. The intake should be done in person and may take several hours, but nothing will be more valuable than this initial interview. It is especially important to listen to the client and evaluate their credibility by watching their mannerisms and demeanor. Client evaluation is the most important part of averting risk. After the interview is completed, immediately follow up on acquiring necessary documents to evaluate the case.

Necessary information/documents

- *Driving history/records* – It is important to know if the client has a history of traffic citations, suspensions or other problems. Also, ask client about prior accidents.

- *Criminal and arrest history/records* – Don't wait to get your client's draft responses to form interrogatories to learn that your client has a criminal background or has been overly “litigious” in the past.

- *History of drug/alcohol use* – ask specific questions: How often do you drink alcohol or use drugs? What do you drink? What drugs do you take? Has your use of drugs/alcohol interfered with your life (work life/social life/family life, etc.)? What prescription drugs do you take? How long? How often?

- *Employment history* – Has client ever been fired? Why? Stable history or jump around from job to job? Income history?

- *Insurance information/records* – Medical insurance: If client has health insurance, then medical treatment will be covered by someone other than you or medical providers “on lien.” If client is not insured, client will turn to you to cover the costs of treatment. Liability insurance: If client has no liability coverage of his own, then he must have a very strong case and must have a defendant with large policy and/or “deep pocket.” Don't forget to ask about your client's UM/UIM coverage.

- *Past injuries & Pre-existing conditions* – You must know of any potential problems with past injuries or pre-existing conditions before you can successfully evaluate a case. Get a complete list of prior injuries, no matter how “minor” the client thinks they were.

- *Background information* – Get family, social, and personal history.

- *Complete Medical History (including psychological)* – Get names of all medical providers seen by client over the last ten years and make sure to get all necessary

medical records before filing the complaint/claim.

- *Client on Facebook? YouTube? Dating Web sites?, etc.* – look at their Web pages. Even if Web pages are taken down after a claim is made, defendants can search archives and find information.

Do your own independent research about the potential client! The Internet and legal research services such as Lexis and Westlaw can be invaluable.

Reality Check: Recognizing the “problem plaintiff”

Unfortunately, it is the insurance adjustor and members of the jury – those people who ultimately govern whether a case is “successful” and therefore, worth the risk to you – who are the most critical of your client. If your client is a “problem,” the case will be a problem.

What to look for:

- Is client a malingerer or hypochondriac?
- Ask clients to describe their injuries in their own words. Are injuries real? Does client have a laundry list of complaints that don't seem relevant to the accident?
- Listen to client– Does client use words or phrases such as “conspiracy,” “entitlement,” “teach them a lesson”? Does client have unrealistic expectations? Is client vague or evasive? Does client get angry or hostile?
- Has client contacted government officials or the media?
- Does client have a willingness to cooperate or do they “fight” you on everything?
- Has client been “shopping” the case among lawyers? If so, this may indicate a client who is only looking for the “right



answers” or that there are other lawyers who rejected the case. If so, contact all prior attorneys who rejected the case.

• **Is your client headed toward bankruptcy?** Unfortunately, in today’s economic world, many lawyers find themselves in situations where their client files bankruptcy between the date of the incident and the date of settlement. This can create a myriad of problems.

Liability and Causation

• **Date of incident** – If a recent accident, then the lawyer has plenty of time to adequately investigate and therefore, control the case. If the statute of limitations is near, be aware that the client may have already negatively affected the case.

• **Police report** – Although the report may not be admissible, it will give you key information regarding potential witnesses who can help or sink your case. Request the report early – currently there is at least a 12-week backlog for LAPD reports. When you get the names of witnesses, speak to them!

• **Scene of the accident** – You should have a very good understanding of the accident scene, either through photographs taken by the client or from getting aerial photographs through “Google earth” or through Dept. of Agriculture, Aerial Photography Field Office in Salt Lake City, Utah. Obviously, if the location or intersection played a significant part in causing or contributing to the accident, you must personally visit the scene.

• **Can you *prove* liability?** Look for conflicting witness reports, inaccurate statements to healthcare providers by the client, and inconsistent scientific/technical reports.

• **Can you *prove* causation?** Look for issues of prior injuries and pre-existing conditions. If the injury did not manifest itself immediately after the accident you may have a difficult time in establishing cause. This is particularly true when client does not seek medical attention for some time after the accident or refuses medical attention at the scene of the accident.

Potential case costs

• **Experts** – You must consider potential costs of liability, causation, and damages experts.

• **Identify potential lien holders** immediately.

What defenses are available to defendant?

• Look specifically for assumption of risk, contributory negligence, and immunities.

• Consider whether there may be counter claims filed against your client.

Jury appeal

- Jurisdiction/venue
- Presentation of client and defendant
- Demeanor and personality

Collectability

• **Is it an uninsured/underinsured defendant?** Do a pre-litigation insurance-coverage check. There are many services

available that can identify policy limits. Although not guaranteed, the information is usually accurate and can help guide you. And don’t forget to check for umbrella policies.

• **Assets?** Turn to the Internet and public record searches.

• **Consider the location of the defendant.** Can you collect a judgment?

Gut check

Don’t forget to use your “gut.” If you get the sense that this is a problem case or client, do not get involved – just set aside your feeling that you can “fix” the problems and walk away.



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