

## **PERSONAL INJURY FREQUENTLY ASKED QUESTIONS:**

**Personal injury cases include automobile accidents, trucking accidents, premises liability and some intentional torts. A tort is a wrong that is committed for which an action for damages can be brought.**

### 1. What should I do if I am in an automobile accident?

Many people that are in an accident with injuries find it difficult to think clearly. Of course, personal safety and care for any injured person is the most important and immediate concern. Always telephone the police and call 911 if there are injuries that necessitate medical treatment. At-fault drivers will typically apologize at the scene. However, some drivers will become irate. It is best to have as little conversation concerning the accident as possible. Any statements or comments that you make can be used in court at a later time. Also, any statements made by either driver or the witnesses can cause an insurance company to refuse to settle the property damage and personal injury claims.

In Georgia, the law allows you to assert your property damage claim separately from your personal injury claim. Many insurance companies will immediately call you to attempt to obtain a settlement for the property damage part of your case. The insurance claims person may state that he needs your recorded statement in order to process your property damage claim. Many people may not know the full extent of their injuries this early in the case. The hassle and frustration of being without a vehicle can easily cause someone to give such a statement. While there is certainly nothing wrong with presenting the facts to an insurance company, it is almost always better to wait until you have consulted with an attorney. Usually, there is no need for such a statement because the police report, which the insurance adjuster usually already has in his possession, can be used to determine whether a property damage claim should be promptly paid.

At Sell & Melton, we prefer that our clients not give such a statement until they have had a consultation with one of our attorneys. Understanding the law and which facts are most important is an invaluable asset to have when dealing with the insurance company. The insurance company does not have the injured victim's welfare as an important concern. Adjusters deal with accidents every day, and you should have someone advocating for you who has experience in dealing with accidents and adjusters. Retaining an attorney early in the case can be invaluable.

### 2. Will Sell & Melton charge me a fee for advice?

Sell & Melton gives all personal injury clients a free initial consultation. Upon contacting our office, we will see that you have an appointment as soon as possible with one of our attorneys. If you are unable to travel, one of our attorneys will come to you. Most personal injury cases are taken on a contingency fee basis.

### 3. How does the contingency fee work?

Most personal injury cases are handled on a contingency fee basis. That means that there are no retainer fees or hourly fees paid to the firm. If we accept your case, we will only charge a fee if we are successful in settling your case or if we obtain a verdict in court. If we lose, you pay no fee. In addition, in most cases the firm advances litigation expenses such as deposition costs, research costs and other expenses.

### 4. Do most cases go to trial?

While most cases settle out of court, some cases do necessitate filing a lawsuit and even fewer cases result in trials. Sell & Melton utilizes alternative dispute resolution ("ADR") in an effort to settle cases without incurring the time and expenses associated with litigation. Our firm has participated in mediations throughout the state of Georgia, and two of our attorneys regularly serve as mediators. While our

attorneys cannot mediate cases involving clients of our firm, this experience provides helpful insight into the settlement process and helps us obtain successful settlements for our clients.

5. If I retain Sell & Melton, will I be able to discuss my case with an attorney?

One of the number one complaints about attorneys is that they are not accessible or do not return client's phone calls. At Sell & Melton, we will ensure that you are able to discuss matters involving your case with an attorney. We utilize a team approach involving paralegals and legal assistants to serve clients at Sell & Melton, but you will never feel that you cannot reach an attorney in a reasonable time. If an attorney is in court, his or her full attention should be with the case at hand; however communication with clients is an important ingredient for success. Our firm has voice mail and electronic mail, and the attorneys do an excellent job returning calls. Our attorneys want to have close, frequent and personal contact with our clients.

6. If I am rear-ended by another car, is it automatically the other driver's fault?

No. In Georgia, the courts have held that just because a car collides with the rear end of another vehicle, there is no automatic finding that the rear vehicle's driver is at fault. However, practically speaking, in the vast majority of rear-end collision cases, the insurance company will not contest liability.

7. What if the insurance company calls and informs me that they are not contesting liability?

In clear negligence cases, most insurance companies will admit liability. However, they may not offer a reasonable settlement. An attorney will obtain the medical records and make a written demand on the insurance company which contains important medical and legal facts that enhance the settlement value of the claim. Rarely will an insurance company offer the same amount to an unrepresented injured victim.

8. What damages are allowed in Georgia?

Personal injury victims in Georgia are entitled to recover special damages and general damages. Special damages compensate you for losses which can be proven in specific dollar amounts, such as lost wages and medical expenses. General damages compensate you for your pain and suffering, including your reduced capacity to enjoy your life, as a result of your injuries. An insurance company should consider all aspects of your damages in determining a fair settlement amount.

Personal injury victims in Georgia can assert various types of damages. The damages are divided into two categories: economic and non-economic. Economic damages are past and future lost wages due to the accident. In addition, diminished earning capacity can be a proper element of the damages that a personal injury victim can recover.

Non-economic damages include pain and suffering, worry and anxiety caused by an accident. A family can be devastated by the lost wages of a husband or wife. Suffering a serious injury can cause tremendous strain and anxiety. The at-fault driver's insurance company should consider these damages when arriving at a fair and reasonable settlement.

9. Why shouldn't I negotiate with the insurance company and only hire an attorney if I can't settle?

In personal injury cases, including motor vehicle accident and premises liability cases, it is critically important to get the evidence early. Photographs, statements of witnesses and other evidence must be obtained as early as possible. In some motor vehicle cases, and in almost all trucking cases, the vehicles should be inspected as soon as possible. We typically send a "spoliation letter" warning the trucking company that the vehicle and other evidence should be preserved. Modern trucks and automobiles have a box with computerized data that can be critical in determining liability, and this evidence should be preserved as soon as possible.

10. What are premises liability cases?

Premises liability cases arise in situations where an occupier or owner of land owes a duty to a person who is injured on the premises as a result of the negligence. Slip and fall cases occur when a person is injured due to a fall caused by the negligence of the landowner. Georgia law requires that the owner have "superior knowledge" of the hazardous condition before an injured person can recover damages. If there is actual knowledge, the owner is liable for allowing the dangerous condition to exist. "Constructive knowledge" arises when it is proven that the owner should have known about the dangerous condition, but for whatever reason, did not act diligently and discover the dangerous condition. Another example of a premises liability case is when an invitee, such as a customer, is a victim of crime, due to the negligence of the owner in not providing adequate security. If the owner knows that his or her business is in a high crime area and does nothing to warn or protect the customer, he or she can be held liable for "inadequate security."

11. What is a product liability case?

If a product that is designed, sold, manufactured, or distributed by a company is unsafe, a person injured by such product can bring a damages lawsuit against the manufacturer under a product liability theory. These cases usually are very complex and require large investments of time and resources.

\* The information in this website is not intended as legal advice but is merely general information concerning the law in Georgia. This information is not intended and cannot replace the advice of a competent attorney.

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