

AUTOMOBILES

by Brock C. Akers

CHAPTER 1

PRE-LITIGATION

Introduction

§ 1.1 CLIENT INTERVIEW

- A. Client Interview Form
- B. Assessing How the Accident Happened
- C. Assessing Client's Injuries
- D. Client Interview Form—Wrongful Death Case
- E. Instructions to Client
- F. An Important Word About Damages

§ 1.2 CLIENT CONTRACT

- A. Long Form—Client Contract
- B. Short Form—Client Contract

§ 1.3 AUTHORIZATION FORMS

- A. General Authorization
- B. Consent for Release of Medical Information
- C. Medical Release (Broad Form)
- D. Insurance Authorization
- E. Earnings Authorization
- F. Employment Commission Authorization

§ 1.4 MEDICAL RECORDS AND EXPENSES

- A. Medical Records Affidavit of Custodian of Medical Records
- B. Medical Records Affidavit of Radiologist (X-ray Films)
- C. Affidavit of Employee of Health Care Provider Concerning Cost and Necessity of Services
- D. Affidavit of Treating Physician Concerning Cost and Necessity of Services

§ 1.5 LETTERS

- A. Refusal of Representation (Nonengagement Letter)
- B. Conflict of Interest Nonengagement Letter
- C. Conflict of Interest Informed Consent Letter
- D. Welcome Letter to New Client
- E. Notification of Representation to the Defendant
- F. Notification of Representation to Defendant's Insurer
- G. Notification of Representation to Plan Administrator (ERISA)
- H. Request for Medical Records (Informal; No Affidavit)
- I. Request for Medical Records (With Affidavit)
- J. Letter to Doctor Providing Medical Expense Affidavit
- K. Letter to Hospital Providing Medical Expense Affidavit

§ 1.6 REQUEST FORMS

- Request for Copy of Tax Return (Form 4506)
- Request for Transcript of Tax Return (Form 4506-T)
- Request for Social Security Statement (SSA Form 7004-SM)
- State Public Safety and Department of Transportation Offices

§ 1.7 CASE INVESTIGATION

- A. Investigation Checklist

B. Documents Checklist

§ 1.8 INVESTIGATIVE SOURCES

- A. Documents
- B. Witnesses
- C. Medical Records Checklist
- D. Military Personnel Records
- E. Witnesses Checklist

§ 1.9 EVALUATION

- A. Case Evaluation Checklist
- B. Settlement Checklist

§ 1.10 FILEMASTER

CHAPTER 2

PLEADINGS

Introduction

§ 2.1 PLEADINGS CHECKLISTS

- A. Theories of Recovery
- B. Grounds of Negligent Operation
- C. Potential Defendants
- D. Defenses
- E. Damages—Personal Injury
- F. Damages—Wrongful Death
- G. Damages—Property
- H. Plaintiff—State Court

§ 2.2 PLAINTIFF’S PETITION/COMPLAINT

- A. Sample Original Petition—State Court
- B. Sample Petition—Against Social Host
- C. Sample Request for Jury Trial—State Court
- D. Sample Complaint—Federal Court

§ 2.3 PROPOSED PRETRIAL ORDER—FEDERAL COURT

§ 2.4 DEFENDANT’S SAMPLE ANSWER

§ 2.5 SPECIAL EXCEPTIONS/DEMURRER

- A. General Negligence
- B. Unavoidable Accident
- C. Prior or Subsequent Diseases, Injuries, or Conditions
- D. Sole Proximate or Contributing Cause—Too General
- E. Sole Proximate Cause—Defense Mispled
- F. Sudden Emergency

CHAPTER 3

PRETRIAL DISCOVERY

§ 3.1 WRITTEN DISCOVERY REQUESTS

- A. Interrogatories to Defendant (State Court)
- B. Interrogatories to Defendant (Federal Court)
- C. Plaintiff’s Request for Production (State Court)
- D. Plaintiff’s Request for Production (Federal Court)
- E. Plaintiff’s Request for Admissions (State Court)
- F. Plaintiff’s Request Admissions (Federal Court)

- G. Order for Medical Examination (State Court)
- H. Deposition Checklist—List of Potential Witnesses
- I. Deposition Checklist—List of Potential Documents

§ 3.2 FEDERAL DISCLOSURE REQUIREMENTS

- A. Pretrial Discovery Requirements
- B. Initial Disclosures
- C. Disclosure of Expert Testimony
- D. Pretrial Disclosures
- E. Proposed Discovery Plan
- F. Federal Rule of Civil Procedure 26
- G. Civil Justice Expense and Delay Reduction Plan

§ 3.3 CASES

CHAPTER 4

TRIAL

§ 4.1 PREPARATION

- A. Pretrial Checklist
- B. Exhibit List
- C. Witness List
- D. Objections Checklist—Federal Rules

§ 4.2 MOTION IN LIMINE

- A. Federal Rules of Evidence
- B. Motion in Limine Subject Matter Checklist
- C. Sample Motion In Limine—State Court
- D. Order on Motion In Limine—Long Form

§ 4.3 VOIR DIRE AND JURY SELECTION

- A. Voir Dire and Peremptory Challenges
- B. Challenging and Defending a Peremptory Challenge
- C. Motion to Record Voir Dire Examination by Videotape and Order
- D. Voir Dire Checklist
- E. Possible Voir Dire Questions Relating to Constitutional and Statutory Requirements
- F. Voir Dire Tips
- G. Specific Voir Dire Inquires
 - 1. Inquiry Regarding Connection With Insurance Industry
 - 2. Inquiry Regarding “Litigation Crisis”
 - 3. Admissibility of Net Worth
- H. Equalization of Strikes—Multiple Parties
 - 1. State Procedure
 - 2. Federal Procedure
- I. Qualification and Disqualification to Serve as Juror
 - 1. State Practice
 - 2. Federal Practice
- J. Striking of Jurors for Racial Reasons
 - 1. State Practice
 - 2. Federal Practice
- K. Jury Challenges for Cause
 - 1. State Procedure
 - 2. Federal Procedure
 - 3. Discretion of Court
 - 4. Abuse of Discretion in Overruling Challenge for Cause
 - 5. Decisions Holding No Abuse of Discretion in Overruling Challenge for Cause
- L. Preserving Error on Court’s Failure to Disqualify Juror
 - 1. State Procedure

- 2. Federal Procedure
- 3. Federal Case Decisions
- M. The Conduct of Voir Dire Examination
 - 1. State Procedure
 - 2. Federal Procedure
- N. Requested Voir Dire Examination—Federal Court

§ 4.4 OPENING STATEMENT

- A. In General
 - 1. State Practice
 - 2. Federal Practice
- B. Principal Points of Opening Statements

§ 4.5 JURY ARGUMENT

- A. Jury Argument Checklist
- B. Function of Jury
- C. Legal Citations
 - 1. State Practice
 - 2. Federal Practice
- D. Samples

§ 4.6 ALTERNATIVE DISPUTE RESOLUTION

Use of Alternative Dispute Resolution Procedure as Alternative to Trial

CHAPTER 5

WITNESS CHECKLISTS

Introduction

§ 5.1 LIABILITY WITNESSES

- A. Accident Reconstruction Expert
- B. Accident Scene Witnesses
- C. Chemical Testing Expert (Direct or Cross-Examination)
- D. Defendant Driver (Cross-Examination)
- E. Drinking Driver (Direct or Cross-Examination)
- F. Eyewitness
- G. Plaintiff (Liability and Damages)
- H. Preparation of Plaintiff for Direct and Cross-Examination
- I. Police Officer

§ 5.2 DAMAGES WITNESSES

- A. Before and After Witness
- B. Chiropractor
- C. Economist
- D. Employer/Supervisor
- E. Employment Expert
- F. Fellow Employee
- G. Medical Doctor/Osteopath
- H. Physical Therapist
- I. Spouse

CHAPTER 6

JURY CHARGE

§ 6.1 STATE COURT PRACTICE

- Introduction
- Checklist

Discussion

- Sample Automobile-Related Jury Instructions
 - California
 - Colorado
 - Illinois
 - Maryland
 - New York
 - Washington

Instructions to the Jury

- General Instructions
- Circumstantial Evidence
- Burden of Proof
- Impeachment of Witnesses
- Expert Witnesses
- Deposition Testimony
- Presumption
- Legal Excuse—Defense in Negligence Per Se
- Assumption of the Risk
- Imminent Peril
- Discovered Peril
- Damages
- Mitigation of Damages

Definitions

- Preponderance of the Evidence
- Injury
- Ordinary Care
- Negligence
- Proximate Cause
- Sole Cause or Sole Proximate Cause
- New and Independent Cause or Intervening Cause
- Unavoidable Accident
- Sudden Emergency
- Act of God
- Negligence Per Se

Defensive Doctrines and Theories in Automobile Accident Cases

- New and Independent Cause
- Unavoidable Accident
- Sudden Emergency
- Sole Proximate Cause
- Sole Cause—Damage Issue
- Assumption of the Risk
- Imminent Peril
- Discovered Peril or Last Clear Chance
- Excuse for Violation of Statutory Standard
- Mitigation of Damages

§ 6.2 FEDERAL COURT PRACTICE

Discussion

Pattern Jury Instructions (Excerpts)—U.S. Fifth Circuit

Manual of Model Jury Instructions—U.S. Ninth Circuit

CHAPTER 7

PRACTICE AIDS

Introduction

§ 7.1 CHECKLISTS

A. Preparation of Client/Witness for Trial

- B. Pretrial Instructions to Client/Witness
- C. Defendant's Cross-Examination
- D. Preparation of Plaintiff's Expert Witness
- E. Defense Expert Witness Cross-Examination
- F. Objections
- G. Potential Product Liability/Crashworthiness Case

§ 7.2 MISCELLANEOUS AIDS

- A. Internet Sites
- B. Perpetual Calendar
- C. Life Expectancy Tables
- D. Drinking Driver—Chemical Testing
- E. Legal Insights into Traffic Control Devices
- F. Conflicts and Ethical Considerations

§ 7.3 ACCIDENT RECONSTRUCTION

- A. Accident Reports
- B. Prediction of Injury in an Automobile Crash
- C. Definitions, Abbreviations, and Formulas
- D. Coefficient of Friction Values
- E. Approximate Stopping Distances
- F. Conversion of MPH to FPS Traveled

§ 7.4 BIBLIOGRAPHY

§ 7.5 ORGANIZATIONS AND AGENCIES

- A. Government Agencies
- B. Private and Professional Organizations
- C. State Trucking Associations

CHAPTER 8

LAW

§ 8.1 INTRODUCTION TO UNIFORM VEHICLE CODE

§ 8.2 FOREWORD

- A. Foreword to 1987 Edition of the Uniform Vehicle Code and Model Traffic Ordinance
- B. Chapter 11, Rules of the Road

§ 8.3 CASE LAW AND GENERAL DISCUSSION

- A. Introduction and General Comments
 - 1. Introduction
 - 2. General Comment
- B. Theories of Liability and Defenses
 - 1. *Res Ipsa Loquitur*
 - 2. Sudden Emergency
 - 3. Last Clear Chance
 - 4. Unavoidable Accident
 - 5. Doctrine of Sole Cause
 - 6. New and Intervening Cause
 - 7. Negligence Per Se
 - 8. Legal Excuse
 - 9. Negligent Entrustment
 - 10. Gross Negligence
 - 11. Seat Belt Defense
 - 12. Helmet Defense
 - 13. Social Host and Related Liability
 - 14. Comparative Negligence

15. Joint and Several Liability
 16. Right to Contribution Among Joint Tortfeasors
 17. Familial Relationships and Immunity
 18. Negligent Supervision of Children
 19. Family Purpose Doctrine
 20. Joint Liability for Racing
 21. Driver's Incompetence
- C. Parties to the Accident
1. Motor Vehicles
 2. Motorcycles
 3. Pedestrians
 4. Bicyclists
 5. Railroads and Railroad Crossings
 6. Passengers
 7. Trucks
 8. Police Officers
 9. Livestock
 10. Car Rental Agencies
- D. Evidentiary Matters
1. Use of an Expert Witness
 2. Perception Testimony
 3. Highway Code as Standard of Conduct
- E. Miscellaneous
1. Wrongful License
 2. Parental Liability Where a Minor is Licensed
 3. Pleading
 4. Admissibility of "Net Worth"
 5. No Fault
 6. Punitive Damages for Driving While Intoxicated
 7. Interpreting Insurance Policies

§ 8.4 STATE STATUTE OF LIMITATIONS

CHAPTER 9

TORT CLAIMS ACT

§ 9.1 GENERAL DISCUSSION OF FEDERAL TORT CLAIMS ACT

General
 Claim for Damage, Injury or Death Form
 Tort Claims Procedures
 Administrative Regulations
 Determination of Status
 Agency
 Employment
 Military Personnel
 Dram Shop Cases

§ 9.2 STATE TORT CLAIMS ACTS

Case Citations

CHAPTER 10

TRUCK LITIGATION

Introduction

§ 10.1 PREPARATION

A. Foundation

- B. Comments
- C. Client/Witness Interview Checklist
- D. Investigation
- E. Pleadings

§ 10.2 DISCOVERY

- A. Interrogatories to Defendant Motor Carrier
- B. Interrogatories to Defendant Driver
- C. Request for Production to Defendant Motor Carrier

§ 10.3 VOIR DIRE

§ 10.4 WITNESSES CHECKLIST

§ 10.5 REFERENCE MATERIALS

- A. Code of Federal Regulations—Hours of Service of Drivers
- B. Case Law
- C. Trade Publications
- D. Federal Highway Administration Field Offices
- E. FHWA Resource Centers
- F. Federal Lands Highway Division Offices
- G. Index to Federal Highway Motor Carrier Safety Regulations
- H. Expert Witnesses
- I. Legal Sources

CHAPTER 11

COLLECTING THE JUDGMENT

Introduction

§ 11.1 POST-JUDGMENT DISCOVERY

- A. Plaintiff's Discovery in Aid of Enforcement of Judgment
- B. Motion to Compel Answers to Plaintiff's Discovery in Aid of Enforcement of Judgment and for Sanctions
- C. Order to Show Cause
- D. Motion for Contempt
- E. Letter Requesting Service of Writ of Execution
- F. Plaintiff's Application for Writ of Garnishment After Judgment

§ 11.2 SAFETY RESPONSIBILITY LAWS

- A. Financial Responsibility Certification (SR-22)
- B. Transcript of Civil Proceeding (SR-42)
- C. Letter Requesting Suspension of Driving Privileges
- D. Installment Agreement
- E. Notice of Default on Installment Agreement
- F. Letter Notifying State of Default
- G. State Statutes

§ 11.3 CIVIL REMEDY (Plaintiff's Original Petition)

§ 11.4 CASE LAW

INDEX