

AUTOMOBILE LITIGATION CHECKLIST

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From time to time I think it's a good practice to step back from the individual cases and specific legal issues you are dealing with, and refresh yourself on all the steps necessary to take an automobile case to trial. I have prepared an Automobile Litigation Checklist based upon a presentation I gave a few years back which borrowed from many ideas and actual practices of several different attorneys. Although everyone has their own approach to handling cases and preparing for trial, this checklist still makes for a good refresher course.

Initiation of Lawsuit

- Check Service
 - may need Special Process Server

- Has Defendant Answered?
 - review each defense – anything you didn't expect?
 - any counterclaims?

- Have subrogated parties been put on proper notice?
 - KRS 411.188(2)

- Send initial discovery
 - Interrogatories & Request to Produce
 - Sometimes better after deposition
 - Discovery answered?
 - Motion to Compel necessary?
 - Do you have *clean hands*?

- Do any depositions need to be taken?
 - Defendant?
 - Prepare your client
 - never agree until you're ready

Proving Liability

- What does the police report say?
 - Any statements that help you? Hurt you?
 - Interview police officer?
 - Anything else in officer's file besides police report?

- Any helpful witnesses?
 - EMS?
 - Tow truck driver?
 - Other motorists?
 - Have you or your investigator spoken to them?
 - May need to depose them
 - Always visit the scene & take photographs

- Do you need a liability expert?
 - Is there physical evidence that may help?
 - Are there visibility or illumination issues?
 - Accident reconstructionist?

- Other considerations
 - 911 Tape & Dispatch Log
 - Department of Transportation
 - Any security/Surveillance cameras nearby?

Proving Damages

- Are all medical expenses documented?
 - prepare itemized medical list
 - include ICD-9 diagnosis & CPT treatment codes
 - do you have a bill & record for every date of service?
 - have you given the defense an updated list?
 - are all the bills reasonable, necessary & related? *Langnehs v. Parmelee*, 427 S.W.2d 223 (Ky. 1967)

- Is there support for future medical expenses?
 - Is this a component of your case?
 - What is the law in Kentucky? Cannot be speculative; must establish specific future care needed & cost of this care in terms of reasonable probability
 - Do you need a life care planner?

- Is there a lost wages claim?
 - Off-work notes from doctor?
 - Support from employer/supervisor?
 - Make sure to review personnel file
 - Do Tax Returns/W-2's help or hurt?
 - Hourly, Salaried, Self-employed or Independent Contractor?

- Will you be asking for future impairment of power to earn money?
 - Look at client's injuries compared to job duties
 - Utilize worklife expectancy tables
 - What do your client's treating doctors say?
 - May need a vocational expert or economist

- General Damages
 - Do you know what juries are awarding where you are?
 - Before & after witnesses
 - Have injuries really affected your client's life?
 - Future pain & suffering is recoverable if it is reasonably certain to occur

What does defense have to argue?

- Identifying Case Weaknesses
 - Minimal property damage
 - Delay of, gap in or lack of treatment
 - Low amount of specials (medical and/or wage)
 - Pre-existing conditions
 - Unrelated treatment or injuries (causation problems)
 - Client makes more now than at time of injury
 - Future treatment recommended, but never obtained
 - Alternative treatment or therapies
 - Likeable plaintiff?
 - Likeable defendant?

- Anticipating Defenses
 - Seatbelt defense
 - Sudden Emergency
 - "It was just an accident" defense
 - Comparative negligence (speed, proper lookout, etc.)
 - Multiple vehicle collision
 - Phantom vehicle defense

Mediation or Arbitration

- Mediation Concerns
 - Will it benefit your case?
 - Do you have a choice?
 - Is it just an exercise in futility?
 - Do you have client control?
 - Sneak peak of your case
 - Reasonable for case to settle?
 - Decide movement in advance of mediation
 - Be able to justify demand & position
 - Prepare client for "realities" of mediation
 - Who's your mediator?
 - Will an insurance adjuster with settlement authority attend?
 - Make sure defense has ALL pertinent documentation
 - If it doesn't settle, consider negotiating a Hi-Low agreement for arbitration

- Arbitration Concerns
 - Takes more effort
 - Binding or non-binding?
 - Decision may "box you in"
 - May help case settle or guarantee a trial
 - Creates a record if court reporter is hired
 - Can be more costly than Mediation

Preparing for Trial

- Prepare & follow your own trial checklist
 - Witnesses to call and subpoena
 - Exhibits to use
 - Depositions to take
 - Order of Proof
 - Prepare Jury Instructions
 - Voir Dire, Opening, Closing & Examinations
 - Supplement Discovery Responses
 - Stipulations
 - Request for Admissions (90-120 days before trial)
 - Get Jury Questionnaires
 - Prepare Trial Notebooks
 - Set your medical proof either by video deposition or live testimony
 - Prepare your client for trial testimony
 - Order deposition transcripts and file with Court

- Evidentiary issues
 - Identify areas for motions and/or objections
 - Brush up on evidence rules and case law

- Physical Evidence
 - Photographs of vehicles
 - Photographs of injuries
 - Photographs of the scene
 - X-rays (positives)
 - Medical hardware, braces, etc.
 - 911 Tape

- Demonstrative Evidence
 - PowerPoint
 - Video recreation and/or animation
 - Aerial photograph
 - Medical illustration
 - Anatomical model
 - Don't out "tech" your opponent too much

- Documentary Evidence
 - Medical List (w/redacted bills)
 - Wage Loss List
 - Medical records
 - Timeline
 - Any other documents obtained in discovery?

➤ Other Considerations

- What Court are you in?
- Where are you on Trial Docket?
- What do you know about your trial judge?
- What do you know about the defense lawyer?
- Who makes up your jury pool?
- What stories have been in the local news lately?
- Are you aware of all subrogated interests in the case?
- Have you reviewed the local rules?
- Have you updated your CR 8.01 disclosures prior to trial?
- Have you cleared your office calendar?
- Will this be your first trial?
- Are you trying the case solo or with co-counsel?
- Do you need a trial consultant?
- What are your current case expenses?
- What will your case expenses be after trial?
- Review the procedures for preserving objections, making directed verdict motions, making JNOV requests and Motions for New Trial
- Review trial handbooks, such as David Ball on Damages
- Do you need a Focus Group?
- Did defense file an Offer of Judgment?
- Have you spoken with anyone who has tried a case before your trial judge in the last year to see how the judge ruled on certain issues?