

# Lawyers

## LIABILITY UPDATE

A LIABILITY NEWS BULLETIN FROM GEORGIA LAWYERS INSURANCE COMPANY

### PLAINTIFFS PRACTICE POINTERS

The lawyer who has the honor of representing plaintiffs needs to beware of common pitfalls. Our practice emphasizes personal injury cases, so this article is written from that perspective. However, the disciplines one needs in a personal injury practice carry over into other areas of plaintiff representation, as well.

#### Statutes of limitation

The first contact with a prospective client should ascertain the nature of the person's problem and learn the answer to the all-important question, "When did this happen?" Unless you are going to clearly decline to represent at the end of the conversation (send a letter, by the way), then the triggering date for the applicable statute of limitation needs to be known from the outset.

Of course, the information is only as good as your use of it. First, you must know realistically whether the case can be prepared well before the statute of limitations runs. It is better to decline representation or associate someone competent than to try to squeeze a substandard investigation and preparation into a too-full calendar.

Once you have considered whether there is time to investigate and prepare the case, you must keep close watch on dates of limitation in all matters which your office is reviewing. Whether your case management system is electronic, paper/physical, or a blend of the two, the statute of limitations must be reviewed

frequently on every case that you have not clearly rejected. It is easy to get distracted by a trial or a busy month of intense discovery only to find yourself on the eve of expiration but not ready. Plan ahead.

Finally, the statutes of limitation remind us of a theme that pervades life as a litigator - waiting until the last minute is typically a very bad idea. In a busy practice, it is a constant struggle not to procrastinate. Keep struggling. From traffic to slow mail to a clerk's office that closes half an hour earlier than you realized or requires a different form of summons than you prepared, too many things can go wrong at the last minute.

In some instances, initial discovery will reveal parties that need to be added. It is hard to explain to a client why you did not discover the need for additional parties until it was too late when the client brought you the case eighteen months before the filing deadline.

**“When did this happen?”**

## Laziness

Laziness is not in either your client's best interest or yours. Stay current on your areas of law. Do not wait until the last minute. Often, your adversary will be better funded and have more resources at his/her disposal. You hardly level the playing field by being lazy. Unfortunately, the folks who take the time to read this article are probably the ones least likely to need it.

## Communication

Often, clients come to you because they were not listened to or cared for by the defendant or insurance adjuster. By not promptly returning phone calls, letters, or emails, you can unintentionally add to their pain or sense of rejection. Your clients deserve your respect and compassion, evidenced by good communication. Also, keep in mind that your very practice demonstrates that today's hurt or rejected folks are tomorrow's (legal malpractice) plaintiffs.

**“Will I have to pay my health insurance company back?”**

Advise your clients early on that litigation proceeds in spurts surrounded by seemingly long periods of inactivity. By preparing your clients for this, they are less apt to think you are the problem when the process drags. Quite often, we receive phone calls asking if we will take a case that another lawyer handled first. The first lawyer has been fired by the client because “he just didn't do anything.” That perception is most easily avoided by good communication (and, of course, by actually doing something.)

## Health insurance

In the personal injury context, there often are two cases rolled into one. The first case, that against the tortfeasor, is what we enjoy and are best trained for. However, for the client, the second case - dealing with the health benefits provider - can be even more important. The lawyer must know how to deal with hospital and doctor liens as well as ERISA, Medicare, Department of Community Health, and state law health benefit plans. “Will I have to pay my health insurance company back?” can be a question without a simple answer. Advising the client early in the case about the forecast in this regard and then handling the reimbursement claim properly are both very important.



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