

PEARSALL LAW FIRM, INC.

PERSONAL INJURY LAW: A PLAIN ENGLISH PRIMER

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This publication is meant to educate you, not to advise you on what to do.

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Tel 1: 210-551-0667
Tel 2: 210-222-2818

11107 Wurzbach Rd., Ste. 602
San Antonio, Texas 78230

www.PearsallLawFirm.com
Gurney@PearsallLawFirm.com

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***Don't get injured
twice: first, by
accident; then,
on purpose***

Dear Reader

Introduction

Unfortunately, you are probably reading this because you have been injured. No one likes to be the victim, especially when someone else's carelessness caused the injury. But we are grateful for the chance to help you recover, not just physically but also financially.

If you feel even the slightest stigma about being a plaintiff, consider this: if you have a case, then you are in a position to hold the wrongdoer accountable instead of letting them get away scott-free. Not only will this help you recover, financially, but this will also help ensure that no one else has to suffer through what you are suffering through.

Know Your Rights and Responsibilities

What you don't know about your rights as the victim of an accident can and will be used against you. We hate seeing people get hurt twice: first, by accident; then, on purpose, when an insurance company cheats them out of a fair settlement.

So, we wrote this booklet because *getting hurt once is enough*. We want to help you understand your rights, as well as the process of demanding your rights. An insurance company, even your own insurance company, is not going to look out for your rights. Only you and your attorney will do that, so it is imperative that you know what your rights are in the first place.

That said, this is not a step-by-step guide for how to enforce your rights, nor is it legal advice. This is only legal information. We want to show you what the forest looks like, but because no two injuries are alike, we cannot show you



how to walk through that forest. If you have any questions, please consult with an attorney. Injury attorneys often offer a free initial consult.

What is an Injury?

Just as not every killing is a murder, not every harm that befalls you is an injury. When we review potential claims, we use a three-part analysis to decide whether there is a pursuable claim: measurability, liability, and recoverability.

Measurability

What is my case worth? This question looms large in many people's minds, and it is perhaps the most frequently asked question that injury attorneys encounter. Measurability is the area of injury practice that determines the value of the case.

*Measurable vs.
Non-Measurable
Damages*

Almost every injury will have aspects that you can measure, and aspects that you cannot measure. Your non-measurable harms generally fall under the umbrella term of "pain and suffering damages," such as sleeplessness, humiliation, mental anguish, discomfort, nightmares, and anxiety. Medical bills and lost wages generally do the two heavy-lifting of measurability. (Take note, there are unique kinds of personal injury cases, such as sexual harassment, with a very different set of rules for what constitutes an injury).

*Severe vs.
Soft Tissue Injuries*

The measurability of an injury often comes down to whether it is a soft tissue injury, or something more severe. Severe injuries are life-changing, easy to document, and often deserve the highest damages. Severe injuries include burns, scars, paralysis, loss of life or limb, and traumatic brain injury. Broken bones are often considered a severe injury, due to the length of time needed to recover and the ease by which they can be documented. Soft tissue injuries, by contrast, are usually temporary and not as easy for a doctor to document. These



injuries include whiplash, sprains, bruises, and other damages to a muscle, nerve, or skin tissue, and the value of such injuries is often \$4,000 or less.

Get Help ASAP

This is why it is important to seek medical attention as soon as possible after an injury occurs! Getting medical attention will help you learn what's wrong and how to treat it, and will give you some medical documentation to prove your injury, whether it is a soft tissue injury or something more severe. In addition, medical attention will help you understand the true extent of your injury. You can be far more severely injured than you seem, but if you wait to get treatment, then an insurance company will jump on that delay to make you look like a liar.

Raising Awareness

Good neighbors warn each other about hidden dangers. On rare occasions, something about your injury is so grossly unfair that the public may take an interest in seeing that justice is done. For instance, consider the case of United Airlines violently removing a passenger from a flight. People across the US put themselves in the victim's shoes, and were understandably outraged and concerned. While it usually makes more economic sense for a business or insurance company to delay, deny, and defend against your claim, or to give you an unfairly low offer, public awareness can make it worth their while to treat you fairly with your compensation. That is why public awareness is something we typically consider when trying to pin a value to a case.

The Value of a Case

So, to revisit the question posed earlier: what is my case worth? The answer will vary on a case by case basis, and will come as a range of figures. There is always a range involved, because the insurance company is going to try to negotiate the number downwards, based on whatever weaknesses in your case it can find, and you or your attorney will try to negotiate the number upwards, to reflect the strengths of your case. Generally, that range comes from multiplying the amount of measurable damages by a number that best reflects the immeasurable damages.



For soft tissue injuries, the calculation would usually look like this: \$1,000 in medical bills + \$500 in lost wages = \$1,500 in measurable damages x .75 for immeasurable damages = \$2,625. For severe injuries, the calculation will vary wildly. Hospital bills, including a prolonged stay and multiple complicated surgeries, may be \$50,000 or \$500,000. Lost wages may amount to someone entire income for the year, or they may amount of an entire lifetime of reduced wages. Recent, local jury verdicts in similar cases can help you determine just how much to multiply the measurable harms. Perhaps they should be multiplied by 10, or 25, or 100, to properly reflect the sheer amount of pain and suffering involved in a catastrophic injury. When you multiply these five- and six-digit figures by high numbers, you can see how multimillion-dollar verdicts are born.

Be Realistic

That said, please take note: most injury cases are valued at \$50,000 or less. You don't want to be injured in a way that is worth anything close to a million dollars, because that will probably mean going blind, losing your legs, becoming seriously deformed, or suffering some other kind of enormous trauma that no amount of money will overcome. The monetary award will certainly help you cope, and the last thing you'd want is to suffer a life-changing trauma and be left on your own to pay for it, but still, I offer this warning in order to keep your expectations realistic: if you were able to read this booklet up to this point, then, statistically speaking, your injury is probably worth \$50,000 or less, no matter how outstanding your injury attorney or your legal arguments may be.

Liability is the analysis into whether someone is responsible for your injury

Liability

Suffering measurable harms only means something if someone or some organization is legally responsible for your harms. While measurability is a matter of collecting documents and perhaps jury verdicts, then doing the math, liability is a legal analysis and requires an intense knowledge of injury law in your local jurisdiction. Every state has set up its own specific rules and standards. State



legislators are often changing these standards. Trial courts and appellate courts are constantly evolving their understanding of those standards, new and old. An attorney with a firm enough grasp of the law would know when an issue is a non-issue because it can be easily won or will be easily lost, and when an issue is worth litigating. An attorney with a poor grasp of the law, meanwhile, will litigate non-issues and end up learning the law the hard way by forcing the impatient judge explain it to him or her, after wasting a lot of your time. This is why it is important to hire an attorney who is well-versed in injury law, and someone who is not distracted and too busy handling other, bigger cases than yours.

That said, states generally approach liability with a five-step analysis: duty, breach, causation, damages, and defensibility.

Duty

The simplest way to explain the laws of duty, in personal injury cases, is that different people owe different duties to different people at different times. Generally, people owe a duty to exercise the same level of caution that a reasonably prudent person would exercise. The legislation rarely goes into more depth than that, so it is up to the courts and juries to determine, based on their own common sense, what this hypothetical reasonably prudent person would do.

The standard may change for certain categories of people. Professionals, like doctors, are often held to a higher standard – that of the reasonably prudent professional. While the reasonably prudent person is a standard generally based on local customs, the reasonably prudent professional is generally a standard based on national industry customs. Landowners often have their own standard of duty to inspect their property for dangerous conditions, so that such conditions do not hurt guests (or even trespassers, sometimes). Children often enjoy a lower standard of care, based on other children of their age and experience,



*A duty is the
responsibility
to do or not
do something*

A breach of duty occurs if you do something you had a duty not to do, or fail to do something that you had a duty to do

A breach of duty must not only occur, but must also harm the plaintiff.

though this lower standard can be replaced by the reasonably prudent person standard if they are engaged in an adult-like activity, like driving a car.

Breach:

To know whether a person has breached the duty they owe you, we must determine what standard of duty a person owed to you in the first place. If the hypothetical reasonably prudent person, or reasonably prudent professional, or reasonably prudent landowner, or reasonably prudent child, and so on would have taken some extra precaution that the person who hurt you failed to take, then perhaps a breach of duty occurred. Reasonably prudent people drive slower when it is raining or snowing, for instance. It is taken for granted that the reasonably prudent person is a law-abiding citizen. So, if you are rear-ended by someone and the traffic ticket for the accident shows that they were speeding or texting while driving, then perhaps it is wise to argue that the violations of traffic law are evidence for breach of duty.

Causation:

A person's breach of duty to you must cause your harms. This sounds straightforward, doesn't it? "If not for the person's breach of the duty that they owed me, I would not have been hurt – or, at least I would not have been hurt as badly as I was. This person's breach directly caused my harms." But it is more nuanced than this. Their breach must be a direct cause of your harms, as well as a "proximate cause" of your harms. Proximate cause, also known as "legal cause," analyzes whether it would be fair to impose liability on the person who hurt you (aka, the "tortfeasor"). If your injury now is really the result of a previous injury that you already had, for instance, then there might not be proximate cause. If you were hurt because the tortfeasor did something that caused a chain of reactions, and you got hurt somewhere down the chain of reactions, then there



Damages are the harm that you suffer as the result of someone's breach of duty

Defensibility refers to the defendant's ability to defend against your claim

might not be proximate cause. It never hurts to consult with an injury attorney to be sure, but proximate cause is something they would consider.

Damages:

Next, the harms that you sustain usually have to be measurable, at least in part, if you want to recover anything. While you could sue just for the sake of having your voice heard, litigation often costs thousands of dollars and over a year of your life. Damages are what make that investment of time and money worth it, and hitting people or companies in their pocketbook is exactly the kind of lesson they need in order to deter them from ever hurting anyone else like they hurt you.

Defensibility:

Even if the above factors are satisfied, a defendant can still be excused from liability if he or she has a valid defense.

Perhaps you waited too long to sue, and the statute of limitations (aka: the deadline to sue) has expired.

Perhaps the tortfeasor was reacting to an emergency.

Perhaps the tortfeasor couldn't help but hurt you because he or she was experiencing a seizure, or a moment of insanity, or perhaps the vehicle they were driving had a sudden mechanical failure that caused them to hit you.

Perhaps the dog that bit you had never bit anyone before, and was therefore not known to be a biting animal.

When you slipped and fell on the wet surface in the grocery store, perhaps the dangerous wet condition had only formed a few minutes beforehand, meaning the store did not have enough time to fix it.



While no defense is always going to work, defenses to liability do exist, and insurance companies will turn over every rock in search of any defense that can excuse the insured person's liability.

Recoverability refers to the defendant's ability to pay you what you are owed

Recoverability

Lastly, even after all of the factors above have been satisfied, you have to determine whether the tortfeasor has anything to give you. Most people do not have thousands of dollars to hand over to someone, even if a judge or jury awards a verdict against them. States generally will not kick someone out of their car or house to collect payment for a verdict. In such a case, the defendant is known in the personal injury industry as "judgment-proof," meaning whatever judgment you might have against him or her, you will never see a penny of it.

It's also worth noting that even if the person is wealthy and can afford to hand over thousands of dollars, this can turn out very poorly in the long run. There have been no shortage of cases where a wealthy person suffers a large loss, as the result of a personal injury verdict against them, and that wealthy person decides to enact revenge by murdering the injured person, or otherwise harassing the injured person and making their life miserable.

This is why injury attorneys often decline cases where recoverability is questionable. If an insurance policy is unable to cover the damages, and if no large business is liable for the damages, then there may be no case worth pursuing. You would not want to sink a year of your life and thousands of dollars into a case, if you end up getting nothing anyway.

Closing Words

In a nutshell, for you to have a case worth pursuing, you want to sit on a stool that has three legs, each of which is as strong as possible: measurability, liability, and recoverability. For an insurance company or jury to take you seriously, you want to show as much medical documentation as possible about



your injury, you want to show that the person who hurt you is legally at fault for your injury because they breached a duty to you and that breach caused your harms, and you want to pursue your claim against someone or something that can actually afford to compensate you. Insurance companies are the go-to source for compensation because they exist specifically to compensate people for accidents. I hope that this booklet helps you better understand the legal framework of an injury law case. Please remember that this is provided to you for educational, information purposes only, not as advice on what to do.

Best Regards,

Gurney F. Pearsall III

Managing Attorney, Personal Injury Section, Pearsall Law Firm, Inc.

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How Insurance Works

Overview

Because insurance companies are often involved in personal injury litigation, you should know what insurance is, how these companies work, and how claims are processed.

*What is
Insurance?*

In its broadest form, insurance is a response to uncertainty. Your car, your life, your apartment, and other major parts of your life can all be damaged or destroyed by accident, at any time. It's unlikely, but it's possible – and if it happens, you don't have the money to replace your lost car, life, or apartment.

In response to this uncertainty, you and millions of other Americans can agree to put \$50 or so per month into a bucket, managed by a company, and if something terrible happens to the insured thing, then at least you or your family can get compensated. This helps ease the burden.

In its narrowest form, insurance is simply a contract – nothing less, and nothing more. The contract involves you, as the insured, buying a product from the company. That product is the insurance policy. The insurance policy is a promise that you will pay the company some amount of money at a regular interval, and in exchange, if the insured item is damaged, lost, or destroyed in a specific way, or if a certain kind of accident happens on the insured property, then the company will indemnify you (ie: help you repair or replace it).

Claims

A claim is how you notify the insurance company that an insured item has been damaged, lost, or destroyed in a specific way, or that a certain kind of accident has taken place on the insured property.



*Making a
Claim*

A claim is easy to make when you are dealing with your own insurance company, because you can review your policy and determine whether it covers the situation. Insurance policies are often hard to understand, and this is one reason to hire an attorney, but at least everything you need to know is in your hands.

A claim made against another person's insurance company is trickier to make. Even attorneys can only guess as to what the other person's insurance policy says. But it is possible to make an informed guess. Insurance companies usually borrow their policy language from the model insurance policy coverage language promulgated by the Insurance Services Office. This office offers model language that is precise and court-tested, so insurance companies find it to be far less risky to borrow that language word for word.

You generally have many ways to file a claim, whether through a phone call, by mail, or by email. Regular mail will generally take the longest for you to prepare and for the company to process, and a call may also take ages for a human being to answer. So, we generally file claims by email. You are in control of every word of your email, after all, and the company's systems will automatically send the email where it needs to go.

*What Claims
Adjusters Do*

Once you file your claim, the insurance company will put a claims adjuster in charge of investigating the claim. In theory, this adjuster's job is just to act as an interpreter of the insurance policy. If your claim falls within the policy, then the job should be over and a fair settlement offer should fall into your lap.

As you can guess, this is not what actually happens. What actually happens is an investigation and a settlement decision, as explained below.



Settlement

For the investigation, adjusters will look for any plot holes or weaknesses in your claim, by reviewing your evidence and gathering their own evidence, often from their insured and from investigators in the field. They will usually interview you and try to record that interview, so that they can review, over and over, every word you say and don't say, in the hopes of finding a flaw or inconsistency.

*How
Settlement
Works*

For the settlement decision, an adjuster's first goal is to deny your claim. The best kind of claim, from their perspective, is the claim that is clearly not covered. If you take that case to court, the court will dismiss it as groundless long before a jury trial can take place. The next best kind of claim is one that is not clearly covered.

If it is not clearly covered because more investigation is needed, then the insurance company has no problem paying a local insurance defense lawyer to conduct a thorough investigation – but for that, you must file the lawsuit. If it is not clearly covered because something about your injury has revealed an ambiguity in the insurance policy, then the company will, at least initially, interpret the ambiguity against you and see if you file the lawsuit. Most people will not sue. Indeed, even many injury lawyers avoid filing lawsuits, because of the time and expense.

Remember, you might only be owed a few thousand dollars, but you and tens of thousands of other people are also owed a few thousand dollars, and most of them will eventually give up rather than fight. Once you look at your situation from the eyes on the insurance company, you will have a much easier time staying five steps ahead of its actions and reactions.

If the claim is clearly covered, then the adjuster will get the insurance company into legal trouble by fighting the claim because that would be



considered “bad faith.” We’ll discuss bad faith more in another chapter. For now, just know that the threat of bad faith means that the next step is to offer a settlement that is as low as possible.

Sometimes, this is accomplished by endlessly haggling with you, bluffing about how weak your case is, making something up about not having authority to offer you any more money, or thousands of other hardball tactics to make you give up and be happy with (or at least settle for) less. Other times, this is accomplished by quickly offering a decent-looking settlement, so that you don’t consult with an attorney or a doctor and discover what you are truly owed.

If you take this quick offer, then your case is over, even if you change your mind five minutes later, even if your injury becomes far worse than you expected, and even if enormous hospital bills start appearing out of nowhere. ***Be wary of quick offers; they are offered quickly for a very good reason.***

When Settlement Fails

If you and your adjuster cannot come to an agreement as to settlement, then you have a dispute. That dispute can only be resolved through a trial, mediation, or arbitration. It is not uncommon for a personal injury trial to quickly get through the legal issues, then focus on the question of how much the defendant owes. The plaintiff had about \$50,000 in medical bills and lost wages after being seriously rear-ended on a highway, but because the defendant was drunk driving and fled the scene, the plaintiff’s attorney was demanding one million dollars as punitive damages.

*The Ways to
Dispute a
Claim*

In a mediation, a mediator talks to both sides and tries to find some middle ground. Generally, both sides will have to make painful concessions for a mediation to work. The mediator’s plan can be rejected by either side, with no



penalty. In an arbitration, an arbitrator (usually a retired judge) or panel of arbitrators will decide the case, acting as both judge and jury.

Then, there is trial. A trial is usually the most complex, most expensive, and most lengthy option, but may be best if a jury can offer a better judgment than a judge, mediator, or arbitrator. If there are serious pain and suffering damages, it may be best to bring the matter to the attention of a jury of people who may sympathize with your plight. The risk is that a jury might do the very opposite of sympathize with you. In the case drunk driving case mentioned above, the jury quickly came back with a verdict of about \$30,000 for the plaintiff. This is a nonsense verdict, as the plaintiff was clearly entitled to at least her medical bills and lost wages. Still, the jury was annoyed at the plaintiff attorney (who seemed rude and greedy), so they took it out on the plaintiff.



Do's and Don't's

Overview

Below, we will explore several rules of thumb that we keep in mind, when handling a personal injury case. Please note that not all of these rules of thumb always apply, and at times a person's case might require an exception to a rule of thumb. As such, this list is provided only so that you better understand the typical process, as legal information, and not as practical guidance or legal advice for what you should or should not do with your particular injury case.

Do's

*In the
Immediate
Aftermath of
an Injury*

- Seek out witnesses. In the immediate aftermath of an accident, look around to see who else is in the area. Get their name and number, or business card. Don't give out your information without getting their information in return, in the hopes that they will call you later. They often won't. If you let your witnesses drive away, then your case might depend on the bad driver confessing to their negligence. They often don't.
- Preserve the evidence. Take out your phone or camera, and take pictures of everything: the road conditions, the amount of traffic, the weather conditions, the injury itself, the people involved, the time, and so on. The more pictures, the better. Take pictures up close and from afar. Take pictures from every angle. Conditions can change in a matter of minutes or hours, but your injury case will last for months – so, preserving the scene of the accident is very important, and can make the difference between having a case and not having a case.
- Seek medical attention immediately
- Consult with a local injury attorney or two, if they offer a free consult
- Hire an injury attorney on a contingency fee basis, if possible
- Contact the appropriate insurance companies, so they can begin their investigation

*In the Days
After an
Injury*



*In the Weeks
and Months
After an
Injury*

- Follow your doctor's advice carefully and fully
- Get a binder where you keep your injury-related information and documents
- Delete all social media accounts, because anything – any picture, comment, or even “like” – can and will be used to cast doubt on your character and the seriousness of your injury
- Request your medical documentation from the hospital, or other medical provider, as soon as it becomes available. Bear in mind that hospitals typically have many departments, each of which will charge you their own bill, and they will not warn you about outstanding bills from any other department. They might not even contact you at all, and will instead expect you to find them and contact them to pay your bill.
- Keep a diary that describes your medical appointments and how your injury affects your life – this may become very useful documentation of pain and suffering
- Begin negotiating a settlement once you are ready, for instance once you have begun recovering and once your current and future medical expenses and lost wages are documented and reasonably certain. Premature negotiations will usually hurt you.
- Assume that someone is watching at all times, watching to see if you do anything out of place for an injured person, like playing sports or carrying heavy objects around.
- Put yourself in the shoes of an insurance claims adjuster. Think about your case from the perspective of someone who is dealing with two dozen victims just like you, and who would love to get a raise or a bonus by somehow finding a way to deny your claim or pay you as little as possible.
- Put yourself in the shoes of a juror. If you've ever served on a jury, you know the feeling. You are annoyed that some plaintiff has ripped you out of your comfortable life and interrupted your plans, and you are going to be angry if the plaintiff has put you through all of this burden for no good reason.
- Raise awareness of anything unusual about your injury. For instance, your author learned the hard way that if you turn your head to the side in the



moments before getting rear-ended, your whiplash is going to be far, far more painful than if you were looking forward. While this is still a regular, boring rear-end case that is not going to attract the attention of the national media, this is still a little fact worth sharing with other people, to spare them of the struggle of severe whiplash.

- **NOTICE:** There may be a statute of limitations or other important legal consideration in your case, and that is why consulting with an attorney is extremely important. There are a number of ways for you to accidentally kill your case, so the above tips are only offered to help show you what may lie in the road ahead. The above tips are not a step-by-step guide, and in no way do they guarantee that you will be able to successfully recover.

Don't's

- Avoid intense activity, at least while you are outdoors. It is not uncommon for a claims adjuster in the field to spend some time observing the injured person, in the hopes of taking a picture of that person playing with their children on the playground, lifting something heavy, or exercising. It is well-known that someone with an injury, even a serious injury, can still be an able-bodied person, but any evidence of an active lifestyle can be used against you.
- Avoid parties. Dancing is an intense activity. Even if an insurance company is not actively spying on you late at night, and even if you have deleted your social media accounts, you are likely to end up in the background of someone else's picture. This may be used to cast doubt on your claims of pain and suffering, as well as on the seriousness of your injury, even if you are not dancing.
- Avoid even the slightest exaggeration of your injuries or pain and suffering. Any hint of insincerity from you will be taken as proof that you are a liar, and can even be mistaken for insurance fraud. Insurance fraud is a serious problem, and there are serious consequences to engaging in it or even appearing to engage in it. This does not mean that you should downplay your problems or try to hide them, either; just don't exaggerate them.



- Avoid malingering. “Malingering” is a buzzword in insurance circles, and it refers to a plaintiff who is dragging their feet with their recovery, so that they recover more money. If you take too long to fill your prescriptions, or if you take too long to start listening to your doctor, or if you only partially comply with your treatment plan, then you are malingering. The more you mangle, the more your injury becomes your fault and no one else’s.
- Avoid social media. Not only it is generally wise to shut yourself off from your own social media accounts, but it is also generally wise to avoid situations that will put you in the background of other people’s social media accounts. Towards that end, avoid not only parties but also social events, fundraisers, and so forth. People, for whatever reason, think that someone who is injured is basically bedridden and suffering at all times, and any evidence to the contrary is going to hurt your case more than you can imagine.
- Avoid taking legal advice from non-lawyers, including yourself. Everyone has an opinion, and some people even have some experience with personal injuries. But every case is unique, and personal injury law is complex and evolving, so if you rely on the legal advice of a non-lawyer, you can end up hurting yourself all over again.
- Avoid apologizing, no matter how polite you might be. “I’m sorry” sounds like one thing to an insurance claim adjuster: it sounds like an admission of fault. If you have an injury case pending, the word “sorry” should be struck from your vocabulary.



Preventing Injuries

Motor Vehicle Accidents

“Motor vehicle accidents,” more commonly known as car crashes, are probably the most likely way for you to get hurt. While so much is out of your control on the road, at least you can reduce the likelihood of causing an accident with the following methods.

- Drive at or at least near the speed limit. Insurance companies routinely raise the rates on speeders because, statistically speaking, you are far more likely to cause an accident while speeding than while driving at the speed limit. As such, the insurance companies understandably figure that they might as well start charging you now, for the accident you’ll probably cause one day in the future.
- Wear sunglasses during the day. Sunglasses protect your eyesight and reduce the amount of glare in your eyes. If you’re going at any reasonable rate of speed, and especially if you’re going at highway speeds, even a few seconds of distracted, blinded driving can result in a car crash, serious bodily injury, and even death. “But I was doing the best I could with the sun in my eyes” is no excuse. Keep your sunglasses in your glove compartment at all times, so that they are always in easy reach.
- Buy an extended rear-view mirror. You can find a wide variety of long mirrors to attach to your rear-view mirror in your car. These extended mirrors will give you a much wider view of your surroundings, sometimes to the point of even eliminating that nasty blind spot and rendering your side mirrors obsolete. These mirrors often cost \$20 or less.
- Look where you’re going! It’s a bit obvious, but it is very hard to get caught off guard when you’re looking where you’re going. If the driver in front of you slams on the brakes because they noticed a strange thing in the road at the



last second, or if a wild animal or small child runs into the road in front of you, then you have one second or less to react before you slam into them. Sending a text, reading a text, looking off to the horizon, fumbling with the radio – all of these distractors have gotten people just like you killed before, and will continue getting people like you killed. So, avoid them at all costs.

- Expect the worst. You won't get caught off guard by a tree that falls into the road if you already considered the possibility of a tree falling into the road. Wherever you're driving, expect the worst. Expect a small child to run out of the bushes and into your headlights. Expect your brakes to fail as you're approaching a yellow light. Expect a car to back out of the parking lot in a hurry, without noticing you in the way. Expect the people around you to fly into a road rage frenzy if you cut them off or make a rude gesture to them. Every time you switch lanes, expect the driver two lanes over to decide to switch lanes at the same time and hit you. Ignore all signal lights, and focus instead on what a driver does. Expect a car to run the red light just as your light turns green. Run these scenarios through your head, and consider how you would react, so that if and when the worst case scenario actually comes to pass, you are not caught off guard.
- Establish a force field. Even in traffic, there are often large patches of empty spaces between cars. If you get into the habit of slipping into these dead zones, so that there are no cars bordering your car, then you are a lot less likely to get into a sudden accident. It's a lot harder for even the worst driver to hit you when you're not around, after all.
- Take a defensive driving course. These courses often teach you plenty of tips, and insurance companies often reduce your rates if you can show them proof of completion of such a class. It may be best to check in with your insurance company to see what they require as proof of completion.
- Beware of the "Waive of Death." The Waive of Death is what we refer to the all too common scenario where you are about to make a turn, a vehicle is



blocking the view in front of you, and the driver of that vehicles waives you forward, suggesting that it is safe to go. You wouldn't know if that driver is mistaken until you make the turn and find out the hard way that a car is about to crash into you. At that point, it is too late to avoid an accident – and that driver who let you through might0 drive away or deny giving you the waive of death.

Slip and Falls

Walking is perhaps the only thing we do more than driving. While you are probably quite good at walking around, your feet can't help but slipping if the ground beneath them is unexpectedly wet or uneven. As resilient as the human body can be, it can also be incredibly brittle, so a good, hard fall can result in broken bones or worse.

Constant situational awareness is a good way to avoid slipping and falling. Wherever you go, especially if the area is unfamiliar, take a moment to look at the ground you're walking on. Look at the beginning and end of a staircase. Pay attention to sidewalks and other elevations. Pretend that there are cameras rolling, and you have to be extra careful not to embarrass yourself in front of the paparazzi who are following you. Consider looking up some Youtube videos on martial arts falling techniques. You may not be able to catch yourself when you fall, but there are ways to fall in a manner that reduces the likelihood of injury.

Premises Liability

A slip and fall is often just a type of premises liability action. "Premises liability" refers to the liability that landowners sometimes owe for the harms that come to guests and sometimes trespassers to the property. When you are visiting a property, whether it is someone's apartment or a museum or gas station, take note of your surroundings. Look around your area as though you



had a bored 10-year-old running around aimlessly. Even when outside, be watchful for potholes and other holes in the ground, which are often half-covered. Your alertness can spare you and the people around you of a sprained ankle or worse.

Defective Products

Sometimes, things explode. Whether a product was designed poorly or designed perfectly and then manufactured poorly, tools (and especially complex tools) will break from time to time. To mitigate the likelihood of this happening to you, be sure to use your equipment as it is meant to be used. Actually read the instructions and warnings on the equipment. If it feels broken, it might be broken, and its brokenness might seriously hurt you at a moment's notice.

Assault

Many people assume that getting assaulted is a criminal act, and not something they can sue for. Other people assume that even though they could sue their assailant, there is no hope of recovering anything from that person because he or she is a "judgment-proof defendant." In fact, there may be far more going on in an assault case. If the person who assaulted you did so while at work (for instance, if the assailant is a bouncer or a disgruntled coworker of yours), then their employer may be responsible for negligently training the employee, negligently hiring the employee, or negligently supervising the employee.

As for preventing an assault, all you can do is exercise your best common sense judgment. In a tense situation where someone may attack you, it may be wise to stay calm and collected, and put forward a non-threatening demeanor. It may be possible to remove yourself from the situation, or to deescalate the



situation, even if it means “losing face” or appeasing the would-be attacker. It does not hurt to take some practical self-defense classes, like Krav Maga, so that you spare yourself from a potentially very serious beating.

Sexual Harassment

Sexual harassment is a unique kind of personal injury case. Like most injuries, it is hard to prevent or even anticipate, and it can happen anywhere, at any time, with or without notice.

It may be possible to gauge the reputation of a place online or through your friends, if you are going to a place where you will stay for some time – for instance, a school, workplace, or a shared apartment. In addition to location, price, and the other usual factors that you consider when looking at a school, workplace, shared apartment, or other place, it is worth looking into the reputation of the place and for any police reports or incidents in the area, if possible. It’s worth knowing ahead of time if a place is already known for sexual harassment and similar mistreatment of women.

For workplace sexual harassment in particular, the job interview is likely your only chance at determining whether your prospective employer will treat you with dignity and respect. If the job interview includes strange, unprofessional, or overly friendly questions, or if your interviewer’s demeanor in any way gives you the impression that they are “creepy” or unprofessional, then perhaps this job opportunity is not as much of an opportunity as it seems. Unfortunately, sexual harassers are often very charming people, are good at hiding their true intentions, and might not be the person interviewing you in the first place.

Clear communication can sometimes help prevent sexual harassment and other mistreatment. Occasionally, sexual harassment results from, or at least is influenced by, the harasser’s misunderstanding of what is acceptable



and what is unacceptable. This misunderstanding is not your fault, but if it is in your power to correct that misunderstanding and clarify your boundaries without putting yourself in harm's way, then that may be a good idea.

If the harassment continues, then prevention may be a lost cause. It may help to treat your situation like a personal injury case, however. Start collecting evidence, as if you were collecting medical records and evidence of lost wages. Some techniques for information-gathering include the following, but remember that these are listed for your awareness and not listed as recommendations:

- Keep detailed notes of what harassing conduct happens to you, when it happens, where it happens, by who, and keep an eye out for any possible witnesses in the area. Whether you keep your notes in a binder, diary, notebook, laptop, or other place, try to keep them all in one place.
- Notify your supervisors in writing about the harassment, if there are managers or supervisors who can be notified, and keep a copy of your written notice for your records.
- People are often predictable. If your harassment continues, you may be able to anticipate when and where it will happen. If you can safely do so, try to record the event, whether by audio, by video recording, by having someone trustworthy around to act as a witness, or some other means.
- Text or email with your harassers, if you can safely do so; that way, they might admit to or suggest to their harassment in writing.
- Avoid trying to play a "double agent" by encouraging the harassment in order to gather more evidence. This is often compared to entrapment, or to injuring yourself further, just to collect more insurance money. The comparison is not fair, of course but it is worth keeping that bias in mind. You don't want your harasser to escape responsibility by claiming that they mistook your encouragement for consent.



- Contact an attorney, to make sure that you are not doing anything legally improper as you gather evidence. Recording people, for instance, can be legally problematic unless you know exactly what you are doing. In your pursuit to stop the unlawful conduct against you, it does not help if you yourself engage in unlawful conduct, even by accident.
- Eventually, you will have gathered more than enough evidence to take action. This, too, is best done with the assistance of an attorney, so that there is no mistaking your settlement offer to be blackmail or something similar. What attorneys often do in these kinds of cases, after investigating the matter and gather evidence, is present the employer with a demand letter, alleging sexual harassment (and perhaps showing a preview of the evidence as well), and making a demand.
- The demands in your settlement offer must be carefully phrased, not only to avoid the appearance of blackmail but also to ensure that the agreement becomes a valid contract. An ambiguous contract is unlikely to hold up in court, after all. That is another reason to involve an attorney – early on, if possible, but certainly at least by the time you are ready to make a settlement demand and offer.
- There are many kinds of demands, for instance:
 - A non-disclosure agreement, so your employer doesn't vilify you
 - A demand that you be allowed to continue work, without retaliation
 - A demand that you be allowed to leave work, without retaliation
 - A demand that you leave work with a specific amount of severance pay for a specific time
 - a demand that you be compensated by a specific amount for your wasted time and for your pain and suffering
 - a demand for an apology (though, oftentimes it is easier to reach an agreement with the person if it allows them to not admit fault)



Closing Thoughts

The one theme that connects all of the information above is the advice to consult with an attorney. With the information above, we hope that you will be better prepared to help your attorney, and that you will better understand what is going on in your case.

What we do *not* hope is that you avoid consulting with an attorney, then mistake the above information as advice and guidance. This would not be in your best interests, because there may be something unique about your case – like a statute of limitations, or special requirements for suing a governmental entity – that will ruin your claim if you do not tread carefully with it.

The information presented above is only a simplified, watered-down version of injury law and the claims process. The devil is in the details, and if you fight a business or insurance company, then you will almost certainly be up against the best team of well-trained, experienced attorneys that a multibillion-dollar business can afford.

Even when you are “only” talking to a claims adjuster, you should know that that claims adjuster is very knowledgeable in the law, is very experienced with handling (read: dismissing) claims, and has received the best training in manipulating you and your claim that a multibillion-dollar business can afford. If you are fighting on your own, then your claims adjuster or opposing attorney may be 35 steps ahead of you at all times, and we would hate for you to stumble into something based on any information provided above.



That is why we will repeat here what we have said many times above: all of the information here is provided for legal information purposes only, and not as legal advice. If you had any questions or concerns about a personal injury before you read this book and you no longer have that question as the result of something you read in here, then you have misread the information as advice. Please consult with an injury attorney before taking any kind of legal action!



Contact Information

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Gurney F. Pearsall III

Managing Attorney
Personal Injury Section of
Pearsall Law Firm, Inc.

Tel: 210-551-0667

Fax: 210-222-2818

Gurney@PearsallLawFirm.com



Alana Pearsall

Managing Attorney
Family Law Section of
Pearsall Law Firm, Inc.

Tel: 210-222-2818

Fax: 210-222-2818

PearsallLawFirm@aol.com

Company Information

Pearsall Law Firm, Inc.

11107 Wurzbach Rd., Ste. 602

San Antonio, Texas 78230

Tel: 210-551-0667

Fax: 210-222-2818

www.PearsallLawFirm.com

