

# DAVID

VS

# GOLIATH

What you need to know about personal  
injury lawyers and how they can fight  
to seek justice for you.



Aaron Gartlan

PERSONAL INJURY LAWYER



# Dedication.

We're mindful of the love, friendship and solid guidance we've received as we continue to move forward on our journey to fulfill our purpose and help others. We want to recognize especially three people whose influence continues to guide, inform and inspire our approach to living each day and fulfilling our mission to serve the injured.

My dad, Robert Bryant Gartlan, challenged me to "get a good education" and help people." He embodied a strong blue-collar work ethic, which ended abruptly after suffering a heart attack while working. In the twinkling of an eye, I witnessed a tough and loving man who took great pride in his work and a job well done transformed by a catastrophic injury, thereby altering him physically, mentally and emotionally. This allowed me to experience the heartbreak and devastating toll of a catastrophic injury on a man and his family.



I started Jones Law School in 1996 and went to work in a law firm in 1997. There's not a day that goes by without me thanking God that I followed my dad's advice. I'm forever grateful for the great education I've received and continue to receive from our wonderful clients and colleagues. You're the foundation of Gartlan Injury Law. I love you!

Do you see a man skillful in his work? He will stand before Kings. – Proverbs 22:29



On September 22, 2016, I lost my brother and best man tragically while he was working in his bucket truck. Larry Andrew Redd Rabion was a loving husband, father, brother, an all around great family-man and trusted, respected loyal friend offering constant encouragement. He succeeded in life and business with an unsurpassed work ethic, determination and dedication, leading the way by example casting a positive influence. Redd was hard nosed and tough as nails but all heart and lived every moment of his life giving freely to family and friends. I'm fortunate to have been in that company. I strive daily to carry on his legacy.

The challenge of Redd's void remains, but I take comfort in knowing that he's standing before Kings.

We also remember John Randall Crawford who should've celebrated his birthday on January 13, with his family and friends. Their lives changed forever on September 3, 2010, when Randy died while working hard to provide a better life for his loved ones, so that celebration didn't happen. Randy was an Army veteran and skillful welder by trade. He was a protector, brother and best friend, as well as a son, father, uncle and husband. Randy's courage, toughness and positive impact remain with us, as part of his legacy. We strive daily to carry it on and deeply and sincerely appreciate his contributions immensely.



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# Foreword

## David and Goliath: The Biblical Story and the Lesson

Most Southerners are at least somewhat familiar with the Biblical teaching of David and Goliath. The lesson comes from 1 Samuel 17 and concerns an epic battle between the Philistine army and the army of the Israelites. The two armies had come to clash in a deep, steep valley.

As they prepped for battle, the strongest man in the Philistine army—a nine-foot-tall giant named Goliath—stepped forward and challenged the Israelites to take him on. Goliath was a professionally trained warrior adorned in massive armor and armed to the hilt. Even Saul, the King of the Israelites, was terrified to take on this beast—and Saul was the tallest of the bunch! For 40 days, Goliath mocked and taunted the Israelites, saying, “If someone can fight me and kill me, then you win.” Not even the bravest soldier in the army was up for the challenge.

But then entered David. David was a young teenager—the youngest of eight brothers—and he worked as a simple shepherd. At his father’s instruction, David went to the battlefield to check on his older brothers who were in the military and bring them some food, but when he heard about Goliath’s boasting, the young shepherd boy sprang to action. He demanded to know who the uncircumcised Philistine was that he should defy the armies of God. David wanted to take up the gauntlet and fight the giant!

Unsurprisingly, David was met with resistance. His brothers ridiculed him. Even King Saul thought David fighting Goliath was a bad plan for obvious reasons. But David persisted and got his way. He would have an audience before Goliath. Saul provided David the best armor. David tried it on and decided not to use it because it was bulky and awkward to move in. He wasn’t used to it and knew he would be defeated if he tried to face the giant Goliath with conventional methods of combat.

A shepherd boy by trade, David’s skills of protecting the flock against lions, wolves and other wild animals and dangers had already been developed. David was very experienced with his sling and was also protected with the invisible armor of God. The Israelites saw Goliath as a strong giant monster of a warrior who was unbeatable, but David saw a target that he couldn’t miss. David had confidence that he had the right plan and he knew the invisible armor of God gave him both the wisdom and the courage to face and defeat Goliath in David’s own unconventional way.

As David approached the nine-foot warrior, Goliath and his shield-bearer taunted and threatened him. David remained confident. He was armed only with five smooth stones in his shepherd bag, the trusty sling he used as a shepherd to fight off wild predators who threatened his flock, and the invisible armor of God.

In spite of Goliath’s massive advantage—his towering size, his armor, his javelin, sword and other weapons—David demolished him with a single strategic shot from his sling. The smooth stone sailed through a hole in Goliath’s armor, hit the beast in the forehead, and knocked him out. David then slayed Goliath using the big man’s own sword, and he led the Israelites to victory as the Philistines fled. The miracle of David’s victory has resonated strongly through the ages. It celebrates the capacity of the underdog to pull off upsets that defy conventional wisdom.

Indeed, the David and Goliath lesson is so well known that it’s now considered the archetypal “underdog victory.” In sports, when an outmatched team wins a major game or tournament, pundits will often refer to such a victory as a “David versus Goliath” story.

The lesson can be aptly applied to Alabama personal injury claims, as we are about to see.

# Introduction

Alabama personal injury victims and their families often don't know what they don't know.

This may sound confusing at first, so let's unpack that idea. Victims of serious accidents, such as car wrecks, trucking accidents, or workplace accidents—as well as people hurt by the use of a dangerous or defective product—often naively trust insurance companies and other corporations to “do the right thing.”

Unfortunately, here's the reality:

Insurance companies are businesses. Profit is their fundamental motivator. They aim to minimize the claims that they need to pay out. Bottom line.

Big companies have selfish financial interests. This means that potentially liable companies will go to great lengths to avoid paying for your damages, even if you deserve better, fairer treatment. Now, there's nothing wrong with being profit-motivated, at least in the abstract. But consider what this motivation means for you.

National banks, pharmaceutical companies, construction companies, oil companies, and other big businesses may say they'll treat you fairly. But the old Cold War axiom about diplomacy is a good rule of thumb:

**“Trust, but verify.”**

Truth be told, **big businesses and insurers often constitute a Goliath**—an epic, aggressive, hostile force. In the biblical story of David and Goliath, David did not face the giant alone. People who have personal injury and accident cases should not face the giant insurance company alone, either.

You'll learn in this book that the way to survive and defeat the giants is through early and thorough preparation in each and every case in an effort to prove and demonstrate liability, injuries and damages; overcome defenses; and add value to the case in order to maximize recovery.

Under Alabama law, the victims of certain car, truck, motorcycle accidents, and work injuries can collect compensation for medical bills, including out-of-pocket expenses; mental anguish; pain and suffering; lost current and future wages; vehicle and property damage; and in some cases, punitive damages. If you lost a spouse, you may be entitled to loss of consortium benefits. In other words, there may be abundant avenues for compensation.

In the following pages, we're going to take a good hard look at who “Goliath” really is, what tactics he uses, what obstacles he puts in your way, and what you can do to fight back.

We expose the nasty tricks and slippery tactics that Goliath uses by including some pretty chilling real life examples of Goliath's victories. We will teach you to use a metaphorical “slingshot,” shepherd's bag, five smooth stones and invisible armor to protect your rights, obtain a recovery, and ensure justice. We are doing so because our American court system and the right to a trial by jury was created by the people for the people and was designed to give the people a level playing field against big corporations.

Now as a disclaimer, every big insurance company or corporation operating in Alabama is not “evil.” They provide jobs and are essential for the economy. But they have an agenda. They are looking after their bottom line and their profits. These corporations make tactical decisions to deny and minimize claims. They calculate, plan, meet, and develop tricks and strategies to wear good people down. And sometimes—more frequently than you probably realize—insurance companies go to extreme lengths. As we are about to see, their tactics often range from annoying and insidious to down-right hostile and cruel.

Restrictions hidden in the bottom of your policy aside, big insurance companies have a duty to behave fairly and in good faith. Even if those precise words or clauses are not contained in Goliath’s contracts, a judge would (or at least should) hold the insurer to that standard.

Of course, as we discovered, getting Goliath to play fair is often easier said than done.

**A well-prepared personal injury lawyer knows the unconventional ways and methods needed to beat the giant companies** and corporations and hold them accountable to the people and communities they serve. This book will provide you with the knowledge you need to maximize your chances of success, even when all odds seem against you.

## SECTION 1

# Goliath Exposed!

*The Weapons, Tactics and Secrets Big Corporations Use Against Innocent Personal Injury and Accident Victims*

## CHAPTER 1

# Goliath's Intimidating Shadow: Pressure Families Face When Considering Legal Help

No one goes out on the road or reports to work expecting to be in a crash or suffering an injury. But once an accident happens, a subtle “ticking clock” starts to count down. Witness statements, evidence, and pictures of the scene can get lost or destroyed, or even fade or disappear. You may understand this now, in the abstract. But in the chaos of the immediate aftermath of an accident, you will likely be distracted by 101 things, not to mention the excruciating pain of the injury, your anger at the driver, and your shock.

Insurance corporations know that **injury victims who retain legal representation resolve their claims for vastly higher amounts** than do victims who fail to retain counsel. The same corporations often keep their own legal counsel on staff, however.

Although every accident is unique and scary in its own way, there are “rules of thumb” that apply to almost every accident that involves damages and injuries. In this chapter, we’ve outlined four major methods Goliaths use—oftentimes in meetings or over the phone—to either delay victims from seeking counsel or ruling it out altogether. Knowing this information in advance leads you to being better prepared for some of the large rocks Goliath throws your way to discourage you.

### 1. “DON’T HIRE AN ATTORNEY—YOU DON’T NEED ONE!”

Oftentimes, an adjuster might tell injured parties that they don’t need a lawyer for several reasons. One reason used often is that a person doesn’t need a lawyer because the adjuster “will arrive at a reasonable figure that will compensate you without delay.” Meanwhile, when a serious injury or death occurs, large corporations and insurance companies are already working a system they have in place that helps them develop the best possible case for denying and/or minimizing a potential claim. As an example, there are some trucking manuals that instruct a truck driver to take two steps in the aftermath of a collision: 1) do not admit to anything; and 2) immediately report the collision to Risk Management.

Why would a trucking manual list these statements? For one, if a truck driver knows he caused and/or contributed to a collision, wouldn't the interests of justice best be served by acknowledging responsibility? Parents teach children at a young age to own up to mistakes, but parents are not motivated by profit. Corporations instruct drivers not to admit fault because silence allows claims to be denied and/or minimized.

Immediately reporting the collision to Risk Management seems innocent enough, except for the fact that many times, Risk Management is to be called before 911, as we've seen in our review of phone records in particular cases. And what is Risk Management? Risk Management is an integral part of the insurance process. By way of example, every tractor-trailer that operates on our public roadways must be insured. All insurance companies have attorneys on the payroll who are well educated, specially trained and available on short notice to respond to the news of a collision. Within hours of a tractor-trailer collision, a lawyer and investigator representing the financial interests of the insurance company are on the scene. As we will examine later, Goliath's lawyers and investigators are not always at the scene with the best of intentions.

**If Goliath has an attorney on the scene within hours, why is it “unnecessary” for you to have an attorney? It is only unnecessary if you are willing to give in to the tactics of Goliath.**

You see, Goliath is building a case against you or your loved ones, but Goliath does not want you to hire a David to investigate a case against him. And thus the statement—“you don't need an attorney.” Additionally, the insurance adjuster would prefer to deal with you any day over an attorney who is representing you. Being an insurance adjuster is a profession. Like the attorney or investigator who Goliath sends to the scene, the insurance adjuster is an integral part of Goliath's network.

The insurance adjuster is not patted on the back for paying fair amounts on a claim. Insurance adjusters advance through the ranks by saving Goliath money. The adjusters are also sophisticated with their craft. They are adjusters 24 hours a day, 7 days a week. Here's an example from my practice that shows

how quickly insurance companies go to work after crash – and their goal is to pay out as little as they can:

*Insurance adjusters want to deal with you because they know the tricks of the trade and recognize that they have a natural advantage over you. You are not an adjuster. You may be a teacher, mechanic, police officer or retired official. Although you are likely very good at what you do, you don't negotiate insurance claims for a living. A good attorney will pay to get the counsel of experts to evaluate how much care you might need, to get concrete estimates of total damages, and to make sure that you get fair treatment. Your lawyer may work with economic advisors, accident scene investigators, psychologists, medical professionals, and even other lawyers to build a successful case.*

## **2. “IF YOU HIRE A LAWYER, SHE WILL GET MOST OF THE MONEY YOU'RE SUING FOR.”**

Having represented Alabamians for over a decade, we know clients are routinely told by insurance adjusters not to hire a lawyer because all he or she will do is take most—or even all—of the money won.

Why would an insurance adjuster working for Goliath make such a statement? Because the right attorney—David—knows how to deal with insurance adjusters. Insurance companies keep files on attorneys, and **they know if you go to a “David,” then they will likely have to pay full value.**

While personal injury attorneys are compensated for our work in Alabama, we accept cases on what is commonly referred to as a “contingency-fee basis.” This means that an **attorney's payment is contingent upon you getting a recovery.** The percentage a lawyer receives is different based upon the nature, complexity and riskiness of the case, and is agreed to by the attorney and client at the outset of the litigation. In other words, the attorney almost always fronts the entire costs of the case.

Cases can be very expensive and attorneys who properly develop and present a case can spend in excess of \$25,000 per case, while some cases even exceed \$100,000. **If a case is lost, the attorney does not seek reimbursement from**

**the client.** In essence, an attorney who loses a case must absorb the cost. If the client wins a recovery, the attorney is reimbursed the expenses and obtains compensation based upon the contingency fee arrangement.

**If you don't hire an attorney, the insurance company may get away with paying as low as 50 percent or lower of the claim's value.**

Think about it: 70 percent (client's share) of \$100,000 is a lot more than 100 percent of \$50,000. Not only does the right personal injury attorney know how to effectively deal with Goliath's adjuster, but he actually has a natural advantage over the adjuster. **A good personal injury lawyer knows how to use the law as a sword.** Most insurance adjusters are not attorneys and therefore when it comes to matters of the law, they are often outmatched and without the proper weapons.

**The reality is that most seriously injured victims need a David.**

There is an important concept in law referred to as the "burden of proof." As the injured, you have the burden of proving your case in a court of law. That means you have to prove your case. If you have ever been involved in the civil justice system as a member of a jury, you know proving a case in a court of law is often not an easy task.

Despite what you may believe, there is no such thing as a perfect "open and shut" case. The law is complete with procedural requirements that necessitate the right personal injury attorney to be prepared with his five smooth stones.

**Lawsuits are often expensive and most people do not have the financial resources to effectively wage a battle with Goliath.**

Can you get a more fair recovery by collecting 100 percent of what is offered by the insurance company without an attorney or by accepting a lower percentage of a much greater offer with the benefit of the right attorney? We can't speak for all Alabama personal injury attorneys, but our firm turns down cases when we feel like our clients will get less with an attorney than they would without an attorney.

We want the clients to benefit from our work. We want to take cases that we add value to. Goliath's insurance adjuster knows this, thus their statements about not hiring an attorney.

We won't take your case unless we believe we can help you get more money. If we don't think we can do that for you, we'll tell you that you can likely handle the case without a lawyer. However, people who have been hurt in a car crash caused by a driver, manufacturer, or government negligence recover on average 3.5 times more settlement money with the help of an attorney compared to injured people without a lawyer, according to an Insurance Research Council study.

### **3. "YOUR INJURIES AREN'T THAT BAD, ARE THEY?"**

Let's clear two things up, right off the bat:

- The insurance adjuster is not your physician.
- Doctors working for an insurance company are not objective doctors.

These doctors are—of course—biased in favor of who is paying them. They are especially sensitive to what the employer wants, if they plan on keeping the business. Therefore, **such a doctor may have motivation to "under-diagnose" you.**

Unfortunately, victims are often easily susceptible to the messages of these authority figures. If you hear someone in a white coat tell you that you are "not as hurt as you think you are," you may begin to believe this propaganda even if your body is telling you otherwise. You need tools to out-think Goliath's psychological ploys. **You need an independent medical assessment that is not corrupted by the influence of interested parties like an insurance company.**

Let us give some examples of what we mean. Why would Goliath's representatives inform someone they are not that hurt? To fully appreciate the motive behind such a statement, you first have to understand what an insurance company does behind the scenes as part of its claim investigation.

Most insurance adjusters have some medical experience or training. They are also assisted by on-staff medical experts and computer

programs that help in the evaluation of an insurance claim. Based upon their initial review, insurance adjusters set what is referred to as a “reserve” amount. In essence, this reserve amount is the insurance adjusters’ initial evaluation regarding the potential value of a claim. Insurance companies establish reserve amounts as a budgetary tool and also as a mechanism to evaluate the effectiveness of an insurance adjuster.

**The insurance adjuster will not share with you the reserve amount.** For instance, the insurance adjuster makes an initial evaluation and determines the reserve or potential value of your claim is \$100,000. This initial evaluation may be based on information about your injuries, but it also may be based on information not known to you.

Let’s say you were told you did not need an attorney, but unbeknownst to you, the insurance company has become aware that its truck driver who caused the wreck failed a drug screen. Now the insurance company adjuster does not tell you about this important fact or about the \$100,000 reserve. Instead, Goliath’s insurance representative offers you \$15,000. **If you accept this, Goliath just saved at least \$85,000.** That is right, at least \$85,000, but in all likelihood, they probably saved much more!

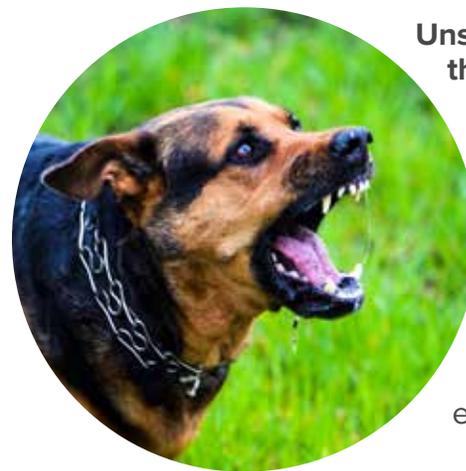
So how does Goliath get the unsuspecting injured victim to accept less than what Goliath knows the claim to be worth? That leads us to the statement, “You are really not that hurt, right?” First off, only you really know how badly you hurt. Goliath’s insurance adjuster is not your doctor and does not know the pain and hardship caused by the fault of someone else. Nevertheless, Goliath is very artful in convincing many people they are not as hurt as they think they are. Unfortunately, Goliath knows his tactics for convincing people are dishonest and even more disturbingly knows that **victims who accept a quick, low settlement are barred forever from getting the compensation they deserve.**

Let’s use a common type injury that occurs in many automobile collisions to illustrate this concept. You have likely heard of a condition referred to as a herniated disc. A herniated disc is a condition that can be caused by trauma

and can occur at any of the three major areas of your spine. Herniated discs can be painful and permanent injuries that often require surgical intervention. Obviously, insurance adjusters know that a diagnosis of a trauma-induced herniated disc results in a more expensive claim to the insurance company.

**Many times, Goliath’s insurance adjusters will disguise this condition from you.** They do this by relaying language to you from medical reports that they know are not pertinent. For instance, there is only one proper diagnostic tool—an MRI—that can diagnose through scientific means a herniated disc. Unfortunately, many insurance claim adjusters will only report the findings from x-rays and CT scans. The deception is that neither X-rays nor CT scans will diagnose or report a herniated disc. X-rays and CT scans are designed to examine bones, not tissue! Goliath’s insurance adjusters know this, but they feed misleading information to you in an attempt to save Goliath money by claiming you are not as hurt as you seem.

**Another technique used by the insurance companies is the use of a company doctor.** We see this primarily with workplace injuries. When a person is injured on the job, many employers will agree to pay for medical treatment so long as the injured person is treated by a physician of the employer’s choosing. The contracts between the physician and the employer’s insurance company can be quite lucrative. Many physicians employed by insurance companies make a living primarily by examining individuals injured on the job.



**Unsurprisingly, these employer physicians often downplay the significance of injuries.** Why? Let us use a recent example to illustrate one probable explanation:

*A hardworking man who was attacked by a vicious dog while working.*



*The attack resulted in immediate shoulder pain. The man seeking fair compensation informed his employer of the attack and made a proper claim under Alabama law with his employer. The employer sent the man to its company physician. The man reported shoulder pain on multiple occasions to the company physician. Finally, the injured man was in excruciating pain and sought treatment with an independent doctor. The employer would not pay for this treatment, but the injured man needed a second opinion so he paid for the treatment himself. The independent physician immediately diagnosed the injured man with a torn rotator cuff that required immediate surgery. Why did the employer's company doctor not make this same diagnosis? The answer is simple: money. The "you are not that hurt, right?" mentality was part of Goliath's plan to minimize the injured man's claim and to maximize Goliath's profit.*

We believe injured Alabamians deserve the best medical treatment available. **The best medical treatment is the one that treats the condition regardless of what it means to the bottom line.** The only way to combat this prevalent message from Goliath is to have a David in your corner who will insist on honest assessments of your medical

condition from unbiased physicians. You know the level pain you experience, so don't let Goliath tell you otherwise!

Why is this so important? Because **you only get one bite at the apple.** If Goliath wears you down to the point that you feel desperate and gets you to accept a nominal settlement when he knows your claim is worth much more, Goliath wins. Most of the time when you settle your claim, Goliath gets you to sign a release that prohibits you from coming back later to make a claim for additional damages. This usually happens when Goliath has internally concluded he does not have a defense to justify denying your claim, but instead has opted to minimize his financial exposure or payout. When Goliath decides on this option, he often pursues a quick settlement in hopes that you will not appreciate the long-term and costly consequences of your injury. If you quickly resolve your claim for a neck injury believing Goliath's claim that your injury is nothing more than a sprain, but later finding out the pain is being caused by a herniated disc, then who will pay the costs associated with that surgery? Who will compensate you for lost wages? Not Goliath, for he has returned to his army camp with a signed release.

*I remember the deposition of a client's psychiatrist in a car accident case. The doctor authoritatively proclaimed that we'd likely saved the victim's life by helping arrange critical psychiatric treatment for an undiagnosed traumatic brain injury as a result of a head on collision. The case settled for the insurance policy limits after this testimony.*

*This all started with a call I made to the victim's dad to check on him after our initial consultation. Unfortunately, the victim didn't have any form of medical coverage, and his treatment at that point was limited to two trips to the emergency room. Without this psychiatric care, his life and case would've turned out much differently.*

#### 4. DELAY THE GAME.

Perhaps one of Goliath's most cunning ploys is his use of delay tactics, which could indirectly force you to accept his offer. As we so commonly say:

**“Justice delayed is justice denied.”**

Goliath loves delays for the same reason: justice delayed is justice denied. This delay approach is often used by Goliath when he recognizes that he stands to pay a significant amount to resolve a claim. We commonly witness these delay tactics when someone has died or has received a catastrophic injury.

Now, let's be clear on this. Goliath is delaying your efforts, not his. Remember, Goliath does not want you to hire an attorney, but **unbeknownst to you, Goliath's team is working tirelessly to build a case against you.** Goliath's team is combing through the wreck scene, preserving evidence it can use against you, allowing evidence to disappear that may implicate Goliath or exonerate you, and obtaining self-serving witness statements.

Also, since Goliath has so much money—and since so many claimants are clamoring for a share—he can enjoy significant benefits by delaying payouts. The economics work out for him.

But what about you? When your claim is delayed, you are left to languish in limbo. This is bad

because you lose the opportunity to earn interest. It's bad because it leaves you without critical funds to pay creditors and medical bills. It's bad because it creates uncertainty in your life, which creates stress, which in turn creates more mental and physical health problems.

**Evidence has a tendency to disappear and memories have a tendency to fade over time.**

Skid marks disappear. Vehicles are repaired. Collision debris is cleaned up. Witnesses move on and tend to forget the kind of details that are significant. Improperly maintained vehicles and equipment and machinery are fixed and onboard black boxes are erased. This is why timely efforts are so valuable and delay tactics so costly.

Take the typical tractor-trailer collision as an example. Most tractor-trailer collisions produce critical physical evidence that helps reconstruct how and why a particular collision occurred. Skid marks, gouge marks and crush patterns reveal critical clues as to the exact location of impact, vehicle closing speeds and involved mechanical defects.

**Most tractor-trailers have onboard computers or what we typically call “black boxes” that contain precise data that help experts reconstruct a collision.** From experience, data from black boxes can reveal the exact speed traveled by the commercial vehicle at the time of the collision, can indicate whether the operator of a tractor ran a stop light, and can indicate whether a driver was tailgating the vehicle it collided with during the wreck.

**Goliath appreciates just how valuable and detrimental this type evidence can be,** so Goliath's team walks through a wreck scene with attorneys, experts and investigators in the aftermath of a collision in order to look for evidence to use against you. Rest assured, this evidence can be so valuable to Goliath that he takes extraordinary measures to preserve this information. On the other hand, this evidence can also be so detrimental to Goliath's own case. His team will not look to preserve evidence that could be used later by you against him.

If Goliath is the only one on the scene, he controls the decisions regarding which evidence

to preserve and which evidence is allowed to disappear. This is where delay tactics are used by Goliath. **Goliath does not want you to have representation at the scene.** Goliath has no interest in seeing David or David's investigators and experts looking for evidence that can shine the truth on what really happened. Let us digress for just a moment to share a **typical and unfortunately accepted practice by Goliath's camp that illustrates this point:**



*A family who had tragically lost a father in a horrific tractor-trailer collision in rural Alabama. Due to delay tactics employed by Goliath, the family did not retain an attorney until more than one year after the collision. No independent eyewitness*

*observed the wreck. The truck driver survived the collision and testified the victim caused the collision by running a stop sign. The insurance company for the commercial vehicle had experts, investigators and attorneys at the scene on the day of the collision. Quite naturally, the family did not, as their time was devoted to making unexpected funeral plans.*

*Goliath's team immediately recognized something was inconsistent about its truck driver's version of what happened, and Goliath's representatives observed lengthy skid marks at the scene suggesting a high rate of speed for the driver. But again, Goliath knew that no independent eyewitnesses observed the wreck and Goliath knew that experts could discredit the meaning of the skid marks.*

*Unfortunately for Goliath in our case, the onboard black box had the capability to give pinpoint data regarding the exact speed of the tractor at the time of impact. All Goliath had to do was download a report from the black box. Instead, Goliath decided not to download the report knowing that after 300 engine hours, the data*

*would be erased. Why would Goliath do this? Does this seem like an honest pursuit of justice? You see, Goliath knew exactly what was on the black box and knew exactly how damaging it could be for his bottom line. Goliath has learned that it is not his case to prove and so he uses delay tactics to keep you from finding the type of evidence you need in order to defeat him.*

Sometimes, Goliath avoids saying anything to you that may drive you to consult with an attorney. For instance, he may tell you he accepts responsibility for what happens in a collision without agreeing that he caused the injuries you claim are related. Goliath can pay you for property damage while denying any responsibility for your physical injuries. **Goliath can lead you along indicating he is going to accept responsibility—only to deny responsibility once his team has built a case against you.**

A classic example of how Goliath delays a typical case is when a victim reports the claim to the insurance company that insures the person who caused the wreck. The insurance company sends out an insurance adjuster to examine the damage to your vehicle. This particular adjuster sends you a check and you get the impression that the insurance company is also going to treat you fairly on the personal injury claim. You are told that a different insurance adjuster will be assigned to handle the personal injury part of your claim. Usually the personal injury adjuster is not local so you get a call from the adjuster. The adjuster asks to interview you about the wreck and also about your injuries.

You want to cooperate and believe that your cooperation will lead to a fair resolution. The adjuster tells you to send all your medical records and bills to the insurance company once you are finished being treated. Or even worse, he or she gets you to sign an unrestricted medical release form so that the adjuster can get all of your records. Then, **as quickly as the adjuster sees a pre-existing injury, he or she will use it against you or claim "we don't pay for that," ignoring aggravation compensation.**

You continue to see doctor after doctor, therapist after therapist, all the while believing the insurance company will treat you fairly. Medical bills start piling up and the month-to-month budget becomes tighter

and tighter as you miss work because of injuries and medical appointments, but you still find hope in a belief that the insurance company is going to treat you fairly. Finally, six months later, you reach the end of your treatment. You send in the medical records and bills, just as you were told to do. You are informed by the insurance adjuster that the insurance company will need time to review the records and bills.

After 30 days of not hearing from the insurance company, you call to get a status. No one returns your call and so a week later you call again. You are informed by the adjuster that your claim has been reassigned and that the new adjuster will need 30 to 45 days to review the file. Finally, **some eight or nine months after the collision, the insurance company either denies your claim altogether or offers some ridiculously low offer that will not even touch the mounting medical bills.**

While Goliath was delaying you, he was busy looking for ways to strengthen his position. His deception and delay kept you from seeking representation. Now you find yourself in an even higher uphill battle against an industry that thrives on delays, denials and defenses. An even more tragic experience occurs when someone dies from an industrial accident or a tractor-trailer collision. As previously discussed, Goliath fully appreciates the significance of evidence at the scene after a fatality. **Likewise, if there was ever a situation where Goliath wanted to keep you from seeking out a David, it is when a family member tragically dies.**

Every hour that Goliath can keep you from getting representation so he can have an opportunity to preserve critical evidence is an hour that Goliath can use to his advantage and your detriment. **One of the most despicable methods employed by Goliath is his use of playing upon a victim's sympathy in order to buy time to delay and mislead.** Something Goliath might do to keep the victims in such a scenario from seeking representation is offer to pay for a funeral—not because it is the right thing to do, but because he knows it will delay you from seeking representation.

A family may be less likely to hire a lawyer or law firm after such an offer, but the price of a funeral

is small in comparison to the value of what Goliath gains by keeping you from the scene where the critical evidence needs to be preserved. And oftentimes, once Goliath finishes his work, the family is informed that Goliath will not be accepting responsibility for what happened. These tactics used by Goliath are time-tested and refined. **Big companies have mastered their techniques and effectively learned how to limit payouts to worthy victims and increase the profits on their companies' bottom line.**

The natural tendency when an accident, injury, or death occurs is for a family to take the position that they are not going to think about legal matters right now. They need to get through the funeral or give the injuries time to heal, and then they will find out if the insurance company is going to do the right thing. Healing is certainly the most important thing. However, the insurance company wants you to have that attitude because it saves them money.

**Having the right personal injury and accident law firm involved from the very beginning makes all the difference.**

You need a legal team on your side in order to handle and take care of the legal aspect, while you and your family take care of all the things that need to be done to heal.

You must be aware of the fact that Goliath wants you to take your time, which could pave the way for your family to never receive justice. To break out of limbo, you need to compel Goliath to break his will in the **“3-D” policy that insurance companies have to delay, deny, defend.**

# The Giant's "Gentle" Disguises: Exposing and Refuting Goliath's Nine Great Myths

It's high time that you got the truth about Goliath. **He and his cohorts have done an effective job creating and spreading around myths about "tort reform"** and personal injury lawsuits. These exaggerations, half-truths, and outright lies have become pervasive in our society.

Sadly, they are often accepted as fact. **These false beliefs can create serious hazards for victims and family members of victims.** Tort cases include cases for fraud, bad faith, misrepresentation, legal malpractice, medical malpractice, general negligence, motor vehicle negligence, personal property disputes, real property disputes, wantonness, product liability, workplace injuries and wrongful death.

**"Tort reform" is simply Goliath's marketing campaign to smear David in an effort to increase Goliath's profits.**

Watch closely how Goliath does this masterful sleight of hand. Insurance companies, manufacturers of dangerous products and chemicals, the tobacco industry and other major corporations have waged a nationwide assault on the civil justice system. "Tort reform" advocates have set up dozens of tax-exempt groups to plant their "lawsuit abuse" message in the media and the public consciousness, to influence legislation, judicial elections and even jurors.

These groups claim to speak for average American citizens determined to protect consumer interests. But their tax filings and funding sources indicate **they actually represent major corporations and industries seeking to escape liability for the harm they cause consumers.** These organizations hide their pro-business agenda behind consumer-friendly names like Citizens Against Lawsuit Abuse, Stop Lawsuit Abuse and Lawsuit Abuse Watch.

Goliath's myths are hidden obstacles in your way. You won't recognize how much harm they are causing you—or potentially causing you—unless you surface them, test them for reality (or lack thereof), and protect yourself against them.

Many of the big companies' myths will appear to be ridiculous. You may find yourself scratching your head, thinking, "How on Earth could I—or anyone, for that matter— have come to believe something so silly and, in retrospect, so easily disprovable?" The short answer: **Goliath may not exactly win points for moral character, but the giant is one heck of a marketer!** It's time to shine the light of truth on these myths and destroy them forever.



## MYTH #1:

*People are overly litigious. “There are too many lawsuits in America.” “Decent people don’t sue other people or companies.” “Our courts are clogged with lawsuits.”*

**The Actual Reality:** According to a Harvard Medical Practice survey that investigated medical lawsuits, many sued? Only 4 percent; that’s one hurt victim out of 20! If this Harvard study is correct—and there are many, many other studies like it—then Americans are almost certainly being under-litigious, not over-litigious.

The number of tort (personal injury) cases has been declining for years. According to the National Center for State Courts, tort cases accounted for just 4.4 percent of all civil cases filed in 2008, and declined by 25 percent between 1999 and 2008. Tort filings in state courts decreased by 6 percent between 2007 and 2008. According to the Justice Department, the number of federal tort cases resolved in U.S. District Courts fell by 79 percent between 1985 and 2003. In 1985, 3,600 tort trials were decided by a judge or jury in U.S. District Courts. By 2003, that number had dropped to less than 800.

In Alabama the statistics are even more telling. Of the cases filed in Alabama, only 4 percent of the cases in Alabama are tort cases.

The “tort reform” movement alleges our court system is bogged down with all the tort cases because people are trying to “get rich quick through jackpot justice.” The reality is that tort cases make up a very small fraction of our system. By comparison, criminal cases take up approximately 36 percent of court time and domestic cases take up 23 percent of court time.

## MYTH #2:

*Out of control lawsuits are damaging our healthcare system. Obviously, our state and national economy have been suffering. People are very budget conscious these days. We want to be good citizens and avoid adding to the perceived problem.*

**The Actual Reality:** Even when you add up the lawsuit payouts, insurance costs, legal fees, and other costs, that total accounts for just \$1 out of every \$200 of healthcare spending. If you want to reform our healthcare system, there are far more important things we should be talking about.

The actual reality is that Goliath wants to shift his own liability to others. If a tractor-trailer or a defective product causes injuries to you that require extensive medical treatment, who should bear the burden of paying the medical costs? To listen to Goliath, he thinks you should. Goliath would prefer for you to pay the costs or for your healthcare provider to absorb the costs instead of the guilty party paying the costs. Goliath has been very successful in his efforts. When Goliath gets his way, healthcare costs do go up. David, on the other hand, seeks to have the guilty party pay the costs, thus holding the right party responsible and keeping the innocent party from bearing the costs. All responsible lawsuits do, then, is seek to have the responsible party pay for injuries he creates.

## MYTH #3:

*Most lawsuits are frivolous. Goliath is not opposed to hitting below the belt in his quest to disparage personal injury lawyers. Here’s a famous example. Several years ago, news services lit up with reports about a man who got hit by a baseball at a minor league baseball game. He sued for a ridiculous amount of money for his injury. The case caused a huge stir online and elsewhere. “When you attend a ballgame, you assume certain risks,” lashed out the outraged critics. “This case makes a mockery of our system of justice!” These attacks resonated emotionally with people who don’t like lawsuits very much. But there was a small problem. Turns out, there was no such case! There never had been. Goliath had made up the case out of wool’s cloth and spread the story around—all for the purpose of nurturing this mythic idea that frivolous lawsuits are ruining America.*

**The Actual Reality:** While crazy cases do crop up, don’t be fooled.

Nonsense cases are extremely rare.

The point is that you really must think critically.

You must question some of the stories you read in the news, particularly when they pertain to “tort reform,” because even when you do find examples of lawsuits that sound absurd—and these do exist—you should pay attention to what the great detective Sherlock Holmes once called “the dog that didn’t bark.” Ask yourself: What is the story behind the story? In technical terms, you want to be on the lookout for what are called “counterfactuals.” These are the invisible “stuff” you can’t see that can turn out to be hugely important.

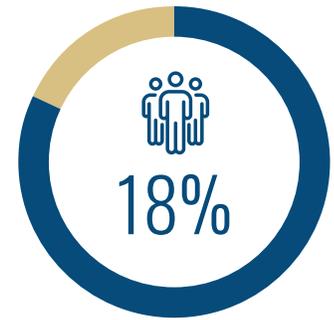
They did not wear their seatbelts? That’s right. In certain freak crashes, victims got flung from their vehicles and survived...and had they been belted in, they would have died.

Does the existence of these freak accidents mean that we should tell people to stop wearing their seatbelts? Of course not! No way. The science and the statistics are crystal clear: seatbelts save lives. Period. This is one of the most fundamental, unquestioned rules of auto safety.

Likewise, the existence of one or two frivolous lawsuits that you read about in the newspaper or see on television should not be of serious concern. You need to look at the stories in context. You need to look at the statistics and the science. And when you do so—like the group at Harvard did—you’ll see that the evidence is overwhelming. The idea that “frivolous lawsuits are destroying America” is an easily disprovable myth.

A Harvard Risk Management Foundation study, led by top level researchers at Harvard’s School of Public Health, looked at nearly 1,500 malpractice lawsuits. In more than 9 out of 10 claims—over 90 percent—the patient had an actual injury. In 6 out of 10 cases, this injury stemmed from a doctor’s wrongdoing. In 1 out of 4 cases, the victim actually died as a result of the bad care.

But ask yourself: do you really believe that? If so, where’s the evidence to prove it? In addition to other ranting, tort reformers argue that lawsuits are driving doctors out of business. But the truth, according to the American Medical Association, is that the overall number of physicians is up more than 40 percent since 1990, while over the same



time, the U.S. population increased by only 18 percent. The Alabama court system has several built in protections for weeding out cases that are not based on merit.

For instance, when any tort case is filed in the State of Alabama, a defendant has an automatic right to challenge the legal sufficiency of a case by filing a Motion to Dismiss. As the case develops from a factual standpoint, a defendant can challenge the legal sufficiency of a case through the filing of a Motion for Summary Judgment.

Alabama recognizes several defenses that provide protections against baseless cases, such as contributory negligence and assumption of the risk. Further, the plaintiff has the burden to prove liability and injuries and damages through expert medical testimony. Additionally, Alabama recognizes the collateral source rule.

At trial, a defendant can challenge the legal sufficiency of a case by asking a case be dismissed at the close of a plaintiff’s case and again at the close of the presentation of evidence. The jury then gets to make a decision based upon the facts, evidence and the applicable law. For a plaintiff to win in Alabama, 12 people on the jury must all agree that the plaintiff is entitled to win and all 12 must agree on the amount of the verdict.

If a plaintiff prevails through a jury verdict, the defendant can then ask the judge to review the verdict and ask to toss out the verdict or reduce the amount of the jury verdict. After the judge conducts her final review, the defendant can ask an Appeals Court to review the case. The Appeals Court can throw out the verdict, reduce the amount of the jury verdict or even require a new trial.



In Alabama, appellate courts are routinely reversing cases. More than 70 percent of civil cases reviewed by the Alabama Supreme Court are reversed in some manner.

The Alabama courts even have a mechanism for dealing with “frivolous” lawsuits. Courts can award the losing party court costs and can even sanction lawyers and parties for any “frivolous” filings.

With all of these built-in protections, why would any personal injury attorney worth anything file a “frivolous” lawsuit? How could a “frivolous” lawsuit in Alabama make its way through all the built-in protections for defendants? Personal injury attorneys have their hands full already trying to win the good cases. Trust us, we are not going to spend time trying to file a case that need not be in the system.

Unfortunately, Goliath does not want you to know the truth. He suppresses the reality from you. He can afford an extensive marketing campaign and he has effectively convinced many people of the myths.

The reality is that the vast majority of lawsuits are

not just legitimate—they’re necessary. Otherwise, how could victims cope, pay for their care, and see justice done? What Goliath does not want you to know is that many lawsuits are filed because Goliath will not accept responsibility for his own actions.

Some lawsuits have to be filed as soon possible for reasons that will be discussed later in the book. Most noteworthy personal injury attorneys try to resolve a claim short of filing a lawsuit if the insurance company is willing to be fair and reasonable. Sometimes, through proper work, personal injury attorneys can get insurance companies to resolve claims in that manner, but sometimes lawsuits are filed after Goliath refuses to accept responsibility.

#### **MYTH #4:**

*Okay, maybe not all lawsuits are frivolous. But we should at least be concerned by the number, size, and scope of legal actions.*

**The Actual Reality:** No. There definitely is a problem. But it’s not a problem of too many lawsuits. It’s problem of too many injuries! We need to find better and more effective ways of reducing the number, size, and scope of injuries from medical malpractice, automobile accidents,

industrial mishaps, etc., because that's the real constraint on our ability to have a safer and more cost-efficient society.

If an automobile manufacturer puts a product in the stream of commerce it knows to be defective, that makes our society more unsafe and increases the costs of treating injuries, as well as increases the burden on our government to take care of those that can't take care of themselves. If a tractor-trailer company allows someone to drive a rig who has a record of unsafe driving practices just to keep an empty tractor from staying on the yard, that reckless behavior increases the risk of injury, medical costs and unsafe roads. If an automobile insurance company refuses to accept responsibility for a collision and demands you have your own health insurance company absorb the costs of your medical treatment, that irresponsible behavior drives up the costs of our premiums.

The premise of any lawsuit is to correct an injustice. We grew up in households where our parents taught us to accept responsibility for our mistakes and to make efforts to right a wrong. If Goliath abided by the teachings of most parents, lawyers would not have to force Goliath to right his wrongs.

#### **MYTH #5:**

*Limiting lawsuits will reduce the financial burden on our society. This Goliath Myth goes hand in hand with Myth #2. It suggests that injured victims are just crybabies begging for a handout.*

**The Actual Reality:** As any experienced, observant personal injury lawyer will tell you, plaintiffs do not have this mentality. If anything, they worry about "causing a stir" and being too aggressive. Victims do not feel falsely entitled. Rather, they feel shy and scared. Oftentimes, victims "under act" and "under represent" their interests. As a result, they often get unfairly taken advantage of.

When injured victims do not receive fair compensation, they often wind up becoming wards of the state. This means that the burden of care (and all those costs!) fall to taxpayers like you. Meanwhile, the liable parties—a negligent or incompetent driver or employer, corporation

or insurance company—get off scot-free, while taxpayers pay. How is that fair? It's not. Lawsuits thus make our collective financial burden fairer by providing a crucial mechanism by which irresponsible people and companies can be compelled to pay their share of the damages they helped to create.

#### **MYTH #6:**

*Lawsuits are easy to file, so that's why there are so many of them.*

*One can certainly understand why this myth is so widespread. If you go online and start Googling around to find information about auto accidents, medical malpractice, truck accidents, workplace and industrial accidents, etc., you will be bombarded by "informational" articles with their "10 tips" and "15 things never to do after an accident" and so forth. The web is packed with attorneys marketing their services. It's overwhelming. And our political discourse is also somewhat obsessed with this issue of lawsuits. This is yet another creation of the Goliath Myth Machine.*

**The Actual Reality:** Lawsuits can be extravagant, complicated, and difficult to file.

Think about it. If Goliath owes you a million dollars in damages, based on his track record and mentality, do you think he will A) happily pay you, or B) defend his money with the best lawyers he can find? Goliath can muster tremendous legal "firepower." To battle back, you often need to invest a lot of resources and mental energy to get results.

Most attorneys only take a tiny percentage of the cases brought to them. Even seemingly simple and "easy to win" cases often hide nuances that make them surprisingly difficult.

There has also been a substantial increase over the years in filing fees, as we have struggled to pay for our shortfall in state funding for our court system in the state budget.

## MYTH #7:

*Tort reform is obviously needed. Come on! It's self-evident. You may believe that Goliath has indeed spun myths about tort reform. But you're probably still not convinced—at least on an emotional, gut level—of the depth of the deception. After all, whether you've been consciously attuned or not, you've probably developed many subconscious beliefs about lawyers and lawsuits.*

*It's also difficult to accept because personal injury attorneys have written this document! So you probably think we're attacking the tort reform myths to further our own ends—that we may not be disclosing the whole truth or whole reality about the debate.*

**The Actual Reality:** You should do your research. Absolutely. Go find unbiased sources, and see what they have to say. Ask your local judge how much of his or her time is spent dealing with tort cases as opposed to the other cases that do actually burden our court systems. The reality is that they will confirm what we've laid out here. Here's a great, journalistically objective quote from a blockbuster New York Times article from 2004:



*"It may be hard to understand why 'tort reform' is even on the national agenda at a time when insurance company profits are booming, tort filings are declining, only 2 percent of injured people sue for compensation, punitive damages are rarely awarded, liability insurance costs for businesses are miniscule, medical malpractice insurance and claims are both less than one percent of all healthcare costs in America, and premium gouging underwriting practices of the industry have been widely exposed."*

Stop reading. And think about what you just read.

Wow, huh? Go back and read that New York Times quote two or three more times to yourself. It's that important. You need to imprint that quote on your

mind to overwrite the false beliefs latent in your sub-conscience about tort reform.

If you have any doubt that Goliath has pulled the wool over your eyes—and over America's eyes—that quote hopefully erases all your cynicism.

## MYTH #8:

*If we could only reduce the number of lawsuits, we could reduce insurance premiums, buy better cars and houses, and enjoy cheaper products overall.*

**The Actual Reality:** Why have insurance premiums gone up so much? The question is obviously a hotly debated one—and a crucial one. But the idea that we can blame premium hikes on lawsuits just does not fit with the evidence. Take a look again at that New York Times quote: "tort filing are declining." If they are declining, and insurance rates are going up, Goliath's argument here completely falls apart! Even if lawsuits had been spiking—and you could correlate that spike in lawsuits with a spike in insurance premiums—that still would not give you enough information to make a statement of causality.

As anyone who studies statistics will tell you, just because two factors are correlated doesn't mean that they are causally related to one another. Here is an example to illustrate this. Say you find a statistical correlation between people who sleep with their boots on and people who wake up with headaches. Would you conclude that wearing boots gives you headaches? Nope. You would want to look for another factor. For instance, maybe people who sleep with boots on are more likely to have consumed alcohol prior to falling asleep. So you could blame "overdrinking and carousing" for causing people to fall asleep with their clothes on and to experience a headache the morning afterwards.

But again, that argument is totally unnecessary, because there is not even a correlation between the rate of tort filings and insurance premium prices. In fact, the relationship is inversely correlated. If anything, you could try to build a case that the decline in lawsuits has caused the spike in premiums. But, of course, that narrative would certainly not jive with the myth Goliath is just trying to push down everyone's throats.

What many savvy industry experts believe is this: insurance companies have behaved in a risky fashion over the past several years.

They've taken in premiums from risky customers and invested those premiums in risky investments. Much like the big Wall Street companies that invested in crazy financial instruments and caused the "Great Recession" of 2008 to 2010, insurance companies gambled their money recklessly. And they lost, big time.

If we really want to deal with the skyrocketing premiums problem, how about we start by regulating Goliath's gambling habit?

### **MYTH #9:**

*Good people don't hire personal injury lawyers.*

**The Actual Reality:** Not true in the slightest. In fact, sometimes lawyers are the only people who can protect good people from being preyed upon by bad companies and an uncaring system. We are proud of the work we do. We also believe that what strengthens us is what strengthened David in the battle. David was armed with the invisible protection of God. We are armed with a commitment to "Seek Justice, encourage the oppressed, defend the cause of the fatherless and plead the case of the widow" (Isaiah 1:17 NIV).

The right personal injury and accident lawyer and law firm can defeat the myth of tort reform by early and thorough trial preparation. This puts you in the best position by allowing us to prove and demonstrate that full compensation in the case serves to show that people and businesses that violate rules and expose the public to unnecessary danger will be required to pay in full measure.

## CHAPTER 3

# Seven Key Mistakes Victims Make When Trusting a Modern-Day Goliath

### **Mistake #1:** Providing statements

As we just went over, an insurance adjuster may try all sorts of tactics and psychological tricks to try to get you to talk about your case. But much like how reality TV producers take reality contestants' statements out of context to tell a good story, so too will insurance companies twist and contort what you say to an adjuster to serve the company's interest.

Remember that Goliath and his lawyers will twist your words to suit their needs. For instance, say you say something innocuous to an insurance company representative like, "I got into an accident before with a driver you insure." Goliath and his team can even use something that generic to make it look like you caused the crash! Yes, it sounds absurd. It sounds manipulative. But Goliath, as we've seen, is a master of manipulation.

Insurance adjusters also record conversations they have with you. Sometimes they tell you, and sometimes they don't. Many times they record early on at a time where you don't even know the extent of your injuries. To avoid all these problems, don't talk about the accident with an insurance adjuster or other insurance company representative. Refer Goliath to your attorney, who knows how to handle him effectively.

Don't give yourself extra work or extra headaches—use your attorney as a shield to deflect this Goliath sucker punch.

### **Mistake #2:** Making exaggerated demands (both asking too little ... and asking too much)

Goliath was not born yesterday. He knows what cases like yours are worth. It's very unlikely he will offer you a full and fair amount straight out. If you ask for too little—less than what your case is worth—Goliath will almost surely be happy to oblige (although he may even try to pressure you to take even less than that). But if you ask for too much, Goliath may enjoy a little smile because you've just shown your hand: that you really don't understand the game you're playing and thus you're likely to be an easy opponent.



Stick to the facts and the reality of your situation. If you lie, exaggerate or otherwise try to defraud an insurance company, you can get into serious legal trouble. Overselling your injuries is not the right way to go. Be honest and straightforward and morally upright, not just because doing so will help your case, but also because it's the right thing to do.

And remember, if you're not sure what your case is worth, don't hesitate to say so. It is best to keep your options open rather than to go out on a whim.

### **Mistake #3:** Failing to keep effective records

This is a critical point that we'll continue to hammer. You need to collect as much information as you think might be necessary—even information that you think would only be glancingly relevant. Keep receipts, medical bills, police reports. Log conversations with anyone from an insurance company. Write down witness statements. Take photos. Journal your own experience. Write down exactly what your doctor said and when he said it. By documenting your losses, your experiences, witness statements when they happen, etc., you are developing an arsenal of potential ammunition to knock Goliath out. Without this documentation, you may have a harder time proving the value of your claim, establishing liability, etc.

### **Mistake #4:** Jumping to take Goliath's offer

As we keep harping on, insurance companies know all the psychological tricks in the book. Goliath might come back to you multiple times with different escalating offers and finally give you an offer that's the "final offer"—yours to accept or decline. Goliath may even say that his offer "is all your claim is worth" with the implication that his years of experience tells him this. If you act as your own representative—if you don't have an experienced lawyer to advise you—you might just accept Goliath's "last and best" offer because you lack the skills and knowledge to press for more. Again, this is why we keep talking about how preparation and documentation are important. If you slack, you might find Goliath's underwhelming "final offer" tempting enough to take—and thus inadvertently "cheat yourself" out of substantial

compensation to pay for your long-term care, therapies, critical medications, lost work time, etc.

### **Mistake #5:** Trusting Goliath's "good intentions"

As much as we keep stressing Goliath's self-interestedness, we are not trying to say that insurance adjusters are bad people. It's just that the goal of the insurer is to keep as much money as possible.

Here's a good analogy. Imagine you're going out to play a game of touch football with your friends, but during the game, you're in competition. So, you don't just hand over the ball out of good faith. You're trying to score points and win! Now, your injury and your claim may not seem like a "game" to you. It may be life and death business. But to an insurance company, your claim is kind of like a game. It's a question of maximizing profits.

You may understand all this intellectually and be nodding your head, like "Yeah, yeah, I get it already" about Goliath's "real nature." But when it comes down to actually getting on the phone with an insurance adjuster and actually dealing with these issues in your life, you may still be tempted to believe that your insurance company representative is an exception to the rule. Here, the old adage applies: trust but verify.

### **Mistake #6:** Providing estimates of your damages

How much do you think it will take to fix your car or truck, as Goliath routinely omits or refuses to pay the full value of your wreck or repair your automobile? How much medical care do you imagine that you will need? How much work will you miss this year—or this decade—as a result of the accident or event? The answer is: you have no idea.

Your ability to estimate these numbers leaves something to be desired. This is not because you're bad at estimating. Rather, research shows again and again that people in general are terrible estimators in certain situations.

For instance, say you have minor neck pain as a result of a crash. You might not think it's "that big of a deal." Maybe you believe that you will have to go to a chiropractor once or twice or take a round

of painkillers to “get over it.” That might be true. Or, as we said earlier, a radically different (but also plausible) scenario could ensue. The neck injury could lead to years (or decades!) of therapy, chiropractor visits, and perhaps even surgery. What you might assume will only cost you a few hundred dollars tops may wind up costing you a few hundred thousand dollars.

You might say to yourself, “No, that won’t happen to me.” Odds are, it might not. But you never know. The reason why this is so important is that you instantly cripple your negotiating power when your insurance representative asks you to estimate your damage if you give a number. Remember, insurance companies play this game all the time, all day, every day. Goliath is definitely not above “playing dumb” or “playing nice” to tempt you into giving him information that he can use to deny your claim or to pay you less than you deserve.

I’m reminded of K, an EMT, that was involved in a minor impact wreck with a franchise restaurant delivery driver that we were able to establish was working in line and scope of his employment and caused the wreck. At the time of our initial consultation, K had just started a new job, so she didn’t have medical insurance but was still complaining of shoulder pain and a nagging popping.

We were able to help navigate getting her followup treatment scheduled, coordinated and covered on her newly established medical insurance plan. It turns out she was suffering with a torn labrum, which is a reoccurring injury we’re seeing in automobile wreck cases. This prompted us to file a lawsuit and obtain the policy limits from the delivery driver, a confidential settlement from the restaurant franchise and a UIM settlement.

Wanton Conduct can drive value, with the potential to recover punitive damages and avoid contributory negligence as viable defense. If the tortfeasor is intoxicated, we must investigate the facts and circumstances, including where he was served to pursue a Dram-shop case when appropriate.

**Mistake #7:** Waiting to see a doctor or a healthcare provider

This situation happens far too often and leads to surprisingly heart-rending tragedies.

Here is a true story to illustrate the dangers here. A young woman had been injured in an automobile collision. She went to the emergency room for treatment but was then released. A month after her crash, she complained of persistent pain in her neck.

Why didn’t her mother take her to a physician? She was going to, but she kept waiting to hear back from the insurance adjuster. She believed that the adjuster would help her schedule medical treatment. This woman was expecting Goliath to do right by her daughter, who was insured. So why did Goliath cause this delay?

Let’s think about it. If Goliath was on the hook for this young woman’s injuries, can you see how much it would benefit him to have a 30, 60 or 90-day head start working up a defense? Plus, if she waits awhile to get medical attention, Goliath can later turn around and say, “See how long it took her to go to a physician? She must not have been that hurt after all!” It’s crazy, isn’t it? Goliath confuses you into delaying medical care at a time when you feel so bad that you just want to drive (or get driven) to the emergency room as soon as possible. Then, as a reward for your willpower and stamina, you get labeled “not that badly hurt.” It’s pretty vicious stuff.

The moral is: don’t wait for the pain or injury or trauma to go away on its own. Don’t assume you can “tough it out,” and don’t play “John Wayne” and consider it “weak” to complain. See a reputable physician. Get documentation of what procedures were done and why. Do it for your health. And do it to preserve your rights and options to take legal action if that becomes necessary.

## SECTION 2

# The Rise of David

*How to Beat Goliath with Five Smooth, Strategic Stones for Success*

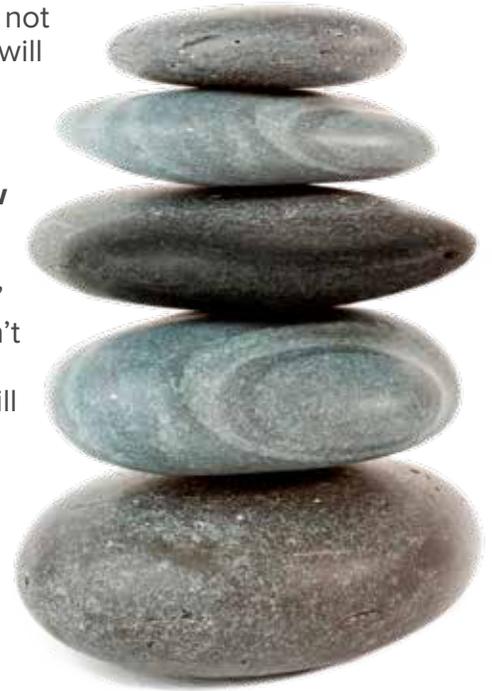
The key to success in any battle between David and Goliath—between an underdog and a perennial power—is a focused approach. If you do not concentrate your skills and resources, you are destined to fail. You will be outmuscled or outgunned.

In this section, we reveal **how the top Alabama personal injury law firms handle their case processes**. Great law firms go through a practiced methodology. There is actually a science to beating Goliath, believe it or not. Winning an accident case is no “accident,” which the insurance company wants everyone to believe. Wins don’t just “happen.” In fact, if you fail to follow certain processes (or a certain philosophy about approaching the enemy, if you will) you will make the journey needlessly complicated and difficult.

That being said, here are five “smooth stones” your attorney should be using as he or she handles your case:

1. Preliminary Strategy
2. Early and Thorough Trial Preparation
3. Recruitment of an Army of Experts
4. Knowledge of the Defense
5. Shepherding of the Client

We will discuss each of these in far more detail in the following chapters.



## CHAPTER 4

# The Game Plan: A Preliminary Strategy for Success

We don't need to tell you that football is popular in the Great State of Alabama. We just so happen to be Paul "Bear" Bryant, Nick Saban and University of Alabama football fans, but you also have the Auburn University Tigers and Troy University Trojans in the state, to name a couple others.



It would be hard to argue with the results obtained by this storied college football program under the guidance of their leadership, but the secret to their success is really no secret and can be applied to just about any endeavor. **It entails the process of preparation and a game plan.** Let's expand on that, because even though it's really simple and is no secret, it's important.

In college football, the process of successful game preparation consists of recruiting a team of the best players and coaches with a focus on strong work ethic and leadership skills and a commitment to winning and being the best. This takes a focused approach and an intense dedication to a common goal. It's not necessarily about the number of hours spent on the practice field, in the weight room or film room. Although practice and training time is vital, the focus of the practice and training should be improvement as a team and the furtherance of that common goal. The most successful college football teams have great players and coaches with leadership skills and strong work ethic, the ability to work as a team and play essential roles as necessary.

**They practice and play with a purpose.**

Once this type of team is assembled, the coaches formulate focused game plans for every team on the schedule. Granted, the best teams play the same style of football all year. However, within the game plan, adjustments are made that take into account their strengths and weaknesses and the strengths and weaknesses of the opponent. **The best game plans will play on the team's strengths and hide their weaknesses, while using an opponent's strengths against them,** exposing their weaknesses and taking advantage of certain matchups. Therefore, everything in the game from the play call to the execution of each play by every player is done with that same driven focus and purpose. This doesn't ensure victory or a championship, but it puts the team in the best possible position to enjoy that level of success. In order to get there, the coaches and players must know both teams.

So what does the process of preparation and a game plan have to do with your personal injury and accident case? We contend that as with David's story, preparation and a game plan have everything to do with increasing the chance of your success in your case. Again, no one can guarantee results. However, we believe that the principles of the process of **preparation and a game plan apply to any personal injury or accident case.**

The process of preparation in your personal injury and accident case begins in the initial meeting with your personal injury and accident lawyer law firm. In this meeting, you should expect to walk away

knowing that **there is a plan in place to prove and demonstrate the liability, injuries and damages, and overcome defenses**, all in an effort to add value to your case and maximize recovery.

**Early and efficient preparation puts the client in the best position** to prove and demonstrate that full compensation in the case serves to make the community safer because it sets a standard that people and businesses that violate rules and expose the public to unnecessary danger will be required to pay in full measure. That is our philosophy and guiding principle. That is how we view every case. That is the driving force behind the cases that we handle.

Like a successful college football team, our game plan will attempt to play on the strengths of our case and hide its weaknesses, use our opponent's strengths against them, expose their weaknesses and take advantage of certain matchups. Everything in the practice, preparation and game plan is done with drive, focus and purpose. Therefore, the decision of when and where to file a lawsuit, every document requested, letter sent, motion filed, argument made, position taken, questions asked, and more are required to be done with that same driven focus and purpose. **This doesn't ensure victory, but it puts the team in the best possible position to enjoy that level of success.**

Remember the Biblical teaching of David and Goliath? The young shepherd did not just run impetuously towards his rival. He took the time to learn about himself. He recognized the hidden advantage of his sling, shepherd bag and five smooth stones; the hidden advantage of the assumptions Goliath would make about him, given his young age and small size; and the hidden advantage of his own huge courage and invisible armor.

It's amazing how much you can accomplish through careful preparation—through knowing yourself and your case. The Boy Scouts have it right: **Preparation is the key.**

## CHAPTER 5

# Early and Thorough Trial Preparation

Since trucking companies are notified within minutes of the wreck, they use that knowledge to gain a huge advantage over the injured victim's lawyer. In fact, **Goliath wants the battle to be one-sided.** Therefore, he has a team of attorneys and experts at his disposal. You can believe they are deployed to the scene of commercial truck wrecks and industrial workplace accidents, serious motorcycle and automobile wrecks to manipulate the investigation and protect their financial interest at your expense.

**Goliath has the latest and greatest technology at his disposal.** As previously discussed,

commercial trucks are now equipped with black box devices that can reveal items like speed, mechanical conditions, driver behavior and weather conditions. Industrial worksites often have cameras and the machinery often has mechanisms that will reveal the facts and circumstances that lead to injury or death.

**Goliath is quick to use this data to help his case, and as we said earlier, Goliath can also attempt to hide this data if it hurts his case.**

Goliath doesn't seek justice. Goliath will selfishly destroy and hide evidence. Since we know these cover-ups take place, we need to look for them throughout the discovery process.

**It is not uncommon for Goliath to blame the victim in the case for his or her own injury.** Think again about the disadvantage you are at if you are involved in a trucking or industrial accident and the corporation and insurance company have their attorneys and experts at the accident scene immediately building their case against you while you are being rushed to the emergency room in an ambulance or, even worse, transported to the morgue.

Here is an example of Goliath blaming the victim after an industrial accident that took the life of our client's brother:

*As an independent contractor, a maintenance man was called out in the middle of the night after a long work day to do maintenance in a machine at a national industrial company. At the encouragement of his sister, he reluctantly got out of bed, scurried to get ready and made the roughly one hour drive. Upon arrival at the facility for only the second time, he was quickly introduced to the machine that needed his attention. He retrieved his tools, climbed in and faithfully went right to work.*

*He was busy inside the machine working when a non-English-speaking convicted felon inadequately trained and supervised employee of the national company turned off an adjacent machine in order to hear a conversation. This released nematic energy causing the gate on the machine the maintenance man was working in to collapse crushing him to death.*

*The national company went to great lengths to shift the blame to him. It's easy for a company to blame the dead and the weak – a tactic used all too often that we know too well. This tactic deters many families from legal action. Our legal team proved it was not his fault. We forced the national company to correct their safety violations and initiate positive changes designed to prevent future injuries and fatalities.*

*We also won a confidential settlement at a mediation prior to trial to compensate the family he left behind and punish this giant company for their reckless conduct which caused the death of a good man that should still be here with his family.*

In car crashes, usually the driver involved in an accident will be the only witness to tell the troopers what happened. Oftentimes, not only will the driver stretch the truth, but he or she will omit facts. Then, to add insult to injury, the insurance company will send representatives and adjusters to the hospital or funeral home to butter up you or your family. We have seen it all too often. This is why it is important to prepare your cross examination as you go through the discovery

process ferreting out facts for impeachment.

You see, without you there, Goliath can control the scene and the investigation, and you can't do anything about it or even say what happened. It's amazing how many workers are blamed by the company for an accident, and how many people that are hit by a commercial truck get the finger pointed at them, but it's no wonder with a one-sided investigation done or manipulated by Goliath. **Without David seeking justice for you, it can be insurmountable.**

A motorcycle wreck case with a commercial driver that we settled at mediation after early and thorough trial preparation demonstrates this:

*Our client and his family were informed at the hospital, shortly after the wreck, that we must file a lawsuit to preserve evidence and to exercise early the discovery and subpoena power of the Circuit Court. We then filed the lawsuit and went to work building our case with the help of an accident reconstruction expert and an investigator. We located, interviewed and then deposed all of the important witnesses, as well as gathered all of the necessary documents and evidence. We retained the services of a life care planner to evaluate the medical needs of our client and an economist to show the financial loss suffered. During this time we learned that the insurance company sent an accident reconstruction expert to the scene and an investigator to the hospital to talk to the family. Do you think the insurance company paid money to an expert and sent an investigator to the hospital to seek justice for this man who was recovering from multiple medical procedures and unable to work to provide for his family? Certainly not!*

You see, thorough preparation accomplishes several things:

- It highlights the strengths and weaknesses of your case.
- It helps with planning.
- It helps you understand what the defenses might be and to refute or work around them.

- It reduces stress and uncertainty, so you can concentrate on your life again.
- It helps you know how and when to assemble a group of experts to support your claim.

In large and complex cases, many experts may need to weigh in on the accident scene, the nature and extent of your injuries, your potential economic damage, and more.

Doing thorough preparation can also mean finding and exposing hidden potential obstacles and opportunities in your case. Let's take a look at examples of hidden obstacles and opportunities:

## Hidden Obstacles

Remember the case in Section One about the trucking company that destroyed black box data after a driver was involved in a traffic fatality? Had the law firm failed to really work the case and turn over every stone, perhaps no one would have ever discovered the truth about the black box.

Again, these devices can reveal key facts that lead to a collision. Without that evidence, Goliath might have stood a much better chance of winning the case. But thanks to that evidence, David was able to overcome his foe. **Further, when David exposes that Goliath has either hidden or destroyed evidence, then the jury under Alabama law can consider that as evidence of Goliath's liability.** However, without early and thorough trial preparation, Goliath would never get exposed, and justice would be denied.

## Hidden Opportunity

Let's consider another truck accident case: *In this case, a trucker had caused a serious accident. On the surface, the case appeared to be nothing more than a rear-end collision caused by driver error. For example, we utilized the services of an accident reconstruction expert and black box expert to review the data, who in turn found evidence that the trucker had been speeding. Further trial preparation and work through deposition and production of corporate*

*documents revealed that the driver had a history of being late for deliveries. His company, like many, valued their product or service and profit over public safety and had told him explicitly to speed things up or risk getting fired. Additionally, the company had their attorneys and experts on the case from the beginning.*

*With all of this information, pressure was applied on the trucking company as a liable party and show that the company encouraged the driver to engage in the reckless driving that ultimately caused the accident and injuries. As you can see, this chain of "cause and effect" was lengthy to assemble and hard to prove. But building and proving that argument turned out to be essential and paid off when the case settled before trial at mediation!*

In order to get that deep into the history and possible root causes of any accident, you must prepare. Good preparation gives you deep insights into key questions about the accident, like: What went wrong? What processes failed? What alternative explanations could maybe account for the evidence? And so on.

You prepare not only because you want to build your best case, but also because **you want to be able to anticipate Goliath's defenses and thwart them effectively.** Goliath will do everything in his power to blame you, because Alabama has assumption of the risk, contributory negligence and the last clear chance doctrine that can bar recovery for you in a harsh and unfair way. Goliath will seek to deny justice.

**Early and thorough trial preparation is the foundation for success** in personal injury and accident cases from the very beginning. Goliath is lurking and evidence disappears. People lose things and forget details, so it's important from the very beginning to be prepared.

## The Discovery Process

During early and thorough trial preparation, we use a process called discovery to subpoena records and documents and depose witnesses. When used effectively, **discovery can add significant value to your case** and build the structures that you need to get the most recovery.

You see, Goliath is a rational creature. If a big insurance company senses that you are disorganized—that you lack the will, intention, or preparation to go to trial—Goliath will have little incentive to compromise with you. Trucking companies, insurers, big auto manufacturers, and other potentially liable parties are very unlikely to offer you a complete and fair settlement amount right out of the gate.

If, on the other hand, you and your team immediately erect the necessary legal scaffolding to **show that you are serious about taking your matter to court (if need be), Goliath will be far more likely to sit down with you and “be fair.”**

You need to diagram, demonstrate, and prove the damages that you suffered—the injuries and the liability. You then want to try to add value to your case. If you have a serious medical condition that requires ongoing rehab, drug therapy, and regular surgeries and checkups for instance, you want to make sure that Goliath pays his fair share of these costs.

Discovery is an art and a science. It’s a process that can be learned and taught. But there is also a certain amount of artistic intuition that truly great Alabama personal injury lawyers use to overwhelm or sidestep defenses in order to prove liability and injuries.

An industrial workplace accident at one of the nation’s largest companies that resulted in a very tragic and preventable death drives these points home:



*A hardworking Alabama man was performing welding and maintenance work down inside a machine when a gate closed on him, causing him to be crushed and killed. Rumor had it that the company*

*was looking for a way to blame the worker and escape liability because of recent OSHA citations for similar safety violations. So, the company met to develop the company line and sent representatives to talk with the family. Fortunately, the family retained our law firm to find out what happened and to seek justice.*

*We filed a lawsuit as soon as possible, again to preserve evidence and exercise the discovery and subpoena power of the Circuit Court. We deployed an investigator to gather documents and interview key witnesses. We also went to the company with an engineering expert and viewed the plant and machinery.*

*While at the plant, one of the corporate attorneys tried to convince us that the deceased worker was at fault, saying that two safety chains would have held the gate and prevented the death had the man used them.*

*Through all of the discussion, we finally reached a conclusion: we learned that an employee of the lumber company—an inadequately trained and unsupervised person who was also a convicted felon—had turned the machine off, which resulted in a gate falling on the man and crushing him to death. Our investigation and trial preparation also revealed that there were two weak chains on the machine and only one chain was equipped with a latch. These chains were not designed for and would most certainly not have stopped the gate from crushing him. As if that news wasn’t enough to show liability, we also learned emergency help was not summoned for the man immediately. This further revealed the lack of adequate training, supervision, policies, procedures and manpower of the company.*

While the aforementioned story is tragic and appears to have been completely preventable, it is yet another example of a company placing the value of money over human life. Imagine if this family had not engaged the right personal injury and accident lawyer law firm to conduct early and through trial preparation. They might have bought the company story that was fabricated and even demonstrated by the corporate attorney with the safety chains. **How many families have fallen for that in their weakest of moments during the grief of a lost loved one? How many workers**

**have been blamed and denied justice?** Early and thorough trial preparation is the antidote and the key to exposing injustice. The safety of our community depends on it.

Many injuries and deaths are preventable, and big corporations must know that our community values a safe workplace over their profits. I bet if it were \$1 million of their money in that machine instead of a man, it would be guarded and protected around the clock and would still be there. **These corporations should be reminded that they will pay a premium for endangering our citizens.**

Early and thorough trial preparation, working the case up for trial and evaluating the case from the very beginning as if it is going to trial (as well as getting the right expert even if a lawsuit is never filed) puts the personal injury and accident lawyer and law firm in the best position to prove that full compensation in the case serves to make the community safer. Early preparation paves the road to sending a message that people and businesses that violate rules and expose the public to unnecessary danger will be required to pay in full measure.

## CHAPTER 6

# Recruiting an Army of Experts

Even the most experienced Alabama personal injury lawyers are not experts in every aspect of accident reconstruction, medical care, economics, etc. To go up against a stronger opponent, you must find ways to level the playing field. Professionals like accident investigators, accident reconstructionist, vocational experts, physicians, life care planners, economists, engineers and others can help build up the case, anticipate some of the defenses and counterarguments and maximize your chances of success.

**Alliances with the right experts can set you up for victory and send Goliath the message that you mean business** and plan on getting to the bottom of what caused the accident, injury or death. Preparation lets them know you will pay the price to seek justice and will not leave any viable stone unturned. Injuries and accidents are in some ways like icebergs—there's far more under the surface than meets the eye.

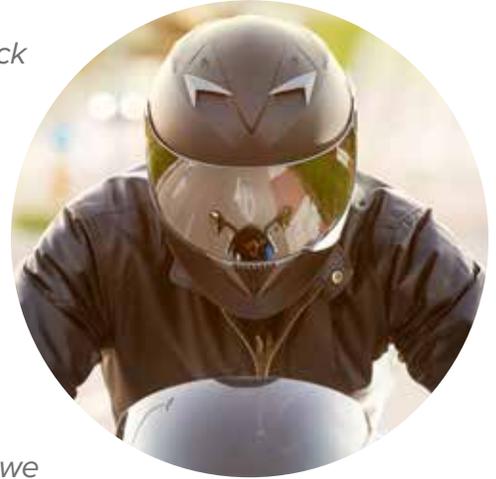
Goliath may have all of these functions in-house. In most cases, personal injury law firms will need to pull together an ad hoc team of experts for the purpose of helping with your case.

In industrial and workplace accidents like the case we've discussed involving the national lumber company, engineers and experts must be brought in. In these cases, you are dealing with OSHA reports, equipment, as well as safety policies and procedures, which is why experts are needed. They are equipped to evaluate the policies and procedures and whether or not they were implemented. They can also examine a piece of equipment for product defects in a potential product liability case. Accident reconstruction experts and investigators help you locate witnesses and determine exactly how a wreck or an accident occurred.

**Experts have specific knowledge in their chosen field and provide direction, guidance and**

**consultation in cases to help find answers.** In some cases, they are available to perform tests—such as crashworthiness tests—and communicate, explain and teach the lawyers as well as the judge and jury what happened, why it happened, how it happened and how it could have been prevented.

*In a serious motorcycle wreck that we settled at mediation, we used an accident investigator and reconstruction expert to investigate the scene, locate the witnesses and make sure we tied up and dealt with any potential defenses in order to effectively prove and demonstrate liability. We also used a life care planner to give a report and testify with regard to the future medical needs of our client. Additionally, we used an economist to be prepared to give testimony regarding the economic impact.*



## Not All Experts Are Created Equal!

One physician may be generally unwilling to provide testimony or to defend a client's diagnosis in the courtroom. He just might not feel comfortable or might not want to invest the time and energy. Other medical providers are historically more likely to want to go court to help their patients succeed in personal injury lawsuits. *In a car wreck case that comes to mind, our client was hit head on in the car in which he was traveling by a pickup truck and rushed to the emergency room, where he was treated and released. He returned in pain. However, it wasn't until after he followed our recommendation and went to a renowned psychiatrist for diagnosis and treatment that a severe closed head injury was revealed.*

*We were able to settle the case for the insurance policy limits after the psychiatrist gave a great deposition and made it clear that he was willing and able to defend our client's diagnosis and*

*treatment in court. Prior to our filing the lawsuit and conducting the deposition of the psychiatrist, the insurance company had not offered to pay one penny for this man's injuries and damages, even though their driver was clearly at fault and wanted to settle the case!*

What do you think would have happened if he did not hire a lawyer who involved the right expert in the case? Do you think he would have been compensated for the head injury we had to prove he had as a result of the wreck? The insurance company didn't prove it for us. In fact, they sought to prove that he had mental problems before the wreck, even though there was no dispute regarding who caused the wreck.

*We also settled a case on behalf of a good hardworking Alabama nurse for the insurance policy limits available against a driver who caused the wreck. We made a claim for her underinsured motorist coverage because she was still experiencing neck pain and had to alter her work as a nurse, which reduced her pay.*

*She followed our advice and sought a second opinion from a renowned neurosurgeon who ultimately performed a neck surgery. We settled the case prior to trial, but after filing a lawsuit and after the neck surgery. Prior to that, the insurance company only offered a fraction of what the case was worth.*

Many of the best experts are industry insiders who decided they could no longer live with themselves while working for Goliath. **These experts know how and where to find the smoking gun documents that expose the legal violations committed by Goliath.** These hidden documents often expose the public to unnecessary danger.

**Important Point:** Obviously, you don't want to either exaggerate or undersell the nature and extent of your injuries, and you don't want your doctor to either. You also never want to work with a physician or any other expert who would lie or exaggerate on your behalf. **It's important to be ethical and above board**—not just because it's better/safer for your case (imagine what might happen if you or an expert ally gets caught in a bald-faced lie!) but also because it's just the right

thing to do, as we said before.

Here are principles David uses to create his army of experts to fight on your behalf:

- Experts must be extremely well versed and credentialed in their subject.
- They must be ethical.
- They must be positive, collaborative self-starters – so-called “A players.”
- They must have the availability and resources to do the job and capability to offer valuable ideas.
- They must be able to stand up to the pressures of testifying in the courtroom.
- Ideally, they will be supportive of the case and work well with other members of the expert team.

**It's very difficult (and extremely important) to find the right experts.** The dilemma is:

- Do you want an expert who is “way too experienced,” who every good attorney uses.
- Do you want somebody who is new to the game, like a professor who has not testified much before?

The best personal injury lawyers in the world will find themselves at an enormous disadvantage if they lack connections and go-to resource experts and instead have novice experts who won't stand their ground. If this happens, justice is denied.

# “Know Thy Enemy and Yourself:” Knowledge of the Defense

David studied Goliath in excruciatingly close detail. He understood the weaknesses in his armor. He understood his own strengths relative to Goliath’s weaknesses. He no doubt surveyed the giant for a while. Just as important (and curiously enough), Goliath probably had little to no reconnaissance on David before the battle. In fact, he took for granted that he could crush his puny opponent. That’s why he mocked David prior to their encounter.

The moral is that **you need to understand your enemy’s strengths and weaknesses.** Together with an understanding of your strengths, **this creates a composite picture that allows you to achieve victory even in unlikely or difficult settings.**

On the surface it might have appeared to simply be a lucky shot. However, let’s study David and Goliath a little deeper to illustrate how the defeat meant so much more. David needed to have self-knowledge on what he was good at and where he was weak. He also needed to understand Goliath’s strengths and weaknesses.

David wasn’t a trained military soldier. He was an obedient son and watchful shepherd. His time as a shepherd gave him vast experience with his sling while protecting the flock against lions, bears and other dangers that would threaten the safety of the sheep. This gave him keen instincts and awareness that would ultimately serve him well in the fight against Goliath.



While David was no match for Goliath’s strength and size, David was in excellent physical condition due to the rigor of tending to his duties as a shepherd and as a son. Still, David knew he would not be able to maneuver and function rapidly in the expensive armor provided by the king. Therefore, David chose to simply wear the invisible armor of God, which gave him the wisdom to call on his own strengths rather than to focus on his own weaknesses and what he couldn’t do.

The invisible armor of God also gave him the ability to recognize Goliath’s strengths and not play into them. Rather, David was able to use Goliath’s strengths against him. David realized that Goliath was not as fast and agile as the wild lightning-quick animals that had challenged David before.

With his armor, David knew he could hit Goliath in a soft spot with one of the five smooth stones he had been guided to select from the brook and carry in his shepherd’s bag. David had earned a living fending off beasts with a focused, aimed shot and had the foresight to know that this shot would be no different. Wearing the invisible armor of God, he saw a target that was so big he couldn’t miss, and had the courage to take the shot at just the right time.

**The right personal injury and accident lawyer and law firm also uses a lean, mean and focused approach that begins with early and thorough trial preparation, and also recognizes Goliath’s strengths, seeking to use them against him whenever possible.**

Hungry for justice, the trial lawyer thwarts the generalized propaganda spewed by Goliath and

concentrates on seeking the truth on a case-by-case basis for good, hardworking people. Goliath likes to hide behind all of the wealth, power and resources he has amassed, as well as procedural defenses he has created.

**The personal injury trial lawyer must stay focused on preparing the case for trial to shine a light on the truth**—not on a battlefield, but in a court of law through the civil justice system.

David was focused. He aimed at Goliath's unprotected head realizing that a strike to that area could be lethal. In the same way, **plaintiff lawyers look for areas of vulnerability that will bring down the defense.** When the personal injury trial lawyer does this, often the arrogance of Goliath will be exposed.

Goliath must be very cocky and confident to attempt to take control of an accident scene and to think he can get away with hiding and destroying evidence and manipulating investigations. **How do you think judges and juries feel when they learn about the steps Goliath takes so boldly and brashly to protect his bottom line?** Needless to say, they're offended and sometimes angered. We love to catch Goliath red-handed, and to expose him as a liar and cheat. **It helps your case and provides justice to the community.**

## CHAPTER 8

# Shepherding the Client: Steps of Guidance from the Start of the Battle to the End

David did some of his best work protecting his flock from the dangers that lurked around. He was a humble shepherd and took great pride in that. This served him well in his epic fight against the mighty Goliath. The personal injury trial lawyer also does some of the most valuable work in the capacity of a “shepherd” by guiding and protecting clients through the minefields of personal injury and accident cases from start to finish and preparing and arming them to do battle with Goliath if necessary.



**The majority of personal injury and accident cases are settled without litigation, but all cases should be prepared as if they are going to trial.** Therefore, in all cases, the client needs to be “shepherded” through the process. This starts in the very first meeting with the client and continues until the case is resolved.

You have the burden of proof in a personal injury and accident case, which means that you must prove liability and damages and escape any defenses in the case. We’ve already established that there is no such thing as an easy or “open and shut” case. So, it’s essential that you be shepherded through the process, or you will likely lose money.

Let’s examine how this applies to a case at each stage of a lawsuit.

### The Initial Meeting

In your first meeting with the personal injury and accident lawyer and law firm, you should expect to walk away knowing that there is a plan in place to prove and demonstrate the liability, injuries and damages—and overcome defense—all in an effort to add value to the case and maximize recovery.

**You should expect to have your questions answered in that meeting with regard to liability, injuries and damages, and whether or not you have a case** in which the lawyer and law firm feel they can add value.

As the client, you should **bring any documents and information that you have relating to the accident, injury and damages.** Additionally, you should be advised regarding the best course of action for you to take and things to avoid. Each case is different, so you may not always walk away from that meeting with all of your questions answered completely. The personal injury and accident lawyer and law firm need more time to investigate, obtain records, locate and interview witnesses and begin the process of trial preparation to completely answer the questions, but there should at least be a plan in

place at the initial meeting.

Your law firm needs to go through all of the appropriate processes and preparatory work, including coaching plan of attack, you make your case more nimble and flexible, and you shore it up against whatever Goliath has in store for you.

Above all else, **you need to have a plan.** You need to gear up for the encounter with Goliath. You plan for the sake of planning itself. Of course, corrections will happen. The plan will change depending on what Goliath does during negotiations, mediation, or inside the courtroom, but by preparing, rehearsing, anticipating questions that you might face at deposition (and getting clear on what you should expect), you will be in a much better position to handle any uncertainties. Planning helps you improvise the right away. It helps you avoid costly errors or omissions. It grounds you.

## The Investigation

As discussed earlier, Goliath is on the scene of serious accident and death cases in an effort to make potentially critical decisions about what evidence helps him and what evidence hurts him. After an accident and injury, you must be concerned about your medical treatment and healing of your injuries. Further, in wrongful death cases, a family needs time to grieve. You must be aware Goliath is counting on preparing to defeat you during this critical time in the case.

Often, **every second that passes without your investigation underway by your personal injury and accident trial lawyer means that you are vulnerable to Goliath's manipulation.** The right personal injury and accident trial lawyer will level the playing field for you and will take charge of the investigation for you so that you can take the necessary steps to get your life back on track. He will arm you with the information, advise you during the process and will insure that your rights are protected by obtaining records and documents, locating and interviewing witnesses and preserving evidence.

Protect your family and yourself by allowing the right personal injury and accident trial lawyer to shepherd your investigation immediately before witnesses and evidence disappears. In most

cases, the personal injury and accident trial lawyer advances the cost of this.

## Medical Treatment

First, your personal injury and accident lawyer's law firm should talk with you about your injuries and make certain that you take the advice of the medical professionals. **We are not in the business of giving medical advice or practicing medicine. However, over the years, we have learned how important it is that you receive the right treatment.** We call it "shepherding the medical treatment." Basically what that means is, as early as possible, we are going to do our best to become actively involved in your medical treatment. We are going to be following up with you on a routine basis regarding your treatment, diagnosis, and prognosis, and if necessary and appropriate, guide you to other treatment providers. This is in your best interest—both medically and legally—especially in cases where there are severe and permanent injuries.

Under Alabama law, injuries correlate and equal damages which have to be demonstrated and proven. **We have had cases over the years where clients did not follow up with their treatment and it hurt their health and the value of their case.**

*Years ago, we had a client who had a leg injury. We reviewed her medical records and the treatment that she received up to that point and helped her understand why she had been referred to a physical therapy clinic. We instructed her to start the physical therapy and to keep us posted. Not long after that, we scheduled her for a follow-up meeting after being unable to reach her. We met with her in the office and learned that she had not been going to her physical therapy.*

*After our meeting, she realized the importance of this therapy. While we were still able to reach a settlement in the case, even a small gap in treatment gives Goliath the potential defense that something else may have caused or contributed to your injury or that you were not really hurt.*

**We want to take as active of a role as possible in the treatment.** We have had clients over the years with neck and back injuries that followed up with

their treatment and their care and they continued to have problems. In those cases, we helped them to make contact with the right neurosurgeon and chiropractor for evaluation and treatment. If they had not followed up and gotten that care immediately, it would have cost them money. It is also a good practice to have a group of medical providers—from neurosurgeons, neurologists, psychiatrists, and counselors to chiropractors, orthopedists, and massage therapists—who can help you in these circumstances. **Oftentimes, just like in any other medical situation, it makes sense to go out and get a second opinion with the help of a specialist.**



*We once represented a young man who was treated at the emergency room twice because of a head-on collision. When he came to see us, it was apparent that something was wrong, so we had him evaluated by a psychiatrist and neuropsychologist that*

*revealed through extensive and ongoing testing that there was a serious head injury. As a result, the case settled for the available insurance policy limits. This demonstrates the importance of receiving the proper medical treatment and being represented by an experienced Alabama personal injury lawyer.*

There are many great doctors in this area. However, an emergency room doctor, an orthopedic doctor, or a general practice family doctor may not be in a position to diagnose and treat all conditions. Once some doctors find out it is a potential personal injury accident type case which may result in litigation and depositions, they may not go above and beyond to help, especially in dealing with the insurance company and in litigation.

## Discovery

Discovery is a part of early and thorough trial preparation. We use discovery to subpoena records and documents and to depose witnesses. **Again, this sends Goliath the message that you mean business** and plan on getting to the bottom of what caused the accident, injury or death and will pay the price to seek justice without leaving any viable stone unturned.

Often, we work with our experts and investigators to coordinate this effort of building a case for you. Like David, **discovery can be used to probe the weakest spots on Goliath.** When used effectively, discovery can build the structures that you need to get the most recovery. During this process, you should be armed with the information and advice that you need to ensure your rights are protected. In most cases, the personal injury and accident trial lawyer advances the cost of this.

## The Selection of Experts

As discussed in the previous chapter, the selection of experts is a critical stage of the case. **Many cases hinge on the selection of the right expert.**

Professionals like accident investigators, accident reconstructionists, vocational experts, medical and psychological experts, life care planners, economists, engineers and others can help build up the case, anticipate some of the defenses and counterarguments and maximize your chances of success. **In most cases, the personal injury and accident trial lawyer advances the cost.**

Alliances with the right experts can set you up for victory. During this process you should be armed with the information and advice that you need to ensure your rights are protected. Again, to go up against a stronger opponent, you must find ways to level the playing field.

## Deposition

**Preparing clients for deposition is a critical task for any attorney.** You might think that the deposition is all about just being honest, forthright, and engaging. Indeed, clients can prep themselves for

success by dressing well, avoiding indirect answers, being polite, being truthful, and being themselves. It would be great if that were all you needed to do to succeed.

Unfortunately, it's not.

Especially in serious personal injury and accident cases, the defense attorneys will probe to find weaknesses or flaws in your case... and possibly with your character itself. Defense attorneys may ask about a gap in your medical treatment, for instance, or about injuries that predated the injuries you suffered in the accident.

The number of potential defenses that can be raised can be mind boggling. So, yes, it's important to be upfront and to demonstrate integrity and civility. **But you need to be very careful in your deposition not to accidentally allow Goliath to escape liability or to limit your claim.** To that end, you need to learn the basic theory about liability law for your case.

If you lack coaching and rehearsal—if you don't practice describing the damages and your experience in detail, for instance—you could find yourself engaging in strange or awkward behavior that could prove problematic. You could accidentally exaggerate your damages or come off as insincere. Or you might accidentally underplay what happened to you. If you've never gone through a deposition before, you really can't understand what the experience is like in the abstract.

The defense attorney may try to trap you into admitting contributory negligence (i.e. you did something or failed to do something that made you partially responsible for the accident) or assumption of risk (i.e. you admit that you should have known that whatever behavior you were doing could have led to an accident or injury). If this happens you may be precluded from recovery or the value of your case may be greatly compromised. **Remember: this is your deposition. You are in charge.**

Fortunately, you do not have to understand every single scenario or defense scheme that Goliath can concoct. An experienced Alabama personal injury attorney can coach you and prepare you so that you can tell the corporate defense attorney who you're relying on your lawyer's advice. But you do want to avoid not having a good answer

when someone asks you why you are filing the lawsuit, as well as avoiding comments like, "The driver didn't really do anything wrong," altogether! You might not think that you would make blatant mistakes like this, but everyone needs good practice. David practiced with his sling on the animals who hunted his flock before he could trust that his skills were good enough to allow him to battle the Philistine giant.

Talking about deeply emotional and personal issues in a public setting can also be difficult. Your Alabama personal injury lawyer should have your back and help you through the process. If you get tired, you can take a break. Be sure to ask your attorney about any questions or concerns about the situation. **Your lawyer will coach you to avoid elaborating on your answers, "making stuff up," volunteering information that was not asked for, or allowing extreme emotion to throw you off your game plan.**

Rehearsal is essential for any complex, valuable activity. But practice does not necessarily make perfect. Only correct practice makes perfect. That distinction is critical. This is a reason why a good lawyer will work up a case early on: to quickly identify and leverage the case's strengths, weaknesses, threats, and opportunities; and to build in extra value. This is also the reason why **great lawyers spend lots of time on client preparation.**

Some attorneys are of the mindset that their clients have nothing to hide and so they do very little preparation with their clients. Thus the deposition preparation might consist of meeting with the client prior to the deposition and reminding them to be truthful, polite, dress appropriately, and only answer the questions asked unless instructed otherwise.

However, we realize that a client's deposition preparation needs to be more thorough and extensive than that. We understand that we must go into the client deposition with a focus on demonstrating liability and damages and to address any potential defenses, pre-existing injuries and gaps in treatment, as well as any other critical issues. While being truthful is still a priority, we know very well that **the insurance defense attorney comes to a deposition with a fixed agenda of fishing for defenses and issues**

**to escape or reduce liability—and not necessarily to find the truth.** The client must be protected with thorough preparation or the value of the case will be jeopardized. There is potentially a lot to lose. The client does not necessarily need to be burdened with the concern of every detail and possible scenario or potential issue that might arise in the case. In fact, in most instances, it's better for the client to just rely on their injury lawyers to deal with those things. That said, **the client must be prepared to at least generally talk about the theories of liability in which they have sued under, while leaving all of the ramifications to their lawyers.** The last thing you want is for a client to go into their deposition and testify that they don't think the person or company has done anything wrong or that they have no idea why a lawsuit was filed.

As Alabama injury lawyers preparing a client for a deposition, we want the client to be able to thoroughly and in detail describe their damages, which include compensatory damages like out-of-pocket expenses like medical bills, future medical bills, lost wages and loss of earning potential, pain and suffering and mental anguish, loss of consortium of a spouse, and punitive damages. This should be genuine and not exaggerated nor minimized. We have witnessed people who greatly exaggerated their injuries and damages and people who acted like they were not really injured when they were clearly not able to do what they once could. Both can negatively impact the value of the case. Thus the client must be prepared.

The client should be reminded to listen to the question, as well as for any objection that their lawyer makes, or for their lawyer's instructions or direction. We also remind our clients that every member of our legal team is there for them. We will not tolerate a client being bullied or being taken advantage of, and **we will take a break and talk any time they want.**

Of course, the clients should be encouraged not to lie, elaborate unnecessarily, volunteer information, speculate, or answer something of which they are not sure. If that is necessary, then the client should qualify their answer by saying that "I am not sure" or "I am speculating." The client needs to be somewhat familiar with the complaint filed on their behalf and their answers

to interrogatories and responses to requests for production from the insurance defense attorney. Again, most of the time, it is best for the client to rely primarily on their lawyer for most of this and not be obligated to go into great detail, but the client does need to be prepared to articulate the basic factual contentions of their case as they know them to be. **The client should be prepared to be cordial and respectful of all of the parties involved and to respect the process.** Generally, as Alabama injury lawyers, we have found anger or heightened emotion can be detrimental to the deposition, especially if the emotion is not genuine or is exaggerated. With that in mind, the client must be able to be genuine. Sometimes emotion is just natural. At those times, it is good to take a break. If a client is tired or has been testifying for more than an hour or so, a break is warranted. Like anything else in life, mistakes are more prone when we are tired or have lost our focus.

Appearance is also vital. The insurance company is going to evaluate that. I advise clients to dress comfortably. While it is not necessary to wear a suit or a nice dress unless that is what you are most comfortable in, **it is important to dress like you take the deposition seriously.** Sunglasses, hats, visors, T-shirts, shorts, tank tops, and short skirts should not be worn. Sometimes, clients must give their depositions in a work uniform. The most important thing is to be prepared and for the client to represent who they really are in real life.

Lastly, don't be afraid to ask your legal team for more information.

We take great pride in helping people and families stand up to big powerful corporations like insurance companies, and we welcome calls and visits from people who think their insurance company might be attempting to take advantage of them.

## Mediation

Mediation is a process where an attorney acts as a mediator between both sides in an attempt to coach a settlement. Many people think mediation is the final step in the settlement process.

Not necessarily! Sure, you might agree to settle based on what happens during mediation. But it's important to look at mediation as a part of the process and not as the end goal of the process. It should be clear that the goal of mediation is not settlement; it is maximum recovery. **If you demonstrate to Goliath that you actually will go to trial if you do not get good results in mediation, you will enjoy a far greater advantage than if you telegraph that you'll be okay with just a settlement.** That's a big thought to process, but it's an important one.

Here's another true example from one of our cases to demonstrate this idea:

*A man had been recovering in a hospital from serious injuries and surgeries. We prepared and filed a lawsuit in order to exercise subpoena and discovery powers of the court to prepare for the trial. We showed our hand to Goliath. We showed that we were willing to go to trial in the accident case—including deploying an investigator to interview witnesses and collect evidence, an economist to prove and demonstrate the financial loss and a life care planner to evaluate the medical damage.*

*Guess what? Goliath caved. And we got excellent results in a confidential settlement.*

Trial preparation is the foundation of maximizing the recovery in any personal injury case. The successful settlement in this case was reached through extensive trial preparation. That holds true even in cases that are settled without the filing of a lawsuit.

### Goliath's Mediation Request

There are times when Goliath requests mediation. Careful consideration is taken in the selection of a mediator when this occurs. **An experienced attorney must choose a mediator who has a reputation of being fair to**



**both sides.** An attorney must also thoroughly prepare the client and his or her family for the mediation process. This can be very similar to the type of preparation that goes into a deposition. Everyone must know what to expect, how to conduct him or herself and how the process works. In most personal injury and accident cases, your personal injury and accident lawyer will advance the cost and expense of mediation.

*Before mediation in one case we handled, all of the important records, bills, and documents were sent to the insurance adjuster, the insurance attorney and the mediator to summarize our case and highlight the injuries and damages with the assistance of our expert's findings. We reiterated at mediation that we were not interested in mediating the case to get a settlement. We were mediating in an effort to maximize recovery for this man and were fully prepared to push the case to trial. We believe that this conditioned the defendant, the insurance adjuster, the insurance company, and their attorney to agree to our final offer of settlement at the mediation.*

Again, **mediation should always be viewed as a step in the process as opposed to the final destination.**

### Settlement

Insurance companies may pretend that they don't care whether you take them to court or not. In some cases, they actually don't, because they believe they have the upper hand. In other cases, they are secretly terrified that you will push forward with the help of a trusted David (i.e. a qualified Alabama personal injury lawyer) by your side with his trusted slingshot, five smooth stones and invisible armor. **How do you know when you're ready to settle?**

**It all goes back to trial preparation.** Once the case has been investigated and evaluated as if it were going to trial, then you're in the best position at that point to evaluate the case. Remember that this can include bringing in experts in the medical, psychological, legal, financial, engineering, accident reconstruction and investigative fields.

Even if a lawsuit is never filed and the case does not see the courtroom, personal injury and accident cases should be prepared for trial. When this is done, then you are in a position to be able to make an assessment of the value of the case by taking the following into account:

- **Conduct of the parties**
- **The available insurance coverage**
- **Potential defenses**
- **Liability, injuries and damages**
- **Where the case would be heard**

Every injury victim's needs are different. Variables that can influence your willingness to settle and your flexibility include:

- **Your financial and medical needs**, both short-term and long-term. How important are the funds to your life, well-being and long-term care needs?
- **The difference between your ideal offer and the proposed settlement offer.** If this gap is small, you may be inclined to accept. If there is a big gulf between your desire and the offer, you may want to press on with the fight.
- **Your need for closure.** In some cases, victims just want to conclude negotiations fast and "get their lives back to normal." In other cases, the need for justice is higher. This difference can also influence your decision to press on or not.

- **The strength of your case.** How compelling is the case that you can potentially build? Are there holes the defense can exploit? What's the likelihood that you will win at trial?
- **The opinion of your seasoned Alabama personal injury lawyer.** Odds are, this is (hopefully) your first time being injured and potentially launching a lawsuit. Your injury lawyer, on the other hand, has years of experience. Based on that experience, he or she can suggest your most likely path to the best success, as defined by your needs and values.
- **Your state of mind.** Are you capable of dealing with the stress and uncertainty of a trial? The short answer and a summary of when to settle your personal injury and accident case is when you know and believe that you have gotten every penny that you can out of the case and are reasonably satisfied with the outcome. Your personal injury and accident trial lawyer should be there to help guide you through this process.

Winning a case or a settlement can be an enormous relief. But if you don't have effective financial plans in place, your victory—and peace of mind—may be short-lived.

It's generally a good idea for Alabama personal injury clients to work with CPAs, tax attorneys, and financial professionals to plan for the near and far term. Your recovery may need to be used to pay for a long-term rehab, therapy and ongoing medical treatment—as well as to supplement you for lost earnings and income potential. It can get confusing and complicated, tax-wise and otherwise. A well connected Alabama personal injury lawyer can help you find reputable people to deal with your award or settlement.

## Trial

The vast majority of cases are going to be settled without a trial. However, as we said before, **your case needs to be looked at, evaluated and prepared from the very beginning as though it is going to trial.**

You go to trial when the necessary witnesses are located and interviewed, depositions are taken, documents are gathered, paper discovery is completed, necessary experts are retained, and the case is worked up and fully prepared. Often, we work with our experts and investigators to coordinate this effort of building a case for you. In most cases, the personal injury and accident trial lawyer advances the cost of this.

At the point which your case is set for trial, you have to make a decision regarding any amount offered for settlement. Does that amount serve to maximize recovery? Have you gotten every penny you can out of the case? If the answers are no, then you must answer the question: **Do you stand to gain money by taking the case to trial?**

Trials can be expensive, risky and time-consuming for both sides. Once the case is worked up and prepared for trial, the lawyers and law firm should have an opinion as to whether or not value can be added to the case by going to trial. A further consideration is whether a verdict larger than the settlement offered will stand on appeal.

The easiest decision to make is when the company offers a very low amount nowhere in the ballpark of the case evaluation. The more difficult decision is when the offer is pretty close to what you feel the case is worth monetarily. During this process, you should be armed with the information and advice that you need to ensure your rights are protected. Further, you should be prepared for trial in a similar manner as your deposition and mediation. **Sometimes trials are necessary in the pursuit of justice.**

You see, David knew when to fling his stones. He knew how to time it. How? Because he spent years in the field as a shepherd fending off lions and wolves and other predators who were after

his flock. He understood his weapons, and he had experience deploying them. He also had the courage to take action with the invisible armor of God, which is an intangible factor. You need to have the courage, the practice, the power, and the timing to win the day.

The practice of Alabama personal injury law is at once an art and a science. The “science part” is the preparation and the processes that we discussed. The “art part” is harder to describe. It’s the knowledge and intuition that you develop after working through different, diverse cases and getting good results over years and decades. You want an attorney who has that kind of “sixth sense” about what to do and what not to do to get results.

With all five stones in your arsenal along with your invisible armor, your chances of hitting Goliath between the eyes (or, more ideally, getting him to turn and run before you even take out your slingshot) go much, much higher.

## CHAPTER 9

# Coordinating the Five Smooth Stones for the Knockout

The more “smooth stones” David has in his arsenal, the better. Obviously, you’d like all five. If you try to meet Goliath head on—play his game without the invisible armor, your shepherd’s bag, five smooth stones or sling—your chances of winning fall from slim to none.

But if you use a targeted approach—this process we’ve just discussed—your chances of a better outcome are much higher. Your Alabama personal injury attorney should:

- Have a tested process
- Should be able to recount (many) successful experiences using it
- Should be able to explain the steps and the purpose of the process in clear language to you



You must remember: you are waging an asymmetric battle. Goliath likely has more money than you do. He has more resources. He has more experience fighting these battles. Again, to have any chance at success, you must change the frame of the fight in a way that favors your strengths, minimizes your weakness, minimizes Goliath strengths, and maximizes his weaknesses.

## The Value That the Right Law Firm Can Add to Your Case

An old joke in the legal community is that a good attorney is one who knows the law, while a great attorney is one who knows the judge.

In all seriousness, **there are substantive differences between “only okay” attorneys and truly brilliant ones.** It is not just about the amount of money that a great lawyer might be able to get for you. It’s so much more than that. Here are some key “value add-ons” that a truly top level attorney or law firm can bring to your situation:

### 1. Better Chance of Success

A better lawyer can get you more money and faster results than a merely competent one.

Great attorneys have established ways of doing business and relentlessly pursuing success according to tried and tested methods. The best attorneys constantly improve their services, measure their

results, get feedback from clients, and strive for never-ending improvement. Note, however, that no attorney can guarantee results. There is always an element of chance and uncertainty in any case—no matter how “open and shut” it appears to you.

## 2. You Will Feel Better About the Case

Amazingly, better case results (e.g. bigger verdicts, shorter time to resolve the matter, etc.) don't necessarily translate into higher levels of client satisfaction! This seems counterintuitive, but the science supports it.

According to Daniel Gilbert, a preeminent researcher on happiness, our satisfaction with an outcome hinges on our perceptions and expectations. If your attorney overpromises you—if he suggests, for instance, that you will get \$400,000 from your case and only obtains a \$300,000 recovery—you will feel regret over that “loss” of \$100,000. On the other hand, if your lawyer suggests that you might only win \$200,000 and manages to get you \$300,000, you will feel happy because you'll have won an “extra” \$100,000.

The simple framing of expectations can enhance your level of satisfaction. Having said that, you don't want your attorney to downplay your chances just to make you feel more satisfied!

## 3. Adds Value Not Only to Your Case but Also to Your Whole Situation

A great attorney can connect you with experts in the community to deal with the after-effects of your injury (e.g. the best rehab specialist in the area, etc.) and leave you feeling more relaxed, more confident, and more able to focus on your work and recovery. A good attorney can make the entire process of recovery as stress-free as possible.

## 4. Answers Your Questions and Treats You with Respect

When people get hurt, their emotional “immune system” often has no downtime to process what has happened to them. Plaintiffs need empathy and answers. Even if your case is “simple and straightforward,” your unanswered questions

about it will linger in your mind, cause uncertainty, and lead to dissatisfaction and discomfort. The architects of a great law firm understand this, so they create systems to help clients get their concerns answered.

## 5. Boasts Experience with Goliath

The best attorneys understand what motivates Goliath. Taming the big guy is no small task, but Goliath is not an arbitrary fellow. He responds to threats and incentives in a rational way. As we've discussed already, one of the ways to tame Goliath—or at least make him more willing to negotiate—is to build a case up effectively from the start.

## When It's Time to Call a Lawyer

**Taking action as soon as possible is a key—if not the key—to preserving your rights and maximizing your recovery.** Yes, it can be scary to contemplate the idea of calling a lawyer or going to trial. Sure, you are probably overwhelmed, tired, confused and potentially in pain from the accident—or from taking care of someone hurt in an accident. The last thing that you want to do is add more commitments to your plate.

But you need to be thinking about the bigger picture: about your long-term finances, about your well-being, and about the well-being of your family and others who depend on you.

Our attorneys may or may not be able to help you, depending on your circumstances and need. But we would certainly be happy to discuss what you are going through and provide a free and confidential consultation. At the very least, you'll come away from speaking with us more informed about your rights and about what you might be able to do to get the outcome you want.

## Faith to Take the Next Step

Life does not always follow our plans. It presents us with challenges and opportunities that surprise us and catch us off guard. **The reality is that you (or someone you care about) is facing a battle against Goliath. Whether you prepare for the encounter or not, it's about to happen or it may already be happening.**

Yes, your situation may seem unfair. In an ideal world, insurance companies and other liable parties would treat their clients with more respect, behave with stewardship and integrity, and strive to do the right thing. But our society is far from a utopia. We often must go to extra effort—sometimes extraordinary efforts—to preserve our basic rights, to ensure justice and fairness for ourselves and our families, and to play our role in preserving the fabric of our civil society.

The metaphorical battle between David and Goliath that we have discussed here is one of the most important of our time. **We believe that David can prevail in spite of what you might have been told,** and in spite of the potentially long odds stacked against you.

You see, despite the reservations of all those around him, David wasn't afraid to do what he knew in his heart was right. He wasn't intimidated by the fact that Goliath had been in battle several times before and won. David didn't let his circumstances shy him away from a victory for all. He used his faith and the experience he did have in finding the proper weapons for battle, and in the end David overcame.

In an ideal world, you want to avoid a war against Goliath. You want to demonstrate to Goliath that you have an overwhelming case, and that it would be foolish for him to oppose you. To that end, your Alabama personal injury lawyer should be willing and able to go to trial, if need be, and win.

With the five smooth stones we've discussed, the metaphorical slingshot, a sure guided hand, and invisible armor, **it is possible to take out the biggest foe and score a victory too,** not only for yourself and your family but for society at large.

Now is the time to stand up and say with passion and conviction: "We demand fairness, Goliath. We demand that you do the right thing—or we will do what we have to do to make you."

# About the Author Aaron Gartlan



Aaron Gartlan grew up in very modest surroundings in a mobile home park, but he knew at a young age that he wanted to be a lawyer.

“Somehow, I had this idea that I wanted to do work that would be meaningful and make a difference and help people,” he recalls. “Growing up in a mobile home park, around good, solid, hardworking family people really made an impression on me early in life. It truly shaped who I am as a man and as a lawyer.”

After graduating from Dothan High School, Aaron attended Wallace Community College and then completed his undergraduate studies with honors at Troy University, where he concentrated on social science. He then enrolled at Thomas Goode Jones School of Law, where he was intent from the start on becoming a plaintiff’s personal injury lawyer.

This commitment grew ever stronger following the death of his father, Robert, during Aaron’s first year of law school. Robert had been unable to work for several years following a heart attack, and Aaron was acutely aware of the financial hardships that can hit families when ill fortune strikes.

While in law school, he was a member of law review and earned 11 academic awards. He also continued serving his community, as he had since his undergraduate years, as a field artillery sergeant in the Alabama National Guard.

Meanwhile, he also worked for a law firm all the way through law school, which gave him a solid base of experience when he graduated and received his J.D. in 2000. That is when the journey of the Gartlan law firm began. Over the years since then, Aaron has had various partnerships and affiliations with other attorneys as his practice has developed and grown into what it is today: Gartlan Injury Law.

Over the years, he has helped many individuals in their efforts to gain compensation for injuries and other problems not of their own making. A student of Biblical study, Gartlan often says his favorite story from the Bible is that of David and Goliath — because he loves going up against large insurance companies on behalf of his clients.

*“A great case for us is when we can help a family pick up the pieces,” he says. “I cherish having an opportunity to help people at their most vulnerable point, to give them the help that they need to hopefully bring about some closure. Sometimes, it can make the difference between saving the family home or losing it.”*

Aaron’s practice is devoted almost exclusively to personal injury cases, with a particular emphasis on workplace injuries. While there are other firms that also focus on personal injury cases, Gartlan Injury Law is different from the rest, Aaron says.

*“The thing that sets us apart is individual, personalized attention. We value our clients as people and truly want to do what’s best and what’s right in their time of need.”*

In addition to his busy practice, Aaron is active in numerous professional organizations and has achieved several prestigious distinctions. He is a member of the John Maxwell Team, the National Trial Lawyers Association’s Top 100 Trial Lawyers, Motor Vehicle Top 25 Trial Lawyers, and Trucking Top 10 Trial Lawyers and also the Million Dollar Advocates Forum and the Multi-Million Dollar Advocates Forum. In addition, he finds time to teach as an

adjunct instructor of business law and communications at Troy University's Sorell College of Business, and is a member of the Dothan and Enterprise Chambers of Commerce, and is on the Advisory Boards of Catholic Social Services and the Dothan Technology Center.

While fighting successfully for his clients is the activity that brings Aaron the most satisfaction in life, he does pursue other interests in his spare time. He enjoys spending time with family and friends, cooking out, spending time at the lake and the beach, and exercising. He is also a professional wrestling history buff.

He and his wife, Suzanne, have three children: Carlton, Ashton, and Alexa Grace.

## APPENDIX A

### What to Do After an Accident

It's never easy to be an accident victim. You don't choose this fight. You don't choose to be injured, or to suffer the stress and surprise of your accident. You may not want to face all the dilemmas associated with possibly becoming a plaintiff.

There is no "magic button" you can press to make the pain go away or to erase what happened. Even if you have the greatest injury attorney on your side, awesome physicians to help you through the pain, and a loving and supporting family, the journey can be rough. **You may feel isolated, confused and overwhelmed.**

In this section, we offer ideas to help you **engage with your present reality, understand your end game, and connect the dots between your present and your idealized future.** This reference guide is packed to the brim with the tips, tricks and insightful ways of thinking through your problems. These strategies and tactics should help you, no matter what law firm you work with, and no matter how your battle with Goliath ultimately turns out.

Whether you were hurt in an auto accident, truck accident, workplace or industrial accident, or injured by a defective product, here are four things you absolutely must do (or deputize someone else to do for you) to maximize your chances of recovery, both medically and legally.

### #1 Get medical help as soon as possible.

If you get seriously hurt in an accident (e.g. you break your leg falling from scaffolding at a construction job) you'll obviously be immediately rushed to the hospital. But not all accidents are so "cut and dry." You might be surprised by how many people neglect to get proper medical treatment after their injuries or who neglect proper follow-up.

For instance, say you got hurt in a rear-ended hit at a stoplight. You went to your doctor for a checkup afterwards. She didn't find any breaks or brain damage, and she sent you home. Despite nagging pain and a feeling of "fogginess," you failed to do follow-up evaluations or treatment. Weeks later, however, your sore neck and shoulders become too painful to bear.

You return to a hospital for medical imaging that reveals you are suffering from whiplash and a sprained spine. But because you allowed a so-called "gap in treatment" to occur, you now will have a harder time proving your case. The insurance company can point to your treatment history and craft an argument that you weren't "that hurt." Or the company may even imply that your injury was caused by something that happened after the accident and had nothing to do with it.

Goliath can be very sneaky when it comes to this stuff. Goliath knows that your delay in treatment will be a feather in his cap. So don't give him an inch. Get good medical help. Listen to your body and avoid ignoring the "minor" aches and pains you feel. They could indicate chronic problems that could cost thousands of dollars to fix.

### #2 Document all evidence, even more than you think you need!

As the old Chinese proverb goes: "the palest ink is better than the best memory." You need to objectively document all evidence that can help you help both yourself and your lawyer.

- **Take pictures** of the accident scene and your injuries.

- **Write down witness statements—** verbatim if possible.,
- **Journal your experience** as soon as possible after the accident.
- **Collect drivers' license numbers, telephone numbers, insurance information, email addresses, names, license plate numbers,** and any other information you can think of from all parties to and witnesses of the accident.
- **If a police officer investigated the crash and wrote up an accident report, get that officer's name and card** so that you can request a copy of the accident report from him or her.
- **If you went to the hospital or to a doctor's office after the accident, collect all relevant paperwork from that visit.** Note what happened and what was said.
- **Don't worry about collecting the "perfect" information the "perfect" way.** Be resourceful about it. For instance, say you don't have a camera in your glove compartment to take emergency roadside pictures. That's fine. Just take pictures with your cell phone.
- **Err on the side of over-collecting information.** Your Alabama personal injury lawyer will be able to sort the useful information from the non-useful later on. Just get everything down on paper and collect relevant materials.

### **#3 Avoid admitting fault at the scene or in discussions with insurance adjuster.**

Perhaps you believe that you caused or at least contributed to the accident. That's fine. There is a time and a place to disclose your feelings and beliefs about the accident.

But don't reveal your opinions until you connect with an attorney.

Until you do a complete and thorough investigation, you can't know with certainty what caused the accident. For instance, maybe you sailed through a red light and hit a car in the intersection. Your intuition is to blame yourself. Maybe you had not been paying attention to the road.

But it might turn out that your brakes had been worn down or had failed at a key movement! If that's the case, then the situation changes completely. The accident wasn't your fault. It was the fault of the brake's designer/ manufacturer or a clumsy repairperson. But if you say something to an adjuster or a police officer or another driver to the effect of "I'm so sorry" or "I saw the red, but I sailed through the light for some reason," your case could be compromised, perhaps fatally so. You could lose out on a chance to recover hundreds of thousands of dollars. You could also wind up on the business end of someone else's personal injury lawsuit.

So you really need to be careful about what you say, to whom, and when you say it! An adjuster from the potentially liable insurer will likely call you after the wreck to "get the facts." The adjuster may be a very pleasant person. He may ask what seems to be harmless-sounding questions. But these questions are loaded with rhetorical traps. Even if you are very guarded, you can easily torpedo your case—or at least hurt it badly—without even realizing that you've said anything particularly wrong.

Remember, Goliath plays this game day in, day out. You've never played it before. You are going up unprepared against a heavily researched opponent who potentially has millions of dollars on the line when it comes to your case.

When the adjuster calls, it can feel kind of casual and “not that big a deal.” It’s kind of like someone waking you up out of a deep sleep at 3 in the morning and throwing you in the ring to box Mike Tyson. It’s not a fair fight, and you could get hurt! But the stakes for your future can be extremely real.

Tell the adjuster that your lawyers will deal with the situation and ask the adjuster to call them, not you.

#### **#4 Connect with an Alabama personal injury lawyer’s law firm immediately—even if the accident wasn’t “that bad” and you weren’t “that hurt.”**

There is no downside to connecting with a lawyer to discuss what happened. But what can be a huge downside is failing to get legal advice as soon as possible! The longer you wait to begin to prepare your case, the more Goliath’s advantage over you grows.

## **APPENDIX B**

### **Frequently Asked Questions Involving Accident/Injury Cases**

Goliath executes several strategies to numb the idea of filing a lawsuit. In this section, we peer behind the curtain and give you the insider answers you need to face down Goliath.

You will discover hugely powerful information. You might want to take notes in the margins or reread this section a few times, so you really “get it.”

This section is laid out as a series of questions and answers. This is not a comprehensive list, but it hopefully can get you thinking critically about your options. We’ve designed it to be far more comprehensive and useful than the standard “Q&As” about personal injury law that you might find online on legal websites.

**Q:** *Do I have a clear, “open and shut” case? Looking at the facts from my perspective, I just can’t see how Goliath will be able to fight back against me.*

**A:** There is no such thing as an “open and shut” case. Repeat: there is no such thing as an open and shut case.

Sure, the evidence may seem to support your claim. But even simple cases—the most “obvious wins”—can harbor vast and surprising complexity. Alabama personal injury law is not at all intuitive. Small mistakes that you make or nuances in the case can give even the most seemingly “guilty” party tools to fight back against your claim or deny or delay compensation to you.

Here is a major truism about being a personal injury client: your perspective on your case has been warped by your emotional experience, your physical experience, your memory of events, and other limits. To paraphrase former Secretary of Defense Donald Rumsfeld, in injury cases:

- **There are “known knowns”**—facts about your case that you know are relevant;
- **There are “known unknowns”**—questions you have about your case that you know you need answers to but that you haven’t gotten; and
- **There are the insidious “unknown unknowns”**—factors about your case that could be important, but you don’t know what they even are or could be.

It’s this third category—the unknown unknowns—that often creates chaos for people.

For instance, say your teenage daughter got hurt in a truck collision. You want to build a case against the driver who ran a red light and crashed into her at an intersection.

An example of an “unknown unknown” might be a revelation deep into trial preparation that your daughter had gone out drinking that night with her friends. If the defendant finds out and uses this information, he could torpedo your entire plan. This is true even if your daughter did nothing to cause or contribute to the collision. These surprising pieces of bad news—what author Nassim Taleb calls “Black Swan” events—can create havoc and turn a “simple case” into pure chaos.

At the same time, your case may also hold

hidden opportunities or “White Swan” events. For instance, consider our above example. If your attorneys work up the case correctly, you might discover hidden “unknown unknown” opportunities that can help you find a way to add value to the case. Perhaps the company that hired the truck driver failed to train the driver appropriately. Or perhaps the company incentivized him to drive more hours than he legally could and thus contributed to his fatigue on the night of the accident. When details like this emerge, it puts heat and pressure on the trucking company where there wasn’t any before. This can add value to what might have looked like a routine case in the beginning.

In summary, avoid using terms like “open and shut” to describe your case. They undersell how complex these events can be.

To take advantage of the positive serendipities (“White Swans”) and protect yourself from the negative out-of-the-blue events (“Black Swans”), you need to thoroughly and aggressively prepare the case. This is true whether or not you go to trial. The more rigorous your preparation, the better.

**Q:** *My insurance adjuster seems like a good person who has my interest at heart and wants to resolve the matter fairly. Would I be naïve to trust him? And should I give him my medical records?*

**A:** Yes, you’d be naïve. And no, do not give them your medical records. An insurance adjuster is an employee of a company that potentially owes you hundreds of thousands of dollars. That company has an explicit financial interest to protect itself from paying out that money to you. Bear that in mind, no matter how “nice” the insurance adjuster appears or how “fair” any offer he presents seems. An adjuster can use any of your words and turn them against you (See Appendix A).

Damages you can recover in your personal injury and accident case under Alabama law include:

- Compensatory damages such as medical bills and any out of pocket expenses
- Pain and suffering and mental anguish
- Future medical bills

- Lost wages
- Loss of future income
- Punitive damages
- Loss of consortium of a spouse
- Property damage

If you release your medical records to the other driver’s insurance company, you put yourself at a disadvantage for no real reason. Again, refer Goliath to your attorney. Don’t try to handle him by yourself.

**Q:** *How much is a personal injury and accident case worth?*

**A:** There is no formula for making a calculation in advance, and anyone who promises a calculation like that in the abstract should be suspect.

Victims and their families often want a simple, clear numerical answer to the question of how much a case is “worth.” In reality, there’s no general answer to this question that will (or should) satisfy you.

There’s sometimes the possibility that the case may be compromised, and you may get very little or nothing at all. On the other hand, you may have a simple, “not that big a deal” case—a minor neck injury, for instance—that ends up becoming a case in which you recover hundreds of thousands of dollars.

Know this: every accident injury case is different! With that said, there are several factors that come into play when considering a case’s worth. Taken together and in context, these factors can help your attorney develop a ballpark estimate. These include:

- How easy or difficult it will be to prove damages and injuries.
- Liability for what happened—who was at fault? If the liability is crystal clear—and you can prove it—your case value should increase.

- The degree of wantonness or recklessness. If the defendant behaved in a careless fashion, you may be able to build more value. (Note: If you caused or contributed to the accident, your case value might be limited. You might even be precluded from getting a recovery.)
- How you finance the medical treatment. If you paid your medical bills through insurance—and you have a few outstanding bills left over—your case may have less value than if you have massive medical bills still lingering—such as bills for surgery, long hospital stays, extensive rehab, etc. Sometimes, outstanding medical bills, liens, and subrogation can complicate the settlement value by increasing the value of your claim, but decreasing the amount left over for you.
- Whether there are gaps in your treatment. For instance, you may fail to follow up with a physician’s advice or adhere to the steps of your rehab plan.
- The collateral source rule.
- Pre-existing injuries. Say you received medical treatment for a spinal problem prior to your car accident. Goliath may try to make hay out of that fact and use it to deny that the accident hurt you. Experts may be called to determine whether your pain stems from an old injury or whether the accident created a cascade of new health problems. It can be a complicated business. You need accurate records and good experts helping you figure out the appropriate strategies.
- The defenses the defendant can raise such as contributory negligence and assumption of risk as well as potential counterclaims.
- The jurisdiction. Where did the injury occur? Where will you be able to file your lawsuit? What judge will hear your case? What type of jury will potentially hear your case? An experienced Alabama attorney will be able to help you figure out the most favorable venue for your needs. This choice alone can add (or, if you make the wrong choice, subtract) massive value to your case.
- The evidence and witness statements that you can produce to support your claim—or that can be produced to refute your claim. Say you are claiming a car accident seriously injured you. Turns out, your car was barely damaged in the crash. If Goliath can produce evidence of your hardly scratched car, you could have a hard time. On the other hand, if you can produce photos of how mangled the car got during the crash—that it was basically a miracle that you survived—that will work favorably in helping you build value.

There are many, many other factors that could be relevant. Goliath can elude liability in even the most bulletproof-seeming cases. On the other hand, seemingly mundane cases can actually hold great value. The key is not to try to work out the calculations alone. A reputable personal injury lawyer will be able to help you make logical, informed decisions.

**Q:** *Will I have to file a lawsuit for my personal injury and accident case?*

**A:** Particularly where there are serious injuries that require multiple surgeries, a prolonged time out of work and an abundance of lost income and wages, there is potentially a large sum of money at stake. In some cases—specifically in big truck wreck cases, industrial or workplace accidents or

product liability cases—it is usually going to be necessary to file a lawsuit.

Often, a lawsuit is filed in the more serious cases immediately to invoke the discovery and subpoena power of the court and to get the expert witnesses in place in order to conduct a thorough investigation, as well as to preserve and document evidence and witness testimony. The reason this is important is because in the serious cases where there is a lot of money at stake, the insurance company or the corporation is just not going to write a check out of the goodness of their heart.

Again, the liability, injuries and damages have to be demonstrated and proven and any potential defenses have to be cut off in an effort to add value to your case and to maximize recovery. However, in the vast majority of cases, like the average car wreck case, it is not going to be necessary to file a lawsuit when the liability is clear and there is not as much money and injuries or damages involved in the case. This should be addressed in the very first meeting with the right personal injury and accident lawyer's law firm, because in many cases you are going to have a good idea as to what the potential defenses are, where liability stands, and the injuries and damages. Each case is different, but in most situations it is something that is going to need to be addressed in a meeting with your law firm.

**Q:** *Do I really need a lawyer to handle my case?*

**A:** Technically, you can handle your own lawsuit. Does that mean it's a wise thing to do? Almost certainly not. As the old saying goes, "a doctor who treats himself has a fool for a patient." Studies show that clients who represent themselves seriously undercut their leverage. The plaintiffs who use attorneys come out way ahead, even after you subtract out legal fees. Besides all the advantages to hiring an attorney that have already been discussed, another huge advantage of hiring an attorney is that you no longer have the stress of dealing with Goliath. This allows you to focus on the areas of your life that need the most personal attention, like getting well.

Even if you are completely healthy and you have tons of time on your hands to pursue your case, where

would you start? What would you do? Can you find an economist to calculate how much damage you suffered, a rehab expert to determine your long-term loss, or an investigator to help you find evidence to support your version of events? The law is a very specialized area. If your car got totaled in an accident, you would likely avoid trying to "rebuild it yourself." You'd look for a good mechanic or shop to do the job for you. The same basic philosophy should apply to your search for representation.

**Q:** *Does this mean that hiring any lawyer is better than hiring no lawyer?*

**A:** No. The quality of your representation obviously plays an enormous role.

Not all lawyers do the same types of work. Some attorneys handle divorces. Others handle criminal matters, wills, bankruptcy issues or real estate matters. In a lot of ways, attorneys are like doctors. Not every doctor performs surgeries, and much less surgeries on any part of the body. Certain doctors specialize in focused areas. The same is true with lawyers.

Not every attorney is equipped to handle your personal injury case. You should find an attorney who focuses his or her time, energy and talents specifically on representing injured victims. Consider the following points:

- A seasoned lawyer who has handled your type of case before can evaluate any settlement offer or other compromise to determine whether you'll get a fair deal.
- Insurance companies know which lawyers mean business and which lawyers will settle quickly. Unfortunately, there are law firms out there that are the equivalent of sausage factories. They make their money by taking on a huge volume of cases and then settling those cases quickly. This strategy may work out nicely for the law firm—provided that the firm attracts enough business. It also works out nicely for Goliath and his pals. But it majorly shortchanges the injured victim.

- Can all attorneys fund a case against Goliath? Taking the right fight to Goliath can be expensive. You should make sure your lawyer has the resources to fund a war and the support to staff the battle.

**Q:** *Are there good alternatives to retaining a lawyer?*

**A:** In some circumstances, you can probably “go it alone” and wind up okay. But be warned: Goliath is as sneaky as he is stingy.

If the lawyer and law firm can add value to the case, then you need a lawyer and law firm for your personal injury and accident case.

In general, any time a person suffers a serious injury that results in damages, they are going to need the right personal injury and accident lawyer and law firm to handle their case. In such cases, liability, injuries and damages have to be demonstrated and proven and defenses overcome. Further, the insurance company and powerful corporations typically have a team of defense attorneys devoted to minimizing their liability and mounting a defense.

In minor cases—worth much less than \$10,000—you can try to settle the dispute in small claims court. But even in this situation, there could be more to your case than meets the eye.

For instance, say someone rear ends you at a stoplight and messes up your bumper. Maybe he only does \$2,500 worth of damage. It’s annoying, for sure, but certainly not life-changing. So instead of calling a lawyer and getting his or her input, you decide to settle with the guy who hit you and just move on with your life.

Lo and behold, a few weeks after the accident, you develop splitting headaches, a constant cramping in your neck, and numbness and tingling in your extremities. A medical diagnosis reveals that you suffered a concussion in the crash. Now you may have to contend with the potentially gargantuan costs of treating a chronic and traumatic brain injury. What appeared to be a \$2,500 hit might, over your lifetime, cost you

\$250,000 or more in medical bills, rehab, lost wages, and so forth.

The odds are if you get into a fender-bender like that, you will be fine. Odds are, there won’t be an unpleasant surprise like the diagnosis of a concussion two weeks after the fact. But you never know. There is always a non-zero possibility of a Black Swan outcome.

Thus, even after minor events, it’s generally worth your while to connect with an attorney, even if just for peace of mind.

So the short answer here is: Yes, you can go it alone. But do beware that Goliath and his minions are nimble, savvy, and tricky even in smaller cases.

**Q:** *How can I avoid making a mistake regarding my representation?*

**A:** Because we are personal injury lawyers ourselves, you might think we’re trying to lead you to a self-serving conclusion. However, while we are very proud of our experience and services, we’re not the right lawyers for everyone. Our mission here is to educate you so that you feel empowered, not to slyly sell ourselves.

Here are some factors to consider while you research law firms:

Bigger is not necessarily better. Some big firms out there—with impressive facades and credentials—make money by working quickly. A big firm might look impressive, but don’t just go by size and scope.

The cheaper law firms generally are not the best. Think about it. As we’ve discussed at length, filing a lawsuit—or even preparing for legal action—can be incredibly expensive, time-consuming, and complicated if you overturn every rock, dot every “i” and cross every “t.” The cheapest law firms can provide discounts because they simply might not go the extra mile to hire top experts and dig deep to root out potential “Black Swan” and “White Swan” events—stuff that can make or break a case.

Here's another way to think about it: would you ever choose your dentist or doctor based on price alone? Would you want to go to the cheapest dentist in your city? How about the cheapest cardiologist? There could be so much at stake for you—even if your case seems minor right now. Remember, your case may hold significant subtleties. Goliath will be sure to find them.

There are differences among lawyers...huge differences. It's extremely difficult for laypeople—that is, non-attorneys—to cut through the thicket of hype that lawyers create. But slick legal marketing does not make a great law firm. A firm can have the biggest ad in the Yellow Pages, billboards over town, and a thousand “Likes” on Facebook, but still under-deliver service and settle your case for far too little.

To dig deeper—to cut through the noise—you need to look at the whole picture of the firm. Check out the certifications. Read the bios of the lawyers. Check out the awards won, if any. Don't be afraid to ask probing questions, particularly during your initial free consultation. Take your time with your decision, and don't be pressured to rush into action.

Law firms that advertise too many services may not be appropriate. It's okay for attorneys to be diverse. Just find an attorney who has ample experience dealing with your specific type of case. For instance, if you got hurt in a truck accident, find a truck accident lawyer. If you suffered an injury at an industrial workplace, find an attorney who deals specifically with industrial workplace accidents. This sounds like common sense. But you might be surprised at how uncommon the practice of this “common sense” is. Beware the “paradox of choice.” In his landmark book, *The Paradox of Choice*, social psychologist Barry Schwartz convincingly argues that “too much” choice in our lives can negatively impact our psychology, our happiness, and our satisfaction.

This is very counterintuitive information! It goes against what our consumerist culture has taught us: namely, to get happier and happier, you need to buy more and more “stuff” (i.e. more choice leads to better decisions and more happiness). The research shows that this is just not true. At some point, more choice creates more stress. Why? Because the more choices you confront, the more opportunities you have for regret.

Imagine you're trying to figure out where to go for a vacation. Your spouse presents you with two options: a trip down to the beach or a trip out west to see the Grand Canyon. You could turn these choices over in your mind, weigh the pros and cons, and come to a decision. If you go out west, you will miss out on fun-in-the-sun. If you go to Florida, you will miss out on one of nature's true wonders.

Now imagine adding more choices to your pot of vacation choices: a trip to the Cayman Islands, a trip to Tennessee to visit your brother and a trip to Disneyland. Now you've got five choices—each with costs and benefits. Whatever choice you choose, you now must reject four choices, not just one. So now you have four times the regrets. Let's say you ultimately choose the Grand Canyon. If that trip doesn't turn out well, you will mull over all the other choices that you could have made. This leads to dissatisfaction.

The takeaway here is that there is such a thing as doing “too much” research on prospective law firms. There comes a point at which finding out more about your options will actually lead to reduced satisfaction with your choice. One way around this Paradox of Choice problem is to leverage a concept called Parkinson's Law. This is informally known as the law that “work expands to fill the volume of time allotted for it.” Practically speaking, it means that you need to make time-bound decisions in order to make yourself efficient.

Here's what's really interesting about Parkinson's Law: according to some theorists, when you restrict the amount of time you give yourself to make a decision, you can increase the efficiency of the decision making without impacting the quality of that decision. In other words, the decision you make after one

week of researching will be the equivalent in quality to the decision you would reach after two weeks of researching. You save time in your life, with no downside! Powerful idea. Remember, the insurance company has a team of attorneys and experts working against you while you are making this decision.

**Q:** *What happens if I wait too long to file my lawsuit?*

**A:** Short answer: Bad things.

First of all, depending on what happened, who hurt whom, and how long it has been since the event or accident, the statute of limitations for action could expire. This means that, even if you have a bulletproof case, once you cross this “ticking clock” threshold, you run out of legal options to get compensation.

Secondly, relevant material from your case can get lost, destroyed, or forgotten.

**Q:** *When is the most precise, strategic time to act?*

**A:** There is no one-size-fits-all answer here. It depends on the details of your case, the tactical moves that the insurance company makes, and many other factors.

Although each case is different in this regard, an experienced lawyer will know how to time the case. In some cases, you may want to sue immediately to catch Goliath off guard. In other cases, you may want to take your time and do a lot of legal spadework and research before taking action. In yet other cases, it’s worthwhile to change up your timing as you go along. Although your lawyer will advise you, ultimately the decision to act (or not) is yours to make.

We have handled many cases over the years where the liability is clear. In other words, there is no dispute over who is at fault for the wreck. The insurance company accepts liability from the very beginning and the only question is the amount of the damages. In most of these cases, you are dealing with emergency room bills, radiology bills, physician bills, doctor visits, physical therapy, chiropractic treatment, counseling and lost wages.

Most of the time, we are able to gather everything; demonstrate to the insurance company the liability, injuries and damages; and settle without filing a lawsuit in these cases.

However, there are times in those cases when, for whatever reason, the insurance company will not offer the right amount to settle the case until a lawsuit is filed. There are also times when even after that process, they will not offer the right amount and you actually have to take the case to trial. Before making that decision, the facts need to be evaluated and discussed and a decision needs to be made under the advisement of your personal injury and accident lawyer law firm.

**Q:** *The Battleground: Where will my case be held?*

**A:** You may have options. A case’s value can be influenced by the choice you make.

The typical injury lawsuit in Alabama will end up in a county court where the event took place or where the parties involved reside. But of course, there are exceptions. In some cases, your complaint may be filed in federal court under federal jurisdiction. Cases can also be moved from state court to federal court, or vice versa, depending on circumstances.

Jurisdictional issues can get complex, which is another reason why you don’t want to be your own lawyer. An experienced, knowledgeable attorney can help you deal with any jurisdictional issues if and when they arise.

If you have a jury trial, there are certain counties in this state that are historically more willing to award money than others. Some counties are historically more conservative in that regard and seem to be more reluctant to award money. So, if you can, you want to get your case filed in the place that you feel is going to be most favorable to you.

Also, the value of your case can be impacted depending on if it is heard by a judge or jury. The judge is going to make critical decisions about evidentiary rulings and which evidence a jury gets to hear. Often, judges make critical decisions as to whether or not the case will go forward to trial or whether or not the case will be dismissed. If you can get your case filed and heard before a judge

who you think is going to be more favorable, that can certainly make a huge difference. Therefore, your personal injury and accident lawyer and law firm must choose the most favorable venue for your case.

**Q:** *How can insurance coverage impact the value of my personal injury and accident case?*

**A:** It is very important in a personal injury and accident case, especially in a case where there is a serious injury or death, to make sure to identify all of the insurance coverage that is available.

Over the years, we have handled a number of automobile wreck cases where, in our opinion, the other driver did not have enough insurance coverage. We then looked at the underinsured motorist coverage and made a claim. We have settled cases where we obtained the insurance policy limits from the other driver and then turned it over to our client's insurance company, made a demand and ultimately got a successful settlement from the underinsured motorist coverage carried by our client. Alabama has something called "stacking," where you can basically tap into the insurance coverage for multiple vehicles, so we also like to look at that. This is all done in an effort to maximize recovery.

**Q:** *How can having all of the parties involved impact the value of your personal injury and accident case?*

**A:** Not only are we going to want to look at all of the available insurance coverage, we are going to want to make sure that we have all the parties who are responsible to be held liable.

In a case that we filed with a jury demand against a large lumber company, we filed lawsuits against the employer for workers' compensation benefits and against the lumber company for wrongful death related to the inadequate supervision, policies and procedures that either were or were not in place and would have prevented this tragic

result.

## **APPENDIX C**

### **Frequently Asked Questions Involving Workplace Injury Cases**

**Q:** *Who is entitled to workers' compensation?*

**A:** Alabama law strikes a balance between making employers pay for worker injuries and putting limits on the compensation workers can receive. This is known as workers' compensation. You generally do not get to sue your employer the same way you could sue someone else for hurting you. However, you are also not required to prove that your employer was at fault for the accident. Instead, you simply must prove that you were injured in the performance of your work duties.

This can get a little more complicated than it should be, however. There are also a number of specific exceptions when an employee may not be entitled to compensation, such as:

- Employee's willful misconduct
- When it is an intentional and personal act (fights between coworkers based on something that happened outside of work)
- Intentional self-harm
- Employee impaired by drugs or alcohol
- Employee failing to follow safety rules or laws

These are just a short list of the types of disqualifiers that may exist. Of course, you should always talk to an attorney about your specific case to be sure.

**Q:** *When are you entitled to more than workers' compensation?*

**A:** There are times when a third party (someone other than you or your employer) is responsible for a workplace accident. Some examples may include:

- A car accident caused by a negligent driver
- An injury caused by a subcontractor or different contractor company
- A defective device made by another company

When some third party is responsible, you may actually have two separate cases – one against your employer for workers' compensation benefits and one against the at-fault party for negligence.

**Q:** *What compensation may you be entitled to receive?*

**A:** Unlike a typical personal injury case, a workers' compensation case will compensate you based on a set of statutory guidelines that set forth the amount of money you can receive for your injuries. There is no jury, but rather the government agency will review the injuries to determine the statutory amount to award.

There are three calculations that need to be made in order to determine your compensation:

- **Your Average Weekly Wage for the Past 52 Weeks Prior to Injury.** First, you must calculate your average weekly wage based on the last year of employment before your accident or injury. You can receive weekly compensation at a rate of 66.67% of your average weekly earnings for the last year before the accident or injury. However, payments cannot exceed the average maximum wage or fall below the average minimum wage, which are set forth by state law each year. See average weekly wages.

- **Whether Your Injury Is Permanent or Temporary.** Next, you must determine if the injury is permanent or temporary. The difference will affect how long you receive payments.

- **Total or Partial Injury.** Finally, you must determine if your injury is only partially disabling or if it is a total disability that affects your entire body or so significantly impairs you that there is little else you could do for work.

**Q:** *How long can you be compensated?*

**A:** In general, you can receive compensation as follows. Just keep in mind these are subject to change, and the determination may not always be as clear as it seems.

- **Worker death:** Maximum of 500 weeks
- **Permanent / Total Disability:** Indefinite / unlimited payments possible
- **Temporary / Total Disability:** Indefinite / unlimited payments possible
- **Permanent / Partial Disability:** Maximum of 300 weeks
- **Temporary / Partial Disability:** 300 weeks

The amount of compensation a family can receive for the death of a worker will depend on the number of surviving dependents.

**Q:** *How long do you have to file a workplace injury lawsuit?*

**A:** After an industrial accident or other work injury, you have very limited time to take action. In general, the statute of limitations is 2 years from the date of the injury.

More importantly, there are other deadlines that need to be understood. For instance, you are

required to notify your employer of the injury immediately. This should happen as soon as possible. Many employers are clearly made aware of the injury but later claim to have no notice. Therefore, you should put it in writing, yet be careful to stick to just the facts. An attorney can help you with this as well.