

TENNESSEE PUBLIC SAFETY

OFFICER LEGAL LINES

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When I retired from MPD in 1998 I decided to focus my private law practice on representing police officers and their families at a reasonable cost. I've published this newsletter for several years to keep officers informed of their legal rights in various situations. I have decided to resume the newsletter since laws have changed and MPD has so many new officers. Additionally, due to serious manpower shortages, heavy call volume and overtime hours spent driving I am seeing more on duty auto accidents resulting in injuries to officers. Having spent my last three years at MPD as a Major in STIS as well as serving as staff legal counsel for both the Association of City Retired Employees (ACRE) and the Shelby County FOP lodge, I am familiar with the problems that active officers and retirees encounter when involved in a serious accident.

UNISURED MOTORIST COVERAGE

One important fact that you need to know is that your personal uninsured motorist insurance will usually provide you with benefits even if your accident is on duty. Insurance companies do not want you to know that information. The last Tennessee Bar Association seminar reported that approximately 40% of all drivers in Shelby County are uninsured or under insured.

Even though your medical bills are paid by the OJI program you do not get compensation for pain and suffering, overtime wage losses, second job losses or permanent/partial disability problems through OJI. Uninsured motorist coverage can provide these benefits.

I am often asked "How much uninsured motorist coverage should I carry". At a minimum you need one hundred thousand dollars (\$100,000) in uninsured motorist coverage. Uninsured motorist coverage is the cheapest part of your policy and the least profitable for insurance companies. Insurance companies would not provide the coverage if they could avoid doing so but it's required by Tennessee State Law. Never let your insurance agent have you sign a waiver of this insurance.

Do Uninsured Motorist claims cause my insurance rate to go up?

No, if you look at the first page of your policy you will see that Uninsured Motorist Coverage has its own separate premium charge. Because of its importance, Tennessee state law T.C.A. 56-7-1201 (f) prohibits an insurance company from increasing your premiums because of an Uninsured Motorist claim.

BODY SHOPS

Often if you are involved in an off-duty accident the insurance adjuster will give you a copy of their “approved” body shops to do the repairs to your vehicle. They lead you to believe you must use one of their companies to get the coverage for repairs. Most of those body shops use aftermarket parts and cut special deals with the insurance companies. Tennessee State Law prohibits insurance companies from requiring that you use their company. You are free to choose the body shop of your choice.

Another issue with some company body shops is that when a vehicle has suffered “A frame” damage they will say they can fix it by welding or by stretching the frame. It is a lie. A damaged “A frame” will never track properly, and the wiring and air bags will not meet specifications. If the “A frame” is damaged, then the vehicle should be totaled.

A vehicle is considered “totaled” when the cost of repair exceeds the value of the vehicle. In Tennessee the courts use the NADA value to make this determination. If you have it available gap insurance is recommended.

STEPS TO TAKE IF YOU ARE INVOLVED IN AN ACCIDENT

If you are involved in an accident do not give a statement to a private insurance adjuster until you have spoken to an attorney. Of course, if the accident is on the job you must comply with all MPD Policy and Procedure requirements, but you are not obligated to speak to the insurance company of the party that hit you. If there is going to be a Uninsured Motorist claim you must give timely notice to your insurance company and a statement. Take pictures of the vehicle damage and your injuries.

If you need medical attention, choose a reputable provider. Do not select a chiropractor as your primary physician, get a referral if you want chiropractic care.

LEGAL FEES

How are legal fees handled if I need representation?

Most personal injury cases are handled by attorneys on a “contingent fee” basis, usually 1/3 (33%) of any recovery. Some firms charge forty percent (40%) if a lawsuit or appeal has to be filed. For police officers, their family members and other public safety officers, we do our cases on a twenty-five percent (25%) contingent fee basis no matter how complicated the case may become. There are never any upfront cost or fees to police officers. If there is no recovery there is no fee.

CLAIM VALUE

What factors go into determining a settlement or court award?

1. Pain and suffering
2. Medical Bills
3. Lost wages and overtime
4. Permanent disability
5. Incidentals

PAIN AND SUFFERING

Contrary to what people have heard there is no chart, book or schedule to measure pain and suffering in an injury. Medical bills are a part of the equation, but some medical treatment that is diagnostic (X-rays / MRIs) are expensive but don't result in much pain and suffering. Surgery, broken bones, and rehab all result in more recovery for pain and suffering. The duration of treatment is also important.

MEDICAL BILLS

The charges for medical services are recoverable at the full amount listed by the doctor or hospital on their bill. What amount that a health insurance company pays does not matter. This rule (collateral source rule) was just upheld (2017) by the Tennessee Supreme Court in the *Dedmon* case. Your health insurance company has contracts with various hospitals and doctors, so they get a discount.

LOST WAGES

If your accident causes you to have to use sick time, vacation time, etc. you are entitled to recover the full amount of that time. If you regularly work over-time you may have a claim for those lost wages. Also included is time you missed from a second job.

DISABILITY

If you are permanently disabled and must seek a City retirement you are entitled to additional damages.

SUBROGATION

Before you agree to any type personal injury settlement you must know if you owe any subrogation to your health insurance company or other insurer (med pay). If you are injured by another party, and your health insurance has paid your medical bill then that health insurance company is entitled to get their money back if you reach a settlement. Most of these companies will negotiate with us and reduce their claims.

SETTLEMENT VERSUS LEGAL PROCEEDINGS

How do you determine whether a settlement offer is good or if a lawsuit needs to be initiated?

Ultimately the decision whether to file a lawsuit or accept a settlement offer is made by the client. Lawsuits of \$25,000 or less are heard by a judge in Shelby County General Sessions Court. Cases over \$25,000 are heard in Circuit Court usually by a jury. Unfortunately, in Circuit Court it can take 1 to 2 years to get a trial date. This is due to the heavy case load of our Circuit Courts. (They also hear divorce and child custody matters)

Each case is different and must be evaluated on the potential gain that would result from a lawsuit. The biggest expense is usually the hiring of medical and other expert witnesses to get proof that must be obtained prior to trial.

SPECIFIC QUESTIONS

Often an officer just needs some free, quick advice when faced with a potential legal question. If you have a question just email me and I will respond within 24 hours. There is no cost to you. All police officer initial consultations are free whether by e-mail, phone or in person.

I hope this Newsletter is of some help to you and the next signal C brings you home safely.

Website – For more detailed information or issues of concern to you visit my office website www.keenanlawandconsulting.com