

SARASOTA LITIGATOR Journal

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Tell Them (Carefully) Where It Hurts

Independent Medical Examination: Vital Evidence in Personal Injury Cases



Stopped at a red light, you are unaware of the drunk driver's SUV barreling toward your car's rear bumper. A concussing impact erupts with a flash of light, the stink of braised rubber and the gut-wrenching sounds of metal gnawing metal, plastic and glass. Days later, released from the hospital, you realize your recovery

will be an extended, expensive journey. In addition to your injuries, day-to-day living has been turned upside down by the reckless act of another.

In personal injury cases in Florida, plaintiffs are entitled to economic and non-economic damages, including medical expenses, lost wages, loss of earning capacity in the future, disability and disfigurement, mental anguish, pain and suffering, loss of capacity to enjoy life and inconvenience.

"After a jury decides that an injured person should be compensated, the big question is: How much?"

says Sarasota attorney Steven Wittmer. "That often depends on the answer to the question: How badly are you hurt?"

An independent medical examination (IME) illuminates that answer. Or does it?

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CASE REVIEW

Settlement Reached in Wrong-Way Collision Case

On March 8, 2005, Nick Sommer was heading south on SR 55 around 11:00p.m. On this evening, Mr. Sommer had just finished work in Clearwater and was heading home to Bradenton. Neal Franzer was a technician with Cardinal Health who had traveled from Jacksonville to Tampa to assist Cardinal in upgrading hospital software at Palms of Pasadena Hospital. After completing his work in Tampa, Mr. Franzer was traveling to his place of lodging in Bradenton. Along the way Mr. Franzer stopped to eat dinner and consumed several alcoholic

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Independent Medical Examination

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“We counsel our clients on the IME, so they know what to expect and how they should behave before, during and after the examination,” Wittmer says. “It is a crucial component in building a personal injury case and maximizing the potential settlement.”

Whether insurance companies truly seek “independent” opinions is debatable. Florida law requires that the physician produce a report of his or her findings.

“Most physicians retained by insurance companies understand where their bread is buttered,” Wittmer says. Accordingly, reports frequently arrive at the same conclusions of “minor injury” or “no injury” from an accident.

One prominent local neurosurgeon was so entrenched as an “expert” defense witness that he was able to make millions of dollars as a “hired gun.” This same expert did not have hospital privileges for more than 10 years and did not perform surgeries; had no day-to-day practice; had no malpractice insurance and, by his own admission testified on a weekly basis for a decade almost exclusively (95 percent) for the insurance industry.

Be On Guard!

Depending on the type of claim you have brought, the defendant and/or insurer has a right to request that you be examined by a physician of their choice or one appointed by the court. More than one IME by physicians of different specialties may be required. For example, if you have orthopedic injuries and are treating with an orthopedic surgeon, the defense has the right to have you examined by another orthopedic surgeon.

- You are suing a driver and his or her insurer for damages, so assume that you have entered into an adversarial relationship, Wittmer explains. The insurance company wants to minimize any potential payout to you. One way to do that is for the insurance company to hire a physician who will minimize your injuries or testify that the accident did not cause your injuries.
- “The physician may be friendly, cordial and disarming,” Wittmer says, “but his report will be formal and is intended to minimize your condition and disability. Cooperate, but remember that it is his or her job to determine how little you are hurt.”
- Answer those questions on the IME form that you can before the examination. Write your physical complaints that are in any

way related to the accident and how these complaints and injuries affect your daily activities.

Waiting at the Physician’s Office

Be on time, but expect to wait. Bring a book to read to pass the time. If you must wait, do not become angry or impatient, as the physician will be assessing you and your attitude the moment you walk in his or her office.

- If you missed the appointment without notifying or rescheduling in advance, you may be required to pay for the missed appointment or the court could dismiss your claim outright.
- While waiting in the reception area, do not speak with anyone about your case, your injuries, or prior medical treatment. It is not unheard of for defense attorneys to place investigators in waiting rooms to observe people and to engage them in conversation.

The IME form is the only document that you should take to the examination. You may be asked to bring any X-rays or diagnostic images that have been taken of you. Do not bring any notes, documents or other written material pertaining to your case or medical condition. Do not give the IME form to the physician or staff, and do not allow them to copy it.

During the Examination

Do not fill out any forms at the physician’s office. The office staff can ask for basic information such as name, address, date of birth, etc. Do not volunteer any information. Do not, under any circumstances, be antagonistic or argumentative with the physician or staff.

- The physician will observe your every movement as you walk, bend over, sit down, take off your jacket or shirt, etc. She or he may distract you, pretending to be interested in the movement of one part of your body while observing the movement of another part of your body. Some physicians are known to have installed two-way mirrors in their offices to observe people without their knowledge.
- Be careful and honest in every motion or movement you undertake. Do not become afraid or paranoid, but alert and cooperative.
- “If you’re not sure or are uncomfortable with any aspect of the examination or what you are asked to do, say no and call our office,” Wittmer says.
- The physician is entitled to know generally how you were hurt. If you were in an automobile case and you are asked how the accident happened: “My car was stopped at a red light and it was hit in the back end,” or, “I was a passenger in a car that turned over into a ditch.” Do not provide details about distance, time, speed, or other factors relating to the collision. “That’s all in the police accident report” would be a good response.

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Independent Medical Examination

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Fully Describe Your Complaints

The physician will ask you about your complaints and it is important that you tell the physician about each physical and emotional complaint that you have had since the accident. Do not make any judgments regarding what you believe is related or not related to the accident.

•“Fully describe your legitimate complaints,” Wittmer says, “and do not be afraid to sound like a complainer.”

• Tell the physician how pain, discomfort, disability or dysfunction affects your daily life. If, as a result of the accident, you have been unable to work or have been limited in the ability to do your work, give this information. If you are unable to do household chores, have recreational activities that had to be limited or terminated, or have difficulty sleeping, etc., all should be provided to the physician and may be important in her or his evaluation.

“It is important that the physician understand the problems you have had as a result of the accident, how they are presently manifesting themselves and are affecting you, and to be able to assess if these conditions or problems will continue,” Wittmer says.

SIGMA FUNDING, LLC AN INNOVATIVE LIQUIDITY SOURCE

Sigma Funding specializes in Litigation and Healthcare Funding for plaintiffs in personal injury lawsuits. Sigma is an innovator in the field of non-recourse financing.

Litigation Funding Division: Clients utilize our program to access capital until their pending lawsuit settles. Sigma provides necessary capital to plaintiffs, which allows their attorney the time to negotiate a larger settlement on their behalf.

Healthcare Division: Sigma pays medical facilities and medical providers on behalf of the accident victim. Sigma will work with any medical provider or facility to assist plaintiffs in getting the medical care and testing they need.

CASES THAT QUALIFY:

Motor Vehicle Accidents

Personal Injury Premises

Personal Injury Assault

Personal Injury Due to Negligence

Sigma's non-recourse funding programs enhance cash flow and returns for attorneys, medical providers and plaintiffs involved in personal injury lawsuits. Since all of our funding programs are non-recourse, we only get paid back if you settle your claim or win a judgment in your lawsuit.

Don't settle for less than you deserve, or wait for medical treatment: Call Sigma Funding today! Toll Free: 877-324-1568.



Settlement Reached

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drinks. At the time of the accident Mr. Franzer had a blood alcohol level of nearly twice the legal limit. Mr. Franzer was driving in the wrong direction on SR 55 and hit Mr. Sommer's vehicle head-on. Mr. Sommer fractured several ribs and separated his shoulder in the accident. Fortunately, Mr. Sommer survived the accident and was able to recover from his injuries, but lost his job as a machinist and was unable to obtain employment until almost 2 years after the accident.

Mr. Franzer was insured with Progressive with liability limits of \$100,000. Cardinal Health denied that Mr. Franzer was working at the time of the accident. The offer to resolve the damages of Mr. and Mrs. Sommer without filing a lawsuit was denied by the Defendants and their Insurance companies. Ultimately, we were able to obtain a settlement of \$575,000 on behalf of Mr. and Mrs. Sommer.

Now Accepting Case Referrals

The law firm of Wittmer & Linehan is accepting referrals of cases in the areas of personal injury, wrongful death, insurance disputes, workers compensation, and trust and estate litigation. We promise to work hard to earn and preserve your trust in referring cases to our firm, providing prompt, diligent and aggressive representation.

Here are 4 good reasons why you can be confident when referring cases to our firm:

1. We are a local firm. Our practice and our families are part of the fabric of the Sarasota community. Locally referred clients will receive the most attentive, personalized service.
2. Our firm understands insurance coverage issues. We can make sure all available insurance coverages are located.
3. We are passionate about obtaining the maximum recovery for our clients, and will try the case to a jury if necessary to obtain the best results.
4. Recoveries in excess of available insurance coverage generate greater recoveries for our clients and larger referral fees to referring attorneys.

The hiring of an attorney is an important decision that should not be based solely on advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.



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