

PROTECT & DEFEND



*Proven Strategies From
America's Leading Attorneys
To Help You*

PROTECT & DEFEND

YOUR BUSINESS, FAMILY AND WEALTH

FEATURING

Gary Martin Hays

& Leading Attorneys from Around the Country



PROTECT
& DEFEND

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CHAPTER 13

3 Major Secrets the Insurance Company Doesn't Want You to Know About Your Personal Injury Claim:

A Former Insurance Company Lawyer Reveals All

By Gary Martin Hays

“Speak up for those who cannot speak up for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy.” ~ Proverbs 31: 8, 9

When a client enters my law firm, they see this quote from the Book of Proverbs in the Old Testament mounted by the front door. It's a mission statement for my law firm. As attorneys, it's a privilege to help our clients “right” their “wrongs,” and not something we take lightly.

There's an old legal maxim: “Everyone has a right to an attorney.”

At my firm, we live by this variation:

“Everyone has a right to an attorney.
However, they do not have the right
to have MY LAW FIRM as their attorneys.”

We must believe in our clients before we agree to accept the case. If we don't think they have a valid claim or are pursuing their case for the wrong reasons, we politely decline to represent them.

This wasn't always the case in my professional career. When I first started practicing law, I worked for a law firm that represented insurance companies. It was our job to defend people that caused automobile wrecks. We couldn't decline to represent someone unless there was a conflict of interest. Even if the defendant was driving drunk, plowed into a school bus full of kids, and had no remorse, we couldn't refuse to defend the case.

This experience working for insurance companies wasn't all bad or a waste of time, as I learned many valuable lessons. With more than 23 years of experience, I've learned a lot about personal injury claims. I want to give you a peek behind the curtain and share three major secrets the insurance companies don't want you to know.

SECRET #1: YOU'LL GET MORE MONEY FOR YOUR INJURY CLAIMS IF YOU HIRE AN ATTORNEY

Insurance adjusters are trained to act like your long-lost friend. They'll say, “You don't need an attorney! We're here to help. An attorney won't be able to get you more money.” Please don't fall for this trick if you or a family member has been hurt in a wreck!

In 1999, a Consumer Panel Survey of Auto Accident Victims by the Insurance Research Council (IRC) tells a much different story insurers don't want you to know:

- Injured victims receive an average of *40 percent more money* just by consulting a lawyer to learn their rights.
- Injured victims receive an average of *three and a half*

times more money before legal fees when they hire an attorney to defend their rights!

(Stats from 1999 IRC report "Paying for Auto Injuries")

The insurance company won't explain your *rights* to you. The insurer is also not going to explain their *responsibilities* to you. You need an attorney to analyze all potential causes of actions, as well as to help you understand who may be responsible for paying for your claims.

SECRET #2: INSURANCE COMPANIES PRACTICE THE 3 D'S WHEN HANDLING CLAIMS

What are the three D's?

- Delay
- Deny
- Defend

There are a few ways insurance companies make money. One is by charging premiums to keep the insurance in force. Another is by taking this money and investing it. I don't criticize these actions; insurers have every right to make money. But there's another way that insurers make money that *is* offensive: When an insurer treats the claims unit as a "profit center," this is wrong. Consider this example: You run a red light and cause a wreck, injuring the other driver. He looks to you to take care of his medical bills, lost wages, and pain and suffering. Your insurance company handles the calls and settles the claims against you. The negotiations at the insurance company are by the claims department. This department sets aside money, called "reserves," to settle claims.

How does the insurer turn their claims department into a profit center? By paying out less than what should be paid on the claim. This is done in three different ways:

1. *Delay*: The insurance company has the upper hand because they have the money. The injured victim needs

money for medical bills or for lost wages. The paychecks stop coming, but the bills do not. When injured victims are bent over the financial barrel, the insurer knows they can get most people to accept less by delaying the claim.

2. *Deny*: If you submit a claim, the adjuster will allege:

- You're faking your injuries.
- You're exaggerating your injuries.
- If you're hurt, it's because you were injured *before* the wreck.
- If you were really hurt, you should have chosen a "real" doctor.
- You overtreated for your injuries.
- If you've lost wages, it wasn't because of your injuries.

The adjuster never admits that your injuries or claims are due to the wreck. You're just a money-grubbing person seeking "life's lottery" from the insurer.

3. *Defend*: If you don't like the insurer's offer, or if the insurer denies your claim, you have three choices:

- drop your claim;
- accept the low offer; or
- file a lawsuit.

If you file a lawsuit, be prepared for the insurer to deny your claims and attack you. Unless it's a case of crystal-clear liability, the insurer will blame you for the wreck or apportion some fault to you. They'll use the courts to delay the claim. Further, be prepared to spend time and money with the lawsuit, and having your entire medical and work history scrutinized by the insurer's lawyers.

On February 7, 2007, CNN's Anderson Cooper wrote on his 360 blog "Insurance Companies Fight Paying Billions in Claims."

He asks the reader to assume they're driving down the road when a truck runs into the side of your car, denting the passenger door. You're hurt, but you don't know the severity of your injuries. Your doctor diagnoses soft tissue injuries and whiplash, and sends you to therapy. You miss work, and end up with \$15,000 in medical expenses and \$10,000 in lost wages. You send a demand to the insurer and ask them to cover just your out-of-pocket expenses of \$25,000. You expect the insurance company to do the right thing. But what do you do when the insurer only offers you \$15,000 and says "take it or leave it"?

Cooper and his producer, Kathleen Johnston, investigated for 18 months how insurance companies were handling these "fender bender" claims. In particular, they researched how Allstate Insurance Company handled the claim of a woman from New Mexico. She had \$25,000 in medical bills and lost wages, but Allstate only offered \$15,000. Cooper wrote that "Martinez's case represents what 10 of the top 12 auto insurance companies are doing to save money. And if you're in a minor impact crash and get hurt, former insurance industry insiders say insurance companies will most likely try doing the same to you: Delay handling your claim, deny you were hurt, and defend their decision in drawn-out court battles. It's the three D's: delay, deny and defend." He added that this " 'is a strategy adopted by several major auto insurance companies over the past 10 years,' a lot of lawyers, former insurance company insiders, and others tell CNN."

These insurers are betting most people won't hire a lawyer and will accept the quick settlement offer to go away. Unfortunately, a lot of people do just that. What happens if you take that offer to settle without consulting an attorney? Once you sign that check and release, your claim is over. Some of the most difficult conversations I have with potential clients are when I have to explain to them there's nothing I can do because they waived all claims when they accepted the insurer's check. The adjuster convinced them they were just "sore" from the wreck and most people are fine in a couple of days. "There's no need to

see a doctor or hire a lawyer as you will be wasting money,” the adjuster told them. “I see this all the time. You’ll be fine,” she says in a reassuring tone. But the strain of the neck was really a herniated disk that needs surgical repair. The medical expenses alone could be over \$50,000. The \$500 settlement check that person accepted won’t even cover the medications the person will need over the next six months. Unfortunately, there’s nothing we can do to set aside the settlement. This happens over and over again—innocent people being taken advantage of by the insurance industry.

So how do you protect yourself?

**SECRET #3: DON’T SIGN ANY PAPERS OR
TALK TO THE INSURANCE COMPANY BEFORE
CONSULTING AN ATTORNEY**

Here’s a quick list of reasons why:

- You could be signing a “Release of *all* claims” without realizing it! The adjuster can tell you they need you to sign a medical release to get copies of your bills and records, but it could also have language on the form that settles your claim. This could be considered a settlement of all claims because you’re responsible for reading and understanding anything you sign!
- Another trick is to give you a release that will settle your property damage repairs. You want your car back because you’re tired of driving the rental vehicle. “Just sign this release, and I’ll have the repair facility release your vehicle. I’ll throw in an extra \$200 for your hassle.” You think the adjuster is being very nice, so you sign the form. But beware, even some property damage releases contain language that could jeopardize other claims.
- The adjuster can ask you to tell her about all injuries in a recorded statement. You mention your neck because it hurts. You also mention your left arm. However, you don’t say anything about your lower back because you as-

sume it will quickly improve. Days go by and your back really starts to hurt. You experience numbness shooting down your leg. You seek treatment and find out you have a herniated disk. The doctor tells you that you may need surgery. What happens when you tell the insurer about your herniated disk? They'll replay the recorded statement that doesn't mention the lower back so they *deny* that part of your injury claim. You weren't trying to mislead anyone, or present a fraudulent claim. You didn't know the severity of your injury when you gave the recorded interview. Imagine how it would sound in front of a jury when the insurer's lawyer plays the recording made after the wreck. "I am doing ok. Just hurt my neck and arm." This could be a significant blow to your case!

- Never sign a blanket medical authorization that allows the insurer to get any medical records they want from any medical provider you've ever seen. Even if it is your *own* insurance company, you should limit their ability to collect medical records from medical providers you treated with just for the accident.

If you or a family member has been hurt in a wreck, please realize this important fact about the insurance company: The insurance adjuster that represents the person at fault for your wreck is out to save the insurance company money, *not* to give you the compensation you deserve.

HOW DO I AVOID BEING HURT FOR A SECOND TIME AFTER MY WRECK?

As a former insurance defense lawyer, I highly recommend discussing your case with an attorney *before* you talk to the insurer. You have nothing to lose by calling an attorney, but think of all you can lose if you don't!



About Gary

Gary Martin Hays is not only a successful lawyer but a nationally recognized safety advocate who educates families and children on issues ranging from bullying to internet safety to abduction prevention. He currently serves on the board of directors of the Elizabeth Smart Foundation. Gary has been seen on countless television stations, including ABC, CBS, NBC and FOX affiliates. He has appeared on more than 110 radio stations, including the Georgia News Network, discussing legal topics and providing safety tips to families. He hosts “Georgia Behind the Scenes” on the CW Atlanta TV Network and has been quoted in *USA Today*, the *Wall Street Journal*, and featured on more than 250 online sites, including Morningstar.com, CBS News’ MoneyWatch.com, the Boston Globe, the Miami Herald, and The New York Daily News.

He’s also co-author of the bestselling books *Trendsetters: The World’s Leading Experts Reveal Top Trends to Help You Achieve Health, Wealth and Success*, *Champions: Knockout Strategies for Health, Wealth and Success*, and *Sold: The World’s Leading Real Estate Experts Reveal the Secrets to Selling Your Home for Top Dollar In Record Time*.

Gary graduated from Emory University in 1986 with a B.A. degree in Political Science and a minor in Afro-American and African Studies. In 1989, he received his law degree from the Walter F. George School of Law of Mercer University in Macon, Georgia. His legal accomplishments include being a member of the prestigious Multi Million Dollar Advocate’s Forum, a society limited to attorneys who have received a settlement or verdict of at least \$2 million. He has been recognized in *Atlanta Magazine* as one of Georgia’s top workers’ compensation lawyers, as one of the Top 100 Trial Lawyers in Georgia by the American Trial Lawyers Association, and by Lawdragon as one of the leading Plaintiffs’ Lawyers in America. His firm specializes in personal injury, wrongful death, workers’ compensation and pharmaceutical claims. Since 1993, his firm has helped more than 27,000 victims and their families recover more than \$235 million.

In 2008, Gary started the non-profit organization Keep Georgia Safe, with the mission to provide safety education and crime prevention training in Geor-

gia. The organization has trained more than 80 state and local law enforcement officers in CART (Child Abduction Response Teams) so first responders will know what to do in the event a child is abducted in Georgia. Gary has completed Child Abduction Response Team training with the National Amber Alert program through the U.S. Department of Justice. He's a certified instructor in the radKIDS curriculum. His law firm has given away 1,000 bicycle helmets and 14 college scholarships.

To learn more about Gary Martin Hays, visit www.GaryMartinHays.com. To find out more about Keep Georgia Safe, please visit www.KeepGeorgiaSafe.org or call (770) 934-8000.

