

CASE SELECTION: What Should You Really Be Looking For?
New Jersey Association for Justice Boardwalk Seminar
April, 28, 2017

Presented by: Heidi L. Wickstrom, Esq.
Pillersdorf Law Firm
225 Broadway, Suite 1000
New York, New York 10007
Phone: (212) 406-4848
Fax: (212) 406-5884
hwickstrom@pillersdorf.com
www.pillersdorflawfirm.com

INTRODUCTION

Case selection: simple and easy, right? Wrong! In reality, case selection can make or break your firm's business, and engaging in a thorough review when the case initially comes in to your office can save you months, or even years, of headaches and heartbreak down the road. Unfortunately, there is no handbook on how to pick the right cases, and then how to properly investigate them before committing to representing the client. However, over time, and after learning some lessons the hard way, my office has worked to synthesize some important issues you should consider when evaluating a new case. Hopefully this information will be helpful as you consider new cases and clients.

EARLY CASE EVALUATION IS CRUCIAL!

Evaluating your case is key, and the earlier the better. Whether a case comes in as a direct case, referred by another lawyer, or via the substitution of prior counsel, immediate review of the file and meeting with the client is critical.

In my office, when we get a new case or a referral from an attorney of record, we focus on four main themes: **COVERAGE, INJURY VALUE, LIABILITY, and CLIENT FACTORS**. If a potential case misses on one of the four factors, it can often be grounds for rejection; if it misses on two of the four factors, it most definitely should not be accepted. To make life a bit easier, I've shared my office's case evaluation form (attached), which assigns scores to the factors you should consider when accepting a case. Under each of the four factors, there are additional inquiries to make that impact the final score given by the attorney evaluating the case:

1. COVERAGE

In a perfect world, it wouldn't matter how much coverage was available when a potential client approached you about a case. In this fictitious utopia, we lawyers could take any case we wanted, regardless of the financial upside or downside. In our harsh reality, however, coverage is a hugely important consideration that needs to be explored as soon as possible during or shortly after meeting with a new client. Every firm has a different business model so the actual "deal breaker" coverage numbers are all relative; yet whether your firm's business model permits taking numerous 25k policy auto cases, or you only take six and seven figure labor law cases, it's important to know what you're working with as soon as you can, and to make sure the available coverage is enough to satisfy the client, your disbursements, and your legal fees.

Most clients don't know anything about a potential defendant's insurance coverage, but asking some early questions and doing preliminary research can shed light on the financial picture sooner rather than later. For example, in a motor vehicle case, if you have the police report, you can immediately find the insurance code and call the adjuster to ask about bodily injury coverage. Similarly, you must find out if your client has insurance in the home that could potentially supplement a minimum policy held by defendant. In a labor law or construction case, you must put the defendants on notice as soon as humanly possible to avoid any future problems with insurance disclaimers among the contractors and property owner. In a premises case, you can check the property records, tax rolls, and Westlaw or Lexis Nexis and find out the mortgage information, value of the property, and ownership information, which could help determine if they are properly insured, and/or if the building is worth anything.

2. INJURY VALUE

Also crucial when evaluating a potential case is the value and severity of the injuries suffered by plaintiff. If at all possible, it is important to obtain medical records and reports as early as possible. Other factors, such as the age and physical condition of the plaintiff; his or her line of work and potential lost earnings; where the case will be venued; and visceral impact of the injuries must be considered to adequately evaluate the value of the injuries and subsequent limitations faced by the plaintiff.

3. LIABILITY

You can have virtually unlimited insurance coverage and horrific injuries, but if you can't come up with a good theory of liability to explain the happening of the accident, and why

defendant(s) are negligent, you will be spinning your wheels and wasting time and money. This is why liability issues must be investigated immediately upon meeting with the potential client. For example, will the plaintiff likely be facing significant comparative fault? Can proximate cause be established? In a premises case, is there adequate notice? Is the law on your side? Will you be looking at an appeal down the road? The earlier these questions are asked, the better. No lawyer wants to face a summary judgment motion years after taking a case, and then realize that he or she cannot causally link horrific injuries to the defendant's negligence.

4. CLIENT FACTORS

We have all dealt with clients we loved and clients who maybe weren't as pleasant. Obviously, we would prefer more of the former but that's not the way our world works. When deciding to take a case, the likeability factor of the client is a significant consideration. A skilled trial lawyer can often rehabilitate a damaged plaintiff, but if the lawyer doesn't know about the client's issues early in the progression of the case, opportunities to neutralize defendant's avenues of attack down the road can be missed. When evaluating a client, my office considers some of the following factors: past criminal record; prior accidents and/or claims; liens; other family members who might be deposed or called to trial; potential involvement of surrogate's court/necessity of guardianship or compromise proceedings; and, crucially in today's world, the social media presence. A good defense attorney will do her homework and if you haven't done yours even earlier, there can be major problems by the time depositions roll around, and certainly at the time of trial. Ask questions of the client; then ask even MORE questions. Invite them to show you their Facebook, Twitter, Instagram, Snapchat, Tumblr, and LinkedIn when they're in your office at the initial meeting. Google them. If you have Westlaw or Lexis Nexis, do a People Search. While we hope that our potential clients will be honest and forthcoming, it's better to be safe than sorry; and it's even better to learn about any major client issues before you accept the case, or shortly thereafter.

After we explore the four main elements of a potential new case, it's also important to consider what my office calls **WILD CARDS**. For instance, was the case referred by a family member or a friend? Will the case generate good publicity for the firm? Is it an opportunity for an easy or quick settlement? Is the defendant unpopular, or likely to make your client seem sympathetic and relatable? If the answer to any of these questions is yes, you can award bonus points to your case evaluation.

Some attorneys find it useful to have uniform case intake documents. My office has a case write-up kit that we try to use when meeting with a potential new client; I've attached a copy of our motor vehicle case write-up form as an example. It can be used by a lawyer or a staff member who may take a phone call about a potential case, and covers some of the main topics that need to be explored when considering a new motor vehicle action. It doesn't have all the questions that need to be asked but it does cover the main inquiries to get the ball rolling, and will prove useful when starting a preliminary investigation.

REMEMBER THESE TEN CASE SELECTION TIPS:

In addition to the four main themes to review when considering a new case, don't forget about these ten case selection tips that can help make life easier down the road:

- 1. Get input from your staff and trusted friends:** Hopefully we all have wonderful employees who can offer opinions about potential new cases. In my office, we try to have a meeting once every week or two and we review potential new cases with the entire legal and paralegal staff. Paralegals have a unique point of view and can provide invaluable feedback--sometimes highlighting things that may have slipped your mind when focusing on liability issues and legal roadblocks. In the same vein, non-lawyer friends and family members see things in a different light; don't overlook input from these people. They could be your potential jurors one day.
- 2. Really listen to what the client is saying:** When your client is revealing problems, don't overlook them. Similarly, if your client seems evasive or nervous, don't ignore it. Your client often doesn't know what you need to know. If you get a feeling you're missing something or want them to elaborate, listen carefully to them and ask questions to get as much information as you can, as early as you can.
- 3. Know the source of your case and keep them informed regarding the case status:** If your case was referred by a prior client, thank them with a letter. If your case was referred by another lawyer, make sure you acknowledge their referral with a letter and fee agreement. If you decide not to take the case, let the referring counsel know as soon as possible. Similarly, if you substitute another firm, work out as much as you can regarding exchange of the file and fees as early as possible and make sure you have been apprised of all prior counsel who may have a stake in the final legal fee.

4. **Avoid the problem client:** I can't stress this enough. We all have them. We will all continue to find them moving forward. But if at all possible, if you can avoid a problem client, do it. I can trace most of my firm's headaches and issues to a problem client, and some of the hassle likely could have been avoided if we had been more careful in the case selection process. If you have a bad feeling about a client, and you feel like he or she is not telling you the truth, you should probably trust your instincts.

5. **Do not get involved in cases you know you really can't handle:** Much like the problem client, I'm guessing most of us have at one point or another felt overwhelmed by a case, or concerned that we have bit off more than we can chew. An easy way to avoid that is to learn as much as you can about the case as early as possible, so you're not kicking yourself two years down the road, when you may be facing a no-win situation, coupled with thousands of dollars in disbursements. If you think you can't handle a case, refer it out to a firm that can, or reject the case early enough so the client can explore other options.

6. **Keep in contact with your client:** It is nice to send the client an email after meeting them, followed by a letter memorializing your consultation--whether you take the case or you reject it. Clients love to hear from their lawyers. Keep them in the loop, especially if you have taken a case "subject to investigation", and don't forget to let them know the time frames involved with a thorough investigation.

7. **Don't over-promise; be ready to go the distance if necessary:** As nice as it is to achieve a quick and lucrative result for your client, it's not always possible to make that happen and life is much more difficult if you make promises to the client that you cannot keep. Clients often want to know how long a case will take and how much money they might get when everything is said and done. Try to avoid making any promises with respect to these topics, and remind them before you even take the case that results are *never* guaranteed and there is a chance they might not see a settlement and might have to spend years on litigation to then go to trial.

8. **Make sure your client's witnesses, medical providers, and employer are cooperative:** If your potential new client knows of witnesses to his or her accident, get them on board early and make sure they'll stick around, or will at least provide a statement you can use as the case progresses. If you think your client's family members might be called to trial, meet them early. It also never hurts to reach out to the client's treating doctor and see if they'll chat with you about the injuries and treatment. Additionally, if the potential client is employed and you

can get a hold of the employer or even the work records before leaping into the case, you can get an accurate picture of what your injury value and damages might be if the case moves forward.

9. Investigate early to avoid surprises: I may sound like a broken record, but it's rare to hear an attorney say they regretted asking questions and doing research. Most of the time, it pays to know what you're getting into as early as you can.

10. Be aware of the image your firm presents: A good reputation must be earned and no attorney wants to be associated with shady cases or questionable clients, if he or she can help it. If you think a potential case might not reflect positively on your firm's reputation, or you feel that the potential client could cause problems for the office, just say no and move on.

FINALLY...

Don't lose sight of why you became a plaintiff's lawyer in the first place: to help people who generally are not able to help themselves. It's wonderful to be able to accept a case and know you really can make a positive impact on a client's life. Keeping that in mind, also remember that you usually cannot turn a bad case into a home run. Practicing thorough case selection as early as possible should help prevent the "oh no!" moments down the road, and will save you, and the potential client, time and hassle. Good luck!

CASE EVALUATOR

CASE NAME _____
FILE NUMBER _____
DATE OF CONSULT _____

COVERAGE (30) 30(3M+/unlimited) 25(1.25M-3M) 20(1M) 15(250k-500k) 10(100k) 5(50k) 5(25k) 0(no coverage/disclaimed)
PTS _____

DIRECT _____ Notes: _____
If Referral: _____
STANDARD 1/3 _____
SPECIAL 1/2 _____
TRIAL ONLY 2/3 _____

INJURY VALUE (25) 25 20 15 10 5 **PTS** _____
LOST EARNINGS _____ Notes: _____
AGE _____
JURISDICTION _____
HORROR FACTOR _____

LIABILITY (25) 25 20 15 10 5 **PTS** _____
CASE DIFFICULTY _____ Notes: _____
CONTRIBUTORY NEG. _____
CAUSAL RELATIONSHIP _____
PRIOR CLAIMS/CONDITIONS _____
CHANCE FOR APPEAL _____
STATUTE ISSUES _____

CLIENT FACTOR (20) 20 15 10 5 0 **PTS** _____
SURROGATE/COMPROMISE NEEDED _____ Notes: _____
CRIMINAL RECORD _____
LIKABILITY _____
PRIOR ACCIDENTS/CLAIMS _____
FAMILY MEMBERS/SUPPORT _____
LIENS _____
SOCIAL MEDIA PRESENCE _____

WILD CARDS BONUS POINTS (+2/factor) **PTS** _____
FAVOR TO FRIEND OR FAMILY _____ Notes: _____
PUBLICITY _____
EASY/QUICK SETTLE _____
UNPOPULAR DEFENDANT _____

TOTAL PTS: _____

NOTES:

ACCEPT/REJECT: _____
DATE _____
ATTORNEY _____

6 MONTH REVIEW _____
DATE _____
ATTORNEY _____

NEW CASE WRITEUP KIT - MVA

Interviewer: _____ Date: _____ TYPE OF CASE: _____
Referred By: _____

CLIENT:

LAST: _____ FIRST: _____ M: _____ Marital Status _____
D.O.B: _____ SSN: _____ Spouse/Guardian _____
HOME PHONE: _____ WORK PHONE: _____
ADDRESS: LINE 1: _____
LINE 2: _____
ALT. CONTACT NAME: _____ REL: _____
ALT. ADDRESS: _____

PEDIGREE:

PLTF. SPOUSE/GUARDIAN _____ DOB: _____ SSN: _____
CHILDREN: _____ DOB: _____
CHILDREN: _____ DOB: _____

HOUSEHOLD INSURANCE/SUM COVERAGE

POLICYHOLDER: _____ POLICY NO.: _____

OCCUPATION:

EMPLOYER: _____
ADDRESS: _____
POSITION: _____ SALARY _____ TIME STARTED _____
NUMBER OF HRS. WORK PER DAY: _____ NUMBER OF DAYS WORK PER WEEK _____
SUPERVISOR: _____ PHONE NO.: _____
TIME OFF FROM WORK: _____
TIME RETURNED TO WORK: _____ LIGHT DUTY _____
TIME RESTRICTED TO BED _____ RESTRICTED TO HOME _____
EMPLOYER DISABILITY CARRIER AND ADDRESS _____

WCB CARRIER AND ADDRESS _____

EDUCATION:

SCHOOL: _____ YEARS: _____
STUDIES: _____

ACCIDENT DESCRIPTION:

DATE OF ACCIDENT: _____ DAY _____ TIME _____ WEATHER _____

TYPE OF ACCIDENT: _____ PLTF. POSITION _____

DESCRIPTION: _____

DIAGRAM OF SCENE

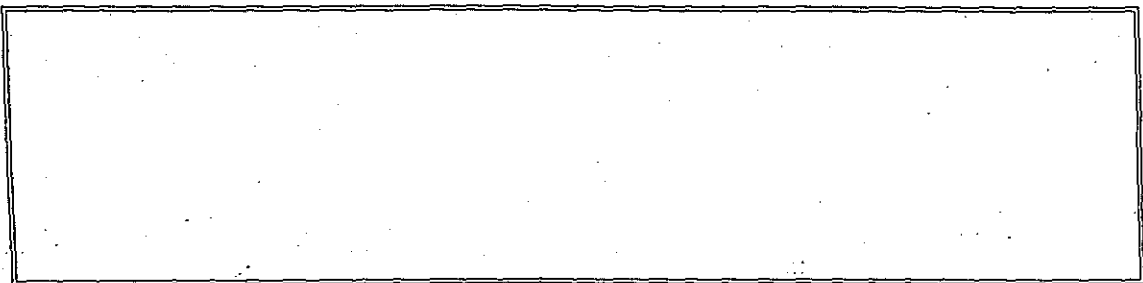
LOCATION _____

Plaintiff's Direction _____

Defendant's Direction _____

Plaintiff's Going To _____

Police Present _____ Precinct _____ Aided No. _____



WITNESSES TO THE OCCURRENCE:

NAME: _____

ADDR: _____

PHONE NUMBER _____

NAME: _____

ADDR: _____

PHONE NUMBER: _____

DEFENDANT'S VEHICLE INFORMATION

DRIVER OF VEHICLE #1/HOST VEHICLE:

LAST: _____ FIRST: _____ M: _____

ADDR: _____

OWNER OF VEHICLE #1/HOST VEHICLE:

LAST: _____ FIRST: _____ M: _____

ADDR: _____

AUTO DESCRIPTION:

MAKE: _____ MODEL: _____ YR: _____ PLT#: _____

INS. CO: _____

POLICYHOLDER: _____

POLICY # _____

DRIVER OF VEHICLE #2:

LAST: _____ FIRST: _____ M: _____

ADDR: _____

OWNER OF VEHICLE #2:

LAST: _____ FIRST: _____ M: _____

ADDR: _____

AUTO DESCRIPTION:

MAKE: _____ MODEL: _____ YR: _____ PLATE#: _____

INS. CO: _____

POLICYHOLDER: _____ POLICY #: _____

MEDICAL CARE:

INJURIES SUSTAINED _____

EMERGENCY CARE AT SCENE _____

AMBULANCE _____ IF NO AMBULANCE, TRANS TO: _____

E/R CARE: HOSPITAL _____ DATE _____

ADDRESS _____ TIME ENTERED _____

TIME DISCHARGED _____

COMPLAINTS _____

TREATMENT _____

E.R.# _____ BILL AMT. _____ HOW PAID _____

2nd HOSPITAL _____ DATE _____

ADDRESS _____ TIME ENTERED _____

TIME DISCHARGED _____

COMPLAINTS _____

TREATMENT _____

1st DOCTOR _____ SPECIALTY _____

Address _____ WHO REFERRED _____

COMPLAINTS _____

Phone # _____ Treatment _____

1st Visit _____ Follow up Dates _____

BILL AMOUNT _____ HOW PAID _____

FOLLOW UP CARE

DOCTOR _____ SPECIALTY _____

ADDRESS _____ WHO REFERRED _____

PHONE # _____ TREATMENT _____

1ST VISIT _____ FOLLOW-UP DATES _____

BILL AMOUNT _____ HOW PAID _____

DOCTOR _____ SPECIALTY _____

ADDRESS _____ WHO REFERRED _____

_____ COMPLAINTS _____

PHONE # _____ TREATMENT _____

1ST VISIT _____ FOLLOW-UP DATES _____

BILL AMOUNT _____ HOW PAID _____

DOCTOR _____ SPECIALTY _____

ADDRESS _____ WHO REFERRED _____

_____ COMPLAINTS _____

PHONE # _____ TREATMENT _____

1ST VISIT _____ FOLLOW-UP DATES _____

BILL AMOUNT _____ HOW PAID _____

DOCTOR _____ SPECIALTY _____

ADDRESS _____ WHO REFERRED _____

_____ COMPLAINTS _____

PHONE # _____ TREATMENT _____

1ST VISIT _____ FOLLOW-UP DATES _____

BILL AMOUNT _____ HOW PAID _____

PRIOR ACCIDENTS:

DOA: _____ PLACE OF ACCIDENT: _____

DESCRIPTION: _____

INJURIES SUSTAINED: _____

PRIOR MEDICALS:

HOSPITAL: _____ Date of Treatment: _____

DOCTOR: _____ Date of Treatment: _____

SUBSTITUTION ATTORNEY: _____