



INTRODUCTION

“Personal injury is easy. Send a letter and then the insurance company sends you money!”

- Lawyer who does not practice personal injury law.

“Attorney Mike, that offer is way too low! Everybody knows that an offer has to be three times the medical bills!”

- Client with an internet connection and access to Google.

As dedicated personal injury attorneys, we know that simply “sending a letter” does not compel an over-worked adjuster to make an automatic offer of three times the special damages for our injured clients. Insurance companies are becoming even more sophisticated and tight-fisted with their funds. We must use other tools at our disposal to get the point across before litigation that the adjuster has a serious case on his or her hands—one that is not run-of-the-mill and is not to be taken lightly.

I’ve even had some clear-liability DUI wreck cases where the insurance company did not tender its limits to protect its insured. It is easy to jump and file suit if your demand is not met. However, the considerable expense and time (yours and your client’s) and the aggravation and anxiety that litigation causes for your client may not be in the best interest of your client or your busy practice. So what tools can an attorney use to maximize the possibility that his or her pre-suit demand will be met, making for a happier client and a leaner practice?

Pre-Litigation Discovery Techniques to Maximize Pre-Suit Settlement Demands

by Michael Melonakos

A. GET A PROFESSIONAL PRIVATE INVESTIGATOR TO DO A FULL BACKGROUND CHECK.

On DUI cases and medium to large cases I like to have a private investigator do a full background check on the defendant. This usually costs somewhere between \$800-\$1,500.00 but is worth every penny. A high quality private investigator performs extremely thorough searches of court records in any county where the defendant driver may be found, along with social media searches and driving record searches. They'll then give you a comprehensive full report and obtain the certified copies of the disposition of the tickets if needed. In my demand I'll summarize the findings, but in the first pages of the demand attachments I insert the investigator's report. I have found that showing the adjuster that I am serious enough to spend money pre-suit for a professional report helps solidify my position

and demonstrates to the adjuster that I am not going to litigate the case "on the cheap" in either pre-suit or litigation.

B. DO THE BACKGROUND RESEARCH YOURSELF

While I prefer to use an investigator to obtain the defendant's prior history, it's possible to do it yourself. Here are some of the tools that are available to lawyers for a smaller investment.

“

It is easy to simply "send a letter"...

but if you put in the extra legwork before you send the demand, it will show the adjuster that you are professional, prepared, and that even without formal discovery you have extra ammo that makes your case the type of case where the insurance company should offer trial money, not simply "pre-suit" money.

”

1. TLO or Accurint search.

TLO and Accurint are services which perform comprehensive background searches on people based off of public records. Both services have a subscription option and a pay-by-the-search option (typically \$11-\$35 per search). Searches can reveal helpful information including:

- Address history for the defendant (for service of process)
- Phone numbers of the defendant
- Names and addresses of neighbors and likely family members
- Liens, Judgments and Bankruptcies in a court search
- Criminal record search (useful for DUI or reckless driving cases, although not always as thorough as a search done by a PI)
- Social Media search – obtain the e-mails and Facebook profile names of the defendant (many people don't use their real name on Facebook, so this part of the search may reveal an alias so you can find the defendant's social media page and possibly find admissions or other unflattering information)

TLO also has a vehicle search which sometimes can reveal information as to the owner of a vehicle if, for example, your client was able to get the tag of a hit and run driver and the police didn't do any follow-up on the case.

2. ISO Search - Use it for your client.

ISO is a great way to protect yourself and to get a client who is a "poor historian" to refresh their recollection regarding a history of past claims and wrecks. https://claimsearch-cdn.iso.com/cs_onlinereport/#/bindex

In automobile accident cases, most of us have received offers from insurance adjusters that are remarkably and seemingly unjustifiably low. As we eventually discover, there is a decent chance that the insurance adjuster has found the client's claims history that the client has "forgotten."

To use ISO, you'll have to create an account and register, and for each client the client will have to sign the ISO application granting access to the client's information. The report costs \$70.00 but is well worth the money for you and your client to make sure you both don't get in too deep if they have a problematic claims history.

3. SAFER Search – take the next step.

On trucking cases, one of the first steps to take when the case comes in is to look up the at-fault trucking company on the FMCSA's Safety and Fitness Electronic Records (SAFER) System. <https://safer.fmcsa.dot.gov/>. More importantly, the SMS results page for the trucking company (located in the "Other Information for this Carrier" box on the upper right hand side of the Company Snapshot page) will provide you with a spreadsheet of all of the violations pertaining to that particular motor carrier. Even more useful, the spreadsheet provides VIN-specific data so that you may determine which violations were committed in which truck. This provides insight into a potential pattern of violations committed by the at-fault driver. And best of all—it's free.

C. IF YOU CAN'T FIGURE OUT IF THE AT-FAULT DRIVER HAS INSURANCE.

Occasionally, the at-fault defendant's insurance listed on the police report is not the liability carrier for the driver. There are a couple steps an attorney can take here to further determine if there's any insurance:

1. Use ML Research to find the liability carrier in effect at the time of the wreck.

If there is a policy of insurance in effect, but you can't locate which company, ML Research is a resource that you can use. <http://mlresearchgroup.com/> Make sure to fill out the application and let them know if you know of any other policies (for example, inform them about policy info for a carrier that takes the position that the policy was not in effect at the time of the wreck). ML Research will only charge you if they do find a policy that you did not already know and tell them about.

3. Check the Ga. Dept. of Revenue website to see if there was any insurance in effect.

If the at-fault driver has a Georgia license plate, then you can go to <https://onlinemvd.dor.ga.gov/vinstatuscheck/vinstatus.aspx> and input the VIN for the at-fault vehicle. The report will tell you whether there was any insurance in effect at the time of the wreck, or when the policy was terminated.

4. USE GOOGLE EARTH / GOOGLE MAPS IN YOUR DEMAND LETTER

On disputed liability wrecks, especially on highways, I prefer to use Google Earth instead of Google Maps. Google Earth has more data, is more precise, and has some great satellite photos that you can view from different angles. Often an accident report will depict the actual geographic coordinates of where the wreck occurred. Input these coordinates into Google Earth and you instantly have an overhead view of the wreck scene. With a quick screen shot of your computer screen, you can easily then paste this graphic into your demand letter to help the insurance adjuster visualize the circumstances surrounding the wreck. And, again, it's free!

5. OPEN RECORD REQUESTS

Open record requests retrieve a wonderful amount of information. Examples of evidence you can obtain via such a request include 911 phone calls, the incident or arrest report of the actual arrest of a DUI defendant, and bodycam or dashcam footage from the investigating officers. Make sure to follow up with the applicable department if you don't believe they included everything, especially any kind of bodycam/dashcam. The video has helped and harmed my cases more than any other piece of information in the ORR responses. In one case, dashcam footage actually captured the hard impact collision on I-285 where the Defendant claimed that my client cut in front of him (he didn't). On another case, footage showed my client making a fool of herself at the scene. Good or bad, it is always best to have this evidence at the beginning of a case rather than discovering it after you have already invested substantial time and money.



Michael A. Melonakos, Esq.

As a young lawyer, Michael spent several years working for two of Atlanta's premier insurance defense firms. He represented locally and nationally-known trucking companies, automobile insurers, and premises liability insurers in defense of lawsuits filed by accident victims. When Mike made a career move to the plaintiff's side, his tenure in the large law firm environment and representation of prominent insurance companies provided Mike the experience necessary to obtain hundreds of favorable settlements and verdicts for his personal injury clients

After a decade of practicing law in Atlanta, Michael and his wife Bren decided it was time to move back to Bren's hometown of Greenville, SC so they could help accident victims in the Upstate area and be a part of a beautiful, growing city.

Michael's experience in Atlanta's fast-paced environment gives him a big advantage, as he has seen every type of injury and fact pattern and knows how to maximize the value of every case.

When not working for his personal injury clients, Michael volunteers for the Greenville Bar Association. He regularly volunteers at his children's schools and attends St. George Greek Orthodox Cathedral. He enjoys spending time with his family, playing guitar, and playing golf.

6. FACEBOOK, INSTAGRAM, AND OTHER SOCIAL MEDIA

Social media can always be useful if you can get some good admissions or otherwise show that the defendant cannot be trusted. Take screenshots when you locate the profiles and make sure to save them early in the case so that the Defendant doesn't eventually put their profile on private. Depending on the case, I may withhold social media screenshots until after the first offer from the insurance company comes in so that I can add some heat on a reiterated demand. Sometimes I'll hold onto it until after the Defendant's deposition when the case is in suit so that they can impeach themselves first.

Quick Hint: Savvier social media users don't use their real names on Facebook anymore. A TLO search (mentioned earlier in the paper) can give you a hint as to the Defendant's usernames and can open a door to find their social media information that way. A simple Google search may find that for you as well.

Conclusion

It is easy to simply "send a letter" and see where the chips fall to determine if you will need to file suit to get the best outcome for your client, but if you put in the extra legwork before you send the demand, it will show the adjuster that you are professional, prepared, and that even without formal discovery you have extra ammo that makes your case the type of case where the insurance company should offer trial money, not simply "pre-suit" money. Your client will be happier with you because you were able to secure a quick and acceptable resolution, and your paralegal will be happy too.

