HELP! I'VE FALLEN AND I CAN'T GET HELP!

A GUIDE TO HELP YOU UNDERSTAND WHAT IS INVOLVED

IN MAKING A VALID CLAIM

IF YOU HAVE FALLEN AND ARE INJURED

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WHO WROTE THIS BOOK?

My name is Kerry H. Collins. I am a proud Trial Lawyer. I am a Board Certified Personal Injury Trial Attorney and have been licensed to practice law since 1984 and have been Board Certified since 1991. I have had tremendous success in recovering money damages for persons injured by the negligence of others.

"Make no mistake, the constant changes to our written laws and the continual rulings of our State Courts make it virtually impossible for an individual to navigate our legal system with any hope of being compensated for the injuries and suffering they sustain, unless they hire a competent, experienced Attorney." Now, more than ever before, injured Texans should immediately seek the advice and assistance of an experienced, Board Certified Personal Injury Law Specialist if their rights are to be protected.

Far beyond merely possessing a license to practice law generally, a Board Certified lawyer has years of experience in a specific field of practice and has passed an additional rigorous, written examination given by the Board of Legal Specialization. Each year, only a small percentage of attorneys in Texas qualify to take the Board Certification exam in Personal Injury Trial Law...still fewer pass.

I am a Board Certified Personal Injury Law Specialist. My firm handles injury claims caused by:

* Medical Malpractice
* Nursing Home Neglect and Abuse
* Automobile, Motorcycle and all Vehicular Accidents
* Credit Card Debt
* Traffic Tickets
* Construction Accidents
* Slip and Fall
* Dangerous Products and Toys
* Swimming and Diving Accidents
* Shooting and Inadequate Security Claims
* Animal Bites or Attacks
* Bicycle Accidents

* Oil/ Gas Field Accidents
* All Types of Serious Personal Injury and Death Claims

There is no charge for answering your questions, and should you decide to retain our services, you do not have to pay any money up front. You will only owe us a fee if a recovery is made. This means that you will pay no legal fees or expenses unless we negotiate a settlement or win a judgement in court on your behalf.

Kerry H. Collins & Associates, P.C. is located at 1301 Ballinger Street in Fort Worth, Texas. If you would like a free brochure entitled "What Is A Board Certified Personal Injury Trial Law Attorney?" or any other of our free books or publications, please call (817) 335-9700 or e-mail my office at kcpc@txis.net or info@kerrycollinslaw.com or you can contact us via our website at www.kerrycollinslaw.com.

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MY LAW FIRM - PERSONAL ATTENTION

When I started practicing Law over 26 years ago I recognized that most attorneys felt they were "too good" and "too educated" to actually deal with clients and listen to their needs. As time went by I also saw lawfirms turn into settlement shops or advertising mills where they spent so much time and money on just getting in new cases that they did not correctly work on any file and would force a client to settle for whatever an insurance adjuster would offer. Of course, all insurance companies keep very good records on what lawyers work hard on files, file suit and actually go to trial. So pretty soon the insurance companies figured out what lawyers will not work a file correctly and realized they could offer very little to the settlement mills and the cases would settle.

My firm is different.

We don't rely on a high volume of cases generated by massive TV, radio and Yellow Page advertising. We don't claim to handle every type of case in every type of area of law. We don't want to and we don't need to.

Each year, we accept a limited number of serious injury cases related to any type of negligence claim that results in injury from the hundreds of people who ask us to represent them. We also handle related insurance claims against insurance companies that refuse to actually do what their insurance policy says they will do. (Many don't or won't ever do what they are supposed to do until forced.)

We do not advertise on TV nor do we advertise with a large page in the Yellow Pages. We do not seek to handle thousands of cases at a time. We are not a personal injury mill or settlement shop. We work each case as it deserves and deal personally with each client. We don't take cases that a client can handle themselves and do not take a case merely because a prospective client feels they have been wronged. We

discuss your claim in detail before we take it and will only take cases with merit where our clients need professional legal help. **Handling fewer cases means more time to spend on your claim and more time specifically for you. Our results have shown that handling fewer files and spending more quality time in each file provides the best result possible on each claim.**

Since 1984, Kerry H. Collins & Associates, P.C. has represented accident and injury claimants throughout Texas and the surrounding States. Most of our cases are referred to us by former satisfied clients and by other attorneys and health care professionals. If we accept your case and you cannot make it in to our office to meet with us, we will come to you, anywhere.

Do we take the case of every person that contacts us? No. If your case does not have merit under the Texas Court System we will tell you. I believe that if you do not have a case that can be won under Texas law, the best advice you can get is that you do not have a claim that can be won. If that is true, we will tell you. If you are better off handling a claim yourself without an attorney we'll tell you. But, if we accept your case, you can be assured that you will receive **personal attention**. I personally like to meet every client at the time they ask me to represent them. However, sometimes due to being in Court or out of town on another case I cannot. In that case, we will make an appointment as soon as possible so that you and I can meet to specifically discuss your case. I am personally involved in every case. My office staff has years of experience handling all types or personal injury and insurance related cases. You can rest assured your claim will be aggressively pursued; you will be kept up to date on what is happening in your case, and at the appropriate time, we will advise you as to whether you should settle your case or go to trial.

We will explain the entire claim process, as well as what happens if a case goes into suit and we will discuss all fees and costs to you before we start working on your case. After we explain the case and we

are able to obtain basic relevant information or documents about your case we will sit down together and decide on the best way to proceed with your case.

WHERE DO I GET MY QUESTIONS ANSWERED ABOUT MY INJURY CLAIM?

You have been in an accident where you slipped on something and fell or tripped on something and were injured that was not your fault. You have questions. Some may be:

* What do I do now?
* Do I hire a lawyer immediately?
* Do I try to handle it on my own and if its get too complicated then hire an attorney?
* Won't the insurance company treat me fairly since the accident wasn't my fault?

This may be the first time you have been in an accident. For some this may not be the first accident but this is the first accident where you have a serious injury or someone you are helping in your family was injured. You have questions. You are getting calls from the insurance company representatives, wanting to "just speak with you" to ask "just a few questions" and to get a "recorded statement." They may be telling you that you have to do these things before they will even consider your claim. Or they may be bugging you to sign their forms "so we can get the records and handle this for you." They may even have already offered you money or told you they will offer you money to settle your claim if you don't hire an attorney.

You may already be receiving phone calls or personal visits from someone claiming they can get you to an attorney. Not only is that practice called "running cases" it is illegal in Texas but generally any lawyer that has to solicit business in an illegal manner is certainly not worth hiring to handle your serious claim.

When you were injured you started looking for an attorney, but quickly found that most attorney advertising doesn't give you any useful information at all about how to find the right lawyer for your case. All of the ads contain worthless statements like "we

don't charge a fee unless we get you money," or "we will fight for you" or "we are aggressive" but then you realize that every personal injury lawyer advertising in these ads say that or something else that does nothing to help you decide if that lawyer is right for you. You soon realized that ads that showed car wrecks or listed that they got thousands of dollars for their client or statements like "We Are in Your Corner" or "We Are the Law Firm That Cares" are completely meaningless. Don't you believe and expect that your attorney will care for you and will be aggressive and fight for you?

Look through the Yellow Pages. You will see many statements and meaningless Headlines such as:

* Legal help for the seriously injured
* I will fight for your rights!
* We are the law firm that cares
* The right team
* All serious accidents and injuries
* Aggressive, experienced, compassionate
* Legal help for the seriously injured
* No fee unless we get you money
* Free initial consultation
* Full service law firm
* Highest rated or "AV" rated
* Member of million dollar club

Do any of these headlines answer your questions? Do any of these statements help you determine if the lawyer is the right lawyer for you in your particular type of case?

I am sending you this information so that you could have good information in the quiet of your own home before you try to decide to hire a lawyer and before you talk to the insurance adjuster. This information is designed to answer some of your questions and provide you with some guidance as to how the claims process works. You may not even need a lawyer to settle your claim. I address whether you even need a lawyer later on in this booklet.

PERSONAL INJURY MYTHS

* All lawyers who advertise that they handle accident cases have the same ability and experience to handle your case.
* If a lawyer advertises that they do personal injury they must know what they are doing.
* If you make a fair demand to settle with the insurance company you will get a reasonable settlement offer.
* If the insurance company calls you to ask for a recorded statement or that you sign a medical authorization, you have to agree and do what they want or they won't settle with you.
* The insurance company has to pay all your medical bills as they become due so that you don't get behind.
* The court and jury system is a great place for injured persons to recover their damages and even more. In fact, isn't it called some sort of lottery that will help you get rich?
* Just because there has been an accident and it wasn't your fault, there must be some insurance company or some individual or company that will pay for all your bills, lost wages and injuries.
* All lawyers can properly handle a simple car wreck case.
* There is a "secret" formula for determining settlement value so I don't need a lawyer.
* The insurance company will pay me more without a lawyer; OR
* You don't need a lawyer because you will get the same offer from an insurance company whether you have a lawyer or not and all the lawyer will do is take part of your money.

AREN'T INSURANCE COMPANIES GOING TO TREAT ME FAIRLY SINCE I WAS NOT AT FAULT?

NO! Insurance companies love to try to take advantage of people before they have a chance to talk to an attorney. Most insurance companies will even try to encourage you to not even talk to an attorney before settling the claim. They use fear "The lawyer will take one-third of this check we're about to pay you just for talking to them" to talk you out of getting good advice. All insurance companies know that if you hire a good, qualified lawyer the value of your case increases dramatically. If not, why would they care if you hired a lawyer?

You may not need an attorney to represent you in your case! No one, however, should settle a case without understanding the claims process and how insurance companies work to try to pay as little on your claim as possible. Typically the insurance adjuster isn't going to tell you that you might have to turn around and take the check they just paid you and pay it to your health insurance company. They don't care about you or whether your claim is settled fairly. The adjuster just wants to close the file and get you to release all of your claims for the least amount of money possible.

INSURANCE COMPANY TRICKS THEY MAY USE IN YOUR CLAIM

Here are some well recognized tricks insurance companies use to wear you out and get you to settle your claim:

1. **Require you to provide unnecessary information.** Insurance companies will insist that you track down every little piece of information before "we can evaluate the claim." Even if the information they are now asking for would not add a penny to their offer, they are happy to wait another six weeks for you to track it down. Meanwhile, they are earning interest on the money they are NOT paying you.

2. **Intentional delay.** They know that often you are in a financial squeeze. Even if you have good health insurance, the fact that you aren't working may make it difficult to pay co-pays and deductibles. The insurance company knows you are getting billed and bugged by the doctors, so they take their time with your claim.

3. **Dispute your medical treatment.** Even though I've never met an adjuster who went to medical school, they seem to know just what treatment is right for you! Usually, they "know" that you were over treated because "our computers say you should have been better by now."

4. **Nickel and dime the medical charges.** Think about it. If they shave just 5% off your claim and can do that to the millions of claims made each year, they get richer.

5. **Misrepresenting insurance benefits.** This is a big one. They tell you that there is no Medical Payments coverage or that there is no insurance and any money you want will have to come out of the owner's pocket. We file suit and "magically" find an insurance policy! Don't you think they

knew that before we filed suit? Of course, they did.

6. **Promising to take care of you or trying to act like your friend.** Watch out for the adjuster who befriends you, shows up at your house and promises to pay your future medical bills. This is a tactic to stop you from hiring a lawyer. They won't come around to your house once you have a lawyer! Those future medical bills? Well, they'll pay them until their computer says "too much, too much, this claim is costing us too much."

7. **Arguing that you could not have been hurt.** This is a big one! Not only will they begin arguing early on that they cannot understand how you could have been injured in "such a minor accident" but will argue that any serious condition your doctor finds that is related to your claim is "pre-existing" or "just a condition of life that you were going to have anyway". In fact, they even have doctors on their payroll that will review your records and testify you were not hurt. They use this argument to make any seriously injured person go all the way to trial. All the while hoping the delay or threat of trial will make you take much less than your claim is worth.

8 **Arguing you are partially at fault.** Texas is a comparative negligence State. This means that your negligence, if any, is compared to the negligence of the person that caused your injury. If you are considered 10% at fault and have $10,000.00 in damages your damages are to be reduced by 10% of the amount of your negligence or reduced by $1,000.00, so you would receive $9,000.00. If you are 20% at fault your damages are reduced by 20% or $2,000.00 and you would receive $8,000.00, and so on. However, in Texas, if you are more than 50% at fault you receive NOTHING! In trying to reduce what they have to pay you adjusters regularly get you to admit in a statement that you could see the liquid or other substance that caused you to fall. Since you should have been paying better attention and should have seen

whatever it was that caused you to fall or trip, they will immediately argue "YOU ARE PARTIALLY AT FAULT" and are therefore not entitled to your full damages. I know, I know, ridiculous. But how many people do you think try to handle their claim on their own and will agree that they are 10% - 20% at fault. Think of how many millions of dollars the insurance companies save every year using this argument alone!

I am sending you this information so that you will have information on how to choose a lawyer to help you overcome these ridiculous arguments and delays that insurance companies use in every case.

LAWYER ADVERTISING AND FRIVOLOUS LAWSUITS

I am as sick as you are of crazy lawyer advertising where lawyers with a reputation for handling hundreds of cases at a time make promises that can't be kept or equate your injury to "a fast cash settlement." Did you notice that almost all of the attorney ads in the Yellow Pages claim personal injury expertise? There are many lawyers who NEVER go to court, settling each case for pennies on the dollar. The insurance companies know who they are, so should you.

I am also tired of lawyers who file ridiculous, frivolous lawsuits, because frivolous lawsuits hurt everyone by delaying real claims from getting to court. If you are looking for a lottery win, look elsewhere. If you are looking to get rich or never have to work again because someone tapped you from behind at a red light, look elsewhere. My firm handles legitimate claims for legitimate claimants. No "fast cash settlement" here. We will explain to you what we feel your claim is worth once we have all relevant documents and information regarding all aspects of your claim. We base each evaluation on my experience in over 26 years of practicing law and having tried hundreds of cases involving injury and property damage claims.

MAKE NO MISTAKE YOU ARE IN A BATTLE

The day you were injured, the battle began. Insurance companies, many politicians and some in the government have declared war on injured people and their attorneys. They have waged the war in the media and their propaganda has had a tremendous effect on juries and their verdicts. This is called tort reform. The success that the insurance companies have had in tainting the minds of jurors has made it so that insurance companies will not offer fair settlements until you prove to them that you are ready, willing and able to go to trial.

In fact, many politicians running for office and the insurance companies have turned the phrase "Trial Lawyer" into something that makes you think of a sleazy, dishonest, money grubbing Lawyer.

Bet you have heard that. And I bet if you think about it honestly until you or a family member were injured, you, too, may have thought that a personal injury "Trial" lawyer is a bad person and that people who make claims and file lawsuits are stealing from society or are just trying to get rich for nothing or are trying to get more than they are entitled to receive for their injury. That's what billions of dollars in insurance company advertising will get you!

SINCE I WAS NOT AT FAULT DO I HAVE TO PROVE ANYTHING?

Yes, you do. You have what is called the "burden of proof". Just because you were hurt doesn't mean you are automatically entitled to money. You must prove that someone else was negligent or careless and that it was their negligence or carelessness which caused your injury. If you fail to do this, you lose. If you sue the wrong person, you lose. If you wait too long to sue, you lose. If you had an injury BEFORE the accident, then you are only entitled to be compensated to the extent your injury is now worse.

In Texas, if you were are more than 50% at fault, you lose. This is known as the law of comparative negligence. Further in Texas any damages you are entitled to will be reduced by the amount of negligence that a jury finds you. This means that if the "other guy" was 90 percent at-fault and you were 10 percent at fault, then you can only recover 90% of the damages a jury awards you. Therefore, in many cases whether you are at fault or not the insurance adjuster will argue "You should have been paying better attention", "You should not have tripped over that ledge we placed there" or even "No one else has ever fallen over that before". Sound ridiculous? It is! But we hear it from adjusters every day and they will even hire "experts" - usually ones on their payroll- to argue that you are either partially at fault or more than 50%!

This is solely an attempt to reduce the payment that they owe you for your full damages. Before we accept your case, we must be confident that you were not more than 50% at fault and determine if you were at fault in any way.

BEWARE OF STATUTORY LIENS, ERISA AND HEALTH CARE SUBROGATION LIENS

You should be aware that often, if your medical bills were paid by health insurance or by an employer's health plan, the health insurance company or plan may want you to reimburse it out of any personal injury recovery. Your "insurance" turns out to not be insurance at all, but a "loan." The laws in some states, including Texas is that these liens have to be addressed at the time of settlement. We have seen cases where the insurance companies hired lawyers to make the claims for them. What they don't tell you is that this area of law, known as "reimbursement or subrogation" is actually quite complicated and is sometimes governed by a federal law called ERISA (The Employee Retirement Income Security Act). Your attorney must understand the implications of ERISA on your case. If these liens are not addressed at the time of settlement, they may sue you immediately to recover the money back you received.

There are other liens that may affect your total recovery in the case. If your bills were paid by Medicare, Medicaid or the United States Government (including "free" military care) you may be forced to pay back a portion of your settlement. These are called Statutory Liens because they are created by law and have to be dealt with or you will be sued.

Imagine that you are not at fault, you receive some money from the other person's insurance and because you did not know about the lien laws you now get sued and have to pay. When you settle your claim with the careless person's insurance they will get a "Complete Release". This means that if anyone else claims you owe them money the insurance company is out and you will be solely responsible for all liens on your own.

Another very important lien matter to consider is a hospital lien. This is also a Statutory Lien. If you are treated within the first 72 hours after an injury the hospital can automatically file a lien. It is filed with the County Clerk and will pop up anytime

you try to finance anything or buy or sell a house. This lien also has to be addressed at the time you settle your claim. The problem with these liens is they never bother to notify you they have actually filed the lien. You have to either call them or check with the County Clerk to see if they filed the lien.

The problem with many of these liens, if you try to settle the case on your own, is that the insurance companies are probably aware of them. They will not tell you about them when they negotiate your claim and you think you are getting some money in your pocket. Then after you agree to settle, for a set amount, they make the check out to the hospital or the insurance company with your name on it and let you bother with trying to get them to sign the check and hope you still have some money left for your pain and suffering.

An experienced Board Certified Personal Injury Trial Attorney will be able to determine if any of these liens exist. Also, there are many different ways to make sure the liens are valid and, if so, make sure they are only paid what they are entitled to receive. Further, many times they will negotiate with an attorney they have dealt with before so that means the liens are addressed and you receive more money in your pocket.

PREMISE LIABILITY LAW

The legal theory of "premises liability" holds owners and occupiers of property legally responsible for accidents and injuries that occur on that property. The kinds of incidents that give rise to premises liability claims can range from a slip and fall on a public sidewalk to an injury suffered on a amusement park ride.

A premises liability claim is a form of negligence based on a premises defect theory. The elements to establish a premises liability claim are different than those of a traditional negligence claim. The claim must arise out of a condition of the premises. A basic negligence claim requires a duty, a breach of that duty, proximate cause and damages.

I FELL ON YOUR PROPERTY SO YOU OWE ME RIGHT? WRONG!

The liability of owners and occupiers of property will vary depending on the legal rules and principles in place in the state where the premises liability injury occurred. In some states, including Texas, the court will focus on the duty owed by any property owner or possessor to any individual depending upon the status of the injured visitor at the time of the injury on the property. The status of the injured party then will determine the liability of the owner or occupier.

Just because you fell on someone's property DOES NOT mean you are automatically entitled to any money for your injuries. Texas Courts do not favor the injured party in any case and have very specific laws that cover when a person who is injured on someone else's property may make a recovery. However, an experienced Board Certified Personal Injury Trial Lawyer can review your claim and a determination can be made if the land owner or possessor may owe you for your injuries.

TYPES OF PREMISES LIABILITY CASES

Generally the different types of Premises Liability cases can be broken down to the following:

1. **Slip and Fall** - This involves any type of liquid, oil, paint, syrup etc on the floor that causes you to fall. Also it may involve produce, food or even trash that makes your foot slip and causes you to fall. Many times an expert can be hired that can discuss the coefficient of friction - that is how slippery any particular substance is in relation to the floor surface - to show how it made you slip.

2. **Trip and Fall/Premises Defect** - this involves something on the floor or a condition of the walking surface that catches your toe, foot or ankle and trips you. It can be an unlevel or broken tile, concrete or brick walking surface. It can be metal plates screwed into the floor that are higher. It can also mean stairs, walkways, ramps etc that are not built in accordance with city ordinances, state law or even the Americans With Disabilities Act. Generally in these type of cases experts familiar with the codes and ordinances have to be hired to help prove the violations by the property owner or occupier.

3. **Criminal Acts of Third Parties** - When the risk of crime is foreseeable, the owner or occupier has a duty to protect invitees from criminal acts of third parties. The Texas Supreme Court has set forth several factors the trial Court should consider in determining whether criminal conduct was foreseeable:

    1) Whether any criminal conduct has happened before on the property;
    2) How recently the prior criminal conduct

had occurred;
3) How often criminal activity has occurred before;
4) How similar the conduct was to the conduct in this case;
5) How probable it was that the owner or occupier knew that criminal activity would occur again.

4. Doctrine of Attractive Nuisance - This is applied to children of a young age that come upon premises by virtue of something that is unusually attractive to them. An example might be a swimming pool that is not properly guarded or fenced or an old refrigerator that is available for the children to get to where they can be locked inside of it. The owner or occupier will owe the same duty to the child as he would an invitee if the injured child's parent can prove:

1) The place where the condition is maintained is one in which the owner or occupier knows or should know that children are likely to trespass;
2) The condition is one in which the owner or occupier knows or should know and which he realizes or should realize that the condition involves an unreasonable risk of death or serious bodily harm to children;
3) The children, because of their young age, do not discover the condition or realize the risk involved in intermeddling in it or in coming within the area made dangerous by it;
4) The utility of the owner or occupier of maintaining the condition so it is not dangerous to children is slight as compared to the risk to young children involved;
5) The owner or occupier failed to eliminate the danger or otherwise protect the children.

This doctrine does not apply to children over the 14 years of age since a child that age is presumed to have the capacity to understand and appreciate the danger. As you can see, if your child is hurt there is a tremendous amount of evidence you must gather, as soon as possible, to bring this type of claim. In my experience when a young child is severely injured, or unfortunately killed, the parents are in no condition to worry about gathering evidence. If you, or a friend or family member ever have a small child injured in a circumstance like this you should immediately discuss it with a Board Certified Personal Injury Attorney and let him handle it. You will need to take care of your child.

LEGAL STATUS OF VISITOR

In Texas there are three (3) separate classes of visitors on any property, each with distinctive qualities and each determine a different duty owed by the land owner.

(1) **Invitee** : an Invitee is a person who is on the premises at the express or implied invitation of the possessor of the premises and who has entered either (a) as a member of the public for a purpose for which the premises are held open to the public or (b) for a purpose connected with the business of the possessor that does or may result in their mutual economic benefit.

You are considered an invitee when you go to a grocery store, hardware store, a restaurant, hotel etc. To be an invitee the reason you are on the property must be of mutual benefit to you and the land owner or possessor.

(2) **Licensee** : A licensee is a person who is on the premises with the permission of the possessor but without an express or implied invitation. Such a person is on the premises only because the possessor has allowed him to enter and not because of any business or contract relationship. A licensee is on the premises for his or her own purposes, benefits, convenience or pleasure and not because of any business dealings with the owner or possessor.

The difference between a licensee and an invitee is that an invitee has present business relations with the owner or possessor that render his or her presence of mutual aid to both, while a licensee is present for his or her own convenience or to conduct business with someone other than the owner or possessor. In the absence of a business relationship that inures to the mutual benefit of both the individual and the owner or possessor an individual is considered a licensee.

You are considered a licensee when you park in a business' parking lot but are not there to go to that particular business - you go to another business instead. They allow you to park there but you are not there for the business where you parked. Social guests at a party or over to watch a football game at someone's house are considered licensees. This is confusing because you may say "Wait a minute! I am here at their invitation so I must be an invitee." Texas law specifically holds that a social guest is not there - even by invitation - for any "BUSINESS" purpose of the host or land owner - therefore you are a licensee.

For another example Texas Courts have held that when a person goes to a hospital to visit a friend or relative, if they are injured while on the hospital's property they are also considered a licensee and not an invitee because they are not there for any BUSINESS purpose with the hospital. They are only there for personal reasons - to visit the friend or family member.

(3) **Trespasser** - A Trespasser is a person who is on the property of another without any right, lawful authority, or express or implied invitation, permission, license, or not in the performance of any duty to the owner or person in charge, or on any duty to the owner or possessor, or on any business of such person but merely for his own purpose, pleasure, convenience, or out of curiosity and without any express or implied assurance of safety from the owner or possessor. The difference between a trespasser and a licensee is that the trespasser commits a wrong by entering the premises while a licensee does not.

The critical factor in determining if a person is a trespasser is whether the entry on the land is without legal authority or permission. The fact that the person does not know that he or she is trespassing is not relevant.

You are a trespasser when you have no legal right to be on the land. Common examples are if someone

parks in a parking lot when there are signs posted that state the parking is for a particular company only and you are not there for that company. Or a person climbs over someone else's fence when there are "No Trespassing" signs posted.

LEGAL DUTY OWED FOR EACH CLASS OF VISITOR

Why do you care what status of visitor you are? You were injured and the owner or possessor must owe you for your injuries right? Wrong! Texas Courts are very business oriented and the laws governing who and how you can make a recovery when you have been injured on someone's property are very complicated. As I told you earlier, it all depends on your status of a visitor because the duty the owner or possessor owes you varies greatly depending upon your status when you were injured.

1. **DUTY OWED INVITEES** - The owner or possessor has a duty of reasonable care towards its invitees. Specifically, an owner or possessor is negligent and liable to an injured visitor if:

a) there is a condition on the premises that creates an unreasonable risk of harm;
b) the owner or possessor knew or reasonably should have known of the condition or danger; and
c) the owner or possessor failed to exercise reasonable care to protect the claimant from the condition or danger by:

    1) failing to adequately warn the claimant of the condition or danger; and
    2) failing to make the condition or danger safe.

Simple Huh? You have to prove all of these points before you can make any recovery even if they admit they had a dangerous condition present when you were injured!

Most times there is no question as to Number 1 above - that is that there was actually something on the floor that caused you to trip or slip. However, I have had prospective clients come to my office that fell and broke their hip, or an arm, or tore ligaments in their knee and they were in so much pain they did not ever

look or even care what caused them to fall - they just wanted immediate help! This means we had to do an extensive investigation to see what it was that caused them to fall.

Businesses train their employees to NEVER - EVER admit they knew a condition was present before you fell. They do this so they will not be held liable under Number 2 above. That is that they knew or should have known the condition was present. I have even seen company policies that have instructed all employees to never admit fault and never even admit there is anything on the floor.

The adjusters that handle these types of cases are very experienced and are well aware of the requirements you must meet before you can recover. They will do everything possible to get you to admit you were at fault for not seeing the condition before your fell or something else that kills your claim. If they can't get you to admit you are the sole reason you fell they will instruct their insured employees to lie and say there was either 1) nothing on the floor when you fell or 2) that they had just cleaned and inspected the floor before you fell and there was nothing there.

I have even had them clean the floor after my clients have been removed by an ambulance, place warning signs and then take a picture and try to say that was the condition of the floor BEFORE my client fell.

2. **DUTY OWED TO LICENSEES** - The owner or possessor owes a licensee only the duty to warn them of a condition and to make the condition reasonably safe when they have actual knowledge of the condition and to not injure them through willful, wanton or grossly negligent conduct. An owner or possessor is negligent if:

a) there is a condition on the premises that creates an unreasonable risk of harm;
b) the owner or possessor had actual knowledge of the condition or danger; and
c) the owner or possessor failed to exercise

reasonable care to protect the claimant from the condition or danger by:

1) failing to adequately warn the claimant of the condition or danger; and
2) failing to make the condition or danger safe.

d) The owner or possessor was grossly negligent.

In the context of a premises case there are very few cases determining when an owner or possessor is grossly negligent because the standard for proving gross negligence in Texas is so hard no one can meet it. Therefore, the only real standard we look to is did the owner or possessor have actual knowledge. As I stated above it is virtually impossible to prove someone actually knew of the danger because most businesses train their employees to never admit they knew a danger existed. This is why it is extremely important that if you have been injured you contact a Board Certified Personal Injury Trial Lawyer as soon as possible after you have been injured to help you determine if you can make a valid claim.

The typical visitor considered a licensee is a social guest or an uninvited salesman or solicitor. This person is not considered to be on the property for the benefit of the owner - they are there solely for there own purposes.

3. DUTY OWED TO TRESPASSERS - There is no duty to inspect, to warn or to make the property safe. The trespasser takes the property as he finds it.

The owner or occupier of the land owes a duty to an adult trespasser not to intentionally and wilfully injure him. The only exception to this rule is if the property owner knows of the trespasser, he then must exercise reasonable care for his safety.

Examples are crossing someone's land for a shortcut or parking in a parking lot that says "No Trespassers" so

you are closer to your destination.

INITIAL QUESTIONS TO BE ANSWERED IN ANY PREMISES LIABILITY CASE

1. CONTROL - Who had control of the premises? Many times this is very hard to figure out. Many large companies do not own their building. They lease them. That means there may be a landlord that has agreed to keep the floors in good shape. If, for instance, there is a tile missing or torn carpet it may not be the business owner but a landlord that is responsible. Or it may be a combination of the two - both the business owner and the landlord. It is extremely important that you contact a Board Certified Personal Injury Specialist as soon as possible after you fall to help you answer these questions.

2. VISITOR STATUS - The easiest way to try to figure out if the visitor is an invitee, a licensee or a trespasser is to ask why the visitor was there. Your status, as I explained above, is determined by the reason you were on the property in the first place. Once your status is determined your rights to make a claim are determined.

3. MECHANICS OF THE INJURY - What was it that caused your injury? Was it torn carpeting, changes in flooring, poor lighting, narrow stairs, or a wet floor that caused you to injure yourself? Or was it a broken or cracked public sidewalks, or a trip and fall on stairs or escalators or trips and falls because of rain ice, snow or a hidden hazard - such as a hole in the grass that was covered up? Then it could be that something falls off a shelf and hits you. All of these different scenarios will determine what rights you may have.

4. NEGLIGENT ACTIVITY - Many people and many lawyers who don't routinely handle personal injury claims will not know what this is. Negligent activity is different than a premises liability claim. In a premises liability claim it is some condition of the property that causes an injury. In negligent activity there is some **activity** on the premises that causes the injury.

Say a company employee of the store is stocking TV's on a shelf and drops one. It falls and breaks your foot. This is a negligent activity case and is handled under a negligence theory. You do not have to prove all the things you have to prove under a premises case as I told you about above. It does not matter your status either.

5. **CAUSATION** - Were your injuries caused by the dangerous condition? You have to prove your injuries and damages were caused by the condition that caused you to fall. Here they will argue that your injuries were pre-existing or you could not have been that hurt. I have had to go to trial in slip and fall cases because the insurance company told me and my client "We just don't believe a jury will think you could get that hurt from only falling down? Believe me we proved them wrong every time!

ELEMENTS YOU HAVE TO PROVE TO MAKE A CLAIM

1. **Actual Knowledge** - As a general rule, actual knowledge is the most difficult element to prove. Either the owner or their employees have to admit they knew the unreasonably dangerous condition was there before you fell or you have to have some evidence of prior notice of the condition or a very similar condition. Here is where an experienced Board Certified Personal Injury Lawyer can help. We have access to a number of methods in which we can investigate prior claims or prior incidents to help prove actual knowledge. Many times you can prove actual knowledge by proving that the owner or their employees created the condition.

2. **Constructive Knowledge** - This means you have to prove they should have known the condition was there before you fell. That is that the condition was there long enough that had they inspected properly they would have found it. Usually proof that a condition existed less than 30 minutes is not enough to prove it had been there long enough that it should have been discovered. This applies a lot to premises defect cases discussed more in detail below. Generally a missing tile or a hole in the flooring or walkway etc will have taken weeks or months to develop. In many cases an expert will have to be hired to prove how long a premises defect took to become unreasonably dangerous. Once you have that type of opinion, ie that it took several weeks to develop you have good evidence that the owner should have known the condition was occurring.

3. **The Condition Posed An Unreasonable Risk of Harm** - This means that you have to prove that the condition you contend caused your injuries posed an unreasonable risk of harm where there was a "sufficient probability" of

a harmful event occurring that a reasonably prudent person would have foreseen it or some similar event would happen. In other words most owners will agree that a liquid on the floor is slick and they recognize that as an unreasonably dangerous condition. However many times I have a client that is severely injured and does not know and honestly doesn't care what caused them to fall - they are hurt and just need help. Many times this can be one of the most difficult elements to prove. If you do not have proof that there was something that caused you to trip or slip and fall you cannot prove your case.

4. **The Owner or Possessor Failed to Exercise Reasonable Care to Protect The Claimant From The Condition or Danger by Both Failing to Adequately Warn The Claimant of The Condition or Danger And Failing to Make The Condition or Danger Safe** - After you prove the condition was dangerous and they knew or should have known about it, it is pretty easy to prove they did not make a spill safe if it was still there. But you also have to prove they did not warn you. If they put up wet floor signs or something that would put you on notice that there is a condition you cannot make a claim. However, many times after someone is injured the owner will put up wet floor signs AFTER the fall and claim they were up when you fell. Again, the sooner you contact a Board Certified Personal Injury Trial Lawyer to help you answer these questions the better chance you may have of making a valid claim.

5. **Proximate Cause** - this means you must prove the owners actions in having the unreasonably dangerous condition were the cause of your fall and were the cause of your injuries and damages. In most cases this is not too hard to prove but it can be very difficult if you had prior injuries or a prior medical condition the insurance company can argue was

the real cause of your problems now. A Board Certified Personal Injury Trial Lawyer can obtain your prior medical records talk to your prior doctor and your current doctor and get and present a clear picture of what the fall caused you and what existed before.

CLAIMS AGAINST GOVERNMENTAL PROPERTIES

Say you go to a City Park and fall over a metal post that has been cut off leaving about 2 inches sticking up in tall grass. Is a claim against governmental properties different than a claim against a store for a spill? YES! Governments, by law have very strict restrictions on who and when you can make a claim.

First, in Texas you must give specific written notice within 180 days of the incident describing the incident, what you injured, your damages, witnesses etc. Also, many Cities will have a written notice requirement that is shorter than 180 days.

Claims against a government for a premises defect still look at your status of whether you are an invitee, licensee or a trespasser. Trespassers cannot make any claim for injuries against a government.

In Texas if a claim arises from a premises defect, the governmental unit that owns and/or operates the property owes to the injured party only the duty that a private person owes to a licensee on private property, unless the injured person pays for the use of the property. This means you will have to prove **actual** knowledge by someone at the City unless you pay for entrance to the park. As I told you earlier, **actual** knowledge is very hard to prove. But if you paid for the use of the property you do not have to prove actual knowledge - you can still make a claim if you can prove they knew or should have known of the dangerous condition.

Also, if you can prove the defect was a "special defect" you will be considered an invitee even if you did not pay for use of the premises. A special defect is basically something that is so unusual that you would never expect it to be where it was. As the Texas Supreme Court does everything it can to make sure that injured parties do not make a recovery, there are lots of cases deciding what a special defect is. A special defect will have to be determined on a case by case basis. It is very hard to claim a special defect in

Texas.

If you are injured on governmental property the sooner you contact a Board Certified Personal Injury Trial Lawyer to help you answer these questions the better chance you may have of making a valid claim.

QUESTIONS TO ASK THE INSURANCE COMPANY WHEN THEY START TELLING YOU "YOU DON'T NEED A LAWYER - WE WILL TAKE CARE OF YOU"

1. Will you put in writing that the accident was not my fault?
2. Will you tell me how much insurance the business owner or possessor has?
3. If I give you a recorded statement, will you give me a copy of the recorded statement that you already got from business owner or their employees?
4. If I sign this medical release, will you immediately forward to me a copy of everything you get using my release?
5. Will you tell me how much money you have set aside in "reserve" to pay my claim?
6. Will you give me copies of the recorded statements that you have taken from any witnesses?
7. Will you tell me now whether there is any "umbrella" insurance coverage available to cover my claim?
8. Will you tell me whether you have already done video surveillance of me?
9. Will you give me a copy of any "index" information that you have already gotten from your computer system?
10. Will you give me a copy of any financial information that you may have already obtained on me?
11. Will you tell me which of my neighbors you have already interviewed?

I can't wait to hear their responses. My years of experience tell me they will tell you that you are "not entitled" to any of the information you request. With insurance companies information sharing is truly a one-way street. You give to them and they don't give to you!

RESPONSES YOU WILL RECEIVE FROM THE ADJUSTER WHEN YOU MAKE A FAIR DEMAND TO TRY TO CONVINCE YOU THAT YOU SHOULD TAKE LESS

1. You just fell down. Everybody does that and they don't get hurt so how could you be injured?
2. The fall was not that bad or that you really aren't that injured.
3. The problems you are complaining of were pre-existing. Once they have set up your claim they run every type of check they can to see if you have ever been injured before or any insurance company has ever made a payment to you for a prior injury. If there is ever any mention in prior medical records - regardless of how remote in time - they will argue you were already injured and they don't owe you anything.
4. You weren't paying proper attention or you would have seen the condition and wouldn't have fallen so you are either partially at fault or the fall was all your fault. Be very careful here! They will try to get you to make admissions they can later use against you that the fall was all your fault.
5. You had been drinking, were drunk or impaired by legal or illegal drugs.
6. No one at our business knew of the spill or condition that caused your injury so we do not owe you anything.
7. The spill or condition did not exist long enough for us to know it was there so we do not owe you anything.
8. Or they may argue the complete opposite when the condition has existed for a long time. They will tell you "No one else has fallen on that condition so it must be all your fault for falling over it" or "Everyone else saw it and did not fall or trip over it so it is all your fault for not seeing it".
9. Your doctor should not have charged you that much so we will only consider 50% of your medical bills, or any other figure they can justify.
10. Since your doctor is recommending surgery and you haven't yet had it you must not be injured or you

really don't need it. No matter that surgery costs tens of thousands of dollars and many people who do not have insurance have no way to pay for it.

DO I HAVE TO HIRE AN ATTORNEY TO HANDLE MY CASE?

No. You do not need an attorney for every small injury case. In fact, our office does not even accept cases where there's little or no injury or the injuries are minor. Why not? Simple. In the small case, the attorney fees and costs might leave little or nothing for you after your medical bills are paid, and we don't believe that would be fair to you.

However, there have been studies that hiring an attorney generally increases the settlement value. Specifically a 1999 study found that insurance companies, pay higher settlements to injured people who use an attorney than those who do not. The insurance industry performed a study to find out if people who had accident claims received more money in settlement by using an attorney than those people who settled on their own. The study was performed by the Insurance Research Council, a non-profit organization that is supported by leading property and casualty insurance companies across the United States. The mission of the IRC (IRCweb.org) is to advance the insurance industry's view on matters crucial to insurance companies. The IRC found that people who used an attorney received, on average, 3 times more money in settlement than those individuals who settled on their own.

SO HOW DO I FIND A QUALIFIED PERSONAL INJURY ATTORNEY?

Choosing an attorney to represent you is an important task. The decision certainly should not be made on the basis of advertising alone. The Yellow Pages are filled with ads all of which say basically the same thing. You should not hire based solely on advertising. Anyone can buy a slick commercial, and many attorneys who have never handled a personal injury case have purchased large, expensive and very impressive looking ads.

How do you find out who in your local community is the best for your case? There are certain questions to ask that will lead you to the best person for your case no matter what type of claim you have. It will involve some time on your part, but that's OK because the decision you are making may be critical to the success of your case.

Personal injury claims, particularly in Texas, are much too specialized for someone who does not handle these cases regularly. Too many times I have been asked to look at cases that have been handled by general practitioners, tax lawyers, criminal lawyers and family law lawyers. That's just not good. Get a specialist. They are out there. You need to make sure you hire a Board Certified Personal Injury Trial Lawyer.

You should be aware that the insurance companies who defend personal injury and accident cases know who the attorneys are in your area who actually go into court to try cases and who do not. The insurance companies use that information to help evaluate their risk. One of the first questions some insurance adjusters will ask when a serious claim comes in is: "Who is representing the Plaintiff?" I've heard insurance defense lawyers laugh as they head for trial against one of these non-personal injury attorneys! It's like shooting fish in a barrel for them.

If this information is important to the insurance

company, shouldn't it be important to you?

HOW DO YOU FIND OUT WHO IS AN EXPERIENCED PERSONAL INJURY ATTORNEY IN YOUR AREA?

1. Ask your friends or family if they have used an attorney for a personal injury case. Again, not every lawyer has sufficient experience in handling personal injury claims so if they give you the name of a Family lawyer or a Probate lawyer etc. don't plan on hiring them for your claim. You can call them and ask them to give you the name of a Board Certified Personal Injury Trial Lawyer.

2. Get a referral from an attorney that you know. He or she will probably know someone who does specialize in your area of need. If you need an attorney in an area of practice that we don't do, call us. We'll help you find the right lawyer for your case.

3. The Yellow Pages may be a good source of names. Understand three things, however: First, not everyone advertises in the Yellow Pages. Most of our cases come from referrals from other attorneys or from satisfied clients. In fact we only have a very small ad in the Yellow Pages. Second, be careful about the ads that say they do too many different specialties. No one can do everything well. Third, be careful about the full-page ads. This advertising may attract a lot of frivolous cases that can overwhelm an attorney. Make sure that the attorney you hire is selective enough with his or her cases that your important case does not become just one more file in the pile. We know several law firms that went out of business buried under the "weight" of full-page Yellow Pages ads.

4. Your local bar association probably has a lawyer referral service. Understand that lawyers have signed up and paid a fee to be listed in certain specialties. Their names come up on a rotating basis and are not reflective of their experience. All this will do is give you a name and number of

an attorney that has paid a fee to have his name listed in one of several areas of the law he may practice.

5. Interview several attorneys. Ask each attorney who else handles these cases in your area. If they won't give you any names, leave. The names you see showing up on various lists of recommendations are probably good bets for attorneys doing these cases in your area on a regular basis.

6. Run from any attorney who calls you first.

7. Beware of "runners." A "runner" hangs out at the police station or listens to a police radio to "run" to accident scenes or hospital rooms to encourage victims to sign contracts with attorneys. They also pay for police reports and then call you repeatedly or even show up at your house with offers to get you "free" medical treatment and offer to get you to a lawyer. Not only is it unethical for an attorney to "run" cases but it is also illegal. Outrageous does not begin to describe this practice!

8. Here are factors and good points to look for and question your attorney about. Note that not every attorney will meet all of these criteria, but the significant absence of the following should be a big question mark.

   * Experience - obviously, the longer you have been practicing in a particular area of the law, the more you will know. Experience can be a big factor in many cases.

   * Experience actually trying cases - ask the attorney how many cases he has actually tried.

     Has he or she achieved any significant verdicts or settlements? The greater your number of cases actually tried and substantial verdicts and settlements achieved, the more likely the insurance

companies will respect you. Past results are not a guarantee of the future, but past results do demonstrate some level of experience and success.

* Respect in the legal community. How do other attorneys and judges feel about this attorneys competence?

* Board Certification - Texas offers a rigorous specialization process that tests and certifies lawyers. It requires a minimum number of trials and recommendations from judges and opposing attorneys as well as a very extensive testing process that covers every aspect of Personal Injury and Trial Law. Currently in Texas there are more than 83,000 licensed lawyers. Out of those only 8364 are Board Certified in any specialty and only a mere 1686 have met the qualifications for Personal Injury Trial Law. You can see there are a whole lot of lawyers that advertise they handle personal injury claims but very few are actually qualified by the Texas Board of Legal Specialization to be called specialist in Personal Injury Trial Law. Ask any attorney you meet with "Are you Board Certified? If not, why not?". For more information about Board Certification ask for our free brochure **WHAT IS A BOARD CERTIFIED PERSONAL INJURY TRIAL ATTORNEY.**

* Membership in trial lawyer associations. In our area, you can certainly find a lawyer who is a member of the Texas Trial Lawyers Association (TTLA), the Tarrant County Trial Lawyers Association (TCTLA) the San Antonio Trial Lawyers Association (SATLA) and the American Association for Justice (AAJ). These organizations provide extensive education and networking for trial lawyers.

ONCE YOU HAVE DECIDED ON AN ATTORNEY, MAKE SURE YOU BOTH UNDERSTAND YOUR GOALS AND YOU UNDERSTAND HOW THE RELATIONSHIP BETWEEN YOUR ATTORNEY AND YOU WILL WORK

How will your attorney keep you informed about the progress of the case? Some attorneys send e-mails, some send letters and copies of correspondence and pleadings in the case to the client. Your attorney should also take time to explain the "pace" of the case and in what time frames the client can expect activity to take place.

Find out who will actually be working on your case. Make sure that you and your attorney have a firm understanding as to who will be handling your case. There are a lot of things that go on with a case that do not require the attorney's attention. On the other hand, if you are hiring an attorney because of his or her trial skills, make sure that person is going to be trying your case for you.

WHAT DOES AN EXPERIENCED PERSONAL INJURY ATTORNEY DO FOR YOU IN A CASE?

Here is a more or less complete list of the tasks your attorney may be called to do in your case. Remember that each case is different, and that not all of these tasks will be required in every case. They are:

* Initial interview with the client
* Educate client about personal injury claims
* Gather documentary evidence, including police accident reports, witness statements, medical records and bills
* Analyze the client's insurance policy to see whether there are any coverages which the client has that may pay all or a portion of the medical bills while the claim is pending
* Analyze the client's insurance coverages and make suggestions as to what coverages should be purchased for future protection
* Interview known witnesses and get testimony preserved for the claim
* Collect other evidence, such as photographs of the accident scene, property damage, pictures of the injuries, videos of the scene
* Analyze the legal issues, such as comparative negligence
* Talk to the client's physicians or obtain writtenreports from them to understand the client's condition fully

* Analyze the client's health insurance policy or welfare benefit plan to ascertain whether any money they spent to pay your bills must be repaid

* Analyze the validity of any liens on the case. Doctors, insurance companies, welfare benefit plans and employers may assert that they are entitled to all or part of the client's recovery

* Contact the insurance company to put them on notice of the claim, if this has not already been done

* Decide with the client whether an attempt will be made to negotiate the case with the insurance company or whether suit shall be filed

* If suit is filed, prepare the client, witnesses and healthcare providers for depositions

* Prepare written questions and answers and take the deposition of the defendant and other witnesses

* Produce to the defendant all of the pertinent data for the claim, such as medical bills, medical records, and tax returns

* Set a trial date

* Prepare for trial and/or settlement before trial

* Prepare the client and witnesses for trial

* Organize the preparation of medical exhibits for trial

* Organize the preparation of demonstrative

exhibits for trial

* Prepare for mediation and/or arbitration

* File briefs and motions with the court to eliminate surprises at trial

* Take the case to trial with a jury or judge

* Analyze the jury's verdict to determine if either side has good grounds to appeal the case

* Make recommendations to the client as to whether or not to appeal the case.

After gathering all of the facts and medical records, and after your medical treatment has ended, your attorney will develop a settlement strategy with you and attempt to get your case settled with the insurance company. There are many reasons to settle a case, including the fact that we are living in a very conservative part of the country as far as jury verdicts go, your attorney fee will be less if your case can be settled, and your costs will usually be less than if the case goes to trial. Your attorney will help you analyze the insurance company's best offer and compare it to what you might net by going to trial. Of course, you must know that every case (even "obvious" cases) can be lost.

Sometimes, attempting to negotiate with the insurance company before filing suit is not a worthwhile endeavor. Insurance companies sometimes use pre-suit negotiation only to attempt to find out as much about you, your lawyer and your doctor as they can. It is generally a dangerous practice to wait until the statute of limitations has almost expired to file suit. I have seen other attorneys do this, only to find that the defendant they sued is either not the correct defendant or is now blaming someone else.

While there are legitimate reasons for delaying filing suit, there is no excuse for the practice whereby an

attorney waits until the last moment to see if the insurance company will settle your case. Sometimes when inexperienced lawyers attempt to handle a personal injury claim and when the claims do not settle, they often try to find an attorney to file the case on time. (I've received plenty of those last-minute calls. I reject them. I lead a balanced life and don't need to take on problems other attorneys have caused by their delay in taking action. Their inaction is not going to be my crisis.) Some accident victims are ill served by hiring attorneys who are not Board Certified in the area of law their claim involves.

Once the lawsuit is filed, both sides engage in the legal process called discovery. Each party is allowed to investigate what it is the other side is going to say at trial. The defendant will be permitted access to your medical and work history, including your income records. You may have to give a deposition under oath and you may be required to submit to a medical examination by a physician of the defendant's choosing. The defendant is also subject to discovery. He will answer written and oral questions about his own background and he will have to give sworn testimony about the incident at issue.

WHAT CASES DO WE NOT ACCEPT?

* Cases involving minor injuries. Bumps and scratches are a natural part of life and do not mean that someone owes you money for them. Our time and effort has to be spent on cases where our client is entitled to a recovery well above the cost of pursuing a suit.

* Cases with less than $2,000 of expected total medical bills and lost wages. Cases with lower damages than this can usually be settled on your own or with a less-experienced attorney. In calculating your medical bills, look at the full amount charged by your doctor, not the smaller amount actually "allowed" by the insurance company.

* Cases with significant pre-existing injury in the same body part. If you have had three back surgeries before this accident, then the chance of a jury awarding you a substantial amount of money for your back injuries here is very low.

* Cases where the statute of limitations will soon run. You have 2 years in Texas to file suit on a personal injury claim. If you wait until the time is almost up I will not take your case no matter what because I am not going to have a crisis at my office because you waited too long.

* Cases where you are at fault in the accident.

* Cases where you assumed the risk of your injury. Please don't call us if you spent three hours drinking alcohol in a bar and then fell down when you were trying to leave the bar.

* Your case has already been filed by another attorney.

* Cases where you have a significant prior criminal history. Sorry, no matter what your case involves Texas juries refuse to give any type of

significant money to persons with a significant past criminal history.

All of this aside we represent lots of accident victims. Our clients are positive thinkers, not whiners or frauds.

ISSUES THAT CAN WRECK YOUR CASE

1. Hiding Past Accidents From Your Lawyer

Once you begin a case, the other side will be interested in knowing how many past accidents, prior falls and/or Workers Compensation claims you have been in. The reality is that they probably already know the answer or have easy access to that information. All insurance companies subscribe to insurance databases and often the only reason they ask you this question is to find out if you are an honest person.

If you have been in other accidents, your lawyer can investigate this and make a determination as to whether this is a valid problem in your case or not. If you do not tell your lawyer, however, and you misrepresent your accident history to the insurance company, then it is almost guaranteed that you will lose your case. If you misrepresent your past injury history to me it is guaranteed that I will withdraw from representing you. I will be completely honest about your claim but I expect the same from you.

2. Hiding Other Injuries

It goes without saying that you should be up front and honest with your attorney about any injuries that occurred before or after this accident. Again, if you saw a doctor or other healthcare provider, then there is a record in existence that the insurance company will find. Your lawyer can deal with this if he knows about it. If you lie about it, and the insurance company finds out, then your case is over. Remember, there is no privacy in America today. When you make an insurance claim, your life becomes an open book.

If your doctor keeps "two sets of records" because she's been treating you for years and you don't make sure that we get ALL of the records, we'll

fire you. Simple as that.

3. Hiding Other Claims

As soon as the insurance company gets notice of the claim they will run a background check on you. There are several websites - accessible to only insurance companies that they subscribe to and share information on - where any time a claim has been reported on you whether by you or by an insurance company that document the type of claim such as a car wreck or slip and fall etc. the type and nature of your injury and what amount of money was paid to you.

Not telling us about prior claims will only result in wasted time and money and will not get you anything in return. Once we find out that there are other prior claims that you have not told us about and we have represented to the insurance companies that there are none we will immediately withdraw from representation of you. Further, any ethical lawyer will not touch your case.

Being up front and honest from day one means we can review your prior claims and see how we can now handle your claim. We have many clients that have had prior claims. In most cases we can ask the health care providers to explain the differences, if any, in the different claims and can proceed with the claim based upon their explanation. In very few cases are we unable to help them. Remember honesty is always the best policy.

4. Not Having Accurate Tax Returns

In almost every case, a claimant will have lost income because of the accident. You will only be able to claim that lost income if your past tax returns are pristine. You don't want to risk going to jail by claiming a loss of income, only to have your past tax returns not back up your claim. Again, being honest with your attorney is the only way to be, because he or she can deal with the

problem if they know about it.

Be aware that you will most certainly be required to produce your tax returns if you file a lawsuit and claim lost wages. If you are a liar and a cheat, this will come back to haunt you in your injury case and I don't want my name associated with liars and cheats.

5. **Misrepresenting Your Activity Level**

Insurance companies routinely hire private investigators to conduct videotape surveillance. Now, they also troll YouTube and other social networking sites or "Google" you. If you claim that you cannot run, climb or stoop, and you get caught on videotape or brag about break dancing on the Internet, you can forget about your claim. There is no explanation (other than "you got my brother, not me") that can overcome the eye of the camera. One of our former clients claiming a "back injury" got caught on his roof repairing shingles. That didn't look so good and I fired him as a client when I found out.

6. **Hiding or mis-representing your past criminal history**

The final determination in any claim is whether a jury will like you and want to give you money for which you are entitled. Juries can award whatever money they feel is justified for any reason. If they do not like you they will not give you money or will only award money for medical bills. Unfortunately, if you have a criminal history, in Texas they can bring that up if you have a felony conviction or have been convicted or pled guilty to a crime of moral turpitude in the past ten years.

We always ask our clients about past criminal record. Please understand it does not matter to us what has happened in your past but any claim must be evaluated in light of any past criminal history as the defense will do anything they can to get

that information in front of a jury and we have to be able to tell you what impact we have seen it may have on juries.

Having a past criminal convictions does not mean you cannot pursue a claim. However we must have all the facts about your claim to properly evaluate your claim.

7. Hiding Or Mis-representing The Facts Of Your Fall

Board Certified Personal Injury Attorneys, Insurance Adjusters and Doctors all deal with clients/patients who have fallen and are injured by the fall. We are very familiar with the types of falls that will occur under certain circumstances, the mechanics of the types of falls expected, the types of injuries that can and will occur based upon how you fell and what caused you to fall. Making up a fall or trying to fake or exaggerate an injury will never get past an experienced Board Certified Personal Injury Attorney, Insurance Adjuster and/or Doctor. If your facts do not match up with the type of fall you claim or an injury you have we will not represent you. Also if a doctor tells us that your injuries could not have come from a fall or more likely than not existed before your fall, we will not represent you. As you should be aware by now, the clients we represent have been truly injured by the negligence of someone else. That is the type of client we will put all of our time and energy into representing. We will not represent anyone who we feel is not telling us the truth about their fall and their injuries.

WHY AREN'T JURIES ENTITLED TO CONSIDER INSURANCE WHEN REACHING A VERDICT IN A SLIP AND FALL CASE?

Why can't a jury consider that the Insurance Company and not the Defendant is really paying for the damages? What a great question! The insurance companies have spent billions of dollars on making sure they elect Legislators that will push their agendas. They have spent billions of dollars trying to convince every person who may be called to jury duty that every personal injury case is a "frivolous lawsuit" and that a "Trial Lawyer" is nothing more than a sleazy, underhanded, lying lawyer that will do and say anything to take money from the poor insurance company.

You can rest assured in a premises injury case that if there is a lawyer defending the Defendant and the case has made it all the way to a trial, the Defendant has plenty of insurance coverage that will cover the damages.

All insurance policies have a provision that the Insurance Company has a right to settle or not settle any claim on its own. The person who bought the insurance has no say in whether any case should settle and therefore no ability to prevent themselves from being sued. Insurance companies are betting that juries will give little or no money so they can pay as little as possible on each suit. In the large majority of cases the Defendant themselves will never have to pay a penny as they purchased insurance that will cover the damages in the suit.

The reason why Courts and Attorneys can't tell you this in a specific trial involving a car accident is the Courts are afraid juries will disregard evidence and award money just because there is insurance that will pay for the damages. But if you sit on a jury in Texas, you will now know that the Insurance Company and not the Defendant will pay for all damages you award. Insurance Companies will begin to settle more cases and stop wasting your time by making you go to

jury duty once juries begin awarding more money that the Insurance Companies have to pay. Cases will settle much easier when that happens and you won't have to go waste your time sitting on a jury when they know they owe the injured party money and that a real jury will make them pay the injured party what they owe.

Please Note: I will not take your case if you are already represented! If you are already represented by an attorney, this book may raise questions for you. Ask your current attorney these questions. Everyone does things a little differently and we do not accept cases in which another local attorney has already been involved. If you are currently represented, use this book to increase your knowledge and to ask questions, but please don't ask us to take on your case. We won't.

This Book is NOT Legal Advice!

The Texas State Bar requires that I inform you that what is in this book is not legal advice. I'm not your lawyer until you and I enter a written agreement for me to be your lawyer. I know the arguments the insurance company will make and so should you even before you file your claim. I can offer suggestions and identify traps, but please do not construe anything in this book to be legal advice about your case, as each case is different and an attorney can only give you quality legal advice when he or she understands the facts involved in your specific case.

Kerry H. Collins & Associates, P.C. is located at 1301 Ballinger Street, in Fort Worth, Texas. If you would like a free brochure entitled "What Is A Board Certified Personal Injury Trial Law Attorney?" please e-mail me at info@kerrycollinslaw.com or e-mail kcpc@txis.net or call (817) 335-9700.