

COST EFFECTIVE PRESENTATION OF THE AUTO TORT CASE IN MARYLAND

Large law firms spare no expense when it comes to representing their clients. While this may make good sense in the context of larger medical malpractice claims, catastrophic injury cases, or mass tort litigation, the same strategies do not apply in handling smaller auto tort cases. There is no sense in investing large sums of money into the presentation of a smaller auto tort case, when the ultimate recovery anticipated does not justify doing so. This article will provide young attorneys and solo practitioners with several strategies to present an auto tort case in a cost effective manner, ultimately resulting in a greater benefit to their clients.

I. COST EFFECTIVE APPROACH TO VENUE CONSIDERATIONS— DISTRICT COURT OR CIRCUIT COURT?

While venue selection may be an obvious consideration to more experienced attorneys, new attorneys should recognize that a proper determination of whether to file suit in District Court or Circuit Court, is essential to cost effective litigation. On October 1, 2007 the Maryland legislature increased the jurisdictional limit in District Court from \$25,000 to \$30,000.¹ For many auto tort cases, not involving complex injury or liability issues, District Court will be the most appropriate venue. The jurisdictional limits of the District Court will often provide adequate compensation for your client and you will not need to take depositions or utilize expert witnesses in order to prove your case. Accordingly, discuss these considerations with your client to determine if suit can be filed in District Court.

¹ The Maryland Legislature amended Maryland Courts and Judicial Proceedings Section 4-401 to state that the District Courts enjoy original jurisdiction when the amount in controversy does not exceed \$30,000.

If the \$30,000.00 jurisdictional limit will not provide adequate compensation for your client, or if you have need for more elaborate discovery, you will need to file your case in Circuit Court or Federal Court. Discuss with your client the additional costs likely to be incurred if the matter cannot be resolved in District Court.

II. COST EFFECTIVE APPROACH TO EXPERTS

In deciding whether to retain an expert you should initially consider if, without an expert, you can meet your burden of proof and get your client's case to the jury/factfinder on liability and damages. In a typical automobile negligence case, the determination of whether to use an expert typically revolves around: (i) can you establish liability without an expert? (ii) can you prove that your client's injuries were caused by the accident without an expert? and (iii) can you admit your medical bills into evidence without an expert?²

a) Courts & Judicial Proceedings Section 10-104

In certain cases there may not be a need for a medical expert witness. Proceeding solely with a properly submitted 10-104 Statement may make the most economic sense for maximizing your client's recovery. Under Section § 10-104 of the Courts and Judicial Proceedings Article of the Maryland Code, medical records and bills are admissible as long as they have been provided to opposing counsel 60 days prior to trial. This procedure is available to practitioners in cases only where the *ad damnum* is \$30,000.00 or less. In larger cases, the § 10-104 submission in lieu of live expert testimony is not an option.

² Practitioners should be familiar with Maryland Rule 5-702 (Testimony By Experts), the case law governing the admissibility of medical expert testimony in Maryland and the general standards applicable to the admissibility of expert testimony in Maryland. See e.g. *Reed v. State*, 283 Md. 375, 391 A.2d 364 (Md. 1978); *Mont. Mut. Ins. Co. v. Chesson*, 399 Md. 314, 923 A.2d 939 (Md. 2007); MD-ENC Evidence § 193 Testimony of Experts-Medical Experts.

If you proceed with a § 10-104 statement only, you will want to know these four cases, and have copies of them with you at trial to provide to the Court, if necessary. First, two Maryland cases examine the use of a § 10-104 statement in Circuit Court: *Singleton v. Travers*, 144 Md. App. 696, 800 A.2d 23 (2002), and *James v. Butler*, 378 Md. 683, 838 A.2d 1180 (2003). These two opinions are helpful on the issue of causation, and stand for the proposition that expert medical testimony is not necessary in cases where “the disability develops coincidentally with, or within a reasonable time after, the negligent act, or where the causal connection is clearly apparent from the illness itself and the circumstances surrounding it, or where the cause of the injury relates to matters of common experience, knowledge, or observation of laymen.” *Singleton*, 144 Md. App at 705. In your case, if true, your client will need to testify that their injury developed at or near the time of the accident, and that they had no prior history of the same. In these situations, these two appellate opinions allow the finder of fact to find causation without the necessity of medical expert witness testimony. Also, two additional Maryland cases address the causation issue: *Wilhelm v. State Traffic Safety Commission*, 230 Md. 91, 185 A.2d 715 (1962) and *Thomas v. Thompson*, 114 Md. App 356, 689 A.2d 1295 (1997). These cases mirror the holdings in *Butler* and *Travers*.

The second method of proceeding without a medical expert is “10-104 Plus,” which focuses on the benefits of having live medical testimony coupled with the submission of a § 10-104 Statement. Many times in auto cases, your client will have undergone chiropractic or physical therapy treatment. In these situations, the § 10-104 Statement alone may not carry enough weight with a judge or jury, and you may desire to call a chiropractor to testify at trial to support your § 10-104 submission. Since your

client's medical records and bills are already in evidence through the § 10-104 procedure, these health care providers can focus their testimony on the specific treatment they provided.³ For example, they may be able to explain the arduous nature of the provided treatment; the pain typically induced by the recovery process; the fact that while their treatment was beneficial; that your client was unable to achieve a complete recovery; that your client will need future medical care; and/or that your client will be predisposed to premature traumatic arthritis in the future. The expense of calling a chiropractor or physical therapist to testify is typically substantially less than the cost of bringing an Orthopedist or Medical Doctor to Court.

b) Video Depositions

In some cases, you will want to call a physician to testify because either the case has a value greater than the § 10-104 statutory limit, or the injuries and treatment are too far removed from the incident and/or too complex. While at first glance the fees associated with calling a physician often seem steep, there are ways to minimize the costs. First, consider using a video deposition of the physician in lieu of live testimony. The physician appearance fees associated with a *de bene esse* deposition, taken in their office, are typically much lower than for live trial testimony. This is because physicians typically block off, and bill for, a half-day or more for live testimony. However, physicians commonly will only charge their actual hourly rate for the video deposition.

³ Maryland licensed chiropractors can qualify as medical experts, under *O'Dell v. Barrett*, 163 Md. 342, 163 A.191 (1932). In *O'Dell*, the Court of Appeals held that due to the licensing requirements for chiropractors in the State of Maryland, a chiropractor could testify as a qualified expert, given the chiropractor's licensing qualifications and his treatment of the Plaintiff. In addition, under Maryland Courts and Judicial Proceedings § 10-104, chiropractors and physical therapists are considered "health care providers." Therefore, the physical therapist records are admissible under § 10-104.

Furthermore, the physician will bill you for their preparation, so minimize the documents that you want them to review, and provide your expert with an organized set of the medical records, and any medical articles that you want him to rely upon. Narrowing the focus for your physician, and minimizing their preparation time will minimize their charges. That being said, it is crucial that you take the time to meet with your expert before trial, know what their opinions are, and review their testimony with them. Although there is a cost associated with doing this, it is necessary in order to make sure that the expert is prepared and has reviewed the necessary documents so that there is an adequate factual foundation for their opinions at trial.

c) “Free” Experts

You may also have instances where you can use the resources of the Maryland government as a substitute for the expense of an expert on liability. For example, in cases involving a dispute over the timing of a traffic signal, consider using a light timing engineer from the local county office of transportation. These individuals are highly knowledgeable regarding light sequences. For the cost of a letter and a subpoena, they can testify at your trial about the exact sequence of the lights at the involved intersection.

Additionally, in lieu of an accident reconstructionist, in some cases you can attempt to use the police officer who responded to the scene.⁴ The officer can testify as to his understanding of the accident, based upon his investigation and examination of the scene of the accident, including making reference to any admissible notations in the

⁴ The Officer can also testify to admissions by the Defendant at the scene, anything he personally observed, as well as any physical evidence present upon arrival. Furthermore, certain parts of police accident reports are typically admissible. See *Honick v. Walden*, 10 Md. App 714, 272 A.2d 406 (Md. App. 1971) (holding that items based on the personal observation of the police officer contained in the police report are admissible).

police report.⁵ In instances where property damage may be an issue, consider using a mechanic rather than retaining a vehicle appraiser.

Expert witness costs are a necessary part of litigation. However, by taking some of the steps outlined here, you can keep these costs to a minimum while still zealously advocating for your client.

III. COST EFFECTIVE APPROACHES TO DISCOVERY AND TRIAL

Discovery is often perhaps the most expensive part of litigating an auto tort case. Funds are spent on depositions, medical records, court reporters, transcripts, couriers, copies, private investigators and other matters. With respect to discovery in smaller automobile negligence cases, attorneys should attempt to minimize these expenditures, where practicable.

a) Use The Internet For Trial Exhibits

When preparing for trial, it is often necessary to present evidence of the scene of the accident. Rather than hiring an investigator or aerial photographer, consider using Google Earth and Google Maps to provide you with satellite images of the scene of the accident. The images are admissible so long as your client testifies that they are “fair and accurate” depictions of the scene of the accident.

For demonstrative medical exhibits, rather than spending the money for a professional demonstrative exhibit, consider doing a Google Image search for the part of the body you want to display. Thousands of images are available, and when used in conjunction with a courtroom projector, these can be powerful and effective exhibits.

⁵ See *Holloway v. Eich*, 255 MD 591, 258 A.2d 585 (1969), holding that “the portion of an accident report based on the officer's first-hand knowledge is admissible as proof of the facts recorded therein upon the ground that it is either a public record or a record made in the regular course of business. Thus, the officer's notations of the length of the skid marks, the dimensions of the road, the make of the vehicles involved, visibility and the weather would be admissible...”

b) Admissions

In Circuit Court cases, consider using Requests for Admissions for as much of your case as possible.⁶ Go through your elements of proof: duty, breach, causation and damages. Then list each and every specific fact that is not contestable and request that your opponent admit these facts. For example, Requests for Admissions can often be used to establish the “fairness and reasonableness” of medical bills. For each document that you want to admit into evidence, consider having your opposition admit: 1.) the genuineness of the document; 2.) that it is a true and accurate copy of an original; 3.) that the document was prepared at or near the time of the occurrence, and/or; 4.) that the signature on the document is genuine. Such admissions will serve to economize your presentation, strengthen your case at trial, and perhaps provide enough ammunition to force a stipulation on liability.

Remember that when a party fails to admit to the allegation presented or to the genuineness of any document under Rule 2-424(e), and the party requesting the admissions later proves the genuineness of the document or allegation, the requesting party may move for an order requiring reasonable expenses incurred in making the proof,

⁶ Rule 2-424 provides, in relevant part, that “A party may serve one or more written requests to any other party for the admission of (1) the genuineness of any relevant documents or electronically stored information described in or exhibited with the request...

(d) Effect of Admission. Any matter admitted under this Rule is conclusively established unless the court on motion permits withdrawal or amendment...

(e) Expenses of Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under this Rule and if the party requesting the admissions later proves the genuineness of the document or the truth of the matter, the party may move for an order requiring the other party to pay the reasonable expenses incurred in making the proof, including reasonable attorney's fees. The court shall enter the order unless it finds that (1) an objection to the request was sustained pursuant to section (c) of this Rule, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to expect to prevail on the matter, or (4) there was other good reason for the failure to admit.”

including attorney's fees. Filing a post-trial motion pursuant to Rule 2-424 (e) will allow you to recover some of the costs associated with proving your case.

c) Stipulations on Liability And Motions For Summary Judgment

Consider whether you can rely on well crafted discovery and Maryland case law to force a stipulation on the issue of liability. If you cannot obtain a stipulation, consider filing a Motion for Summary Judgment in appropriate cases. Maryland case law that discuss common factual scenarios where a Summary Judgment Motion may be appropriate are: rear end collisions⁷, crashes involving sudden stops⁸, left turn cases,⁹ and boulevard rule cases.¹⁰ These cases should be cited by plaintiff's counsel when seeking a liability stipulation. If a stipulation cannot be obtained, these same cases can be used at trial to argue for presumptions of negligence on the part of the Defendant.

d) Obtaining Medical Records and Bills

Another expensive aspect of litigation involves obtaining the client's medical records and bills. With regard to medical bills, many providers will charge our law firms a fee of \$15.00-\$30.00 if we request a copy of our client's bill. However, if the client calls and requests a copy of the bill, there typically will not be a charge. Therefore, have

⁷ See *Andrade v. Housein*, 147 Md. App. 617, 810 A.2d 494 (2002) held, "A true evidentiary presumption of negligence arises where a motor vehicle is lawfully stopped on a highway awaiting for traffic to clear before entering an intersecting highway and that vehicle is suddenly struck from behind by another vehicle, resulting in personal injuries and property damage to the driver and the front vehicle." *Andrade*, 147 Md. App. at 623.

⁸ See *Clark v. Junkins*, 245 Md. 104, 225 A.2d 275 (1967): "The general rule in Maryland is that where motor vehicles are traveling in the same direction there exist duties incumbent upon both drivers. The driver to the rear has a duty to exercise reasonable and ordinary care to avoid injury to the vehicle in front of him." *Clark*, at 106.

⁹ See *Myers v. Bright*, 327 Md. 395, 609 A.2d 1182 (1992), which states that "where permitted, left turns should be made cautiously, in the exercise of due care, and the responsibility for seeing that the turn can be made in safety is placed on the motorist desiring to make the turn, without regard to which vehicle enters the intersection first. A driver attempting a left turn must keep a proper lookout for other vehicles in, or approaching, the intersection." *Myers*, 327 Md. at 401.

¹⁰ See *Dennard v. Green*, 95 Md. App. 652, 622 A.2d 797 (1993); *Dean v. Redmiles*, 280 Md. 137, 374 A.2d 329 (1977).

your client request copies of their bills from the provider before incurring this charge. Also, make sure that your client knows to send you copies of any bills that they receive in the mail.

With regard to medical records, in those cases where your client has a complex and extensive medical history, consider providing the Defendant (or an insurance adjuster) with a specific authorization signed by your client to obtain those records, in exchange for an agreement that they will provide you with a free copy of every record they obtain. This can save your client hundreds of dollars, and opposing counsel will almost always agree to this.

If you obtain a large volume of medical records and provide a copy of those records to the defense attorney, it is reasonable to request reimbursement for photocopying. Furthermore, color copies can be expensive. It is therefore reasonable to request that defense counsel agree to reimburse you for the cost of duplicating photographs and other such documents.

e) Deposition Transcripts

Deposition transcripts are amongst the largest expenses in litigation. In smaller automobile cases, consider whether you truly need to take the defendant's deposition. Well-crafted discovery utilized early in discovery, can, in some cases, be used to force a stipulation on liability, thereby negating any need to depose the defendant and liability fact witnesses. Also, consider holding off on purchasing a copy of your client's deposition until you are certain that the case will go to trial.

f) Utilize the Resources That MTLA Provides

MTLA provides its Regular Members with many benefits that help minimize costs. For example, the MTLA Website has an online document repository which can be easily accessed by plaintiff's attorneys at minimal cost and it contains a wealth of useful information, including sample motions, complaints, interrogatories and other litigation documents.¹¹ Reinventing the wheel is a waste of time when tried and true forms are available and searchable at your fingertips.

MTLA also has a Defense Expert Database and a Deposition Library. These databases provide information that is crucial for effective cross examination of defense experts at trial. Using these tools can often alleviate the need to depose a defense expert witness. Similarly, the MTLA Listserve, and networking with the MTLA Auto Negligence Section, are also fantastic resources for obtaining advice from experienced trial lawyers. Consider consulting members of the Listserve or of the Auto Negligence Section with complicated legal research questions prior to spending money and time re-inventing the wheel.

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In summary, a cost effective approach to auto tort litigation can effectively yield an increased recovery for your client. While each particular case will require a careful analysis of its own particular facts, budget and the elements required for proof, the above strategies should be useful to any new or solo practitioner in litigating automobile accident cases in a cost effective manner.

¹¹ www.mdtriallawyers.com