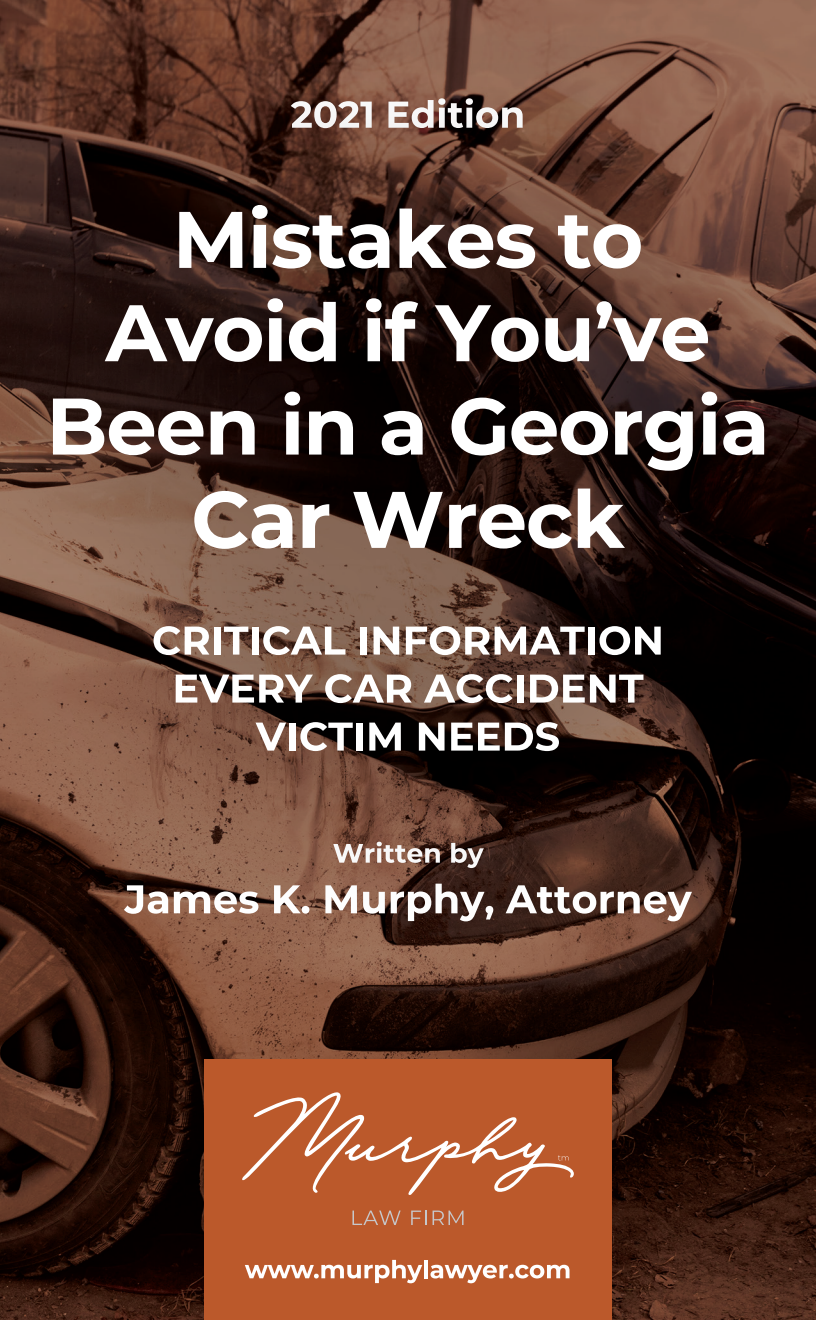

2021 Edition

Mistakes to Avoid if You've Been in a Georgia Car Wreck

CRITICAL INFORMATION EVERY CAR ACCIDENT VICTIM NEEDS

Written by

James K. Murphy, Attorney

Murphy™

LAW FIRM

www.murphylawyer.com

Mistakes to **AVOID**

IF YOU'VE BEEN IN A

GEORGIA CAR WRECK

Critical Information Every Car Accident Victim Needs

By Attorney James Murphy

James Murphy

Attorney at Law

8302 OFFICE PARK DRIVE

DOUGLASVILLE, GA 30134

770-577-3020

WWW.MURPHYLAWYER.COM

JAMESKMURPHY@MURPHYLAWYER.COM

COPYRIGHT © JAMES MURPHY, ESQUIRE

TABLE OF CONTENTS

Preface: *A Note From James Murphy* **pg. 4**

Chapter One: *What is a "Personal Injury Case"?* **pg. 5**

Chapter Two: *You Are at War—But It's a War That Can Be Won* **pg. 6**

- *What Must Be Proven to Win a Case?*
- *How Do I Find a Qualified Personal Injury Attorney?*
- *How Do You Choose?*
- *How Do You Find Out What Attorney is Good in Your Area?*
- *What About Harmful Products, Dog Bites, and Slip-and-Fall Cases?*

Chapter Three: *What Do We Do For You During Your Personal Injury Case?* **pg. 10**

- *Beware of ERISA*

Chapter Four: *Mistakes to Avoid If You Want to Win Your Accident Case* **pg. 13**

CONCLUSION & DISCLAIMER **pg. 15**

A NOTE FROM JAMES MURPHY

First, I want to thank you for requesting this book. I think that the information I give you here will help you receive fair compensation for your injury case.

I have written this book so that my neighbors could have good, solid information BEFORE hiring an attorney or dealing with the insurance company. As I point out later, not every case needs a lawyer. I truly believe, however, that you should have this valuable information before you are pressured by an insurance company to answer their questions or settle your car accident case.

My name is James Murphy, and I have been practicing law in Georgia since 1991. I limit my practice to injuries related to auto accidents and worker's compensation cases. So, if you need help with, say, a traffic ticket, I can't help you, but I'll be happy to direct you to a good local lawyer that might be able to help. You can find out more about me and the cases I handle at my website: www.MurphyLawyer.com.

James Murphy, Esq.

CHAPTER 1: What is a Personal Injury Case?

Let's start at the very beginning: What is a personal injury case? My wife, Charlotte, tells me that most people don't really understand what that means. Indeed, people who have known me for years will come up to me and ask me if I know a good auto accident attorney. They don't realize that injuries resulting from an auto accident actually falls under the category of personal injury.

A personal injury case is any type of claim where a person has been injured or killed due to someone else's careless actions (negligence). However, if you have been in an auto accident, and the only damage that occurred was damage to your car, then you don't have a personal injury case—but you may have a property damage case. My firm does not handle property damage cases, but there are some lawyers who do.

If you have been hurt *and* your car has been damaged, then you have two potential claims; a personal injury claim and a property damage claim. In those circumstances, either your insurance company or the other driver's insurance company will usually take care of the property damage claim.

If someone's careless actions cause the death of another, then this is called a wrongful death claim. The law of each state or jurisdiction differs significantly regarding what can be recovered in a wrongful death case. You need an attorney who understands these specialized wrongful death laws.

CHAPTER 2: You are at War, but It's a War That Can Be Won

The day you were injured, you entered a war zone. Insurance companies and some in the government have declared war on injured people and their attorneys. They have waged this war in the media, and their propaganda has had a tremendous effect on juries and their verdicts. The success that insurance companies have had in influencing the minds of jurors has convinced them not to offer fair settlements until you prove to them that you are ready, willing, and able to go to trial.

What Must Be Proven to Win a Case?

The law does not demand compensation for every injury. You must prove that someone else was negligent or careless, and that it was their negligence or carelessness which caused your injury. If you have suffered an unfortunate accident that is no one's fault, or if you do not sue the right person, then the law says that you will not win your case.

If a person has a valid personal injury case, a qualified personal injury attorney will use their expertise to gather the necessary evidence to help prove a client's case. This can help maximize the compensation the injured person receives.

How Do I Find a Qualified Personal Injury Attorney?

Choosing an attorney to represent you is an important, but daunting task. The decision certainly should not be made on the basis of advertising alone—anyone can buy a slick commercial. The T.V. and Internet are filled with ads—all of which say basically the same thing. Heck, you shouldn't even hire me until you trust that I can do a good job for you.

How Do You Choose?

How do you find out who in your local community is the best for handling your case? I believe that there are certain questions to ask that will lead you to the best person for your case—no matter what type of case you may have. It will involve some time on your part, but that's OK, because the decision as to who your attorney will be is very important.

The world of personal injury and worker's compensation is, in my opinion, much too specialized for someone who does not regularly handle these cases. Too many times, inexperienced attorneys take personal injury cases and do not do their clients justice, due to their lack of experience in this area of the law.

You should be made aware that insurance companies who defend personal injury and accident cases know who the attorneys are in your area, and they know who will actually go into court and try cases, and who will not. The insurance companies use that information to evaluate their risk. One of the first questions some insurance companies will ask when a serious claim comes in is: who is representing the plaintiff? **If this information is important to the insurance company, shouldn't it be important to you?**

How Do You Find Out What Attorney is Good in Your Area?

If you are considering hiring an attorney, consider the following points before signing any documents. Note that not every attorney will meet all of these criteria, but a significant absence of any of the following can help you determine if the attorney is or is not right for you.

- **Experience**—The longer you have been practicing a particular area of the law, the more you will know. Experience is a big factor in most cases.
- **Experience fighting in court**—Ask the attorney how many cases they have already tried in court. Has he or she achieved any significant verdicts and settlements? The greater the number of cases taken to court, and the more settlements and verdicts achieved, the more likely it is that the insurance companies will respect the attorney. Past results are not a guarantee of future results, but past results demonstrate some level of experience and success.

  Martindale Hubble peer review rating—A compilation of ratings of attorneys based on reviews of local lawyers and judges in a particular area.

  NOTE: Attorney James Murphy has a "BV" Martindale-Hubble attorney rating. This rating is an indication of an exemplary reputation and a well-established practice with an ethics rating noting adherence to professional standards of conduct and ethics, reliability, diligence, and other criteria relevant to the discharge of professional responsibility.

- **Licensed in the appropriate state**—Ask your attorney if he/she is licensed in the state where your case will be filed. An attorney who is not licensed in the state where the case will be filed is at a disadvantage when it comes to negotiating with the insurance company. The insurance company knows who is not licensed, and they know that a lawyer without the appropriate state license will not be able to try the case.
- **Online reputation**—As the Internet grows, there are many attorney directories, and even more attorney websites. Check to see what kind of testimonials and reviews they have received on different websites. What do other attorneys say about them (Avvo.com)? What kind of reputation have they built on social media sites? These might be good indicators of what kind of service you can expect.

What About Harmful Products, Dog Bites, and Slip-and-Fall Cases?

Whenever you are hurt by anyone's negligence, including a professional, builder, manufacturer, or store merchant, you have a "personal injury claim." Product liability (injury by harmful product), medical malpractice (injury by a doctor, hospital, or other healthcare provider), slip-and-fall (injury because someone did not take care of the walkway) are all subtypes of personal injury cases. I do not handle products liability or slip-and-fall cases. I dedicate my expertise and practice to the complexity of auto accident and worker's compensation cases. However, there are plenty of lawyers who handle slip-and-fall and product liability, and I will be happy to try to help you find a lawyer for that type of case. There is no charge for this service.

CHAPTER 3: What Do We Do for You During Your Personal Injury Case?

Here are some of the tasks we may be called to do in your case. Remember that each case is different, and not all of these tasks will be required in every case. They are:

- Initial interview with the client.
- Educate the client about personal injury claims.
- Gather documentary evidence, including a police accident report, medical records, and bills.
- Analyze the client's insurance policy to see whether there are any coverages that the client has that may pay all or a portion of the medical bills while the claim is pending.
- Analyze the client's insurance converges and make suggestions as to what types of coverage should be purchased for future protection.
- Interview known witnesses.
- Collect additional evidence, such as photographs of the accident scene.
- Analyze legal issues, such as contributory negligence and assumption of the risk.
- Talk to the client's physicians, or obtain written reports from them, to fully understand the client's condition.
- Analyze the client's health insurance policy or welfare benefit plan to ascertain whether any money they spent to pay their 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 a suit shall be filed.
- If a 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.
- Go to court to set a trial date.
- Prepare for trial and/or settle before trial.
- Prepare the client and witnesses 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, and make recommendations to the client as to whether or not to appeal the case.

Beware of the ERISA

You should also be aware that, often, if your medical bills were paid by the insurance of an employer's health plan, the health insurance company or plan may want reimbursement out of any personal injury recovery. Your "insurance" turns out not to be insurance at all, but a "loan." We have seen cases where the insurance companies hire 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 of 1974). Your attorney must understand the implications of ERISA.

CHAPTER 4: Mistakes to Avoid If You Want to Win Your Accident Case

Here are what I consider to be the worst mistakes that can ruin your personal injury case:

#1 Not Taking Good Photographs

Perhaps the biggest mistake you can make after an auto accident is not taking good enough photographs of the damage to the car, or visible signs of your injuries.

- **Property Damage Photos**: Property damage estimates are good to know, but there is no substitution for good pictures of the damage to the vehicles involved in a wreck. Our experience with juries tells us that the jury will want to see if you have actual damage to your vehicle before they believe you are really hurt. Please take **plenty** of good pictures!
- **Physical Injury Photos**: Your injuries are most serious shortly after an accident. The best way to preserve the seriousness of your injuries is by taking good photographs.

#2 Hiding Past Accidents from Your Attorney

When you make an injury claim, the defendant's insurance company will be interested in knowing how many past accidents you have been in. The reality is that they probably already know the answer. All insurance companies subscribe to insurance databases, and often they only ask you this question is to test your credibility. If you have been in other accidents, tell your attorney. He or she can make a determination as to whether this is a problem in your case. If you do not tell your lawyer, however, and you misrepresent your accident history, then it almost guarantees that you will lose your case.

#3 Hiding Other Injuries

It goes without saying that you should be upfront 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 or she knows about it. However, 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.

#4 Not Having Accurate Tax Returns

In almost every case, a claimant will have lost income because of an accident. You will only be able to claim that lost income if your past tax returns are in order. 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. Being honest with your attorney is crucial, because he or she can deal with a problem only if they know about it. Be aware that you will be required to produce your tax returns if you file a lawsuit and claim lost income.

#5 Misrepresenting Your Physical Limitations

Insurance companies often hire investigators to do videotape surveillance. If you say that you cannot run, climb, or stoop, and you get caught on videotape doing these things, your case is ruined. There is nothing you can say to dispute the eye of the camera. Recently, one of our former clients was videotaped running around the bases of a ball field with his kids. He claimed that his back pain from his car wreck was so bad he could barely walk. This little surveillance video cost him several thousands of dollars.

#6 Beware of Social Media

Insurance adjusters also closely watch the online social profiles of those claiming they have an injury. Be cautious that nothing you say, or portray in a video or photo, could harm your case. Talk to your attorney about what may be acceptable to post.

#7 Speaking to the Other Driver's Insurance Company

If you have been in a car accident and it is not your fault, the insurance company of the at-fault driver will likely contact you. It can be a big mistake to talk to the adjuster of the at-fault's insurer because the adjuster could get you to say things on a recorded statement that could later come back to hurt your personal injury claim.

CONCLUSION

I hope this book serves as a helpful resource for your personal injury case and how to avoid some of the common mistakes that I have seen over the many years of handling these types of cases.

If you think we can help you with your case, please call give me a call. **To Get a Free Consultation with James Murphy, Call 770-577-3020.**

DISCLAIMER: We are happy you took time to read this book. You should note, however, that ordering or reading our book does not create an attorney-client relationship. Please note that this book does not contain legal advice, as each case is different, based on the facts of your specific situation. If you would like our legal advice, please schedule a free meeting with James Murphy at 770-577-3020.