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CHAPTER 8

SPECIAL ISSUES FOR WRONGFUL DEATH CLAIMS DUE TO CAR AND TRUCK COLLISIONS

The vast majority of injuries arise from collisions on the roads and highways. According to the U.S. Department of Transportation and the National Highway Traffic Safety Administration, approximately 33,000 people die each year due to traffic-related accidents.

The most obvious source of recovery is from the defendant himself/herself. The problem is that many people have very limited savings. For many working people, the most insurance that they can afford is the state minimum insurance of just \$25,000. While, on one hand, \$25,000 is a great deal of money, it's a certainty that \$25,000 is not going to compensate a family that has lost a father, mother, husband, sister, brother, daughter or son.

So, is a Georgia family limited to recovering just \$25,000 if a loved one dies in a car crash?

Sadly, sometimes the answer is yes. (However, see the sections in this book about recovery from the Georgia Crime Victims Compensation Program and Social Security.)

Sometimes other sources of recovery may be made available.

A. The Driver's Employer or Owner of the Vehicle

One of the best sources of recovery is the defendant driver's employer if the driver was acting in the scope of their employment at the time of the accident. The employer is held responsible under the doctrine of *Respondeat Superior* – roughly translated from Latin, “let the boss answer” [for the acts of the servant]. As discussed above, the possibility to hold a defendant's employer responsible may turn a \$25,000 possible compensation into a multi-million-dollar recovery. The challenge is that the employer-employee relationship is not always easy to prove. On many occasions, a company will argue that the defendant was not an employee, but an independent contractor, and that the company is not responsible. This often happens in cases with cabs, commercial trucks, etc.

B. Problems and Defect with the Vehicle and Road Designs

Sometimes, the cause of the crash is not the driver, but problems with either the plaintiff's or the defendant's vehicle. For example, the braking system may have failed, or there may have been problems with the tires. Plaintiffs in product liability actions can allege three theories of liability; (1) liability for defective design, (2) liability for a manufacturing defect, or (3) liability for failure to warn. Product liability lawsuits, like medical malpractice lawsuits, are extremely complex, for they rely significantly on expert witnesses to testify to certain scientific principles and facts. Also, like medical malpractice actions, the manufacturers

do not want to admit liability, and will often litigate the matter all the way up to the U.S. Supreme Court.

Sometimes, an accident is caused by a defect of the roadway. If the problem is due to poor design, an action can be brought against the Georgia Department of Transportation (DOT). If the problem is due to poor maintenance, as in the case of a bridge falling, claims can be brought against a city or a county. Either way, a governmental agency can be held responsible and the special notice requirements must be provided. (See the section on ante litem notices in Chapter 2).

C. Drunk Drivers

In the event that the defendant was drunk, there is always the possibility of holding the supplier of the alcohol responsible. Under Georgia's Dram Shop Act, O.C.G.A. § 51-1-40, the dram shop laws hold that someone selling alcohol, regardless of whether it's a bar, restaurant, or convenience store, can be held responsible if they were selling alcohol to persons underage, to a noticeably intoxicated adult, or an adult who will be driving. Importantly, the claim is only for innocent third parties. If a drunk driver or the purchaser of the alcohol is injured, they cannot make a claim against the bar.

Uninsured motorist or underinsured motorist coverage (known as "UM Coverage") is one of the best sources of recovery.¹⁶ UM coverage is part of the decedent's automobile insurance coverage. It is designed for a situation in which a traffic incident occurs and there is not enough coverage by the defendant driver to pay for the damages. The UM coverage is generally broadly written and it includes all family members of the household.

¹⁶ We always encourage folks to purchase as much uninsured and underinsured motorist coverage as possible.