

Four (4) Tips for Winning the Poker Game of Limited Tort Litigation

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Wednesday, April 6, 2016



In the world of personal injury litigation, everything we do is a gamble. Every time we sign up a new client, file a lawsuit, pay our experts, and walk into that courtroom to pick a jury we, and our clients, are betting on 8 or 12 people sitting in the jury box. We're risking our time, our staff's time and our case costs, that the jury will come back with a favorable award. In that regard, any personal injury litigation is a game of chance. And like most games of chance, the odds are tipped slightly in the house's (the insurance companies') favor...especially in the limited tort context.

That being said, you can only win if you're willing to put your chips in the middle of the table. When an adjuster asks "why does your client pierce limited tort?" he is really asking if you're willing to go *all in* for your client. To take on the big stacked insurance carriers in the poker game of limited tort litigation, you must be willing to bet it all. But before anteing up, remember these four (4) tips to taking down the house:

1. Avoid the Pre-suit Demand "Tell"

I know limited tort litigation is an expensive and time-consuming. To settle a limited tort case pre-litigation would save everyone a lot of time, money and aggravation. But, deep down we all know that it is nearly impossible to settle a limited tort case, pre-suit, for full value. Submitting a pre-suit demand is the most obvious "tell" in the book. You've told the carrier that you not prepared to spend

the money to litigate this case, and even worse, that you don't believe your case is worth taking to trial. Instead of forcing his hand, you have given the adjustor an opportunity to get out cheap.

2. Don't "Limp In" by Filing An Arbitration Case

The aggressive defense of limited tort claims needs to be met with equally aggressive litigation. As trial lawyers, we should always be playing offense. You wouldn't just "limp in" to a hand of poker if you're holding a pair of Aces. Why then would you file an Arbitration level complaint when your client has suffered serious injuries? While the arbitration process is less expensive and less time-consuming, it is also less profitable and less practical for a limited tort claimant. The carriers have to know that you believe your case is worth more than \$50,000. A major jury lawsuit, demanding in excess of \$50,000, lets the carrier know that they must settle your case for fair value or it put its fate in the hands of 8 or 12 strangers in a box.

3. Commit to Your Hand

Now that you've decided to go full force, it's time to show the carriers that they can't come back over the top. The best way to show commitment to your case is to video your doctor. While this is an expensive litigation cost, your doctor's video sends the message that you're prepared to take this case to verdict. You've spent so much of your valuable time on preliminary objections, written discovery, depositions and motion practice. But the doctor's video and trial preparation is worth tenfold what you spend on the previous litigation tasks *combined*. With your money spent and your doctor in the "can", you are now trial ready, the position of greatest strength in a limited tort case.

4. Be Prepared to Go All In

You've played the textbook hand, filing a Major Jury Complaint, developing your case and videotaping your doctor. But, it all means nothing if you're not prepared to walk into the courtroom, pick a jury and put your client on the stand. It's now time to put all your chips in the middle of the table and force the carrier to decide if they are willing to risk calling you. The carriers know what firms go to trial and what firms settle early. By going to verdict, not only are you showing your willingness and ability to try *this* case, but you're sending a general message to the carriers that you're not afraid to go all in. They now know they're going have to match your gall and can't just sit back and wait for you to fold.

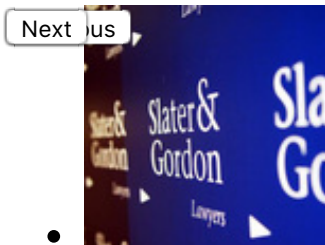
Marc I. Simon, Esquire is the CEO of Simon & Simon, a nineteen (19) lawyer personal injury firm, representing victims and their families. The firm specializes in limited tort motor vehicle collisions in Pennsylvania and verbal threshold collisions in New Jersey. Contact Simon & Simon , PC at 1-877-GO-SIMON or www.gosimon.com



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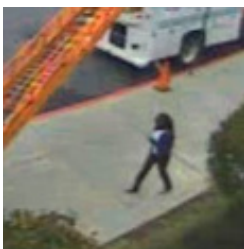
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