

Mark A. Anderson's

LAW TALK



JUNE 2009

INSIDE THIS ISSUE:

Book Excerpt: Failing to Use Your Health Insurance.....2

Order Mark's Book.....2

New Child Safety Law.....2

Bonehead Award.....3

Guest Attorney Eric Beal.....3

Q & A with Mark.....4

CAR SAFETY MATTERS: A TALE OF TWO CARS

Over the last 18 years practicing injury law, I have seen a whole lot of wrecked cars. There is generally a correlation between the amount of damage sustained by the car and the injuries sustained by its passengers. However, that is certainly not always the case.

Many factors determine how bad the damages will be in a car accident and one of the most important is the safety of the vehicles involved.

Last newsletter, in my *Bizarre Case of the Month*, I featured the “breast-pumping lady” who absolutely destroyed my clients’ Volkswagen Jetta. I mentioned that while my clients sustained serious injuries, they were not life-threatening and all is thankfully well with them now.

This past month, I resolved yet another case involving a totally destroyed Jetta—this time my clients were hit on Loop 820 by an RV driver who was simply not paying attention. Luckily, my clients in this wreck walked away with minor injuries and I was able to resolve their cases without costly and lengthy litigation.

Check out the pictures of these two totally destroyed Jettas from both cases. It’s

absolutely amazing that no one died or that no one suffered life-threatening injuries. This makes me want to drive a Jetta just for the safety aspect.

When purchasing a new (or used) car, the vehicle’s safety record is definitely something everyone should consider. However, it’s easy to get distracted by other important factors like price, looks, comfort and gas mileage. When considering safety, we all know better than to listen to the car salesmen, as they all tout the safety aspects of the cars they sell no matter what.

Instead, I suggest doing a comprehensive internet search on the cars you are considering.

The best website to visit is the Insurance Institute for Highway Safety (www.iihs.com). It gives vehicles grades for the four main tests: 1) frontal offset, 2) side impact, 3) roof strength and 4) rear crash protection/head restraint. All car models are tested and the IIHS gives out awards for their “top safety pick.”

Not surprisingly, the Jetta did very well in the safety tests and was a “top safety pick.”



7625 Bellaire Drive South, Suite 130

Fort Worth, TX 76132

817-294-1900

877-294-1115

www.maafirm.com

ACCIDENT & INJURY LAW



Last month's *Bizarre Case*.



My clients walked away with minor injuries

Book Excerpt: Failing to Use Your Health Insurance

In my recently released book *15 Mistakes That Will Wreck Your Texas Accident Case*, I discuss the various mistakes that I see injury victims make. Here is an excerpt from the book:

If you have health insurance, consider yourself very fortunate. Fewer employers offer it now and it's getting harder to afford health insurance coverage with the rising costs of monthly premiums. So if you do have health insurance, you need to use it! I know that sounds basic, but many people don't want to use it because they want the responsible party's insurance to pay for their medical care. The problem with that approach is that the liability insurance company won't pay as your medical expenses are incurred; they will only pay at the end of the claim when all your treatment is complete (and they only pay then if they are forced!). Use your health insurance and work out a way to deal with the co-pays and deductibles. (If you have PIP insurance, it's a great way to deal with those expenses.)

All health insurance companies have timeframes by which you must submit medical claims in order for them to be paid. If you're in a car accident and go to the hospital by ambulance, you might come through the hospital doors on a stretcher. This obviously prevents you from going through the normal admitting process. As such, sometimes your insurance information is not collected, so you'll need to call the hospital afterwards to make sure that they know your medical expenses are covered by health insurance.

At the end of your case, it's much easier to work with the health insurance carrier on paying them back (because they have a contractual right to reimbursement) than it is working with the hospital on paying those unpaid bills. Hospitals have a right to assert what is called a "hospital lien" which requires that they be paid back out of any settlement proceeds. The bottom line is, if you have health insurance, don't hesitate to use it. It will make resolving your case much easier.

Plus, no one likes to have bill collectors calling them. Turning your accident-related bills over to your health insurance company will prevent this inevitable avalanche of unwanted (and unnecessary) calls to your house—and your credit will not be unnecessarily affected.



Order Mark's **FREE** Book:
15 Mistakes That Will Wreck Your Texas Accident Case
 By calling 817-294-1900, or visit:
www.DontWreckYourCase.com



NEW LAW REQUIRES CHILDREN TO RIDE IN BOOSTER SEAT UNTIL AGE 8

On May 29th, Texas changed its law regarding children safety seats in vehicles.

The new law requires children to ride in booster seats until they are at least 8 years old or 4-foot-9 inches tall. Up until now, children had to be at least 5 years old or more than 3 feet tall to ride without a booster-seat.

The change comes from statistics which show alarming rates of child injuries in Texas vehicle accidents. Lawmakers argued that motor-vehicle accidents are one of the main causes of child fatalities. Standard seatbelts are made for adults and requiring young children to stay in a booster-seat longer is a much safer option. Lap belts ride up and shoulder belts can cut into a child's neck and face in a car crash. Booster seats, however, help elevate small kids so that their stronger bones (like the collarbone and pelvis) take the brunt of the impact in an accident.

The new law takes effect Sept. 1, 2009. Texas will be the 24th state to require kids to ride in a booster chair until age 8.

4 STEPS FOR KIDS—KNOW HOW CHILDREN SHOULD RIDE

1. From birth to at least 1-year-old or *and* at least 20 pounds, in the back seat in a rear-facing chair.
2. From age 1 and 20 pounds to age 4 and 40 pounds, in the back seat in a forward-facing seat.
3. From age 4 to age 8, in a back-seat booster chair.
4. At age 8 and over 4-foot-9, all children age 12 and under should ride in the backseat with a seatbelt.



THE BONEHEAD AWARD

On a cold January morning in North Texas, we woke up to a thin layer of ice covering our cars. A father was in too much of a hurry that morning to defrost or scrape off his car's windshield, so he chose to drive his kids to school hanging his head out the window in an attempt try and see around his icy windshield. Unfortunately, one of our favorite clients was doing his civic duty as an elementary school crossing guard when he was run over by the reckless man. The father claimed not to have seen our client. Our client was even holding up a hand-held STOP sign.

Luckily, no children were hurt and our client fully recovered from his injuries after a few months of intensive medical treatment.

A Fort Worth Police Officer gave the negligent driver citations for reckless driving and driving with an obstructed view. During our investigation, we interviewed the Police Officer and he told us: "If I could have given the idiot a third ticket for driving with his head up his ***, I would've done it."

Needless to say, with the



mere threat of litigation, the insurance company for the Bonehead Award Winner paid the Anderson Law Firm's client the full policy limits and he was fully compensated.

GUEST ATTORNEY ERIC BEAL: TO SIGN OR NOT TO SIGN, THAT IS THE QUESTION: PREMARITAL AGREEMENTS IN TEXAS

There may be nothing as beautiful (or as hot) as a summer marriage in Texas. With all the preparation that goes into the making of a marriage, the last thing a couple wants to contemplate is how the marriage might end.

In Texas, there are two ways to marry, and two ways to "un-marry." Both "common-law" and ceremonial marriages are recognized in Texas. Once married, however, the only way to end a marriage is death or divorce. Texas does not recognize concepts such as "legal separation," and there is no such thing as a "common-law divorce."

Most people know that Texas is a **community property** state. The problem is that few people understand what that means. While volumes could be written on the subject, should a divorce occur, the basic concept is this: *The court is obligated to presume that all property held by either or both spouses is community property and the court is free to divide the property in any manner it deems to be fair.*

While it's true that any property owned prior to marriage is separate property, the burden is on the party claiming the property to prove its origin. Doing so can be an expensive and uncertain task. Moreover, common misconceptions like, "the name on a title proves ownership" or "my income is

mine," are simply wrong.

In order to have as much certainty as possible regarding the disposition of property at the time of divorce is to enter into a Premarital Agreement—also known as a Prenuptial Agreement, Antenuptial Agreement, or "Prenupt."

The questions most often asked regarding such agreements are: 1) Do I need one? And 2) Are they enforceable?

Many people believe that Premarital Agreements are only for the rich. The thought is that if one doesn't have much, there is no benefit to the agreement. The reality is that such a belief can't be further from the truth.

Although nothing in a Prenupt can adversely affect the rights of children, virtually all aspects of property can be dealt with. Significantly, the parties can "opt-out" of the community property system such that there is no question "my earnings are mine and my spouse's earnings are [his or hers]." That means that potentially grossly expensive items that may arise should a divorce occur – such as temporary alimony and a spouse's attorneys' fees – can be dealt with and eliminated in advance.

With respect to enforceability, Texas law is clear. As long as the agreement was entered into voluntarily and the party seeking to "break" the Prenupt was given full disclosure of the finances of the other spouse or waived such disclosure prior to

signing the Prenupt, a divorce court is obligated to enforce the agreement as written.

The ultimate question in deciding whether to seek a Premarital Agreement is the cost. One should certainly consider the potential emotional cost and one's unique situation. Does a request to sign a Prenupt "just in case" lead to a doomed marriage? The fact is that a second or third marriage later in life is a completely different animal than a first marriage for two 20-somethings.

It is naïve to not consider the cost-benefit of a prenupt in terms of actual dollars. In Tarrant County, Texas, a divorce can last two years or more. There's no statutory cap on temporary alimony and awards in excess of \$10,000 per month are not unheard of. Finally, attorneys' fees in even moderately complex cases can amount to \$50,000 or more, per side.

When considering all the facts, failing to obtain a Premarital Agreement prior to tying the knot can lead to the tying of a noose that one will regret for the remainder of one's life.



Eric Beal is a family lawyer and can be reached by phone 817-261-4333 or at 2920 W. Southlake Blvd, Suite 140, Southlake, TX 76092, or by visiting www.DFWdivorce.com.



7625 Bellaire Drive South
Suite 130
Fort Worth, TX 76132

Phone: 817-294-1900
Toll Free: 877-294-1115
Fax: 817-294-3113

Check us out at:
www.maafirm.com

**ACCIDENT &
INJURY LAW**

The Anderson Law Firm handles all types of personal injury cases including every kind of motor-vehicle accident (car crashes, truck and bus wrecks, motorcycle collisions), pedestrian-crosswalk and bicycle accidents, drunk-driving accidents, dog attacks, dangerous drug cases, injuries to children and wrongful death claims. If we're unable to help you with a particular legal matter, we're happy to refer you to an attorney who can.

WE GET QUESTIONS...

Q: WHEN IS IT TIME TO SETTLE MY TEXAS ACCIDENT CLAIM?

A: No one should ever even think about trying to resolve their accident claim until they are completely healed or they are as well as they are going to be. Why wait? Your claim will get its maximum value only if you wait until you are completely healed. If you try to resolve your claim before all of your medical treatment has occurred, you're definitely selling yourself short. The insurance company for the negligent party would like nothing more for you to be in a rush to settle your claim since it will benefit from an early (and premature) settlement. Once you settle your case, there is no going back for more compensation if your condition doesn't heal as you expect or actually worsens. So don't get tempted by the quick offer of a few dollars made by some companies right after an accident—wait it out.

Settling early is one of the worst mistakes you can make. That mistake and others are discussed in Mark's new book, *15 Mistakes That Will Wreck Your Texas Accident Case*. The book is free for Texas residents. Call the Anderson Law Firm today for your copy: 817-294-1900.



If you have questions, feel free to submit them to:

info@maafirm.com