



Unbeatable Logic

An Actual Client Call

© 2008 by Ali A. Akhtar

The following is a true account of an actual call made by a prospective client (as always, names and details are omitted in order to protect the identity and confidentiality of the caller!):

A gentleman called my office, from his hospital room, in order to get representation regarding a major injury he had suffered in a collision with a train. He stated that he was told he'd been in a coma for several days, and had just recently woken up.

This was the kind of case that would spark anyone's curiosity. Not only did his injuries sound quite serious, but in a case involving a railroad crossing collision, there is a substantial amount of initial investigation and research to be done, all as soon as possible, in order to preserve crucial evidence.¹

I asked him if he could recall what happened.

All he could remember was that his job sent him out to a small town in east Texas, where he was driving his small Honda around the curve of a winding dirt road. Then, as he put it, "I came around the corner, and — BAM! Next thing I know, I'm woken up in a hospital."

"Is that all you can remember? Were there any witnesses that you know of?"

He said he was the only one on the road at the time, as he was making a very early morning delivery run.

“Well, have you been able to speak with the police to find out what happened, and what investigation they did?”

“Yeah,” he replied. “They came to visit me in the hospital, and told me I ran into the 47th car of the train.”

I was somewhat confused at this point. “So, you ran into almost the back part of the train, according to the police? And you don’t remember anything about the train or the collision except for waking up in the hospital?”

“No, sir,” he replied.

“Then, why do you believe the train was at fault?”

“Well,” he replied matter-of-factly, “the police didn’t give me a ticket!”

Naturally, I did not pursue this case. It’s another fun story to tell. But some important words need to be said about the ‘unbeatable logic’ that this caller was using.

It is a very common misconception that every accident must result in a ticket for one of the parties. It is also a common belief that once a ticket is given (or not given), that constitutes an official and final “judgment” as to liability. In reality, neither one of these things is true.

An investigating officer has discretion to issue a citation (i.e., a ticket) for what he believes to be a violation of a particular traffic statute. He can make this particular determination after doing his own investigation and accident reconstruction, or by talking to eyewitnesses, or upon admissions from the

involved parties. In a rear-end collision, for example, he may or may not choose to issue a citation to the liable driver for “failure to maintain assured clear distance.”

If the officer does in fact issue the citation, that is certainly helpful for insurance settlement purposes, but it does not prove the civil case if it must go to court. The injured plaintiff’s attorney must still prove, either through evidence or witness testimony, that the defendant driver was liable. In fact, in most cases, the fact that the defendant driver received a ticket cannot even be stated in court. It is inadmissible unless the driver actually pled guilty to the charge; if he simply pled nolo contendere (i.e., no contest) and paid his fine, the ticket cannot be brought into evidence.²

Finally, it must be noted that an investigating officer’s report, and even his issuance of a citation to any driver, is merely a reflection of his opinions regarding the factors causing or contributing to the collision. It is not an official or binding “judgment.” The police report by itself also cannot be admitted into evidence as proof of the conclusions contained in it, because that report would simply be hearsay.

I have had firsthand experience obtaining successful recovery for clients injured in accidents even when the investigating police officers had written reports placing the blame on the clients rather than the other drivers. In one such case, this involved filing suit against the defendant driver, taking written and recorded statements from eyewitnesses to the accident, and deposing the police officer (i.e., asking him questions under oath before a certified court reporter) in order to establish that he had relied merely on the word of the defendant driver, and conducted his own scene investigation without the benefit of hearing either the plaintiff’s version or speaking with any of the eyewitnesses.

The bottom line is: don’t try to rely on the presence or absence of a ticket or police report to argue your case to an insurance company! Contact an experienced trial lawyer right away in order to make sure all the evidence and witness testimony in your case is preserved and presented in the best possible manner.