

What Every Georgia DUI Victim Needs to Know

Copyright © 2013 by R. Shane Smith

All rights reserved. No part of this book may be used or reproduced in any manner whatsoever without written permission of the author. Published 2013.

Printed in the United States of America.

ISBN: 978-1-59571-905-8

Designed and published by
Word Association Publishers

205 Fifth Avenue
Tarentum, Pennsylvania 15084
www.wordassociation.com
1.800.827.7903

What Every Georgia DUI Victim Needs to Know

Law offices of
R. Shane Smith

WORD ASSOCIATION PUBLISHERS
www.wordassociation.com
1.800.827.7903

Table of Contents

Introduction

Anger and Grief Are Normal

Drunk Driving Statistics

A Two-Path System—Criminal and Civil

The Criminal Process

The Civil Process

DUI-Specific Questions

Will I get justice?

What is the victim witness liaison?

What do victim witness liaisons do?

What is restitution?

What is criminal restitution?

What if it's the second or more DUI for the person who hit me?

What exactly is DUI?

Do I have to go to the criminal hearing?

What happens at a criminal hearing?

Should I talk to the judge or solicitor?

How do I deal with anger toward a drunk driver?

Should I try to talk to the drunk driver?

What is pain and suffering?

What if I feel sorry for the drunk driver?

What support groups are there for victims of drunk driving?

What am I entitled to as a victim of a drunk driver?

What are punitive damages?

How is a drunk driving victim's case different from a regular or normal bodily injury case?

What if someone who hits me leaves the scene of the accident before getting tested by the police?

What if the police officer didn't test for blood alcohol?

What is a "DUI less safe"?

What if the DUI charge is pled down to some other charge, reckless driving or something else?

What if it's a hit and run?

Do you always get the policy limits?

Do you recover this in every case?

What if I'm not hurt, but they still damaged my car. Can I still get punitive damages?

What if I'm not in my car and someone hits it?

Why do you wait until the criminal portion is done?

What if the person who hit me doesn't have any insurance?

Are my feelings of anger normal?

Can I sue the bar where the drunk driver was drinking?

What are the insurance limits in Georgia?

What is uninsured motorist insurance? How does it apply in any case?

What is Georgia's Dram Shop Act?

Who may bring a drunk driving dram shop or social host case?

What is a social host's liability?

What does the impact on losing a loved one have on the case?

How should a DUI case be handled?

Will the drunk driver's insurance fix my car?

General Accident Questions

How do I get my car fixed?

Can I see my own doctor?

Can I see a chiropractor?

Should I use my health insurance?

How do I find out who the other party's insurance company is?

Statutes of Limitations

Introduction

I'm Attorney Shane Smith. I work in a law practice in Peachtree City, Georgia, just south of Atlanta. We practice personal injury law in the surrounding counties and in metro Atlanta. Several years ago, we began to develop the portion of our practice that represents victims of drunk driving. We identified this as a specific area in which we could help many people. I have found that those hit by drunk drivers have needs different from those of a "regular" car accident victim.

The process of dealing with being hit by a drunk driver has two steps. The first is the civil process, in which a suit is filed against a drunk driver involved in an accident. The second process is the criminal process, which has its own needs and steps that need to be undertaken. What we found is that working with the civil and the criminal process in conjunction, our clients got better resolutions and felt more comfortable.

A third component of these victims of drunk driving cases, though, is the emotional aspect. Frequently, victims of drunk driving accidents experience a large amount of grief and anger, much more so than do victims of "regular" car accidents. After learning that, we began to focus our practice in ways that met all the needs of our clients.

I wrote this book so people who don't retain my firm as a lawyer can still get the information I offer here.

If you find the information in this book helpful, consider attending one of our seminars during which we discuss the civil process, the criminal process, and the grief and emotional aspects of these types of tragic cases.

R. Shane Smith

Anger and Grief Are Normal

Being struck by a drunk driver is the same as being a victim of any other deliberate crime. Someone purposefully chooses to do something that results in your being injured and hurt. When you first talk about your case, some of your friends, coworkers, or even your lawyer may treat it as they would a regular car accident: “Oh, you just got hit by somebody.” The thing is, though, that you didn’t get hit by somebody who simply made a poor decision and went through a stoplight or was following too closely—someone who chose to drink and drive hit you. The drunk driver showed a conscious indifference to your life and the safety of others around you when he or she got behind the wheel. He or she put personal needs and desires totally above yours and endangered your life or may have killed a loved one. These cases are radically different from regular car accidents.

Through talking with many clients who were victims of drunk driving, we realized that anger is a normal reaction. Some people get immediately angered, while others are just relieved they didn’t die. But over the coming weeks, the anger sometimes can be more and more overwhelming, and this is because you are in pain and recovering from injuries. As you hurt, you will think about the person who caused this accident who may be perfectly fine. If you look at statistics and listen to anecdotes, it can seem that drunk drivers walk away from the accidents they cause a lot more often than anyone else. The victims begin to think about that, the anger usually sets in, and it can become worse over time.

If you combine that with the sometimes- difficult criminal justice process and the length it can take, the anger can grow even more.

This is one of the reasons why we frequently

What Every Georgia DUI Victim Needs to Know

recommend to our clients that they consider seeing therapists or counselors or get involved in Mothers Against Drunk Driving (MADD) or Students Against Drunk Driving (SADD). These are ways that can help them deal with this, and sometimes it helps them to talk with an outside party rather than family and friends because they may not understand why victims of drunk driving accidents are so angry or why it becomes such a significant part of their thought processes.

Not everybody feels this way, but many do, and if you're struggling with this, what you should know and what you should take away from this is that feelings of anger are normal, understandable, and justified, and the best thing you can do is try to deal with your anger through various ways.

MADD and SADD can help you with this, as can a therapist who is familiar with post-traumatic stress syndrome. It's not something you get just after war.

R. Shane Smith

Drunk Driving Statistics

The following statistics come from the MADD.org website. They can be found in further detail at <http://www.madd.org/statistics>.

Almost half of all drivers who were killed in crashes and tested positive for drugs also had alcohol in their systems.

(Johnston, L. D., O'Malley, P. M., Bachman, J. G., & Schulenberg, J. E. [2011]. Monitoring the Future national survey results on drug use, 1975–2011. Volume I: Secondary school students [NIH Publication No. 10-7584]. Bethesda, MD: (National Institute on Drug Abuse, 734 pp.)

About one-third of all drivers arrested for or convicted of driving while intoxicated or driving under the influence of alcohol are repeat offenders.

(Fell, Jim. "Repeat DWI Offenders in the United States." Washington, DC: (National Department of Transportation, National Highway Traffic Safety Administration Traffic Tech No. 85, February 1995.)

Over 1.41 million drivers were arrested in 2010 for driving under the influence of alcohol or narcotics.

(Federal Bureau of Investigation, "Crime in the United States, 2010.)

Among persons aged 12 or older, males were more likely than females (15.1 vs. 7.9 percent) to drive under the influence of alcohol in the past year.

(Substance Abuse and Mental Health Services Administration. "Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings," September 2011.)

What Every Georgia DUI Victim Needs to Know

Driving under the influence of alcohol was associated with age in 2010. The rate was highest among persons aged 21 to 25 (23.4 percent). An estimated 5.8 percent of 16- or 17-year-olds and 15.1 percent of 18- to 20-year-olds reported driving under the influence of alcohol in the past year. Beyond age 25, these rates showed a general decline with increasing age. (Substance Abuse and Mental Health Services Administration. “Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings,” September 2011.)

In fatal crashes in 2010, the highest percentage of drunk drivers was for drivers ages 21 to 24 (34 percent), followed by ages 25 to 34 (30 percent) and 35 to 44 (25 percent). (National Highway Traffic Safety Administration. “Traffic Safety Facts 2010: Alcohol Impaired Driving” Washington DC: National Highway Traffic Safety Administration, 2011.)

The average person metabolizes alcohol at the rate of about one drink per hour. Only time will sober a person up. Drinking strong coffee, exercising, or taking a cold shower will not help. (Michigan State University. “Basic Alcohol Information.” East Lansing, MI: Michigan State University, 2003.)

The speed of alcohol absorption affects the rate at which one becomes drunk. Unlike foods, alcohol does not have to be slowly digested. As a person drinks faster than the alcohol can be eliminated, the drug accumulates in the body, resulting in higher and higher levels of alcohol in the blood. (Narcotic Educational Foundation of America. “Alcohol: A Potent Drug.” Santa Clarita, CA: Narcotic Education Foundation of America, 2002.)

R. Shane Smith

A standard drink is defined as 12 ounces of beer, 5 ounces of wine, or 1.5 ounces of 72-proof distilled spirits, all of which contain the same amount of alcohol—about .54 ounces. (National Highway Traffic Safety Administration. “Alcohol Screening and Brief Intervention in the Medical Setting.” DOT HS 809 467. Washington, DC: National Highway Traffic Safety Administration, July 2002.)

Impairment is not determined by the type of drink but rather by the amount of alcohol ingested over a specific period of time. (Insurance Institute for Highway Safety. “Q&A: Alcohol: General.” Arlington, VA: National Highway Insurance Institute for Highway Safety, March 2012.)

In 2010, 211 children were killed in drunk-driving crashes. Out of those 211 deaths, 131 (62 percent) were riding with the drunk driver. (National Highway Traffic Safety Administration. “Traffic Safety Facts 2010: Alcohol Impaired Driving” Washington DC: National Highway Traffic Safety Administration, 2011.)

In 2010, 16 percent of all drivers involved in fatal crashes during the week were drunk driving crashes, compared to 31 percent on weekends. (National Highway Traffic Safety Administration. “Traffic Safety Facts 2010: Alcohol Impaired Driving” Washington DC: National Highway Traffic Safety Administration, 2011.)

Alcohol impairment among drivers involved in fatal crashes in 2010 was four times higher at night than during the day (37 versus 9 percent). (National Highway Traffic Safety Administration. “Traffic Safety Facts 2010: Alcohol Impaired Driving” Washington DC: National Highway

What Every Georgia DUI Victim Needs to Know

Traffic Safety Administration, 2011.)

Adults drank too much and got behind the wheel about 112 million times in 2010—that is almost 300,000 incidents of drinking and driving each day. (Centers for Disease Control and Prevention, October 2011.)

In the United States, the number of drunk-driving deaths has been cut in half since MADD was founded in 1980. (National Highway Traffic Safety Administration FARS data, 2011.)

In 2011, MADD served more than 63,000 victims and survivors of drunk and drugged driving crashes. (Internal MADD tracking data, 2002–2010.)

Every day in America, 27 people die as a result of drunk-driving crashes. (National Highway Traffic Safety Administration FARS data, 2012.)

Drunk driving costs the United States \$132 billion a year. (National Highway Traffic Safety Administration FARS data, 2010.)

If all 17 million people who admitted to driving drunk in 2010 had their own state, it would be the fifth largest in the U.S. (Lacey, John et al. “2007 National Roadside Survey of Alcohol and Drug Use by Drivers: Alcohol Results.” Washington, DC: National Highway Traffic Safety Administration, December 2009.)

High school students who use alcohol or other substances are five times more likely to drop out of school or believe good grades are not important. (NIDA,

R. Shane Smith

2008. Full cite: National Institute on Drug Abuse. “Volume 1: Secondary School Students”, National Survey Results on Drug Use from The Monitoring the Future Study, 1975–1997. Rockville, MD: Department of Health and Human Services, 1998.)

Kids who start drinking young are seven times more likely to be in alcohol-related crashes. (Hingson, 2001. Full cite: Hingson, Ralph, et al. “Age of Drinking Onset, Driving After Drinking, and Involvement in Alcohol-Related Motor Vehicle Crashes.” DOT HS 809 188. Washington, DC: National Highway Traffic Safety Administration, January 2001.)

Car crashes are the leading cause of death for teens, and about one-third of those are alcohol related. (National Highway Traffic Safety Administration. “Traffic Safety Facts 2008: Young Drivers.” DOT 811 169. Washington DC: National Highway Traffic Safety Administration, 2009.)

Teen alcohol use kills about 6000 people each year, more than all illegal drugs combined. (Hingson and Kenkel, 2003. Full cite: Hingson, Ralph and D. Kenkel. “Social and Health Consequences of Underage Drinking.” In press. As quoted in Institute of Medicine National Research Council of the National Academies. Bonnie, Richard J. and Mary Ellen O’Connell, eds. Reducing Underage Drinking: A Collective Responsibility. Washington, DC: The National Academies Press, 2003.)

One in five teens binge drinks. Only 1 in 100 parents believes his or her teen binge drinks. (Institute of Medicine, 2003. Full cite: Institute of Medicine National Research Council of the National Academies. Bonnie, Richard

What Every Georgia DUI Victim Needs to Know

J. and Mary Ellen O'Connell, eds. "Reducing Underage Drinking: A Collective Responsibility." Washington, DC: The National Academies Press, 2003.)

50 to 75 percent of convicted drunk drivers continue to drive on a suspended license. (Peck, R. C., Wilson, R. J., and Sutton, L. 1995. "Driver license strategies for controlling the persistent DUI offender, Strategies for Dealing with the intent Drinking Driver." Transportation Research Board, Transportation Research Circular No. 437. Washington, D.C. National Research Council: 48–49 and Beck, KH, et al. "Effects of Ignition Interlock License Restrictions on Drivers with Multiple Alcohol Offenses: A Randomized Trial in Maryland." American Journal of Public Health, 89 vol. 11 [1999]: 1696–1700.)

On average, one in three people will be involved in a drunk driving crash in his or her lifetime. (National Highway Traffic Safety Administration. "The Traffic Stop and You: Improving Communications between Citizens and Law Enforcement." National Highway Traffic Safety Administration, March 2001, DOT HS 809 212.)

MADD has helped save over 27,000 young lives with the passage of the 21 minimum drinking age law. (National Highway Traffic Safety Administration. "Traffic Safety Facts 2008: Young Drivers." DOT 811 169. Washington DC: National Highway Traffic Safety Administration, 2009.)

Almost one in three 8th graders has tried alcohol. (Johnston, L. D., O'Malley, P. M., Bachman, J. G., & Schulenberg, J. E. [2011]. Monitoring the Future national survey results on drug use, 1975–2011. Volume I: Secondary school students [NIH Publication No. 10-7584]. Bethesda,

R. Shane Smith

MD: National Institute on Drug Abuse, 734 pp.)

Drunk driving costs each adult in this country almost \$500 per year. (Taylor, et al., 2002. Full cite: Taylor, Dexter; Miller, Ted; and Cox, Kenya. “Impaired Driving in the United States Cost Fact Sheets.” Washington, DC: National Highway Traffic Safety Administration, 2002.)

One in three people will be involved in an alcohol-related crash in his or her lifetime. (National Highway Traffic Safety Administration. “The Traffic Stop and You: Improving Communications between Citizens and Law Enforcement.” National Highway Traffic Safety Administration, March 2001, DOT HS 809 212.)

In 2011, 9,878 people died in drunk driving crashes—one every 53 minutes. (National Highway Traffic Safety Administration FARS data, 2012.)

MADD serves a victim or survivor of drunk and drugged driving every eight minutes. (Internal MADD tracking data, 2002–2010.)

Since 1980, MADD has saved 300,000 lives ... and counting. (Fell, 1995 and NHTSA FARS data. Full cite: Fell J.C. [1995], “What’s New in Alcohol, Drugs and Traffic Safety in the U.S.?” National Highway Traffic Safety Administration, Proceedings of 13th Conference, International Council on Alcohol, Drugs and Traffic Safety, ICADTS, NHMRC Road Accident Research Unit, University of Adelaide, Australia, C. N. Kloeden and A. J. McLean, editors, T95, pp. 329–335.

Almost every 90 seconds, a person is injured in a drunk driving crash. (Blincoe, Lawrence, et al. “The Economic

What Every Georgia DUI Victim Needs to Know

Impact of Motor Vehicle Crashes 2000.” Washington, DC: National Highway Traffic Safety Administration, 2002. NHTSA FARS data, 2011.)

An average drunk driver has driven drunk 80 times before his or her first arrest. (Centers for Disease Control. “Vital Signs: Alcohol-Impaired Driving Among Adults—United States, 2010.” Morbidity and Mortality Weekly Report. October 4, 2011.)

A Two-Path System—Criminal and Civil

A DUI case has a civil path and a criminal path. The civil path involves filing a claim against a drunk driver's insurance company or filing a lawsuit against the drunk driver. That's why you hire a civil attorney such as me.

The second path is the criminal path, and that is where the state prosecutes the drunk who caused the accident. You would not normally retain a lawyer specifically for that; the state is acting as your lawyer, and you're acting as the state's victim and witness against the person who caused the accident.

The Criminal Process

The criminal process starts with the drunk driver being arrested at the scene. He or she will be taken to jail, processed, and normally released in twenty-four to forty-eight hours after posting bail or being bonded out.

Shortly after that, the drunk driver will be arraigned. The length of time from arrest to arraignment will depend on the county the person was arrested in, but that's when the drunk driver will be formally arraigned on the charges.

Normally, as a witness, you would not be required to attend the arraignment. At the arraignment, the person will say whether he or she pleads guilty or not guilty. In almost every case in Georgia, those accused of DUI will plead not guilty if they have an attorney so they can begin trying to work out some kind of plea arraignment.

Shortly after that is another motions hearing during which the defendant's attorney will fight over the field sobriety test, the breathalyzer results, or other aspects of the case.

After that, there might be various calendar calls or

What Every Georgia DUI Victim Needs to Know

status hearings. This is normally when the criminal attorney is trying to work out a deal or a plea arraignment in the case with the county solicitor. If none of this resolves the case, the matter is set for trial, and as the primary victim, you would have to show up for the trial.

The Civil Process

In a civil case, you hire a personal injury attorney experienced in handling drunk driving accidents who will contact the insurance company and find out the limits of the defendant's insurance policy. The attorney would notify the insurance company of the claim while you seek medical care for your injuries.

Once things are back to normal—your pain has been resolved and you're back at work—your personal injury attorney can make a claim for your pain and suffering, your medical bills, your lost wages, and the impact on your life and punitive damages to the drunk driver's insurance company.

This is where you will find more justice in the sense that you can be awarded compensation for being hurt, and the civil side allows for punitive damages to compensate you for your injuries.

I have found that many of my clients get more closure by resolving a claim or going to civil court rather than through the criminal process. I believe this is because clients generally feel that large punitive damages are a more significant penalty to drunk drivers than a few days in jail and a few hours of community service.

Our firm focuses on civil cases because I am primarily a civil attorney. But civil cases can give injured parties more of an opportunity to be involved in the matter, if that's what they want. We can get good recovery through punitive damages, and they also offer a sense that the drunk driver is being punished.

R. Shane Smith

Additionally, a civil suit allows you an opportunity to get the medical care you need. You can get medical care through your health insurance company, which will be reimbursed if required when the case settles.

If you don't have health insurance, your personal injury attorney should be able to put you in touch with doctors who will treat you on credit and be paid when the case settles.

Once your medical care is completed, whether that requires physical therapy for pain or even surgery, your personal injury attorney can make a claim to the insurance company for compensation for your injuries.

In Georgia, the mandatory minimum laws of insurance state that the least amount of insurance anybody has to carry is \$25,000; some carry more, while others carry less. Our office rarely resolves DUIs case for less than the minimum \$25,000; we demand very serious reasons why that amount is not appropriate in any one case. We base our attitude in this matter primarily on the punitive aspect of the case: we feel that drunk drivers who injure others should be punished at least by a judgment of \$25,000.

We cannot say what any case is worth until we evaluate it and learn its specifics, but we can say that on average, these cases should settle for \$25,000 or more in Georgia if the person has insurance and if you were injured and sought medical care for any serious length of time. Normally, if we are not offered this amount from the insurance company, we would recommend filing suit and preparing for trial. Please remember though, every case is different, and there may be facts that make your particular case less valuable. We always urge you to contact an attorney on DUI victim cases to discuss your claim.

DUI-Specific Questions

Will I get justice?

I frequently tell my clients in DUI cases that they do not receive justice in the criminal court system. There are many reasons for this, but one of the main reasons is that many solicitors treat DUI cases with injuries the same as DUI cases without injuries. In other words, they will focus on the standard penalties they normally recommend in other cases, and many times this will not result in justice for the injured parties.

In one of my cases, a young woman struck by a drunk driver ended up in a halo harness, a metal band that went around her head with a steel rod down to her lower back, where it was drilled into bone to help the bones heal. She had to wear this for about six weeks, but the only change in the criminal sentence was instead of forty hours of community service, the person had to serve a hundred hours of community service.

Of course, we did not feel this was justice in a case in which my client had to deal with her injuries far longer than the person who caused the accident had to spend in community service.

This was a case for which we actually went to court and spoke to the judge and the solicitor. The case was moved from one court to another, and then, without us getting notice of a hearing, a deal was worked out, and the case was resolved. My client and I were furious with this result.

In reality, most of these cases are resolved with some sort of plea bargain between the criminal defense attorney and the person who caused the accident and the county solicitor attorney. We always advise our clients to be in touch with the solicitor's office or the victim witness liaison

R. Shane Smith

of the solicitor's office and tell the liaison how they feel, what injuries they suffered, and what they had received. MADD can also help you in this area by accompanying you to the courthouse. The next section offers more information about the victim witness liaison.

What is the victim witness liaison?

All prosecutors' offices have victim witness liaisons, people whose primary job is to interact with victims of crime and the solicitor's office and the DA to tell them the feelings of the victims and the impact the crimes had on them. Liaisons are supposed to be sources of communication between the victims and the prosecutors.

We highly recommend our clients utilize this resource. Many times a solicitor or the district attorney will be in court off and on all day and will be very difficult to get in touch with. Clients are much more likely to be able to talk to a person and get in touch with him or her very quickly if they go through the victim witness liaison.

Additionally, victim witness liaisons can present the impact the accident had on you in a manner more objectively than you can, and this can actually be more persuasive to solicitors than if the victims did it themselves; thus, we highly recommend their do this.

You can almost always get the liaison's name and number by calling the county courthouse or the district attorney's office.

What do victim witness liaisons do?

Victim witness liaisons serve as go-betweens for the victims of crimes and the district attorney and solicitor's office. The victim witness liaison's job is to help walk victims through the criminal justice process and to learn the victims' feelings and viewpoints on what happened and provide it to

What Every Georgia DUI Victim Needs to Know

the solicitor, who may not have had the time to really talk to the victims about the impact the accidents had on them.

I encourage you to tell the victim witness liaison all about your injuries, your medical bills, what happened, the impact the accident had on you, and other such matters, because if you do not make sure the solicitor knows this, the prosecutor might treat your DUI accident the same as any other DUI, which is not right.

When somebody is injured at the hands of a drunk driver, it should be a different matter, and the punishment should be different from a routine, traffic-stop DUI.

If you ever have trouble contacting the victim witness, call the courthouse and ask for the victim witness liaison for the state court.

What is restitution?

Restitution is the means by which a judge orders a criminal to compensate you for the damages he or she caused you as a result of an accident. We have found that this can be effective if your damages are very small, but rarely has it seemed to be effective if you have thousands and thousands of dollars of medical bills on top of lost wages because of an accident.

The primary reason is not that a judge or solicitor would not want it to happen; it's just that in so many cases the criminal doesn't have the money to make such restitution. It could be arranged that the criminal pays a little bit over time over the course of probation, and if he or she does not do so, jail time might be ordered. That, however, does not help you pay your bills.

Additionally, if you had to break the payments down, you may be having a cash flow issue in the sense that your creditors want to be paid in full but all you can get at any one time from the person who caused your accident is a fraction

R. Shane Smith

of what you're owed.

We encourage clients to cooperate with the solicitor and the judge about asking for restitution, but to be aware that there are serious issues with getting your compensation that way.

Additionally, most judge are not going to award anything for pain and suffering or any punitive damages through restitution.

What is criminal restitution?

My clients frequently ask me if they can get restitution in criminal cases, having heard of the possibility from victim witness liaisons. Restitution is definitely available since the passage of Georgia's Victims of Crime Act, which made available to victims of violent crimes and certain other crimes, including DUI. However, restitution generally does not make you whole, especially when you have been severely injured.

I've always encouraged the many clients who ask about restitution to get as much as they can, but I know rarely does it ever pay all their medical bills. It normally comes out to pennies on the dollar, through the crime act or through a term of probation. The problem with it being a term of the probation is that it is not all due at once. Therefore, a drunk driver may be ordered to pay restitution to a victim but only a certain amount per month. That amount goes to a probation officer, who sends it to the court, which sends it to you. There can obviously be delays in this process, and if a payment isn't made one month, the victim gets nothing.

In light of this, I encourage my clients to ask for restitution but not to expect to receive an amount that would justly compensate them for their injuries.

What if it's the second or more DUI for the person who hit me?

Our firm has found that many people charged with DUI either have at least one prior DUI or receive another DUI before the first one is resolved. This is important to you in the civil portion of your case and can aggravate the punishment in the criminal case. Punishments get larger the more prior DUIs somebody has.

The penalties are normally broken up into ten-year periods. In the first sentence for the first DUI in ten years, someone has to spend twenty-four hours in jail and twelve months on probation and pay a \$300 minimum fine. He or she has to attend DUI school and complete forty hours of community service. There is additionally a one-year suspension of the license, but after 120 days it may be reinstated, or there may be some limited work permits granted, so the license suspension is not a hard penalty.

The second offense in ten years can result in seventy-two hours of jail time, twelve months' probation, a \$600 fine, DUI school, thirty days (240 hours) of community service, and a suspended license, which can be reinstated under certain circumstances. In addition, the driver is required to get an ignition interlock device, a device that measures the alcohol level in the breath, and undergo alcohol and drug evaluation.

For the third offense in ten years, the driver must serve at least fifteen days in jail (as the offense becomes a high and aggravated misdemeanor), spend twelve months on probation, pay a \$1,000 fine, attend DUI school, and complete thirty days of community service. The driver's license is supposed to be revoked for five years, but he or she could get some variance on this.

For the fourth offense, the driver is supposed to serve one to five years in prison and twelve months on probation,

R. Shane Smith

pay at least a \$1,000 fine, attend DUI school, and spend sixty days minimum of community service. His or her license could be revoked for five years, but this can be reduced to two with the interlock device.

The fourth offense in ten years would be classified as a felony.

What exactly is DUI?

Georgia's DUI laws require that anybody over age twenty-one cannot have a blood alcohol content of .08 or over. Different guidelines apply if the drunk driver is a commercial driver or under twenty-one. Anyone under twenty-one can be *per se* found guilty; this means if a youth's alcohol level is .02 or higher or a commercial driver's alcohol level is .04 or higher, he or she is liable for regular DUI punishments that kick in at the .08 level.

Do I have to go to the criminal hearing?

Many times clients tell me they received a notice from the court saying they had to show up to a hearing, an arraignment or some other matter. We always advise our clients to call, usually within twenty-four hours, and ask the county solicitor's office if they need to show up to the hearing.

Telling the office you can't make it or asking if you need to show up is radically different from just not showing up. If you don't show up, you will be considered an uncooperative witness, and the solicitor is likely to plea your case down to something much less significant because you're not there, and the solicitor will have to depend solely on the testimony of a police officer.

However, if you have called, a solicitor can tell the judge that his or her office had told you that you didn't need to show up that day. It's much different in the eyes of the

What Every Georgia DUI Victim Needs to Know

court, and this is why it's so important to talk with a solicitor rather than ignoring him or her.

What happens at a criminal hearing?

What goes on at a drunk driver's criminal hearing is determined by what type of hearing it is. I always encourage my clients prior to showing up in court to contact the courthouse and make sure that they really need to be there. Sometimes they will receive notice of a hearing date, but the prosecutor does not really intend to speak with them because it's early in the case, or it's not a drunk driving case, or if their showing up is not mandatory for some reason, such as when the defendant actually pays the fine.

This situation is not as common in drunk driving or reckless driving cases, as they normally require the drunk driver to show up in court. However, dates can change sometimes due to scheduling conflicts or the defendant's lawyer getting a postponement. I tell my clients to call the day before to ensure they need to be there.

In the criminal process, the initial court hearing is normally called the initial plea arraignment, an opportunity for the drunk driver to plead guilty or not guilty. Many times that's all that happens at an initial plea arraignment.

If the drunk driver pleads not guilty, the judge will schedule another hearing; if the driver pleads guilty, sentencing can happen that day.

If by the time of the first hearing you have not spoken to the solicitor or district attorney, let them know you are there before the hearing, prior to the call on the calendar by the judge.

After the call of the calendar, a judge will normally ask if anyone's name had not been called. It's normally appropriate to tell the judge that you're the victim in the case of State v. the drunk driver. This will normally get them

R. Shane Smith

to speak with you prior to any plea negotiations or dealings.

Should I talk to the judge or solicitor?

There's nothing wrong with speaking to either or both. Normally, the judge will not talk to you directly, but he or she may ask you to speak, and you can ask the solicitor to let you speak to the judge. The judge will want to make sure the drunk driver's attorney has the opportunity to listen to you, but many judges will talk to you in open court or even in their back offices, especially if you are severely hurt or if your attorney shows up with you.

The main reason for speaking to the solicitor and the judge is to let them know the impact the accident had on you and the financial cost as well as emotional and physical cost the accident and the drunk driver's conduct had on you. I usually encourage my clients to talk to the solicitor first unless he or she is unresponsive. The solicitor will normally ask for a meeting between the judge and you.

A word of caution is in order here. Many judges want their courtrooms to be formal places, so I recommend that you wear nice clothes— no cut-offs, no baggy clothes or other informal clothes. Wear what you would to church or a business meeting. Always address the judge as “Yes, sir” or “Yes, ma'am,” “No, sir,” or “No, ma'am” or “Your honor.”

How do I deal with anger toward a drunk driver?

The difference between being hit by a drunk driver and being hit by another person is a matter of context. Many people, including me and most of society, feel that drunk drivers have chosen to endanger the lives of others. Their behavior is different from that of car drivers who cause accidents by making driving mistakes. By choosing to drink and drive, drunk drivers show indifference to the safety of

What Every Georgia DUI Victim Needs to Know

others.

Drinking and driving makes it harder to drive and makes accidents more likely. I don't think any adult can claim otherwise in our society. Therefore, when you are hit by a drunk driver, it is not uncommon to feel a great deal of anger toward the drunk driver, and this is perfectly normal; many of my clients have experienced such anger. This is especially the case when someone has been severely injured or has lost a loved one, but I also see such anger in people who have not been injured severely but have still unjustly suffered because somebody chose to drink and drive.

Everybody knows many ways to get home after drinking besides driving. Many cab companies offer free rides, many bars will call taxis for their patrons, and friends and designated drivers are frequently available as well. There is simply no excuse for drinking and driving; those who drink and drive are basically saying that they don't care about others. This is the main reason why there is so much anger toward drunk drivers.

It's been my experience that many people get closure through the civil process, but not everyone. I encourage people to get involved in Mothers Against Drunk Driving or Students Against Drunk Driving or any of the other support groups for victims of drinking and driving. I have found that my clients can find healing by being around other people who have suffered loss or injury because of drunk drivers, normally the best way to deal with anger issues.

Should I try to talk to the drunk driver?

Clients routinely ask me if they should try to talk to the drunk driver, and this is always a very personal decision. At a minimum, however, I suggest not talking with the drunk driver until the end of the civil or criminal case, whichever happens last.

R. Shane Smith

There are several reasons for this. You don't want your words thrown back at you during either trial. It's not uncommon for drunk drivers to ask their victims for forgiveness and to confess that they've learned their lesson and that it will never happen again.

This is especially critical when the drunk driver is involved in an AA program or when you've lost a loved one. Many people find it very difficult to refuse to forgive someone who begs for it. But you don't want to offer such forgiveness in a moment of compassion and then have it thrown in your face during a civil trial in which a jury hears that you have forgiven him or her.

Additionally, because your level of anger might be very high, you don't know exactly what your behavior might be when confronting a drunk driver, and you might react in a much more aggressive manner than normal. In the heat of the moment you might even threaten a drunk driver, especially one who caused harm to a loved one.

I caution you against talking to a drunk driver until you know you can emotionally handle it, and after the civil and criminal cases are completed.

What is pain and suffering?

"Pain and suffering" in the personal injury world refers to the noneconomic losses and damages you suffer due to an accident. These include pain, whether temporary or permanent, inconvenience to your life, loss of an ability to do something, missed activities, loss of time spent with doctor's appointments, and other such losses.

Pain and suffering includes aching muscles, insomnia caused by back pains, not being able to attend functions—parties, dances, movies—because of the accident, or the inability to visit with friends and family. All these represent the nonmonetary but nonetheless very real damages you

What Every Georgia DUI Victim Needs to Know

have suffered due to somebody else's behavior.

What if I feel sorry for the drunk driver?

Feeling sorry for the drunk driver is perfectly okay and acceptable. Many people can feel sorry for someone who is addicted to alcohol. If you feel compassion for the drunk driver, that's okay, but while you may feel this compassion, you do not want to make it easier for that person to avoid taking responsibility for his or her actions. Feel sorry for the addiction, but don't feel sorry for what it resulted in.

What support groups are there for victims of drunk driving?

While major support groups for victims of drunk driving exist, two primary ones are Mothers Against Drunk Driving (MADD) and Students Against Drunk Driving (SADD). SADD is at major colleges and universities and some high schools. MADD chapters are in almost every county in Georgia.

In Georgia, MADD has several annual events at which victims of drunk driving, concerned citizens, and businesses get together to support MADD's activities. Additionally, the organization hosts lobbying programs to discuss issues relating to drinking and driving with lawmakers.

If you are having difficulty dealing with any aspect of your accident caused by a drunk driver, contact MADD in Georgia. The organization has a list of resources that includes service groups, attorneys, psychologists, support groups, and so on. Mothers Against Drunk Driving can most likely refer you to someone who can help with any of your needs. Drunk driving is a serious problem that affects us all, so you should never feel alone.

R. Shane Smith

What am I entitled to as a victim of a drunk driver?

If you have been injured in a car accident through someone else's fault, you are entitled to compensation for your medical bills, lost wages, and pain and suffering. When you are hit by somebody whose conduct was so egregious that it showed a reckless indifference to the safety of others such as reckless driving, hit and run, road rage, or drinking and driving, you are entitled to additional damages, "punitive" damages.

What are punitive damages?

Punitive damages are extra damages victims of drunk drivers are entitled to receive. Punitive damages under Georgia are designed to punish a wrongdoer and to convince him or her not to engage in this type of behavior again.

Courts can take a defendant's financial condition into consideration when deciding on punitive damages. For instance, someone who has \$1 million in the bank is going to pay greater punitive damages than someone with a net worth of \$10,000 will because it can take a stiffer penalty to convince an affluent drunk driver not to drink and drive again.

Punitive damages are available in every drunk driving case, and they can be significant. If you do not have an attorney for a case that could involve punitive damages, I encourage you to ask any insurance adjusters about punitive damages. My guess is that they will be silent, avoid the question, or say they are not available in this case. Let me stress that punitive damages are available in almost every DUI case because the vast majority of insurance policies cover punitive damages when somebody is drinking and driving.

If you get evasive responses from an insurance adjuster about punitive damages, hang up and consult with

What Every Georgia DUI Victim Needs to Know

an attorney. Punitive damages are available, but they have to be requested. Punitive damages are available even if you have to file a lawsuit, although you may have to have two parts to the trial, one on the underlying conduct and another on the punitive damages issue.

This aspect of punitive damages makes drunk driving cases different from other types of vehicle accident cases.

Punitive Damages

Punitive damages are damages designed solely to punish the offender. The Georgia legislature decided years ago that people who drink and drive are in fact different from others who blow a stop sign. Punitive damages are allowed in Georgia to punish people who do things that show a conscious indifference to the safety and welfare of others, those who are so reckless and out of control that they need to be punished financially.

This normally applies to DUI drunk drivers but can also apply to reckless drivers and those who flee the scenes of accidents. While punitive damages can apply in many cases, most of the time they involve drunk driving. Your civil attorney should discuss the possibility of punitive damages with you and explain if they apply or not.

Sometimes a drunk driver will not have insurance, and this can force you to file on your own policy's uninsured motorist coverage. But most uninsured motorist policies have an exclusion for punitive damages, so it's important to discuss this with your lawyer.

In my office, we always monitor and track the criminal process of any DUI case. As soon as the criminal process concludes, we will do an open records request to find out the sentencing details and try to get the solicitor's file. We do this because sometimes the police have information in the file different from what had been given to the solicitor because some departments have different rules on what they can release during investigations. We will want to look over that information.

Also, by looking at the sentence, we can normally see if there were any prior DUIs or post-accident DUIs, an aggravating factor. If somebody has multiple DUIs, the

What Every Georgia DUI Victim Needs to Know

punitive damages can be a lot more because we can show that the driver had not learned his or her lesson.

So depending on how fast the criminal process goes, my office may recommend waiting for the resolution of the criminal that case. Circumstances in which we would not recommend waiting would be when a drunk driver's insurance policy limits are, say, only \$25,000. However, if the drunk driver has higher policy limits, say a \$100,000/300,000 policy, we would usually recommend waiting until the resolution of the criminal case to go forward.

How is a drunk driving victim's case different from a regular or normal bodily injury case?

Aside from the emotional aspect of being hit by a drink driver, most of the cases are the same in that they all require setting up a claim, verifying insurance coverage, getting the vehicle fixed, getting proper medical care, and writing a demand to the insurance company.

However, the possibility of being awarded punitive damages makes a drunk driving victim's case different. To collect punitive damages, a victim has to ask for them. The more information you have about the drunk driver, the more likely you are to get a high punitive damages award.

My office prepares cases for punitive damage claims, and to do so, we learn everything we can about the drunk driver, including other DUIs and reckless driving charges and whether he or she is attending AA. Information about the behavior of the drunk driver can allow us to seek the maximum amount through the punitive damages claim.

My office generally recommends that you wait until the criminal case is over prior to attempting to settle your civil case, because that allows us to get access to the defendant's driving history. I cannot tell you the number of times I have seen someone settle a drunk driving victim's case and in the

R. Shane Smith

rush to collect a good offer assumed that the drunk driver had no prior DUIs or had none after the accident but found out otherwise after the settlement.

Almost one out of three drunk drivers has a prior DUI or receives another DUI after a DUI accident. It is therefore of critical importance to have all the facts prior to attempting to settle a civil case. It is for that reason my office does not rush to settlement, and I will caution you against doing so. It could mean a difference of thousands of dollars to you.

What if someone who hits me leaves the scene of the accident before being tested by the police?

This frequently occurs. Clients have frequently told me that after they were hit, they got out and spoke with the other driver and smelled alcohol on his or her breath. The drunk driver then fled, and the police were at times unable to find the person until the next day, when he or she had sobered up.

My firm nonetheless seeks punitive damages in these cases. We will try to go forward with your testimony or any other's testimony to prove the person was drinking and driving and to pursue the case that way. These are harder cases, of course, than those that involve evidence of high blood alcohol content, but we will ask why he or she wanted to get away before the police arrived. We will suggest that the reason was drunk driving and try to corroborate that by your testimony. So, the fact that someone fled the scene of an accident does not stop cases from going forward.

What if the police officer didn't test for blood alcohol?

This happens occasionally, even though you might think it was obvious that the other driver had been drinking, as evidenced by the smell of breath, slurring of words, stumbling, and so on. The police still might not test a driver,

What Every Georgia DUI Victim Needs to Know

or the driver might pass a field sobriety test. If the police choose not to test someone for drinking and driving, my office would not normally recommend pursuing a punitive damages claim. The reason for this is that unless there is some other compelling evidence, the police officer could testify that he or she didn't notice any symptoms. This would be very persuasive testimony for the court unless it can be proven that the officer was biased, and that is very difficult to do.

So normally, if the police did not test somebody, we don't recommend pursuing punitive damages; however, we can pursue a regular civil case.

What is a "DUI less safe"?

A DUI less safe is a situation in which a driver's blood alcohol content is below .08 but the police felt that he or she was not driving in a safe and effective manner. We pursue these cases. An insurance company will tell you that the punitive aspect of these cases is not as serious or that these cases can become a DUI less safe if for some reason the blood alcohol content reading was suppressed. This can happen if the police or the criminal defense attorney was able to get the judge to throw out the blood alcohol content readings for some reason.

My office still strongly feels that you can and should still proceed in DUI less safe cases, but we have to move fast. We would want to get an interview with the police officer as quickly as possible after this so he or she still has recollection of what happened, has notes, and can testify that in his or her professional opinion it was DUI less safe and state why.

A long delay in such a case can cause you to forgo a significant amount of money and may make the case very difficult to repair.

R. Shane Smith

What if the DUI charge is pled down to some other charge, reckless driving or something else?

Once again, this is a case in which a police officer can be a key witness if we can get to him or her early on for a deposition or a recorded interview. In such cases, we can frequently proceed normally. If, however, we're unable to take these steps, or if the police officer has moved, is unavailable, or doesn't have any recollection of the accident, such a case can be very difficult.

In these cases, it's critical that the injured party get in touch with an attorney familiar with these types of cases who will take the necessary steps to protect the evidence, the police officer's testimony.

What if it's a hit and run?

If someone who hits you flees before you can judge whether he or she was drunk, we can still try to get punitive damages. Much will depend on the amount of damage to your vehicle and your injuries, but we can focus solely on the conduct of the driver, implying why he or she fled the scene. We can also, if a lawsuit is filed, find out where he or she was prior to the accident and get records, receipts, and so on. However, these types of cases generally don't result in large punitive damage awards unless we can show the defendant was most likely drinking before the accident or if there was a serious injury.

Do you always get the policy limits?

We can of course never specifically state what will happen in a case without knowing all its details, and policy limits in Georgia may vary. The minimum policy limit is \$25,000, but some policies go up to \$50,000 or \$100,000 or more.

DUI cases can be very valuable, but a DUI case that involves \$3,000 in damages will probably not be worth

What Every Georgia DUI Victim Needs to Know

\$100,000. In such a case, it would be unlikely to be awarded the full policy limit.

In our practice, barring exceptional circumstances, we always try to get at least the minimum policy limits in Georgia, \$25,000. However, every case is different, and there may be facts that make your case less valuable. No attorney can tell you the value of your case without knowing all of the facts.

Do you recover this in every case?

No. Sometimes there are compelling circumstances that work against this. Maybe a victim wasn't injured at all or didn't suffer great harm. Victims with severe criminal histories might not want to go to court. All these factors could impact a case.

We do, however, aggressively pursue these cases, and you will want a civil and personal injury attorney who will try to get you the maximum recovery, including punitive damages.

If an insurance company does not offer you \$25,000, you should discuss the matter with your attorney and learn if it makes sense for you to settle or go to court.

What if I'm not hurt, but they still damaged my car. Can I still get punitive damages?

Georgia law allows punitive damages in these kinds of cases solely because of the defendant's conduct, so your injuries don't technically come into play on whether punitive damages can be assessed against the defendant.

However, if you have not been injured, your case might not be worth as much, but punitive damages could still be assessed, just not as much as if you had been injured.

What if I'm not in my car and someone hits it?

Such cases still allow for punitive damages, just not as much as cases that involve injury. Juries will look at the

R. Shane Smith

accident as bad but not as bad as it could have been had you been injured.

Why do you wait until the criminal portion is done?

At times, the criminal process can drag on; court dates can be postponed because the defense attorney asks for continuances. We are patient about this because we want get all the evidence in the criminal process and find out the penalty or the criminal history of the defendant in the case. Once we get that criminal history, we can find out if there are any prior DUIs, and if that's the case, we can ask for more punitive damages.

What if the person who hit me doesn't have any insurance?

This is a bad situation. If you have been hit by an uninsured motorist, you have two options. One is to file under your policy's uninsured motorist claim and let your insurance company try to collect the money from the uninsured driver. Punitive damages rarely come into play in these cases, so your case is treated like a regular personal injury case.

At the close of it, you'll sign a release indicating that you're not going to sue your insurance company and that your insurance company gets first bite at any money you receive through another remedy. Unfortunately, this is normally the route we recommend.

The second option is to sue the person individually to get a judgment against him and collect it. This is normally an exercise in frustration because uninsured motorists generally don't have many assets.

We normally recommend the first option, suing your own insurance company, before the second option, suing the person who hit you.

Are my feelings of anger normal?

Yes they are. Many people who have been hit by drunk drivers can feel a great amount of anger either immediately or as time goes on. The feeling of anger can build and sometimes get worse as the criminal justice process slows down due to requests for continuances on the part of the defendant. Sometimes it can get worse after a badly injured victim learns that the defendant received a sentence of only one or two days in jail. This feeling of anger is a normal and understandable reaction that the victim should acknowledge.

Talk to your lawyer about your feelings, how a DUI accident is different from a regular accident, and how it's impacted your life. We will recommend again that you get in touch with Mothers Against Drunk Driving or Students Against Drunk Driving so you can tap into their resources.

We will also try to put you in touch with a therapist or counselor familiar with these issues.

There are many groups out there that help victims of drunk drivers. Some focus on cases that involve loved ones who died in an accident, but many are glad to help anybody struggling with these feelings. We always recommend you take advantage of these resources. Talking to somebody who understands, who has been through the same thing, can work wonders for you.

DUI accidents are different from normal accidents because drunk driver deliberately choose to drink and drive—the accident was not simply a careless mistake or error. They actually chose to drink and drive rather than call a cab, and by doing so, they injured you. Such cases should be treated differently.

Below are the addresses and telephone numbers of some local chapters of MADD. Consider contacting MADD; if you can't find a nearby chapter, contact my office or visit our Web site for a link to MADD's state directory.

R. Shane Smith

Also, keep in mind our advice about seeing a counselor familiar in these areas—we'll be glad to help you with that.

Can I sue the bar where the drunk driver was drinking?

Georgia law includes a “dram shop” and a “social host” liability clause. What this allows you to do is to file a claim against a bar that served somebody even after he or she was drunk. In Georgia, these cases are harder to prove than other cases because you have to prove that the bar knew the person had been drinking or was drunk when it continued to serve him or her. This, however, can be evaluated based on the length of time the drinker was there, how much of a bill was run up, how many drinks the drinker had had, and his or her overall behavior. Because these considerations are very fact-specific and witness-specific, they require much investigation. Witnesses, including staff and other customers, need to be deposed, and the matter has to wait for the conclusion of the criminal process in a drunk driving case.

While these cases can result in large awards, depending on the injuries, they are more difficult to conduct. They require somebody experienced in these matters and with the resources such cases require.

What are the insurance limits in Georgia?

Currently, Georgia is an at-fault insurance carrier: you pay for your own conduct. The person who caused an accident or his or her insurance company is liable. Georgia insurance policies are currently minimums of \$25,000, \$50,000, and \$25,000. The first \$25,000 is the amount of liability insurance for any one party. The \$50,000 refers to the most the insurance company will pay due to multiple bodily injury claims. So if you have one or two victims, this

What Every Georgia DUI Victim Needs to Know

number is not relevant, but if there are three or more victims, each will get less than \$25,000.

The last \$25,000 refers to the maximum property damage that will be paid. If you drive an expensive car, say, a vehicle worth more than \$25,000, get uninsured motorist coverage to cover the value of your vehicle.

We recommend that everyone get uninsured motorist insurance.

What is uninsured motorist insurance? How does it apply in any case?

Uninsured motorist insurance applies when somebody with no insurance coverage hits you. “Underinsurance” occurs when the person who hit you has a cheap policy that does not pay for all your injuries.

Underinsured insurance can be “stackable” or “nonstackable.” Stackable means that if you pay for \$25,000 of coverage, it stacks on top of the defendant’s car insurance coverage. If the person who hit you had \$25,000 worth of coverage and you had \$25,000, you would have a total of \$50,000 worth of coverage.

Unstackable insurance means that whatever your insurance coverage is, your insurance company gets credit for what the defendant driver’s insurance pays. Therefore, if you have \$25,000 worth of uninsured motorist coverage, and the person who hit you has \$25,000 worth of uninsured motorist coverage, you therefore have no uninsured motorist insurance coverage because they get credit for the full \$25,000. If you had purchased \$50,000 worth of uninsured motorist coverage, after their credit, you would have \$25,000 left.

There are certain circumstances where even nonstackable insurance is available; this occurs primarily when there is a lien of some sort on your settlement. A

R. Shane Smith

lien on your case by a hospital, Medicaid, or Medicare for money they have spent on your care can reduce the limits of coverage available for the liability carrier.

An issue specific to drunk driving victims' cases is that the uninsured motorist does not pay punitive damages. This is because you cannot punish your uninsured motorist carrier for the actions of the liable party. Therefore, punitive damages are available only from the defendant drunk driver or his or her insurance company if the policy does not exclude punitive damages.

What is Georgia's Dram Shop Act?

Georgia's Dram Shop Act allows claims or lawsuits against restaurants, bars, nightclubs, and other licensed places that serve alcohol for profit. Georgia's Dram Shop Act came out of a Georgia Supreme Court decision, *Sutter v. Hutchins*, 254 Ga 194 (1985). The Dram Shop Act treats dram shop cases and social hosts the same and with the same elements.

The law allows an innocent third party or victim of a drunk driver to bring a case against a commercial vendor or a host if alcohol is sold or furnished to someone underage with knowledge that that person will soon be driving a vehicle, or if alcohol is sold or furnished to a person who is noticeably drunk, again with the knowledge that the person will soon be driving.

Who may bring a drunk driving dram shop or social host case?

Any innocent driver who is a victim of the drunk driver, a passenger in the vehicle of the drunk driver, a pedestrian struck by the drunk driver, or a passenger in another vehicle.

The law specifically states that the drunk driver

What Every Georgia DUI Victim Needs to Know

cannot collect from his social host or a dram shop case.

To win a dram shop case, you must prove that the defendant knew, sold, or furnished alcohol to an underage person or served it or sold it to somebody who was obviously drunk, and that in both cases the person was going to be driving soon. It also has to be proven that the alcohol led to the intoxication and that the drunkenness was noticeable. Expert testimony can be allowed in such cases, including blood alcohol levels, which can even be calculated “backwards,” so to speak, to prove that someone would have most likely been in state of noticeable intoxication at the time of the accident.

What is a social host’s liability?

Georgia’s Dram Shop Act also covers social hosts who serve alcohol but don’t charge for it, say, at a party at someone’s house, a fraternity function, or a club.

What does the impact on losing a loved one have on the case?

If someone dies as a result of a drunk driver’s behavior, this fact complicates and aggravates the case due to the emotional impact of the death, and the criminal punishment of the drunk driver can be much worse.

Additionally, the burden on the family of the person who dies is obviously much harder; his or her estate might have to go through probate before the heirs or next of kin can collect any judgment.

How should a DUI case be handled?

As I stated previously, most DUI cases are handled very similarly to normal bodily injury cases, but you want to choose a lawyer familiar with the emotional impact of drunk driving cases. You also want someone who can refer you to

R. Shane Smith

counseling or support victims of drunk drivers frequently need. You also want a lawyer familiar with punitive damages and how to maximize the punitive aspect of your case.

I recently read about a general personal injury attorney who wondered why post-accident DUIs were relevant to DUI cases. This lack of knowledge of punitive damages can be common among lawyers who aren't familiar with this area of the law, and this is exactly the reason why you want a lawyer familiar with representing the victims of drunk drivers. A lack of knowledge in this matter can cause a victim to lose out on being awarded thousands of dollars.

Additionally, waiting until the criminal case wraps up so you can get access to the driving record or criminal history of the defendant is of critical importance if you're looking to maximize the value of a punitive damages case.

Without this knowledge, you have to take it on the defendant's word that he or she has no prior DUIs or post-accident DUIs.

DUI cases have to be handled by somebody who is familiar with the penalties for DUIs so that if nothing else, he or she can interpret the penalties, get a general idea about prior DUIs, and learn the defendant's driving record or criminal history.

The more experience an attorney has in this area, the easier it is for him or her to advise you on whether an offer is fair or if you should go to trial and whether dram shop or social host law may apply.

Will the drunk driver's insurance fix my car?

Generally, whether someone was drinking and driving should have no bearing on whether his or her insurance company will pay to fix your car. As long as the driver had valid coverage, drinking and driving does not invalidate insurance coverage, and the company should handle the

What Every Georgia DUI Victim Needs to Know

property damage portion of the claim in the normal manner. The fact that the other driver was drunk comes into play later on, during settlement or punitive damages discussions.

General Accident Questions

How do I get my car fixed?

Any time your car is damaged in a car accident, you have two choices: you can file with your own insurance or file a claim with the insurance carried by the person responsible for the accident.

If you're filing with your insurance company, you will be responsible for your deductible. However, once your insurance company collects from the insurance company of the person who caused the accident, you should get your deductible back. The process of your insurance being paid back is called subrogation. This process can take six weeks more or less. Some insurance companies will waive your deductible if you're not at fault, but others may not.

The most common and sometimes preferred method to get your car fixed is to file a claim on the person who caused the accident. Many times police will give you an information card that has the opposing party's name, insurance company, and policy number, or you can get this information from the accident report once it becomes available.

You can then contact the other person's insurance company and start the claim process if the other party does not report the accident.

Many times the opposing party's insurance company will ask for a copy of the accident report. As long as the accident report is accurate, I would encourage you to send it to the insurance company, as this can speed up the process.

If the accident report is incorrect, you need to get this fixed as soon as possible. It is a critical starting point in your case. You have to contact the police officer who did the report to get him to fix it. Also, your attorney cannot normally get

What Every Georgia DUI Victim Needs to Know

it changed. It must be one of the listed parties on the report.

Here's a big word of *caution*: many times, insurance companies want to record statements while setting up the claim, but I do not recommend this. A recorded statement is an opportunity for the insurance company to use your words against you later.

I specifically caution you against describing your injuries in a recorded statement. The reasons for this are several, but the primary one is that your injuries may not have shown up in full at the time of the recorded statement. It's not uncommon for a neck and back strain to develop and worsen over many hours or even days after a car accident.

It's also not uncommon for someone who's been injured to focus on one or two areas of his or her body and not realize the seriousness of an injury in another area. For instance, I've known some people who focused primarily on neck pains and the migraines that result from those pains but fail to mention that their knees are bothering them. They don't realize until later that they had struck their knees on the dash and ended up requiring surgery, but all this was obscured by their migraines.

If you fail to mention an injury to the insurance company, this could hurt your case and make it more likely that it has to be litigated or taken to trial.

The opposing party's insurance company should put you in a rental car if you need one. Another word of caution here: the insurance company does not have to provide insurance for the rental; that's your responsibility. This can be an issue when you have liability coverage only and the rental insurance company makes you buy comprehensive or collision.

Once again, the primary and preferred method to get your car fixed is to contact the other party's insurance company. If you have specific questions, check out my other

R. Shane Smith

book, *Your Georgia Property Damage Rights*, or check out my web page www.shanesmithlaw.com for in-depth descriptions of your property damage rights in Georgia and the entire process.

Can I see my own doctor?

The answer is a most definite yes. After a car accident, you're entitled to see any physician you think you need for your treatment. Do not wait for the other insurance company to tell you to see your doctor; it's in that company's best interests to have you delay seeking medical care; this, the insurance company hopes, would be a sign that you weren't really hurt.

Also, some people who delay may end up not going to a doctor at all even though they are in fact hurt, and this can also help the insurance company.

The bottom line is that if you're in a car accident, you're within your rights to seek medical care wherever you want. I would always encourage you to see your primary care physician first and as things crop up in the future.

Can I see a chiropractor?

Some people like chiropractors while others don't; it's a personal choice. Chiropractors can be very good at treating back and neck strain or soft tissue or whiplash-type injuries. Chiropractors may also be more familiar with car accident injuries and treating car accident victims. This is important from a legal perspective because if a chiropractor can properly document your injuries, this will present better in court than the testimony of someone who does not know how to properly document such injuries.

I encourage you to ask your chiropractor if he or she handles many car accident cases. Some chiropractors do while others do not in the same way some primary care

physicians are good at certain things rather than others.

Should I use my health insurance?

My position on health insurance is quite simply that you pay for health insurance on a monthly basis, so if you are in a car accident, you should use the health insurance you pay for every month. Sometimes clients will tell me that they don't feel that their health insurance should have to pay for injuries caused by someone else. That's a very valid concern, but I tell them that whether they use their health insurance or pay cash for or charge their medical bills should have no bearing on an offer made by the insurance company of the person who caused the accident.

Whether you use your health insurance becomes important is when it comes time to settle your case with your lawyer. If your medical bills have been paid by health insurance or through another source, the portion that would normally go to pay medical bills will be paid directly to you. It is for that reason I recommend that you use your health insurance.

Additionally, even if we end up paying your health insurance back its money dollar for dollar, you would still come out ahead by using your health insurance because insurance companies frequently offer discounts or write-offs.

The only party that benefits if you do not use your health insurance is your health insurance company. I have never had a health insurance company call me at the end of the year to congratulate me for not getting sick and offer to refund some of my premiums. Until health insurance companies start operating this way, I see no benefit in allowing them to take my premiums and not pay for my health care.

The critical issue is whether your doctor will take your health insurance for injuries due to an auto accident.

R. Shane Smith

Occasionally, injured clients will go to their primary care doctors and learn they do not take third-party health insurance or third-party insurance for car accident victims. What these doctors are saying is that they will not deal with anybody other than you for your car accident injuries.

Many times, physicians who do not treat many car accident victims think that health insurance companies will deny payment on car accidents. In Georgia, a health insurance company is a secondary payor for car accident injuries. The primary payor for medical bills is you or your car insurance company. This is an optional type of coverage that some people have on their policies while others do not.

For your health insurance company to pay on your claim, you need to confirm whether you have medical payment coverage. If you do not have medical payment coverage, you need to send a no-med-pay letter to your health insurance company. It will then pay for your treatment just the same as they would normally.

You should contact your car insurance company directly with questions and ask them to send you a no-med-pay letter if this is an issue. You can then tell your primary care physician that with this no-med-pay letter, your health insurance company will pay the claim. Keep a copy for your next doctor as well.

How do I find out who the other party's insurance company is?

The easiest way is to check the accident report the investigating officer wrote up; it should list the other person's insurance company. If it does not, you can call or write the driver to ask him or her about insurance carriers. Your insurance company may be able to help you locate the other party's insurance. Some insurance companies are willing and able to do this, but others are not.

What Every Georgia DUI Victim Needs to Know

Another option is looking at an information sheet some police departments fill out immediately after an accident. This is normally just an exchange of names, addresses, telephone numbers and insurance policy numbers done at the scene. If you don't receive either of these two, you can contact the investigating police officer, who might have the information.

Georgia's Statute of Limitations

Georgia's statute of limitations is something everyone should be aware of. It states how long someone has to pursue a claim against a drunk driver or any other driver. Georgia's law states that under most circumstances you have two years from the time of the accident to file a lawsuit. One exception to this is that the handling of a traffic citation can extend your statute of limitations by the amount of time it takes to handle the ticket.

I never recommend waiting longer than your two years to file your lawsuit because there is no reason to. Always consult a lawyer if you are going to file a lawsuit well before the two-year statute of limitations.

One other factor that occasionally applies in drunk driving cases is the necessity to send an anti-litem notice; that's a notice to a city, state, or county government if one of its vehicles was involved in a collision. This is not normally a consideration in drunk driving cases, but I mention it just in case.

Conclusion

I hope this guide has answered some of your questions about what happens when you are involved in a DUI accident and has pointed you in the right direction.

If you have further questions, please contact my office at 770-487-8999 or look it up on the Web at:

www.shanesmithlaw.com

We will be happy to talk to you.

We also have a guidebook for Georgia Slip and Fall cases. We'd be happy to send you that as well as our *Seven Critical Mistakes Car Accident Victims Make* informational pamphlet and *Top Ten Ways to Wreck Your Georgia Car Wreck Case*, both are available for no cost on our website.

R. Shane Smith

About the Author

Shane Smith calls Georgia his home. Shane graduated from high school in Fayette County, Georgia. Shane then attended the University of Georgia for two years. Shane then transferred to Georgia State University where he graduated Magna Cum Laude in 1997. During his undergraduate program he was active in ROTC, serving on the Color Guard, Ranger Challenge, and as the company commander of his ROTC Company. While at Georgia State, he also met his wife. After receiving his Bachelor of Science, he attended Georgia State's College of Law, where he graduated Cum Laude in 2000. During this time, he worked with Richard Hobbs, a local attorney in Fayetteville, and with the Fulton and Rockdale County DA offices as an intern. Additionally, he was active in the Student Trial Lawyers Association competing in a national competition.

After being admitted to the Georgia Bar, he then entered the United State's Army Judge Advocate General's Corps. He served at Fort Campbell, Kentucky, with the 101st Airborne (Air Assault) Division. While at Ft. Campbell, he attended and graduated from the Army's Air Assault School. This qualified him to wear the Army Air Assault Wings on his uniform. He also served at Fort Benning, Georgia. While in the Army, he practiced criminal defense throughout the Southeast. He has defended those accused of a wide range of charges although he primarily focused his representation on those accused of serious sexual assault crimes. He also acted as the lead attorney on the only military homicide in his multistate state district during his tour.

After leaving the army, Shane moved back to Peachtree City, Georgia. He then began practicing personal injury law at a major firm in Atlanta for four years. During this

time, he handled over 500 cases to completion, ranging from minor injuries to a serious tractor trailer collision. Shane has represented people with injuries ranging from mild soft tissue injuries to their back and necks, severe broken bones requiring surgery, people who have undergone lumbar fusions and a client who has an amputation because of his injury. During this time, he represented numerous clients who were struck by a driver who was DUI or intoxicated, and has helped many people who were pedestrians when they were struck by an automobile.

After working downtown for several years, Shane formed his own law firm to better represent his clients. Shane focuses his practice on helping those injured through no fault of their own. This can be someone injured in a car wreck, to someone injured on someone else's property, or other seriously injured people. Shane particularly enjoys helping his clients who have been struck by drunk drivers receive the compensation they deserve. Shane has worked hard to develop contacts and relationships with many specialist doctors in the Atlanta area to help ensure that his clients can receive treatment no matter how seriously they are injured.

In addition to practicing law, Shane is married and has two small children. He attends and is a member of Holy Trinity Church with his family. He is a member of the Knights of Columbus, the Masons, and the Shriners. Shane is admitted to practice law in all courts in Georgia and the Military Court System. Shane is also admitted to practice in the Middle District of Georgia.

Education:

University of Georgia Athens
September 1993 - March 1995

Georgia State University
Bachelor of Science
Criminal Justice
Magna Cum Laude
April 1995 - June 1997

Georgia State College of Law
September 1997 - May 2000
Juris Doctorate
Cum Laude

Professional Honors & Activities:

Army ROTC
Distinguished Military Graduate

Air Assault School Graduate

Numerous Academic Awards
(both Undergraduate & Law School)

Presentations & Speeches:

New Comers Briefing to Ft. Campbell, KY soldiers -
weekly briefing to approximatly 200 people every week

Legal Issues to Family Readiness groups in Ft. Campbell, KY

Ethical Issues in Practice to John Marshall Incoming
Law Students

Publications:

Georgia Guide to Property Damage for Car Accidents

Georgia Guide to Bodily Injury Claims for Car Accidents

“I was hit by a drunk driver, what do I do now?”

– Georgia’s Guide for Drunk Driving Victims *Coming Soon

Bar Admissions:

State Bar of Georgia

Court Admissions:

Georgia State Court

Georgia Court of Appeals

Georgia State Supreme Court

All military courts

Federal Court of the Middle District of Georgia

Community Activities:

Active Member of Holy Trinity Church

Parish Council of Holy Trinity Church

F & A Mason

Knight of Columbus

Shriner

WA