

What you want to know  
**BEFORE** you hire a **LAWYER**  
or talk to the  
**INSURANCE ADJUSTER**

*The Ultimate Guide to Accident Cases in Hawaii*

**FIVE DEADLY SINS  
THAT CAN WRECK  
YOUR INJURY CLAIM  
HOW TO HIRE THE RIGHT LAWYER**

*By Collin M. (Marty) Fritz*

**Second Edition**

**TRECKER & FRITZ**  
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**If you can answer YES to these questions, we may  
be the injury law firm for you.**

1. Was the accident or injury to you someone else's fault?
2. Did you get prompt medical treatment?
3. Have you followed your doctor's recommended course of treatment?
4. Did the accident happen less than 24 months ago?\*
5. If an auto accident, do you have total expected medical bills of at least \$5,000 *or* a permanent/significant injury or scarring *or* a situation involving criminal action such as drunk driving?

\*This period may vary depending on the type of case.

If you can answer YES to these  
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***Disclaimer***  
***This Book Is NOT Legal Advice!***

The Hawaii State Bar requires that we inform you that what is in this book is not legal advice. I'm not your lawyer until you and I enter a written agreement for me to be your lawyer. I know the arguments the insurance company will make—and so should you—even before you file your claim. I can offer suggestions and identify traps, but please do not construe anything in this book to be legal advice about your case, as each case is different and an attorney can only give you quality legal advice when he or she understands the facts involved in your case.





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## ***Our Approach: Fewer Cases-More Time for You***

We are “different.”

We don't rely on a high volume of cases generated by massive TV advertising. We don't claim to handle every type of legal case under the sun. We don't want to. We don't need to.

Each year, we accept a limited number of injury, malpractice and wrongful death cases from the hundreds of people who ask us to represent them. We are not a personal injury mill. We do not allow paralegals and assistants to negotiate your case with the insurance company. Fewer cases means more time for you and, we believe, better results overall.

Since 1976, Trecker & Fritz (and its predecessor McKenzie Trecker & Fritz) has represented accident, malpractice and significant injury claimants throughout Hawaii. A large percentage of our cases are referred to us by satisfied former clients, other attorneys, and health care professionals. If we accept your case and you are

not local to us, we will come to you, anywhere in Hawaii and even anywhere in the world (if your claim arises or would be heard in Hawaii).

Sometimes, the best advice you can get when you are thinking about filing a lawsuit is that your claim cannot be won or that it makes no economic sense. If that is true, we will tell you. We'll also tell you when we think you are better off handling a claim yourself, without an attorney. But, if your case passes our litmus test and we accept it, you can be assured that you will receive personal attention. We will represent you aggressively; keep you up-to-date on what is happening in your case; and give you advice as to whether you should settle your case, engage in alternative dispute resolution if appropriate (like mediation or arbitration) or go to trial before a judge or jury. We will explain all fees and costs to you fully before we start working on your case and as we work on the case. Together, as a team, we will decide on the best approach for your case.

**TRECKER & FRITZ**  
**Honolulu, Hawaii**

## ***Foreword: Why THIS Book?***

We wrote this book because, if you are like most people, this is the first time you have been injured in an accident. You have questions. You are often getting calls from the insurance company representatives, wanting to ask “just a few questions.” The insurance company may be pestering you to sign their forms “so we can get the records and handle this for you.” They may even have already offered you money to settle your claim. You started your search for an attorney, but found that attorney advertising rarely gives you useful information about how to find the right lawyer for your case. You see an ad that says, “Hire me, we don’t charge a fee unless we get you money,” but then you realize that ALL personal injury lawyers say that. You soon realize that ads that showed fistfuls of cash, gory accident scenes or platitudes like “We Care For You” or “We Are Aggressive” are meaningless. (Don’t you expect that your attorney will care for you?)

Here are some other meaningless headlines you might see in the Yellow Pages or on television: (Ask yourself: Does this headline help me figure out if this is the right lawyer for me?)

- Results
- “Why Me?”
- Can You Get a Lawyer Who Cares?
- All Accidents and Serious Injuries
- Accidents and Injuries
- We’re the Law Firm that Cares About You
- Legal Help for the Seriously Injured

We wrote this book for you. So that you could have good information in the quiet of your own home or other location BEFORE you hire a lawyer and before you talk to the insurance adjuster. (Hopefully, you haven’t signed any forms yet!) You may not even need a lawyer to settle your claim.

## ***Myths You Might Have Heard from Friends, Neighbors, and Relatives***

- If you write the insurance company a reasonable letter, you will get a reasonable settlement proposal.
- When you are in an accident and the other person's insurance company calls you to ask for a recorded statement, you give them a recorded statement or they won't settle with you.
- All lawyers who advertise that they handle accident cases have the same ability, tools, track record, and experience to handle your case.
- The insurance company for the person who injured you is obligated to pay your medical bills as they become due.
- All lawyers charge the same way in injury cases.
- The court system is some sort of lottery that will help you get rich.
- Just because there has been an accident and it wasn't your fault, there must be some insurance company or



other entity that will pay for your bills, lost wages and injuries.

- If a lawyer refers you to a certain type of doctor, that is a good idea.
- A jury or judge will give you whatever you ask for.
- There is a formula for determining settlement value.

## ***Tricky Insurance Companies, Meaningless Lawyer Advertising, and Frivolous Lawsuits***

I am sick and tired of insurance companies taking advantage of people before they have a chance to talk to an attorney. For years, one major insurance company encouraged claimants not to even talk to an attorney before settling the claim. They used fear (the lawyer will take a big chunk of this check we're about to pay you just for talking to him or her) to dissuade people from getting good advice. Guess what? You may not need an attorney to represent you in your case! No one, however, should settle a case without understanding "the system." Typically, for example, the insurance adjuster isn't going to tell you that you might have to turn around and take the check they just paid you and pay it to your health insurance company. They simply don't care about you most of the time. That adjuster just wants to close the file and get you to release all of your claims and save the company money. Here are some other tactics I've seen insurance companies use just to wear you out and get you to go away:

1. **Deliberate delay.** They know that often you are in a financial squeeze. Even if you have good health insurance, the fact that you probably aren't working may make it difficult to make co-pays and deductibles. The insurance company knows you are getting dunned by the doctors, so they often take their time with your claim.
2. **Requesting Unnecessary Information.** Insurance companies will insist that you track down every little piece of information before "we can evaluate the claim." Even if the information they are now asking for would not add a penny to their offer, they are happy to wait another six weeks or longer for you to track it down.
3. **Disputing Medical Treatment.** Even though I've never met an adjuster who went to medical school, they seem to know just what treatment is right for you! Usually, they "know" that you were over treated because "our computers say you should have been better by now."
4. **Nickel-and-Diming the Medical Charges.** Think about it. If they shave just 5% off your claim and can do that to the millions of claims made each year, they get richer.

## ***FIVE DEADLY SINS THAT CAN WRECK YOUR INJURY CLAIM***

5. **Misrepresenting Insurance Benefits.** This is a big one. They tell you that there's only \$100,000 in coverage. We file suit and "magically" find an umbrella policy worth far more in benefits! Don't you think they knew that just by looking on their computers before we filed suit? Of course, they did.
  
6. **Acting Like Your Friend and Making False Promises.** Watch out for the adjuster who befriends you, shows up at your house and promises to pay your future medical bills. This is a tactic to stop you from hiring a lawyer. (Believe me, they won't come around to your house once you have a lawyer.) Those future medical bills? Well, they'll pay them until their computer says "too much, too much, this claim is costing us too much."

“Allstate had a stated goal of reducing attorney involvement in the claims process to achieve a higher rate of return on settlement claim.”

The Washington Supreme Court hammered Allstate several years ago for its “Quality Service Pledge.”

The Pledge said: “Because you have been involved in an accident with an Allstate policyholder, we will provide you with quality service. . . . Your claim representative is dedicated to carrying out this Quality Service Pledge.” Allstate’s internal rules directed the adjuster to act as the individual’s claim representative for unrepresented claimants.

An injured woman settled her case with Allstate based on the Pledge and on the fact that the adjuster gave her extensive “help” in setting her claim. Later, the woman tried to return the \$25,000 Allstate had paid her. Allstate said “no, you signed a full release.”

The court, in allowing the injured woman to proceed with her bad faith lawsuit against Allstate, said that Allstate had a stated goal of reducing attorney involvement in the claims process to achieve a higher rate of return on settlement claims.

*It said:*

“Here, Allstate’s claims adjuster’s conduct fell below that standard when she advised the Joneses to sign a release of liabilities, did not properly advise the Joneses that there were potential legal consequences of signing a settlement check and a release of all claims or refer them to independent counsel, and did not fully disclose the conflict of interest she presented.”

Jones v. Allstate Insurance Co., 146 Wash.2d 291 (2002).

## ***FIVE DEADLY SINS THAT CAN WRECK YOUR INJURY CLAIM***

We wrote this book so that you can be empowered. We are also sick and tired of outrageous lawyer advertising, where lawyers with a reputation for handling hundreds of cases at a time make promises that can't be kept or equate your injury to "cash, cash, cash." Did you notice that almost all of the attorney ads in the Yellow Pages claim personal injury expertise? There are lawyers in the yellow pages who NEVER go to court or contested arbitrations, settling each case for pennies on the dollar. The insurance companies know who they are—so should you.

Frankly, I am also tired of lawyers who file frivolous lawsuits, because frivolous lawsuits hurt everyone by delaying real claims from getting to court. If you are looking for a lottery win, look elsewhere. If you are looking never to have to work again because someone tapped you from behind at a red light, look elsewhere. My firm handles legitimate claims for legitimate claimants. No "quick cash for your pain" here. Sorry.



## ***What You Should Expect from Any Lawyer BEFORE You Make an Appointment for that “Free Consultation”***

Before you make an appointment with any lawyer, you should ask him or her to send you a package of written information, which should include at least the following:

1. A sample fee agreement;
2. A listing of sample verdicts, settlements and testimonials from former clients;
3. A full written explanation of the steps involved in a personal injury lawsuit;
4. A written assurance that he or she carries errors and omissions (“malpractice”) insurance in the amount of at least two million dollars (you’d probably be surprised to see how many lawyers carry NO insurance.) Ask for this representation in writing;



5. A full explanation of fees and costs, the difference between the two, how the percentage fee is calculated, and whether the lawyer advances your case costs;
6. A professional biography that outlines at least how long he or she has been actually going to trial in personal injury cases and indicates whether he or she has been rated by peers and judges in objective publications such as *Martindale-Hubbell* or *Best Lawyers in America*, or is a member of an organization that requires more than a simple payment. (Like doctors, there is no requirement that an attorney be certified by any recognized organization. In other words, any lawyer can advertise for any type of legal case.)

Please note: Although we dislike it, Trecker & Fritz is willing on rare occasions to consider handling cases where the client is already represented by other counsel, when there are legitimate reasons for discharging prior counsel.

## ***What Is a Personal Injury Case?***

Let's start at the very beginning: Just what is a personal injury case? Lawyers say that they do “personal injury cases” or “accident cases” or “wrongful death cases” and yet, not everyone understands exactly what this means. Indeed, people who have known me for years will come up to me and ask me for a referral to a car accident attorney! They do this even though I think that they know exactly what it is that I do.

A personal injury, car or motorcycle accident, plane crash, fall, professional negligence or wrongful death case is: any type of claim where a person has been injured or killed due to someone else's carelessness. If the only damage in your case is that your car got banged up, then you don't have a personal injury case—but you may have a property damage case. (We do *not* handle property damage cases, but there are lawyers who do.) If both you and your car have suffered an injury, then you have both a personal injury

and a property damage claim. In those circumstances, either your insurance company or their insurance company will usually take care of the property damage claim.

If someone's negligence causes the death of another, then this is called a "wrongful death" claim. The law of each state or jurisdiction differs significantly regarding what can be recovered in a wrongful death case. You need an attorney who understands the specialized wrongful death laws of Hawaii.

## ***You Are at War, But It's a War that Can Be Won***

The day you were injured, you entered a war zone. Insurance companies and some in the government have declared war on injured people and their attorneys. They have waged the war in the media and their propaganda has had a tremendous effect on juries and their verdicts. This is called *tort reform*. The success that the insurance companies have had in tainting the minds of jurors has emboldened them not to offer fair settlements until you prove to them that you are ready, willing and able to go to trial.

Admit it. Until you or a family member were injured, you, too may have thought that a personal injury lawyer is a bad person and that people who make claims and file lawsuits are wrongly stealing from society. That's what billions of dollars in insurance company advertising and public relations will get you!



## ***What Must You Prove to Win Your Case?***

Just because you were hurt doesn't mean you are entitled to money. You must prove that someone else was negligent or careless and that it was this negligence or carelessness that caused your injury. If you fail to do this, you lose. If you sue the wrong person, you lose. If you wait too long to sue, you lose. If you had an injury BEFORE the accident, then you might only be entitled to be compensated to the extent your injury is now worse.

In Hawaii, if you were more than 50% at fault, you lose. This is known as the law of contributory negligence. This means that if the "other guy" was 49 percent at fault and you were 51 percent at fault, then you cannot recover anything. On the other hand, if you are 20% responsible you collect 80% of your damages.

Even though this rule can be unfair, before we accept your case, we must be confident that you were not at fault more than 50%.

In addition, in Hawaii auto cases there is a modified no-fault system for claims. Although this system is unique to Hawaii and very complex, an important element is that you must make the “threshold” to qualify to make a claim. This threshold is usually (but not always) \$5,000 in medical bills—a lawyer can discuss with you whether you made the threshold. Also in Hawaii, every auto jury verdict or arbitration award is subject to something called The Covered Loss Deductible (CLD). This essentially means that as much as \$10,000 is deducted from the verdict or award. The CLD was instituted by the Hawaii Legislature in response to insurance industry complaints about low profits. Interestingly, Hawaii insurers now have some of the highest profits in the country.

## ***Do You Really Need an Attorney to Settle Your Case?***

You definitely do not need an attorney for every small injury case. In fact, our office does not even accept cases where there's little or no property damage or the injuries are minor. Why not? Simple. In small cases, the attorney fees and costs might leave little or nothing for you after your medical bills are paid, and we don't believe that would be fair to you or make sense to us.

Before you decide whether to hire an attorney...

Did you know that a 1999 study found that insurance companies pay higher settlements to injured people who use an attorney than those who do not?

It's true. In 1999, the insurance industry performed a study to find out if people who had accident claims received more money in settlement by using an attorney than those people who settled on their own. The study was performed by the Insurance Research Council, a non-profit organization



that is supported by leading property and casualty insurance companies across the United States. The mission of the IRC (IRCweb.org) is to advance the insurance industry's view on matters crucial to insurance companies. The IRC found that people who used an attorney received, on average, 3 ½ times more money in settlement than those who settled on their own.

## ***Finding a Qualified Personal Injury Attorney***

Choosing an attorney to represent you is a very important but daunting task. The decision certainly should not be made on the basis of advertising alone. The Yellow Pages are filled with ads-all of which say basically the same thing. Anyone can buy a slick commercial, and many have.

How do you find out who in your local community is the best for your case? There are certain questions to ask that will lead you to the best person for your case, no matter what type of claim you have. Yes, it will involve some time on your part, but that's OK because the decision you are making may be critical to the success of your case.

In my opinion, the world of personal injury claims is much too specialized for someone who does not handle these cases regularly. Too many times we have looked at cases that have been handled by general practitioners, tax lawyers, criminal lawyers, family law

lawyers, and even workman's compensation lawyers. That's usually just no good. Get a lawyer who knows what they are doing. They are out there. (Clue: does the Yellow Pages ad list 20 different often non-injury-related "specialties"? Question to ask: how can that be?)

You should be aware that the insurance companies who defend personal injury and accident cases know who the attorneys are in your area who actually successfully go into court to try cases and which ones do not. The insurance companies use that information to help evaluate their risk. One of the first questions some insurance adjusters will ask when a serious claim comes in is: who is representing the plaintiff? I've seen insurance defense lawyers and adjusters laugh as they head for trial against one of these non-personal injury attorneys! It's like shooting fish in a barrel for them.

If this information is important to the insurance company, shouldn't it be important to you?

## ***How Do You Find Out Who Is Good in Hawaii?***

Here are some tips:

1. Check out the peer-reviewed lawyer ratings. Peer review means that the lawyers have been vetted or approved by other highly-rated lawyers and judges. Probably the three best-known and most prominent peer review sites are *Best Lawyers in America*, *Martindale-Hubbell* and *Super Lawyers*. The most selective is probably *Best Lawyers in America*, which is chosen exclusively by other lawyers, and claims the top 2% of lawyers. *Super Lawyers* claims to list the top 5% of lawyers using specific criteria and peer review. *Martindale-Hubbell* is oldest. Historically an A-V rating was the highest rating a lawyer could be awarded. None of these peer review ratings can be bought like an advertisement. In other words, you must be independently chosen by judges and peers. If a lawyer has been chosen for *Best Lawyers in America*, *Martindale-Hubbell* (and has an A-V rating), and is listed in *Super Lawyers*

you can be fairly confident that the lawyer is both experienced and competent. Their internet sites have specific information.

2. Get a referral from an attorney that you know and trust. Interestingly, this course of action is far from foolproof since many lawyers don't really know what lawyers get the best results because they practice in another specialty. They can be guessing sometimes. However, advice from a lawyer can generally give you the names of several lawyers, which might help you decide what firm is best for you.

If you get stuck, we'll even help you find the right lawyer for your case. Both the partners at this firm are former presidents of the Hawaii Trial Lawyers (now known as the Hawaii Association of Justice) and know the areas in which different firms' practices are strong.

3. The Yellow Pages can actually be a good source of names. Understand three things, however. First, not everyone who advertises is really an experienced and highly competent personal injury attorney. Many, if not most, of our cases come from referrals from other attorneys (even some who advertise!) or from satisfied clients. Second, be careful about the ads that tout too many different specialties. No one can do everything well. Third, the Yellow Pages and any other advertising simply means the lawyer can afford to pay for an ad—it has nothing to do with his or her experience or competence.

## ***FIVE DEADLY SINS THAT CAN WRECK YOUR INJURY CLAIM***

4. Your local bar association has a lawyer referral service. Understand that lawyers have signed up and paid a fee to be listed in certain specialties. Their names come up on a rotating basis. This is another source for an initial appointment. Just take the questions we talk about here to that interview. Call and ask for the written information that I mentioned above.

5. Interview several attorneys. Ask each attorney who else handles these cases in your area. If they won't give you any names, leave. Ask this question of each attorney. The names you see showing up on various lists of recommendations are probably good bets for attorneys doing these cases in your area on a regular basis.

6. Be careful about any attorney who rushes you to sign a contingent fee agreement. Take your time and think about this decision—it is an important one.

7. Run from any attorney who calls you first or approaches you through a third person whom you may not even know.

8. Beware of “runners.” A “runner” hangs out at the police station or the hospital, or listens to police radio to “run” to accident scenes or hospital rooms to encourage victims to sign contracts with attorneys. Although this practice is very uncommon in Hawaii, outrageous does not begin to describe it!

9. Beware of any attorney who contacts you in writing just after you have had an accident for the sole purpose of soliciting your

claim. If you are contacted “cold,” it should be for the *sole purpose* of providing you free information that you can study in your own home, on your own time—not to solicit your case.

10. Here are factors and good points to look for and question your attorney about. Note that not every attorney will meet all of these criteria, but the significant absence of the following should be a big question mark.

- *Experience.* Obviously, the longer you have been practicing a particular area of the law, the more you will know. Experience can be a big factor in many cases.
- *Experience actually trying judge and jury trials and handling binding arbitration cases* (much like trials). Ask the attorney how many cases he or she has actually tried before a jury.
- *Significant verdicts or settlements.* Does the attorney have a list of verdicts and settlements available that you can look at? Don't accept the “all my cases are confidential” line! The greater your number of cases actually tried and substantial verdicts and settlements achieved, the more likely the insurance companies will respect you. Past results are not a guarantee of the future, but past results do demonstrate some level of experience and success.
- *Respect in the legal community.* Does the attorney teach other lawyers in Continuing Legal Education courses?

## ***FIVE DEADLY SINS THAT CAN WRECK YOUR INJURY CLAIM***

- *An A-V rating from Martindale-Hubbell and listing in Best Lawyers in America, or Super Lawyers.* Both selected by peers and judges. You can't buy your way into these ratings.
- *Membership in trial lawyer associations.* In our area, you can certainly find a lawyer who is a member of the Hawaii Association of Justice (HAJ) and the American Association for Justice (AAJ). These organizations provide extensive education and networking for trial lawyers.
- *Publications.* Has your attorney written anything that has been accepted for publication in legal journals? This is another sign of respect that the legal community has for his or her skills and experience.
- *Licensing.* Ask your attorney if he or she is licensed in the state where your case will be filed. We believe that an attorney who is not licensed in the state where the case will be filed is at a disadvantage when it comes to negotiating with the insurance company and working with the courts. The insurance companies know who is not licensed and thus cannot actually try the case. We also recently ran across a horror story involving an out-of-state attorney who evaluated a medical malpractice case. This attorney kept the file for two years and gave it back to the client on the day the statute of limitations was expiring. The problem was that the attorney told the client that he had one more year to file his case, but this was based on the statute of limitations in his own state.



The client was then unable to file his case. Dealing with a lawyer who is not licensed in Hawaii can be a “kiss of death” to your claim.

Once you have decided on an attorney, make sure you both understand your goals and you understand how your relationship will work. How will your attorney keep you informed about the progress of the case? Many attorneys send a copy of every piece (or every significant piece) of correspondence and pleadings in the case to the client. Your attorney should also take time to explain the “pace” of the case and in what time frames the client can expect activity to take place.

Find out who will actually be working on your case. Make sure that you and your attorney have a firm understanding as to who will be handling your case. There are a lot of things that go on with a case that do not require the senior attorney’s attention. On the other hand, if you are hiring an attorney because of his or her trial or negotiation skills, make sure that that person is going to be trying or negotiating your case for you.

## ***What Does an Experienced Personal Injury Attorney Do for You in a Case?***

Here is a general list of many of the tasks your attorney may be called to do in your case. Remember that each case is different, and that not all of these tasks will be required in every case. They are:

- Conduct initial interview with the client;
- Educate client about personal injury claims;
- Gather documentary evidence, including police;
- accident reports, medical records and bills;
- Analyze the client's insurance policy to see whether there are any coverages which the client has that may pay all or a portion of the medical bills while the claim is pending;
- Analyze the client's insurance coverages and make suggestions as to what coverages should be purchased for future protection;
- Interview known witnesses;

- Collect other evidence, such as photographs of the accident scene;
- Analyze the legal issues, such as comparative negligence and assumption of the risk;
- Talk to the client's physicians as necessary or obtain written reports from them to understand the client's condition fully;
- Analyze the client's health insurance policy or welfare benefit plan to ascertain whether any money they spent to pay your bills must be repaid;
- Analyze the validity of any liens on the case. Doctors, insurance companies, welfare benefit plans, and employers may assert that they are entitled to all or part of the client's recovery;
- Contact the insurance company to put them on notice of the claim, if this has not already been done;
- Decide with the client whether an attempt will be made to negotiate the case with the insurance company or whether suit shall be filed;
- If suit is filed, prepare the client, witnesses and healthcare providers for depositions;
- Prepare written questions and answers and take the deposition of the defendant and other witnesses;
- Produce to the defendant all of the pertinent data for the claim, such as medical bills, medical records, and tax returns;
- Go to court to set a trial date;

## ***FIVE DEADLY SINS THAT CAN WRECK YOUR INJURY CLAIM***

- Prepare for trial and/or settlement before trial;
- Prepare the client and witnesses for trial;
- Organize the preparation of medical exhibits for trial;
- Organize the preparation of demonstrative exhibits for trial;
- Prepare for mediation and/or arbitration;
- File briefs and motions with the court to eliminate surprises at trial;
- Take the case to trial with a jury or judge;
- Analyze the jury's verdict to determine if either side has good grounds to appeal the case;
- Make recommendations to the client as to whether or not to appeal the case.

## **MORE INSURANCE COMPANY TRICKS**

Secretly videotaping you and talking to neighbors in an effort to get some dirt on you for trial or settlement.

Trolling YouTube, Facebook or Google for your postings and videos to use against you.

Putting their own insureds at risk of financial ruin by failing to settle claims for fair amounts and failing to advise insureds of offers to settle within their policy limits. We have seen many cases which insurers have offered very low amounts and subjected their own insureds to large verdicts and recorded judgments against them because they refused to settle cases fairly. Try getting a mortgage with a large judgment against you! Remember, an insurance company's primary mission is to make profits.

Trecker and Fritz has frequently successfully resolved cases against insurance companies for their "bad faith" in handling of claims. Few Hawaii lawyers have handled this type of claim.

## ***Beware of the Lien Monster***

You should be aware that often, if your medical bills were paid by a medical plan, the military or Medicare/Medicaid, you may have an obligation to repay some or all of the amounts paid out of a personal injury recovery.

### **11 Questions to Ask the Insurance Company Who Wants You to “Just Sign a Few Forms and Give us a Statement”**

1. Will you put in writing that the accident was not my fault?
2. Will you tell me how much insurance the person who hit me has?
3. If I give you a recorded statement, will you give me a copy of the recorded statement that you already got from the person who caused the accident?

4. If I sign this medical release, will you immediately forward to me a copy of everything you get using my release?
5. Will you tell me how much money you have set aside in “reserve” to pay my claim?
6. Will you give me copies of the recorded statements that you have taken from any witnesses?
7. Will you tell me now whether there is any “umbrella” insurance coverage available to cover my claim?
8. Will you tell me whether you have already done video surveillance of me?
9. Will you give me a copy of any “index” information that you have already gotten from your computer system?
10. Will you give me a copy of any financial information that you may have already obtained on me?
11. Will you tell me which of my neighbors you have already interviewed?

Good luck! Our experience is that the information sharing with insurance companies is a “one-way street.” You give to them and they don’t give to you!

## ***The Legal Process in Personal Injury Cases***

After gathering all of the facts and medical records, and after your medical treatment has ended, your attorney will develop a settlement strategy with you and attempt to get your case settled with the insurance company. There are many reasons to settle a case, including the fact that we are living in a relatively conservative part of the country as far as jury verdicts go, your attorney fee will be less if your case can be settled, and your costs will usually be less than if the case goes to trial. Your attorney will help you analyze the insurance company's best offer and compare it to what you might net by going to trial. Of course, you must know that every case (even "obvious" cases) can be lost. Sometimes, attempting to negotiate with the insurance company before filing suit is not a worthwhile endeavor. Insurance companies sometimes use pre-suit negotiation only to attempt to find out as much about you, your lawyer and your doctor as they can. It is generally a dangerous practice to wait until the statute of limitations has almost expired



to file suit. I have seen other attorneys do this, only to find that the defendant they sued is either not the correct defendant or is now blaming someone else. While there are legitimate reasons for delaying filing suit, there is no excuse for the practice whereby an attorney waits until the last moment to see if the insurance company will settle your case. Sometimes out-of-state lawyers attempt to represent people with Hawaii claims. When the claims do not settle, they often try to find an attorney to file the case on time. (I've received plenty of those last-minute calls. We usually reject them. We lead balanced lives and don't need to take on problems other attorneys have caused by their delay in taking action. Their inaction is not going to be our crisis.) Some accident victims are ill-served by hiring attorneys who are not licensed in the jurisdiction where suit must be filed.

Once the lawsuit is filed, both sides engage in the legal process called discovery. Each party is allowed to investigate what the other side is going to say at trial. The defendant will be permitted access to your medical and work history, including your income records. You may have to give a deposition under oath and you may be required to submit to a medical examination by a physician of the defendant's choosing. The defendant is also subject to discovery. He will answer written and oral questions about his own background and he will have to give sworn testimony about the incident at issue.

Here are some of the arguments the insurance company will use to justify a low payment (or outright denial of your claim):

1. You weren't wearing your seatbelt.
2. Your car had defective equipment.
3. You were drunk or impaired by legal or illegal drugs.
4. You didn't see our guy blow the red light, so it's your fault you got hit.
5. You exaggerated the bad guy's speed or conduct, so you are not credible.
6. You had physical problems before and this accident was minor.
7. Your medical care was excessive or inappropriate.
8. You should have gone back to work sooner.

### **What cases do we typically not accept?**

- Cases involving minor impact. Unless you had a pre-existing condition that was basically healed and the impact caused you serious injury. Bumps and scratches on your rear bumper do not typically make for a good case in Hawaii. However, sometimes a client can be doing well and a relatively minor impact can cause big damage. This type of person is referred to as an "eggshell" plaintiff. Trecker & Fritz have represented legitimate eggshell plaintiffs and obtained large recoveries for those claims.

- Cases with less than \$5,000 of expected total medical bills. Cases with less than \$5,000 in medical bills usually do not qualify for a claim against the negligent driver under Hawaii's modified no-fault law, unless there is serious scarring or a drunk driver involved.
- Cases with significant pre-existing injury in the same body part. If you have had three back surgeries before this accident, then the chance of a jury awarding you a substantial amount of money for your back injuries here is not high unless you had made a good recovery and were not experiencing pain, suffering or disability at the time of the accident. If you were, a doctor will typically apportion your injuries between your pre-existing condition and your current condition. Importantly though, if an accident caused you to lose wages or have medical treatment you otherwise would not have undergone, that is typically covered entirely by the later accident.
- Cases where the statute of limitations will soon run. Your delay is not going to become my crisis.
- Cases where you were charged with a moving violation of the law in the accident.
- Cases where you assumed the risk of your injury. Please don't call us if you spent three hours in a bar and let your drinking buddy drive or if you decided to test to see how fast your mom's Lexus could really go. You probably got what you deserved—Sorry.
- Cases where you have a significant prior criminal history.

## ***FIVE DEADLY SINS THAT CAN WRECK YOUR INJURY CLAIM***

Well, are there any cases left?

Yes, there are, and we represent lots of accident victims. Our clients are typically positive thinkers, not whiners or frauds. We try very hard to limit our representation to people with legitimate injuries and serious damages.



## ***The Five Deadly Sins that Can Wreck Your Case***

### **1. Hiring the Wrong Lawyer**

We have talked extensively throughout this book about the importance of hiring the right lawyer for your case. Remember, it is your case and you must be comfortable with your relationship with the lawyer and be comfortable that the lawyer has the experience and skill to help obtain a fair and reasonable recovery.

### **2. Hiding Past Accidents from Your Lawyer**

Once you begin a case, the other side will be interested in knowing how many past accidents you have had. The reality is that they probably already know the answer or have easy access to that information. All insurance companies subscribe to insurance databases and often the only reason they ask you this question is to find out if you are an honest person. If you have been in other accidents, your lawyer can investigate this and make a

determination as to whether this is a valid problem in your case or not. If you do not tell your lawyer, however, and you misrepresent your accident history to the insurance company, then it is almost guaranteed that you will lose your case. One client told her lawyer that she didn't think she needed to disclose prior accidents to us because "It didn't matter." The insurance company already knew and when they told the judge, the case was lost. While the lawyer can deal with a past accident if he or she knows about it, this error in judgment cost the client big money. Another client gave the attorneys' confidential analysis of the good parts and bad parts of her case to her father. He gave it to his insurance company which gave it to the defense lawyer. Bye-bye case! "Confidential" means CONFIDENTIAL.

### **3. Hiding Other Injuries**

It goes without saying that you should be upfront and honest with your attorney about any injuries that occurred before or after this accident. Again, if you saw a doctor or other healthcare provider, then there is a record in existence that the insurance company will find. Your lawyer can deal with this if he or she knows about it. If you lie about it, and the insurance company finds out, then your case is over. Remember, there is no privacy in America today. When you make an insurance claim, your life becomes an open book. If your doctor keeps "two sets of records" because she's been treating you for years and you don't make sure that we get ALL of the records, we'll fire you. Simple as that.

**4. Not Having Accurate Tax Records or Having Not Paid Taxes Due.**

In almost every case, a claimant will have lost income because of the accident. You will usually only be able to claim that lost income if your past tax returns are pristine. You don't want to risk going to jail by claiming a loss of income, only to have your past tax returns not back up your claim. Again, being honest with your attorney is the only way to be, because he or she can deal with the problem if they know about it. Be aware that you will be asked to produce your tax returns if you file a lawsuit and claim lost wages. If you are a liar and a cheat, this will come back to haunt you in your injury case, and we don't want our name associated with liars and cheats.

This being said, we understand that there are unique situations where you may not have paid taxes but you may have a legitimate loss of earning capacity claim. Some examples are students or people who have been disabled or out of work for long periods but were ready to start working.

**5. Misrepresenting or Exaggerating Your Activity Level**

Insurance companies routinely hire private investigators to conduct videotape surveillance. Now, they also troll YouTube and other social networking sites or "Google" you. If you claim that you cannot run, climb or stoop, and you get caught on videotape or brag about break dancing on the Internet, you can forget about your claim. There is no explanation (other than "you got my



brother, not me”) that can overcome the eye of the camera. One of our former clients claiming a “back injury” got caught on his roof repairing shingles. That didn’t look so good and I fired him as a client when I found out.

The Insurance Companies Will Stop at Nothing to Destroy Your Claim This story is almost unbelievable, yet Progressive Insurance Company once ADMITTED to these actions. It seems that the insurance company actually hired private detectives to JOIN A CHURCH in order to discredit a couple suing the insurer.

Progressive Corp. Chief Executive Glenn Renwick later apologized for the use of private detectives. “What the investigators and Progressive people did was wrong - period,” Renwick, head of the third-largest U.S. auto insurer, said in a statement. “I personally want to apologize to anyone who was affected by this.”

Apparently, the Progressive detectives worked their way into and taped support group sessions. This conduct is outrageous but, unfortunately, not all that unusual. Victims of car accident cases must be ever-vigilant, because these companies will stop at nothing.

Progressive has been sued on this matter and based upon the admission of its CEO, should expect to pay.

## ***Our Cases and Verdicts***

Here is a sampling of recent cases that we have handled. There are others at our website at [www.TRECKERFRITZLAW.com](http://www.TRECKERFRITZLAW.com). Remember that each case is different. This is not a representation of what YOUR case is worth. Every lawyer with any experience has won cases he probably should have lost, and lost cases that he expected to win. We are no different in that regard. Once a case is in the hands of the jury, it is out of our control. We do believe, however, that significant experience in big cases is one factor that people may use to choose one attorney over another. Many of our clients have told us that this is true. With these disclaimers in mind, here are some of our results:

### **Medical Malpractice:**

- Medical malpractice settlement against the U.S. government for approximately \$3.6 million for failure to diagnose stroke causing brain injury.

## ***COLLIN M. (MARTY) FRITZ***

- Medical malpractice jury verdict in Hawaii Circuit Court in excess of \$6,500,000 for severe injury to teenage girl for improper treatment. This case was tried twice after remand on appeal. (August 2013)

The former award was one of the largest pretrial settlement in the U.S. District Court of Hawaii to that date and the latter, one of the largest medical malpractice judgment in a Hawaii State Court to date.

- \$1,000,000 settlement for a military wife injured from negligent spinal surgery. (2011)

### **Recent Auto Accident Awards:**

- *State Farm* (2009) \$1,291,731
- *AIG* (2007) \$925,000
- *Geico* (2012) \$892,246
- *Allstate* (2012) \$764,155.34
- *First Insurance of Hawaii* (2010) \$675,604.45

### **Falls:**

Numerous six and seven figure awards and settlements in fall cases.

- *United States of America* (2010) \$750,000 (Navy Exchange)
- *City and County of Honolulu* (2011) \$164,934.45 (Waikiki sidewalk)
- *Kauai tourist fall* (2013) \$500,000.

### **General Negligence:**

- Settlement with State of Hawaii for approximately \$3.7 million for negligent handling of child abuse case resulting in severe brain injury to youngster. *Buentipo v. State of Hawaii* (2006)

### **Ocean/Beach**

- Six and seven figure recoveries, including settlement with City and County of Honolulu for wrongful death of swimmer. *Sylva v. City and County of Honolulu* (2009) ranging in six and seven figures.

### **Aviation/Products Liability**

- Helicopter crash (Kauai) (2013) (Amount confidential)



## ***Conclusion***

Without warning, an accident can change everything in your life – physically, emotionally, and financially. Almost immediately, you find yourself in a maze of medical bills, lost wages, and maybe even permanent physical damage. And just when you are at your most vulnerable, the insurance company comes knocking at your door with its little games to get you to settle your personal injury claim quickly and cheaply. Sort of like the accident never happened at all.

Our goal in writing this book is to provide victims of serious injury accidents in Hawaii with a straightforward guide to handling their cases. Personal injury cases can open up a myriad of questions, and the answers are often confusing. But armed with clear, simple, honest answers, you will be able to understand the legal process and how to go about getting a fair recovery. These are among the first steps needed to get your life back in order.

WA

*From Five Deadly Sins that Can Wreck Your Injury Claim  
How to Hire the Right Lawyer:*



“We will represent you aggressively; keep you up-to-date on important happenings in your case; and give you advice as to whether you should settle your case... or go to trial before a judge or jury.”

—Collin M. (Marty) Fritz

Marty Fritz’s compact and clearly organized book, designed to help victims of personal injury cases in Hawaii, guides readers through decisions such as how to find the right lawyer, and how to avoid the mistakes that could destroy a personal injury case.

Written in clear language, this book answers questions like, “What Must You Prove to Win Your Case?” and “What Does an Experienced Personal Injury Attorney Do for You?”

Marty Fritz, of Trecker & Fritz Attorneys at Law, has been representing victims of personal injury and negligence cases in Hawaii since 1976.

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