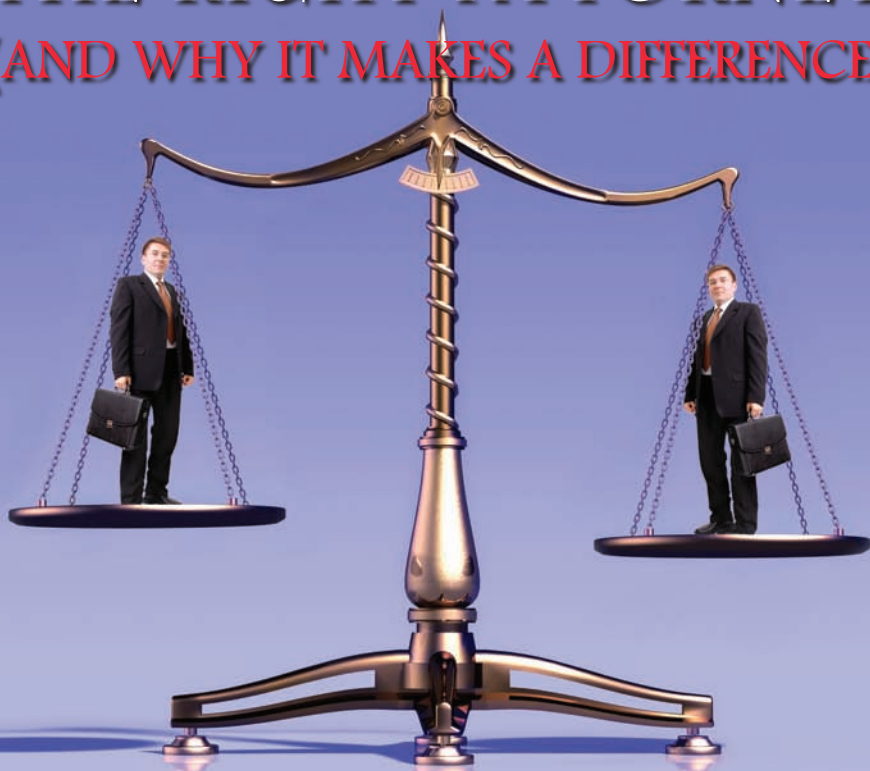


THE
TRUTH
ABOUT CHOOSING
THE RIGHT ATTORNEY
(AND WHY IT MAKES A DIFFERENCE)



DALE WILLIAMS

“A JURY CONSISTS OF TWELVE
PERSONS CHOSEN TO DECIDE WHO
HAS THE BETTER LAWYER.”

—ROBERT FROST



If you are suddenly faced with a serious injury or a death in the family caused by someone else’s carelessness or neglect, choosing the right attorney will be one of the most important decisions you will ever make. Do you know where to start to find the right attorney? Or would you, like millions of Americans, turn to the attorneys who advertise the most on TV or in the phone book?

Dale Williams is not only a successful trial attorney, he’s been the professor of Injury Law at Baylor Law School for more than thirty years, teaching thousands of attorneys how to handle serious injury and death cases. In this book he reveals the truths about how the system works and why it makes such a tremendous difference to choose the right

attorney in serious injury and death cases. You'll see how choosing the wrong attorney can potentially cost you millions of dollars. You'll learn what it means for an attorney to be board certified, and why the insurance company on the other side of your case wants to know your attorney's courtroom record.

Williams leads you step-by-step through the process of finding the right attorney for your case and provides a checklist to make the process easier. This book will take the guesswork out of one of the most important decisions you'll ever make.



Dale Williams is a board certified trial attorney and senior partner of the Waco, Texas law firm of Williams & Brown LLP. The firm's website is www.TrialFirm.com and Dale can be reached at Williams@TrialFirm.com or toll-free at 1-888-741-6200.

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Dale Williams is Board Certified in Personal Injury Law by the Texas Board of Legal Specialization and was recently selected by other attorneys as one of the **TOP 50 TEXAS LAWYERS out of the many thousands of lawyers that practice in Central and West Texas.** He has been named a **Texas Monthly Super Lawyer** each year that the designation has been given. For the past 30 years, Dale has taught courses on **Personal Injury Trial Law** and **Products Liability** at the **Baylor Law School**. Dale handles a broad and varied trial practice that includes **trucking/auto negligence, medical negligence, birth injuries** and all manner of life-altering **personal injury cases** and **product safety** lawsuits.

Laura Brown is Board Certified in Personal Injury Law by the Texas Board of Legal Specialization. Laura was named by other attorneys and the **Texas Monthly Super Lawyer** publication as a **Rising Star**. Laura is also an adjunct professor at Baylor Law School teaching Injury Trial Law. Laura has a biology degree and has handled medical negligence cases during her 17 years of practice. She represents children who have suffered **birth injuries, victims of medical negligence, trucking/auto negligence, and personal injury.**



Board Certified, Experienced Attorneys with Proven Results.

Our Attorneys are Board Certified in Personal Injury Trial Law. Board certification is controlled by the Texas Board of Legal Specialization. Not all attorneys are board certified. In fact, not all attorneys are even eligible to become board certified. To apply for board certification in Personal Injury Trial Law in Texas, the attorney must have significant experience trying lawsuits as lead counsel. The Texas Board of Legal Specialization will check with trial judges and other attorneys who are familiar with the attorney and get confidential evaluations of the skill, knowledge, and reputation of the attorney. If the attorney has sufficient trial experience and receives positive recommendations from other attorneys and judges, the attorney must sit for and pass a rigorous written examination. If the attorney passes that examination, he or she will become board certified as a **Personal Injury Trial Law Specialist.**

EXPERIENCE AND RESULTS MATTER

When choosing an attorney for a case involving serious injury or death, **experience** and **results** matter. Choosing the right attorney will be one of the most important decisions you will ever make. Our attorneys have obtained numerous multi-million dollar jury verdicts and settlements:

19,800,000.00	Defective Product	1,525,000.00	Industrial Negligence
10,000,000.00	Intentional Injury	1,500,000.00	Hospital Negligence
9,750,000.00	Pharmacy Error	1,500,000.00	Defective Product
7,500,000.00	Property Damage	1,500,000.00	Defective Product
5,883,000.00	Medical Negligence	1,500,000.00	Automobile Accident
5,650,000.00	Corporate Negligence	1,460,000.00	Pharmaceutical Injury
4,000,000.00	Auto Death Case	1,400,000.00	Hospital Negligence
3,500,000.00	18 Wheeler Accident	1,350,000.00	Trucking Accident
3,500,000.00	Trucking Accident	1,350,000.00	Nursing Home Negligence
3,250,000.00	Birth Injury	1,300,000.00	Workplace Injury
3,100,000.00	Chemical Exposure	1,250,000.00	Tractor Injury
3,000,000.00	Chemical Exposure	1,200,000.00	Electrocution Death
2,500,000.00	Defective Seat Belt	1,200,000.00	Automobile Accident
2,500,000.00	Construction Death	1,180,000.00	Automobile Accident
2,500,000.00	Property Damage	1,150,000.00	Trucking Accident
2,050,000.00	Defective Product	1,125,000.00	Chemical Exposure
2,000,000.00	Defective Product	1,020,000.00	Automobile Accident
1,900,000.00	Automobile Accident	1,000,000.00	Medical Negligence
1,750,000.00	Automobile Collision	1,000,000.00	Birth Injury
1,575,000.00	Business Litigation	1,000,000.00	Hospital Negligence

COURTROOM JURY VERDICTS

Even though most cases will settle, the amount that the insurance company will offer in settlement will largely depend on what it believes would happen if the case went to trial. This is why it's important to have an attorney who has the proven ability to obtain outstanding results in the courtroom. In cases where the insurance company did not offer enough to settle, we have gone to trial and obtained multi-million dollar verdicts on behalf of our clients. Here is a list of our top five courtroom verdicts:

\$10,000,000 - Intentional Injury - Sessions vs. Sessions

\$5,883,000 - Hospital Negligence - Pina vs. U. S.

\$5,650,000 - Corporate Negligence - Burgess vs. Lighthouse

\$3,100,000 - Workplace Injury - Snapka vs. Big Red, Inc.

\$3,000,000 - Pharmaceutical Injury - Osburn vs. Rochelle Lab

“Dale Williams uses his easy going manner in the negotiation stages – which leads to exceptional settlements for his clients on complex cases – and then the Jeckyl and Hyde comes out when he goes to trial. He’s very ethical, but he’s a tenacious fighter in the courtroom with record setting results. I’d rather fight a wharf rat.”

– Noley Bice, former General Counsel of Baylor University

TEACHING AT BAYLOR LAW SCHOOL

Our teaching relationship with Baylor Law School started one day back in 1980 with a discussion between the dean of Baylor Law School, Baylor's Practice Court professor, and Dale Williams. The topic of discussion was how well Baylor had prepared Dale, a 1978 Baylor graduate, to try cases. The result was the creation of the Personal Injury Trial Law Course, with Dale as the professor. The class focuses on skills used in the everyday practice of personal injury law, such as investigations, settlement brochures, structured settlements, and the effective trial tactics for the cases that go to the courthouse for the full blown fight. Now, Dale Williams, Laura Brown, and Jason Easter, the firm's Information Technology manager, all appear at Baylor Law School in teaching roles. Dale Williams has completed his 30th year teaching Personal Injury Trial Law. Laura Brown is also an adjunct professor at Baylor Law School and assists in teaching the course, and contributes lectures on birth injury litigation. Jason Easter teaches technology and litigation support to students in Advanced Trial Preparation.

Debbie Villarreal is a vital member of the Williams & Brown team. She has been a legal assistant with the firm for more than twenty-four years, and is responsible for coordinating client information and documentation, and serving as a primary client contact. Debbie and her husband, Roxie are active in area sports and they've volunteered to coach Challenger League baseball for the past fifteen years.



TECHNOLOGY

Although once just for techno geeks, the effective use of technology in litigation is now essential to maximize the value of the case.

We are fortunate to have an information technology manager at our firm who has as many trial hours under his belt as many board certified trial lawyers! Jason Easter is a Microsoft Certified Systems Engineer, Microsoft Certified Professional, Certified Novell Engineer, Network Technologies Certified Planner, Sanction and Casesoft Trainer. Jason has taught Management of Complex Litigation at Baylor School for the past eleven years and is an adjunct faculty professor teaching students in Advanced Trial Preparation. Jason works with Dale and Laura to design and construct all mediation and trial presentations. He attends mediations and trials to run all the technologies utilized.



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WILLIAMS & BROWN LLP

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by

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INTRODUCTION

In 1977, as I was finishing my last year of Baylor Law School, there was not a single attorney TV commercial running anywhere in the United States; not a single attorney yellow page ad or phone book cover; not a single radio spot. Hard to believe, isn't it? The reason is because the state bar associations of all fifty states prohibited all attorney advertising. For more than 200 years in this country, people chose their attorneys based upon the attorney's past successes and reputation in the legal community, not advertisements. That changed in June of 1977 when the United States Supreme Court declared that states could no longer prevent attorneys from advertising their services.

Today, I looked in my local phone book and found 40 pages of attorney advertising, including the front

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and back covers. This trend is certainly not limited to the legal profession. The medical profession has followed suit and it's now common to see TV, phone book, and billboard ads from doctors and hospitals competing for business.

In addition to my full-time legal practice, for 30 years I've been the professor of Injury Law at Baylor Law School. Baylor has an outstanding national reputation for turning out some of the nation's finest trial attorneys, and I have taught somewhere around 4,000 Baylor attorneys how to handle serious injury and death cases.

My teaching of this area of the law has caused me to pay particular attention to the way attorneys advertise for injury cases. Obviously, if an ad helps consumers find the right attorney for their case, then the ad serves a beneficial function; however, it is my belief, based upon many years of experience, that some of these ads lead people to attorneys who are not the right attorneys to handle their cases. My goal in

writing this book is to provide you with the information that you will need in order to choose the most qualified attorney to handle your case and obtain the best results.

One of the downsides of the proliferation of attorney advertising is a general perception among the public that all of these attorneys are actually equal in experience and knowledge. Those of us in the profession know just how false this is, and, as you will see in the following pages, learning the differences can dramatically affect the outcome of your case.

The **TRUTHS** that I provide in this book apply mostly to cases that involve serious injuries or a death in the family. Small cases, or what attorneys call “fender-benders” (cases that require a few weeks of pain medication or chiropractic care), are capable of being handled efficiently by most attorneys and their settlement value will not vary significantly depending upon which attorney you choose; however, for serious injury and death cases, the amounts recovered are

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dramatically affected by the experience and reputation of the attorney that you choose. It is for those of you who have experienced such serious injuries or a death in the family, and who are looking for the best attorney, that I provide these **TRUTHS**.

Today, I saw a TV ad by a law firm asking people to contact them if they had been affected by the use of some prescription drug that had recently been removed from the market. At the bottom of the screen, in very small print, were the words “The choice of an attorney is an important decision, and should not be based solely on advertisements.” This was an out-of-state law firm, and I’m sure that their state required these words to be included in their ad. These words are truthful, but are put into the ad only as a disclaimer. If your choice of an attorney should not be based solely on advertisements, on what should it be based?

In this book I will teach you the **TRUTHS** about choosing the right attorney, and I won’t hide them in the small print!

HOW THE LEGAL SYSTEM WORKS

To understand the **TRUTHS** that are revealed in the following chapters, it will be helpful to have a basic knowledge of the legal system in general, and personal injury law in particular. Most of us get our information about the legal system from television, movies, and newspapers, and these sources often use legal terms incorrectly, causing confusion. This chapter explains the basics of the personal injury law system, which was created for the sole purpose of providing a recovery for injuries and losses caused by the carelessness or negligence of others.

Let's start with an example that I might use in one of my law school classes: Paula is involved in an accident with a gravel truck driven by Dan, who was driving while high on drugs. Dan was driving

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the truck for Sky High Gravel Company. Dan was speeding and crossed the center line causing a head-on collision with Paula. Paula suffered many broken bones, had several surgeries, spent three months in the hospital, one month in a rehabilitation facility, and incurred medical bills of \$300,000. She has not returned to work. The insurance company for Sky High Gravel Company is Typical Insurance Company and they provide Sky High with a five million dollar liability insurance policy.

Since Paula is the one with a **claim**, she is called the **plaintiff**. Dan, the trucker who caused the injury, and Sky High Gravel, his employer, are called **defendants**. Sky High is legally responsible for the negligence of its driver. The plaintiff and defendants are called the **parties** to the case.

Paula will absolutely need the services of a top-notch attorney. The insurance company for the defendants is a powerful multi-million dollar corporation that is in the business of making profits by

collecting more money in premiums than it pays out in claims. It has only one goal in this case and that is to get the claim resolved for the least amount of money possible—and it certainly does not have the goal to see that Paula is fairly compensated for her injuries and losses. The attorneys who represent injured plaintiffs, such as Paula, are referred to as **plaintiff attorneys** or **trial attorneys**. These attorneys normally do not represent the defendants who cause the injuries or their insurance companies.

The attorneys who represent the defendants and their insurance companies are called **insurance defense attorneys**. These attorneys are hired by the insurance companies to protect the insurance company's money. They are paid hundreds of dollars per hour for each hour that they work on the case, and they get paid whether they win or lose. In a serious injury or death case it is not unusual for the insurance defense firm to have multiple attorneys working against you and to bill the insurance

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company for more than a thousand hours.

Most injured plaintiffs and their families cannot afford to pay multiple attorneys hundreds of dollars per hour, win or lose; however, in serious cases like Paula's, she will need an experienced and accomplished trial firm to take on the insurance company and its defense attorneys. The **contingent fee contract** was developed to equalize the playing field and give injured plaintiffs like Paula the same ability to hire the most experienced and qualified attorneys to represent her. This contract will pay the law firm a percentage of any recovery that it obtains for Paula in this case. This percentage is usually between thirty-three and forty percent, depending upon the nature of the case, and the amount of expense and risk that will be involved. But remember, the big difference between the insurance attorney and Paula's attorney is that Paula's attorney will only get paid if he wins or obtains a settlement.

Most plaintiff firms will agree to pay on behalf of Paula all of the **expenses** necessary to develop the

case, including the cost of **expert witnesses**. It is not uncommon in serious injury and death cases for the out-of-pocket expenses to exceed fifty thousand or even one hundred thousand dollars, primarily because of the number of expert witnesses required, and most injured plaintiffs cannot afford to pay these expenses. If Paula's attorney obtains a recovery for her, these expenses will be reimbursed out of her recovery; however, if Paula's attorney does not obtain a recovery, normally he will have to absorb these expenses as a loss. The insurance attorneys do not have to pay their expenses, since they are paid by the insurance company. As you can see, when Paula's attorney accepts her case, he is risking both his time and his money. For this reason, reputable attorneys are careful to take only those cases that appear to have a good chance of success.

Since most trial attorneys are going to charge similar percentages, Paula has the right and the opportunity to find and sign a contract with the

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attorney and law firm that is the most successful and has the best reputation in town. The **contingent fee contract** allows Paula to hire an attorney that has a proven track record of success. **It's her most important key to justice.**

Sometimes attorneys recognize the need to send their client to an attorney who has more expertise and success in obtaining large recoveries, in order to maximize the recovery for the client. When they do this, the referring attorney will usually receive a **referral fee**, which must be agreed to by the client. This referral fee agreement requires the trial attorney to pay a percentage of any legal fees collected in the case to the referring attorney. In other words, the trial attorney pays the referring attorney. The referral fee does not come out of the client's portion of the settlement or verdict. Referral fees can range from ten percent to as much as fifty percent of the fee in some cities. The theory behind referral fees is that they encourage the less-experienced attorneys to refer

clients to the best attorneys without increasing the total fees to the clients. Sometimes referral fees work well in practice, and sometimes not, as I will explain later in the book.

In large cases like Paula's, the trial attorney will most likely need to file a **lawsuit**. This is usually necessary because Paula's attorney will need to find out all the details about Dan's driving record and drug use, his previous employment and criminal record, Sky High Gravel's investigation of his background, etc. Finding out these kinds of details is called **discovery**. Discovery consists of written questions called **interrogatories** and questions in person with a court reporter called **depositions**. If there is a question regarding the negligence of Dan, the truck driver, then Paula's attorneys will most likely need to hire **expert witnesses**, such as an accident reconstruction engineer. The insurance company may hire its own experts and each side will take their depositions.

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Once the discovery is complete on both sides, the attorneys will have a good idea of all the evidence and witnesses that would potentially be available for a trial of Paula's case. With this information, if the attorneys have **sufficient experience trying cases** in court, they should be able to analyze what a typical jury might do if the case went to trial. It is the evaluation on both sides of what a jury would do if the case went to trial that determines the range of settlement that is possible in Paula's case.

Once the settlement analysis is complete, the attorneys for both sides usually schedule a **mediation** or settlement conference. Most cases of any significance will go through the mediation process. The attorneys agree on the selection of a **mediator**, who is an attorney or retired judge who serves as a neutral party to help both sides come to an agreement. The mediator does not decide the case, but facilitates discussion and tries to encourage the parties to settle. If Paula and the insurance company reach a **settlement**, an agree-

ment is signed that day that prevents either party from backing out. Final settlement documents are prepared by the insurance defense attorneys and the settlement documents and settlement check are usually provided to Paula's attorney within thirty days. In the majority of cases, if both sides have attorneys that are experienced in handling big cases, the mediation will be successful in settling the case.

Less than five percent of all personal injury cases will go to trial; however, this percentage increases as the size of the case increases. Sometimes in large cases the insurance company wants to wait to see the makeup of the jury and see the skill level of the plaintiff's attorney before it will pay the full value of the case. If the case proceeds through trial, the jury will ultimately render a **verdict**, and the judge will take the jury's verdict and enter a **judgment**.

These are the basics of how the system works. Now, let's look at the **TRUTHS** that will teach you

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how to choose the right attorney to make the system work best for you.



TRUTH NUMBER 1

CHOOSING THE RIGHT ATTORNEY CAN DRAMATICALLY AFFECT THE SETTLEMENT VALUE OF YOUR CASE.

If you were suddenly faced with the need to have open-heart surgery, you would know that your future, your very life, depended on the experience, skill and expertise of the surgeon. How comfortable would you be in selecting your heart surgeon based on a catchy TV jingle or colorful phone book ad? I'm guessing not very comfortable. Yet, unfortunately, this is how attorneys are selected in major cases every day. Why is this? It's because no one tells the public how to choose the right attorney, or why it makes a difference—until now.

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Imagine this: an insurance company offers less than five hundred thousand dollars to one attorney to settle a wrongful death case and then offers more than three million dollars to a different attorney to settle that same case less than six months later. Is this really possible? Sure it is. This happens all the time. This is one of the **TRUTHS** that are well-known to attorneys, but unknown to the public.

So, what's going on here? How does this happen? This happens because having the right attorney, one that's experienced and highly successful in obtaining results in big cases, is one of the most critical factors in determining the outcome of your serious injury or death case. Even though all attorneys know this, we have done a poor job of explaining to the public how they should go about finding the most qualified attorneys to handle their case. As a result, the public often chooses the attorney or law firm that advertises the most on TV or in the yellow pages. That attorney or law firm may have little experience in handling

big cases, no track record of success in the courtroom, and may even have a poor reputation in the legal community.

What I'm talking about here are cases that involve serious injuries or a death in the family. When your case is serious enough that the outcome will significantly affect your financial future, choosing the right attorney can make all the difference. Small cases, such as minor car accidents, can easily be handled by most attorneys. Insurance companies will follow their own formulas in determining how much they will pay and very few of these cases will ever go to trial. As a result, an attorney's lack of courtroom success or ability rarely affects the value of these smaller cases.

It might surprise you to learn that some attorneys that aggressively advertise for personal injury cases **have never tried a single significant case in their entire career** and many have never obtained a single significant verdict. You won't hear about this in their TV advertisements or see this proclaimed in

their phone book ads. But, if you choose one of these attorneys to handle your big case, you can bet that the insurance company on the other side of your case will find out about your attorney's lack of courtroom success and will factor this in to its evaluation of your case.

SEVEN KEY FACTORS OF SETTLEMENT VALUE

For thirty years I've taught law students the seven key factors that affect the settlement value of an injury case:

1. THE ATTORNEY REPRESENTING THE PLAINTIFF
2. THE ATTORNEY REPRESENTING THE INSURANCE COMPANY
3. THE SIGNIFICANCE OF THE INJURIES AND LOSSES
4. THE AMOUNT OF INSURANCE COVERAGE
5. THE PLAINTIFF
6. THE DEFENDANT
7. WHERE THE ACCIDENT OCCURRED—
THE VENUE

How each of these seven factors affects the settlement value of your case is better left to law school and is beyond the scope of this book; however, the important point to remember is that you have control of only one of these seven factors: who you choose as your attorney!

In order to understand the importance of choosing the right attorney, you need to know how the other side of your case chooses their attorneys. Even though you may see a negligent trucking company, or a manufacturer of a defective tire, or a hospital who gave your child the wrong medication as the other side of your case, in reality, the other side is almost always a **liability insurance company**. Every liability insurance policy requires the insurance company to pay any damages caused by its insured up to the policy limits. In addition, the policy also requires the insurance company to provide and pay for an attorney or law firm to represent the insured defendant. As a result, these insurance companies are constantly using

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law firms to represent them wherever a lawsuit is filed. There are entire law firms set up to represent dozens of insurance companies and they get called upon to represent any policyholder who gets sued in that law firm's geographic location. These insurance attorneys don't pick and choose cases based upon whether they think their client is right; they simply choose which insurance companies that they are willing to represent. We call these law firms "**insurance defense firms**" and they are normally the largest law firms in any city.

In almost every personal injury case that is tried in any courthouse in the state, the defendant is being represented by an insurance defense attorney and that attorney is being paid by the insurance company, not the defendant. In addition, any damages that are determined by the jury will most likely be paid by the insurance company and not the defendant personally. Even though this is truthful information that many jurors would like to know, the rules prevent the plaintiffs from even mentioning the word

“insurance” to the jury. The theory behind the rule is that jurors would more likely provide higher damages if they knew that the damages were going to be paid by an insurance company. Instead, the rules require that jurors be left with the false impression that the damages will come out of the defendant’s pocket.

These insurance defense firms are made up of very bright, talented attorneys, and most of them graduated near the top of their law school class. These attorneys get paid very handsomely by the hour, whether they win or lose. The best and most experienced attorneys in these firms have tried many significant cases in front of juries. The insurance companies often use the younger attorneys in these firms to handle the smaller cases for two reasons: first, because there is not as much money at risk, and secondly, the younger attorneys have the lowest hourly billing rate. But, as the size of the case and the risk to the insurance company increases, the company will insist that senior attorneys with the most experience

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and best courtroom track record take the lead in the case. The insurance company is more than willing to pay the highest rate for the best attorneys to protect their money. Why? After many years of paying attorneys to defend their money, the insurance companies know **TRUTH NUMBER 1: CHOOSING THE RIGHT ATTORNEY CAN DRAMATICALLY AFFECT THE SETTLEMENT VALUE OF YOUR CASE.**



TRUTH NUMBER 2

CHOOSING THE WRONG ATTORNEY CAN BE THE MOST EXPENSIVE MISTAKE YOU'LL EVER MAKE.

Let's take another example: assume that a 40-year-old high school football coach is involved in a collision on the interstate when an 18-wheeler changes lanes improperly, striking the coach's pickup and forcing him across the median into on-coming traffic where he collides head-on with an SUV. The accident results in many serious injuries to the coach, including the amputation of his right leg at the knee. Let's also assume that the truck driver has a bad driving record, several previous accidents, and the trucking company has been cited for numerous federal safety violations. The insurance carrier for the trucking company

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discovers all of these bad facts during its internal investigation, and it is sure that any reasonable jury would punish the trucking company by providing a large verdict to the coach. As a result, the insurance company decides that it would be willing to settle this case for any amount under \$3,000,000.

The coach goes to see an attorney who advertises on TV and claims to handle personal injury cases. The coach signs a one-third contingent fee contract with the attorney. Unknown to the coach, this attorney has gone to trial only three times in his entire career, losing twice and obtaining one small jury verdict of \$7,000. Most of the cases this attorney handles are small fender-bender cases.

The attorney investigates the accident scene, takes photographs, gets a copy of the accident report, and orders the medical records. He doesn't file a lawsuit because he doesn't want the insurance company for the trucking company to retain a large insurance defense law firm who will most surely be aware of his

lack of courtroom success. As a result of not filing the lawsuit, the attorney never learns of the truck driver's terrible driving record or the federal violations of the trucking company.

Of course, even without the filing of a lawsuit, the insurance company calls its local insurance defense firm and finds out that this attorney handles mostly small cases and has no courtroom track record. The insurance adjuster is instructed to keep assuring the small-case attorney that the insurance company wants to settle this case without the filing of a lawsuit. The last thing the insurance company wants is for the coach's small-case attorney to refer the case to an experienced trial attorney with an outstanding courtroom track record, which would require it to pay the full value of the case.

After six months the small-case attorney agrees to bring the coach to a mediation or settlement conference where the insurance company makes an initial offer of \$500,000 to settle the coach's case. After eight

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hours of negotiation the insurance company makes what it claims to be its final offer of \$1,000,000 to settle the case. The insurance company is sure that the small-case attorney, with no significant courtroom victories, will never turn down a million dollars. And, of course, it is right!

Although the inexperienced attorney might wish that the offer were higher, the mediator is telling him that the insurance company insists that they will never offer more on this case. The attorney convinces himself that this is the best offer that he's ever going to get and advises the coach to accept the settlement. In the back of the attorney's mind he knows that the alternative is to either file a lawsuit, which will bring in the dreaded defense firm, or refer the case to a more experienced attorney, which will mean that he will only be paid a referral fee.

The poor coach follows his inexperienced attorney's advice, but has no way of knowing the mistake he makes when he accepts the offer. The coach never

learns **TRUTH NUMBER 2: CHOOSING THE WRONG ATTORNEY WAS THE MOST EXPENSIVE MISTAKE HE WOULD EVER MAKE.**

Choosing this inexperienced attorney cost the coach more than a million dollars!

One of the amazing truths in this area of law is that it often costs the client far less in terms of real dollars to hire the most experienced and qualified attorney than it does to hire an inexperienced and unqualified attorney. Even though all of the attorneys will charge a contingency fee of somewhere between 33% and 40% (depending on the complexity and expense involved in the case), the only thing that should matter to the client is the amount that he will receive at the end of the case. In reality, the client should hope that his attorney is paid very well because this will only mean a larger recovery for the client. Any amount that is left in the hands of the insurance company because the client hired an inexperienced attorney is simply a huge, unnecessary added cost to the client.

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Let's see how this works in the coach's case. We'll assume that an experienced and qualified attorney could have gotten the coach the maximum that the insurance company was willing to pay, \$3,000,000 (of course, it could have been more).

TOTAL SETTLEMENT	\$3,000,000
LESS 1/3 ATTORNEY FEES	<u>\$1,000,000</u>
COACH'S RECOVERY	\$2,000,000

Compare this to what the coach actually received with the inexperienced and unqualified attorney.

TOTAL SETTLEMENT	\$1,000,000
LESS 1/3 ATTORNEY FEES	<u>\$ 333,333</u>
COACH'S RECOVERY	\$ 666,667

This example has been simplified by leaving out the court costs and expenses, but the bottom line is that the coach paid an "inexperience fee" of more than

one million dollars because he unknowingly chose the wrong attorney to handle his case.

Do you think this is an exaggeration? I promise you this happens all the time. I'll give you an example from one of my cases. A few years ago a 49-year-old veteran named Felix Pena went to a VA Hospital for what was expected to be a routine surgery to repair a blockage where his esophagus emptied into his stomach. Felix was expected to remain in the hospital for four or five days before returning home. Something went wrong and he developed a leak from his esophagus following the surgery. The medical staff recognized that his deteriorating symptoms could be evidence of a leak into his abdominal cavity, which would be fatal if untreated, so they ordered the appropriate scans. Sure enough, the radiologist found that Felix had a leak; however, none of Felix's doctors read the radiologist's report or attempted any treatment until days later, when Felix crashed and nearly died on the operating table. Instead of five days,

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Felix spent five months in the hospital and underwent multiple surgeries, including the permanent removal of his esophagus! He has a tube coming out of his neck to drain saliva, and a feeding tube that goes through his skin into his stomach. He feeds himself liquids and will do so for the rest of his life. His normal weight was 190 lbs; he came out of the hospital weighing 120 lbs.

Felix went to see an attorney that has represented his family on various matters over the years. Although this attorney is a very fine attorney and definitely knows his way around a courtroom, this attorney recognized that he was inexperienced in handling complicated medical negligence cases. In addition, this case would not be a typical medical malpractice claim involving an insurance company. Because the negligence occurred at a government hospital, Felix had what is called a Federal Tort Claim. By law, Felix would have to file his claim against the United States of America; it would be defended by the U. S.

Attorney's Office; and, if the case went to trial, there would be no jury. All Federal Tort Claim trials are heard by a federal judge who acts as both the judge and the jury.

Felix's family attorney called and asked if I would meet with Felix and his family and consider taking his case. I met with Felix and his wife, found them to be wonderful people, and I was convinced that he had suffered a terrible tragedy through no fault of his own. I agreed to accept the case and pay the family attorney a referral fee of one-third of any fee that was collected in the case. I certainly didn't mind paying the referral fee because this attorney performed a valuable service to his client by helping him find an attorney that was qualified by training and experience to handle his case.

After we spent two years investigating, hiring experts all over the country, taking depositions from Virginia to California, the U. S. Attorneys defending the government suggested that we meet at their

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offices for a settlement conference. We drove the hundred miles to the federal courthouse and began the negotiations around 9:00 a.m. By noon, the U.S. Attorney's Office had used four or five attorneys to try and convince us to accept its final offer of \$1,000,000. They explained that \$1,000,000 was the ultimate amount that could be offered by any U.S. Attorney. Any amount over that would have to come from the Justice Department in Washington, which they claimed was unlikely without a trial. Fortunately, Felix stood strong and followed my advice to turn down the government's offer.

The trial lasted many days and the federal judge took several agonizing weeks to render his final judgment; however, the result was worth waiting for – \$5,883,000. This was not the runaway verdict of an overly sympathetic jury, but a well-reasoned decision by a very experienced federal judge. The government conceded the justness of the amount of the judgment when they decided not to appeal. After legal fees and

the expenses for expert witnesses, Felix received a check for over \$4,390,000.

I'm a firm believer that almost any inexperienced attorney, one who has never turned down a significant offer and obtained a more significant verdict at trial, would have convinced himself and Felix to take the government's settlement offer of \$1,000,000. If Felix had chosen such an inexperienced attorney, and accepted that attorney's recommendation to settle for the government's offer, his choice of attorney would have cost him more than \$3,500,000.

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TRUTH NUMBER 3

CHOOSING AN ATTORNEY WHO IS A BOARD CERTIFIED SPECIALIST IN PERSONAL INJURY TRIAL LAW IS A GREAT PLACE TO START.

Most of us are aware that the best doctors are **Board Certified** as specialists in their fields of medicine. I might allow a non-board certified doctor to perform a minor procedure on me, but if I need major surgery, you can bet that I will make sure that my surgeon is a board certified specialist. Board certification means that the doctor has years of experience, a good reputation among his colleagues, and has taken and passed the extensive board certification examination to prove his competence.

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Many of the best attorneys are **Board Certified** as specialists in their fields of law. In Texas, board certification is controlled by the Texas Board of Legal Specialization. One of the fields of law for which there is board certification is Personal Injury Trial Law. You will find that most of the attorneys that heavily advertise for personal injury cases are not board certified. Why is this? I believe the reason is because most of them do not meet the minimum qualifications that are required by the State of Texas.

To even apply for board certification in personal injury law in Texas, the attorney must have gone to trial in at least ten cases, five of which must have been personal injury jury trials. In all ten of the trials, the attorney had to have been lead counsel, and not just assisting another attorney. In addition, the board wants to check out the attorney's qualifications by checking with a trial judge and attorneys who are familiar with the attorney's practice. The attorney is required to submit the names of three Texas

attorneys who practice near the attorney and are familiar with his personal injury practice; one Texas attorney with whom or against whom the attorney has tried a personal injury case; and one judge before whom the attorney has appeared in a personal injury case. The board then contacts these attorneys and judge to get confidential evaluations of the skill, knowledge, and reputation of the attorney who is applying.

An attorney with poor skills or a poor reputation in his community is unlikely to apply for board certification. Likewise, an attorney who does not have the minimum number of trials will certainly not apply. However, if the attorney has the minimum number of trials and receives positive recommendations from his colleagues and a judge, then he is given permission to take a very difficult examination. If he passes the exam, he will be Board Certified as a Personal Injury Trial Law Specialist.

This is important to you for two reasons: first, if your attorney is board certified you will have the

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comfort of knowing that your attorney has extensive experience in the courtroom, a good reputation among his peers, the recommendation of a trial judge, and has passed a very difficult exam; secondly, and equally important, you will have a attorney who will command the respect of the insurance company that will decide what to offer in your case.



TRUTH NUMBER 4

CHOOSING AN ATTORNEY WHO HAS OBTAINED MAJOR COURTROOM VERDICTS CAN SIGNIFICANTLY INFLUENCE THE INSURANCE COMPANY'S EVALUATION OF A BIG CASE.

Let's assume for a moment that you are the vice-president of an insurance company and your job is to determine how much money your company is willing to offer to settle big cases. In doing your job you want to pay as little money in settlement as possible, but the last thing you want to do is to offer too little, forcing the case to go to a jury trial, and have a skilled plaintiff's attorney obtain a judgment far in excess of your settlement offer. This is one way that you can lose your job as vice-president.

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For our purposes, let's also assume that you are trying to determine what your final settlement offers will be in **two identical cases**, where your insureds, the defendants, were clearly at fault, your policy limits are \$5,000,000, and the plaintiffs suffered identical serious injuries. The only difference between the two cases is the plaintiffs' choice of attorneys.

In one case, the plaintiff is represented by **ATTORNEY A**, a board certified trial attorney who has tried dozens of cases in front of juries, has an outstanding reputation, and his five largest jury verdicts are:

\$8,500,000

\$6,100,000

\$5,600,000

\$4,300,000

\$3,000,000.

In the other case, the plaintiff is represented by **ATTORNEY B**, who advertises heavily on TV and in the phone book, has tried only five small fender-bender cases in front of a jury in twenty years, winning

three, has never qualified to apply for board certification, and his only three jury verdicts are:

\$17,000

\$11,000

\$7,000.

As vice-president of the insurance company, would you make the same settlement offer in both cases? Of course not and here's why. **ATTORNEY B** has never taken a significant case to trial. He's a small-case, settling attorney, who will most likely convince his client to accept whatever you say is your final offer. Your experience as vice-president convinces you that this attorney is not willing to commit to pay the expenses necessary for expert witnesses to properly develop a big case. He prepares his case assuming it will settle, because everybody knows he won't go to trial in a big case. You, the vice-president, know that he has very little confidence in his ability to turn down even an unreasonably low offer and get more in front of a jury. If he's tried only five cases in twenty years, you know

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it's not because the insurance companies are scared of his courtroom abilities; it's because he's obviously able to convince himself and his clients to take whatever the insurance companies offer. Your experience in evaluating cases leads you to believe that the case could be worth as much as two million dollars, but you expect that if you tell **ATTORNEY B** that the most your company will ever pay is \$600,000, he will fold like a cheap lawn chair.

On the other hand, **ATTORNEY A** poses a problem for you. With his track record of obtaining large jury verdicts, he's proven more than once that he's unafraid to take a large case to trial and knows how to get the job done. He's a confident attorney who is well respected in the legal community. He's obviously willing to spend whatever it takes in expenses to properly develop his case. This is an attorney who prepares every case as if it were going to trial, which results in either big settlements or courtroom victories. He's your insurance company's worst nightmare. His

board certification tells you that he has the experience, qualifications, and knowledge that set him apart. His final offer to you is a settlement of \$3,000,000 and he has made it clear that he will withdraw this offer and proceed to trial if it is not accepted by his deadline—and you believe him. After intense negotiations you agree to pay a half a million dollars more than your original evaluation for a final settlement agreement of \$2,500,000.

SAME CASE, SAME CLIENTS, SAME INJURIES, SAME INSURANCE POLICY—DIFFERENT ATTORNEYS—DIFFERENT RESULTS.

The TRUTH About Choosing The Right Attorney



HOW TO FIND THE RIGHT ATTORNEY

After learning these **TRUTHS** about why it is so important to choose the right attorney, let's look at the steps that you should take to accomplish this goal. Remember, there's no substitute for excellence. First, you should start your search by looking for attorneys in your area who are **Board Certified Specialists** in Personal Injury Trial Law. In the yellow pages of most phone books you will find a listing of "Attorneys – Board Certified." These are found after all the attorney advertisements and the general alphabetical listing of all the attorneys in town. Find the section heading for Personal Injury Trial Law and there should be a list of these attorneys. Probably the most accurate source is the website for the **Texas Board of Legal Specialization, www.tbls.org**. There's an on-line directory that

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can be accessed by clicking “Who’s Certified.” You can search this database by any combination of name, city, county, zip code, and specialty area. If you don’t have access to the web, you can call and get the same information at 800-204-2222, ext. 1454.

Keep in mind that this is just your starting point. Board certification in Personal Injury Trial Law is not limited to attorneys that represent injured plaintiffs. Probably half of the attorneys that will be listed as board certified are actually insurance defense attorneys that, for obvious reasons, should not be part of your search. Since there are no distinctions in the listings between plaintiff and defense attorneys, you will have to do some additional research to find the board certified attorneys who exclusively represent plaintiffs. This may involve computer research, checking out law firm websites, or simply calling the attorney’s number and asking the receptionist, “Is your law firm a plaintiff’s firm or a defense firm?” If the answer is “defense” or “we do both” you should keep searching.

Once you narrow your search down to one or more board certified plaintiff attorneys, you should ask these attorneys or law firms to send you a firm brochure. Most successful firms have them and will be more than happy to send one to you. If they have a law firm website, this should provide you with valuable information. One thing to remember about websites, though – most attorneys do not list their courtroom results or settlement results on their websites. In order to prevent attorneys from providing misleading information, the Texas State Bar restricts the information that attorneys can provide in public advertisements about their past results, unless those results are specifically requested by a prospective client. This is why requesting a firm brochure will provide you with more information about the prior successes of the attorney or law firm. If the attorney or firm does not have a firm brochure, you can simply request that they give you a list of their top five jury verdicts, including the names of the cases, dates of the trial, and the courts

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where they were tried. This may seem like it's intrusive, but it's not. It's your case, your financial future, and you're entitled to the best. An attorney with impressive results will be proud to provide you with this information.

You want to know his courtroom track record, and not just a list of settlements. As you've already seen, an attorney can list a million-dollar settlement as if he really accomplished something, but it could have been a three-million-dollar case in the hands of an attorney with a good courtroom record!

What if there is not an attorney in your community who is board certified? There are really two ways that you can handle this. First, (and I believe this is the best way) if you really have a serious injury or death case, then I would look to the nearest town large enough to have attorneys who are board certified. Good attorneys who handle large cases will handle cases all over. My law firm handles large cases throughout the nation, so traveling to another city is

routine. This is where the Texas Board of Legal Specialization website comes in handy, as you search for board certified attorneys in other towns. The other way is to visit with the attorneys in your town who are not board certified, but have courtroom experience. Ask them for a list of their five largest personal injury courtroom verdicts. If they have impressive results, then you might feel comfortable staying with them. But if their courtroom results are not impressive, then I would look out of town.

When you visit with any attorney regarding a potentially big case and you request a list of his five largest courtroom verdicts, if he tells you that he hasn't ever had to go to trial because all of his cases have settled, I would politely thank him for his time and leave. As you've learned in these **TRUTHS**, insurance companies do not settle for full value unless they respect the courtroom abilities of the attorney chosen by the plaintiff.

In the first chapter I told you that **referral fees**

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sometimes work well in practice, and sometimes not. In **TRUTH 2**, I gave you an example of the family attorney that referred Felix and his family to me as an example of a case where the referral fee worked well. Now, let me explain the situations where they should be avoided. If you are interviewing an attorney (not your family attorney) and it's obvious to you that this attorney is not the right attorney for your case, don't agree to allow him to find you an attorney that is qualified. This attorney may make one phone call to another attorney and ask that attorney to pay him a referral fee on your case. On a big case a referral fee can amount to hundreds of thousands of dollars. This is bad for a couple of reasons. First, you will probably feel obligated to use this attorney, and he may not be the best attorney for your case, but only the best friend of the referring attorney. Secondly, a real trial attorney may be able to charge you a lower contingent fee if he does not have to pay a referral fee to an attorney who simply made a phone call.

You should also avoid the attorney with no significant courtroom verdicts who promises to “associate” a qualified trial attorney if he’s not able to get your case settled. For all the reasons that we’ve already covered, this is a terrible idea. Insurance companies have settlement committees that meet to evaluate their risk on big cases. They will determine the maximum amount that they are willing to pay to settle the case. Once they factor in the plaintiff’s choice of an attorney with no courtroom success, it is sometimes hard to get them to significantly increase the amount simply by adding another attorney late in the game. This may force you to go to trial, when the case very well might have settled if you had had a successful trial attorney from the beginning. Another major problem with this arrangement is that the first attorney may do a poor job of taking the key depositions that are necessary for a successful trial long before he “associates” the real trial attorney. Also, in big cases it is often critical to hire the very best experts early in the process. Many of the

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best experts are in other states and the process can be very expensive. The inexperienced attorney may not be willing to spend the money necessary to hire the best experts, or even know how to find them. I have seen many cases lost because of this.

You now know how to find the most qualified attorney for your own case. You don't need to rely upon someone else to find an attorney for you, and you certainly don't need to pay him a large chunk of your attorney's fee for making a phone call. If you stick with the **TRUTHS** that you have learned in this book, by searching for board certified attorneys with the best courtroom track records, you should have the best chance to obtain the justice that you and your family truly deserve.

THE ETHICAL ATTORNEY

After more than thirty years of handling major cases against some of the best insurance defense attorneys in the nation, co-counseling cases with some of the nation's best plaintiff's attorneys, and practicing with outstanding partners, my experience has proven to me that the best attorneys are also the most ethical attorneys. In Texas, as in other states, attorneys are required to conduct themselves according to a very stringent set of **Rules of Professional Conduct**. These rules are designed to protect you, the public, and to make sure that every thing an attorney does on behalf of a client is in the client's best interest. Attorneys are officers of the legal system and have a special responsibility for the quality of justice.

There is one ethical rule, Rule 7.03, which bears

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specifically on the subject of this book. Attorneys are strictly prohibited from contacting you in person or by phone following an accident in order to seek employment, unless you've requested them to contact you, or unless they have represented you or a family member in the past. Otherwise, this is called a prohibited solicitation. **No ethical attorney will do this.** If you are solicited in violation of this rule, I would suggest that you get that attorney's name and number, and then cease all communication. When you find the right attorney for your case by following the advice in this book, give this name to your attorney. He will be obligated to inform the authorities.

The same rule prevents an attorney from paying a non-attorney to solicit cases for him. He can't use a non-attorney to do that which he is ethically prevented from doing on his own. If you are contacted by someone who claims to be an investigator or some other employee for an attorney or law firm, and he is

trying to solicit your case, this is probably in violation of the ethical rules. Even if he doesn't reveal himself as working for the attorney, if you don't know him and he is trying to get you to sign a contract with an attorney, avoid him at all cost. Ethical attorneys don't need to use people to solicit business for them. You deserve an outstanding and ethical attorney.

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CHECKLIST FOR CHOOSING THE RIGHT ATTORNEY

- _____ CHECK FOR BOARD CERTIFIED SPECIALISTS IN YELLOW PAGES

- _____ CHECK FOR BOARD CERTIFIED SPECIALISTS ON TEXAS BOARD OF LEGAL SPECIALIZATION WEBSITE, www.tbls.org

- _____ IF NO WEB ACCESS, CALL TEXAS BOARD @ 800-204-2222, ext. 1454

- _____ CALL LAW FIRMS TO DETERMINE IF THEY EXCLUSIVELY REPRESENT PLAINTIFFS

- _____ ASK PLAINTIFF FIRMS FOR A FIRM BROCHURE

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- _____ ASK FOR A LIST OF THE ATTORNEY'S
TOP FIVE COURTROOM VERDICTS—
NOT JUST A LIST OF SETTLEMENTS

- _____ CHECK THE LAW FIRM'S WEBSITE

- _____ IF YOU ARE NOT IMPRESSED WITH
THE ATTORNEY'S COURTROOM
RECORD, KEEP SEARCHING

- _____ DON'T LET AN UNQUALIFIED
ATTORNEY FIND A QUALIFIED
ATTORNEY FOR YOU UNLESS HE IS
YOUR FAMILY ATTORNEY

- _____ ONCE YOU FIND THE RIGHT
ATTORNEY, SIGN A CONTINGENT
FEE CONTRACT AND LET HIM GO
TO WORK FOR YOU

Dale Williams is the senior partner of the Waco law firm of Williams & Brown LLP. He is board certified in Civil Trial Law by the National Board of Trial Advocacy and in Personal Injury Trial Law by the Texas Board of Legal Specialization. For more than thirty years he has taught thousands of attorneys how to handle serious injury and death cases at Baylor Law School. He is past-president of the Waco-McLennan County Bar Association and the Central Texas Trial Lawyer's Association.



“Dale Williams, a trial attorney who is highly respected by his peers and a respected long-time adjunct professor at Baylor Law School, very concisely and accurately shares in this book what you should consider – or not consider – in assessing the qualifications of an attorney. This is an incisive ‘how-to’ guide that takes away the veil of ambiguity and confusion concerning how to retain the best qualified, ethical attorney to represent you or a loved one.”

—BRADLEY TOBEN, DEAN OF BAYLOR LAW SCHOOL

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