

ACE LAW LETTER[®]

Volume 1, Issue 1

SPRING 2009

QUARTERLY ACE LAW[®] ACTION CORNER

Kevin Mark Smith, Esq.
Law Offices of Kevin M. Smith, P.A.

Each quarter, ACE LAW LETTER[®] will highlight a legal area that demands immediate action steps to ensure the rights of you and your family members are protected. We only highlight areas of the law that our firm or affiliate firms handle, so if the highlighted articles strike a nerve, don't hesitate to call us immediately.

This quarter's article is an area of particular interest, Wills and Estate Planning. You would be shocked by the number of families with many minor children who have never had a will made, or did so many years ago and have since had children, remarried, or faced other life changing circumstances. Don't neglect

continued on page 2

INSIDE THIS ISSUE

- 1 If you're injured in an Auto Accident, get an attorney or get ripped off!
- 1 Just because the Doctor said he did all he could doesn't mean he did.
- 2 Estate Planning is essential for everyone
- 2 Just paying a fine is the gift that keeps taking
- 3 Don't run your business with your pants down!

PERSONAL INJURY LITIGATION INFORMATION

IF YOU'RE INJURED IN AN AUTO ACCIDENT, GET AN ATTORNEY OR GET RIPPED OFF!

Did you know that the insurance companies have conspired to keep you from receiving the compensation you are entitled to? It's true. In fact, they actually developed a computer data base accessible by all insurance companies to see if claimants have been injured in auto accidents in the past, and how much such claims generated in compensated damages.

How can you keep from getting ripped off by such corrupt organizations? Simple. Hire an attorney. In Kansas the medical claim threshold is \$2,000.00. Thus, if you've accumulated more than \$2,000.00 in medical bills (or will), call an attorney to ensure that you are compensated not only for those bills, but for any future medical treatments that you may need, not to mention your out-of-pocket expenses and wages lost due to your injuries.

Our firm has a network of physicians who specialize in the treatment of auto accident-related injuries. Call us so you can be sure that you aren't signing away your rights to future expenses.

JUST BECAUSE THE DOCTOR SAYS HE DID ALL HE COULD DOESN'T MEAN HE DID

Medical malpractice is an area of law that hits close to home. My grandfather was a true role model for me. In fact, from my toddler years up until my mom married my dad (he adopted me after my biological father passed away), Grandpa Gene was my only healthy father figure—my bio-dad was an out-of-control alcoholic, so not so good a father figure. Shortly after

continued on page 3

continued from page 1

this important legal area and leave your family in a lurch.

ESTATE PLANNING IS ESSENTIAL FOR EVERYONE

Did you know that if you and your spouse die without wills it is the State that will determine who gets your kids, how your assets are divvied up, and whether your “inheritance” is subject to estate taxes?

Imagine the nightmare your family will go through. Grandparents or siblings *might* get custody of your kids, but they won't know for certain until the probate judge rules from the bench. If you have minor children, at least you know that the assets left behind will go to them, but you won't be able to control when they get their hands on their inheritance. Imagine the possible repercussions of a child turning 18, getting a hold of a large sum of money (*any* amount will be large to a child), but not having the benefit of your solid parenting to give him or her the maturity to handle such a windfall. Had you and your spouse had a will, you could have kept the assets in trust until your child was mature enough to spend wisely. Not if you die without a will. I've seen such tragic outcomes in my own law practice.

Simply put, everyone needs a will. Also, when you do finally consider making a will, make sure your legal representative takes care of other needed documents. Our firm won't do a will unless it includes a Durable Power of Attorney (so your important affairs can be handled in the event you are incapacitated), a Living Will (this tells medical professionals what they can do if you are rendered brain dead), and a Health Care Power of Attorney (this allows a loved one or friend to make medical decisions on your behalf).

If you are ready to take this important step, call our firm immediately. We have very reasonable rates and will draft your documents quickly.

JUST PAYING THE FINE IS THE GIFT THAT KEEPS GIVING

Traffic laws can be frustrating, not because they're complicated. Rather, the inconsistency of multiple jurisdictions makes this often unappreciated area of law unpredictable. One municipality makes it easy on unrepresented and represented defendants alike by amending even the most heinous offenses down to non-moving violations, while the next makes you plea as charged regardless of how pristine your driving record may be. But there's one thing for certain: *Do not just pay the fine without talking to an attorney or the prosecutor!*

Simply put, you won't know how any particular court works until you talk to someone who does know. Also, an innocent plea combined with a lack of knowledge of one's driving record might result in a suspension or worse—revocation due to habitual violator status! The best way to stay clear of these traffic law landmines, in my humble opinion, is to talk to a lawyer familiar with both state laws and how the particular jurisdiction operates.

As an example, in Wichita, Kansas, unrepresented defendants are encouraged to apply for traffic diversion, despite the fact that you get only one such opportunity every 2 years and, if you pick up another speeding ticket within 6 months, will not only turn the diverted case into an insurance rate raising conviction, but also the new charge that violated the diversion. A better idea is to get the moving violation amended to a non-moving, non-classified misdemeanor, which leaves no chance of turning the case into a moving violation (it won't even be reported to the DMV!).

In summation, don't just plead to that traffic ticket. Ask questions first, then make a well-informed, less risky decision that keeps you driving legally and at lower insurance rates!

DON'T RUN YOUR OWN BUSINESS WITH YOUR PANTS DOWN!

I am amazed at the number of business owners I know who are doing business as sole proprietorships. I'm not talking just about the paycheck-to-paycheck, job-to-job types either. I'm talking about very successful people who are comfortably in the six-figure net income categories. They get a contract to do a job, do it, cash the check, and then turn over all their paperwork to their bookkeeper at the end of the year. They assume that since they pay their taxes everything is cool. Sadly, some of these types, responsible as they are otherwise, are neglecting perhaps the most important responsibility they have, the one they have to their own families.

Here's the nightmare scenario of the sole proprietorship mentality. It starts with a bill slipping through the cracks. In this case, a commercial insurance bill. Next, our otherwise responsible businessman goes to the construction site and puts in a very long day, and let's say he leaves a key in the crane that is holding up an air compressor thirty feet in the air to keep it away from vandals. Late at night some kids walk onto the site (in legal terms, the open gate presents "an attractive nuisance") and one gets in the crane cockpit, while another stands under the compressor. The kid in the crane starts the engine, flicks a lever and drops the compressor. Kid under the compressor dies and the contractor gets sued. No problem, the sole proprietor says. He calls the insurance company. Oops. The policy lapsed due to the bill not being paid. Next thing you know the kid's family comes after the man, not the business, and the family loses everything.

Had the contractor been smart and set up a Limited Liability Company or a Chapter S Corporation he would have put a wall between his personal assets and the business. The kid's family would've taken the business's assets but nothing else. Afterwards, the contractor could have shut down the business and opened another one.

A colleague of mine represented a carpet cleaning business that was underinsured. After cleaning one rental property's carpet, the proprietor left a heater in

continued on page 4

continued from page 1

my mom remarried, he received a late diagnosis of cancer. Because the diagnosis came later than it should have given his annual physicals, the doctors couldn't save his life. He died a year after the fateful diagnosis.

I think about Grandpa Gene every day. He was a well-respected attorney in Carlsbad, New Mexico. He even received an honorary governorship award. But no matter how respected and revered he was in his state and community, such reverence couldn't make up for bad medicine. Today, we find many illnesses that result in death similarly misdiagnosed. Colon cancer, for example, is almost 100% curable if caught early. But if the family practice doctor or general care physician misses the early signs, or, as is my situation, tries to talk a person of high risk out of starting colonoscopies earlier than usual, he may miss the critical early diagnosis. Simply put, don't assume that your loved one who died of cancer had to perish.

And it's not just colon cancer. Even the more fatal cancers such as pancreatic, lung, and liver cancer are curable if detected early.

If you are facing a death sentence from cancer, or if a loved one is (or has already died), ask yourself a few questions before assuming your doctor did all he could to help. Do you get annual physicals, or did you get one within 2 years of the fatal diagnosis? Has your doctor ever talked you out of a diagnosis tool such as a colonoscopy, proctology exam, pap smear or mammogram? Of course, the best thing to do is to talk to an attorney to be sure. If malpractice is present, at least those left behind can feel a sense of justice by holding the doctor accountable.



*WHERE TO GO IF YOU NEED MORE
INFORMATION ABOUT THE
SUBJECTS IN THIS NEWSLETTER*

Your legal rights are important. Whether you are facing a life changing criminal charge such as DUI or drug possession, nasty divorce, or if you are finally taking steps to finally draft that will you've been neglecting for too many years (not to mention all the other subjects mentioned in the debut edition of the Ace Law Letter®), make sure you go into it with your eyes wide open. Talk to an attorney before you make any life changing decisions.

**Law Offices of Kevin M. Smith, P.A.
1502 N. Broadway
Wichita, Kansas 67214
316-262-2331
kmsmith@acelaw.net**

continued from page 3

the main living area, along with several fans, to dry out the carpet. It was a really old heater and it somehow sent a spark onto the carpet, which led to a massive blaze that torched the entire home. He assumed that because the property owner had insurance he was covered. Wrong! While the owner and *former* customer got a new home to replace the dilapidated rental property, the insurance company came after the client for its costs. Fortunately, they worked things out, but not until the attorney's client had paid \$.10 on the dollar to the insurance company (for a total of \$10,000.00 and change).

As a side benefit to incorporating via Chapter S or setting up an LLC, you are taxed as an individual if you so choose. You can also pay yourself a minimal salary and then pay dividends at the end of the year based on company performance. After talking to an attorney about setting up your "wall of protection," you should also talk to a tax professional for details on how these business structures can minimize your tax burden.

**Law Offices of Kevin M. Smith, P.A.
1502 N. Broadway
Wichita, Kansas 67214**

POSTAGE

DUE

ADDRESS CORRECTION REQUESTED