

Outstanding ListServ Contribution Award



Congratulations to this issue's Outstanding ListServ Contribution Award recipient, Brian Dunigan. Brian is a Senior Associate with Ponce Law in Goodlettsville, Tennessee. Brian's practice focuses on helping injured people. Brian lives in Hendersonville, Tennessee, with his wife Blair and their children. He is an avid fisherman and accomplished acoustic guitar player. He graduated cum laude from Cumberland University with his Bachelor of Arts in English and received his law degree magna cum laude from the University of Tennessee College of Law.

On June 25, 2023, Ivan Lopez asked for input from our trial lawyers on whether accepting a trip and fall case caused from a threshold at a downtown Nashville bar would be worthwhile. Ivan's potential client, who was traveling to Tennessee from New Jersey, gashed her hand badly as a result of the fall. Brian offered this reasoned advice to Ivan's inquiry:

[W]e have to be rational in our case selection. When we're working on contingency, if we don't walk away from certain cases, we also won't be in business! The description below gives us the following:

1. It's a premises liability case, which already are a challenging category of cases. Compared to car wreck cases, you've got a much higher likelihood that the (a) the adjuster won't make a pre-lit settlement offer; (b) you'll have to spend significant attorney time and expense on litigation since discovery usually involves deposing multiple employees, witnesses, and probably a corporate rep; (c) you'll probably need an expert, which is an additional expense; and (d) you'll probably have to survive a summary judgment before you have any shot at reasonable settlement value.

2. It's not just a premises case, it's a threshold trip case at a popular public establishment, which means large numbers of patrons pass over the potential fall hazard every day. That's not automatically fatal – I have had successful sidewalk trip/fall cases where there was significant traffic past the hazard. But it doesn't help.

3. It's not just a threshold trip case, it's a threshold trip case at a bar. You'll have to confront potential issues about intoxication and negative perceptions toward your client. Again, not automatically fatal, but it doesn't help.

4. The potential client is out of state, which will pose significant logistical problems. It makes scheduling depositions harder. It makes the logistics of getting your client here for a trial harder. It means you can't have your client do basic things like come to your office to sign the oath page on your discovery or a medical release. Everything is by phone or through the mail.

5. A "gashed hand" and low medicals means that if even if you clear all the other obstacles, you're doing it for a relatively small case. I'm not hearing any elements that are indicative of a potential significant large verdict, such as permanent injury or impaired earning capacity. There will probably be a scar, and so some damages for disfigurement maybe, but it doesn't sound like a blockbuster case.

Case selection is like running a hurdle race. There's rarely going to be a "perfect" case. We'll always have to clear a hurdle or two. But every additional hurdle makes the race a little harder. Eventually, it becomes awfully difficult to get across the finish line in one piece.

At a minimum, before I took that case, I'd do an in-person site inspection and have a close look at what caused the fall. I would want to feel pretty confident that I could get an expert to say there was a violation of some applicable code or generally-accepted building standard. I'd also have a very in-depth discussion with my client about any potential comparative fault elements that the jury is going to hear (intoxication, distraction) as well as what my damages really look like. I'd have to find something better about the case than what's been described so far, both on liability and damages, before I'd accept it.

The ListServ Award committee, chaired by Ali Toll and Parker Trotz, always have great options to choose from, but when Brian sent his reply, they both immediately marked it as outstanding and the obvious winner for this quarter. Congratulations Brian and thank you to all members for their ListServ contributions!