

**HOW TO KEEP TORT CLAIMS OUT OF LITIGATION:  
KEY INGREDIENTS TO A QUICK RESOLUTION**

- I. Gathering evidence
  - A. Accident Report
    - 1. Not determinative of fault in court!
    - 2. Prepared by law enforcement
    - 3. Prepared by risk management
  - B. Recorded claimant statement ASAP
    - 1. Current Injuries
    - 2. Past injuries
    - 3. Past accidents
    - 4. Past medical / conditions
    - 5. Medication
    - 6. **Make sure it is recorded in a way that can be used later**
      - a. A tape that is lost is not helpful
      - b. A recording that can't be understood is not helpful
      - c. Invest in clear, digital recordings that can be easily saved with the rest of the file.
  - C. ISO
    - 1. Prior accidents match recorded statement?
    - 2. Timeliness of "forgotten" Information
  - D. ESI / Social Media
    - 1. Admissible v. Not Admissible Evidence
    - 2. PDF, .doc, .wpd, .txt, .rtc, etc.
    - 3. Email
    - 4. Images
  - E. HIPAA Authorizations
  - F. Site inspection
    - 1. Take photos
    - 2. Measurements
    - 3. See it for yourself
  - G. Interviews
    - 1. Talk to insured
    - 2. Talk to people with knowledge
      - a. Who knows the area (if not auto accident)
      - b. Were there any witnesses to the accident
  - H. Video
    - 1. Nearby businesses
    - 2. Traffic cameras
    - 3. CELL PHONES
      - a. Insured
      - b. Witnesses
      - c. Police Officer
    - 4. Security system for location (slip and fall, etc)
  - I. Pictures

1. Not as helpful as video
  2. Still worth a thousand words
- II. Getting it resolved
- A. Represented v. Unrepresented Claimant
    1. Lawyer Fee - practical matter
    2. COMMUNICATION IS KEY
  - B. What does the claimant want - Motivation to Settle
    1. Pay off debt
    2. Apology
    3. Buy a specific item
    4. Save time
      - a. No deposition
      - b. No written discovery
      - c. No trial
    5. Illegals
      - a. Their concern about going to trial and being deported
      - b. Court rulings that they have a right to make claims
  - C. Reasonable settlement
    1. What was the injury
    2. How long did claimant treat
    3. Total medical expenses
  - D. Use Evidence to Reduce/Support Settlement Amount
    1. Medical Records
    2. Recorded statement
      - a. Fraud
- III. What do you need to know:
- A. Who is the claimant
  - B. What happened
  - C. When did it happen
  - D. Where did it happen
  - E. Why did it happen (liability)
  - F. What do they want