

PENGLASE & BENSON, INC.

Information Booklet for Personal Injury Clients

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QUESTIONS AND ANSWERS ABOUT YOUR PERSONAL INJURY CASE

Introduction

The purpose of this information booklet is to enlighten you about personal injury law and to explain how your case will be handled by your attorney. Most of the questions that you may have about your case are answered in this booklet. Please read this thoroughly, more than once if necessary. The information will be very important to you. A thorough understanding of the details of your personal injury case can help promote a fair, adequate settlement.

If you have further questions after reading this booklet, write them down or note them in the booklet itself, and your attorney will discuss them with you in detail.

You the Client

1. What is the most important thing for me to do after my injury?

The most important thing for you to do, quite simply, is to recover from your injury. The law requires injured people to "mitigate their damages." In other words, the law requires you to do that which is necessary to improve your physical condition and recover from your injury.

For you this may mean some, or all, of the following steps:

a. Do not miss appointments with your doctor. Stay in touch with your doctor and be certain to maintain your appointments. If you have to cancel, notify the doctor with as much notice as possible. The words "no show" on a doctor's record sheet can be used against you at the time of settlement or trial.

b. Attend physical therapy sessions as prescribed. Your physician or hospital may prescribe therapy to facilitate recovery from your injury. Such a procedure is often helpful in many types of injuries including strains, sprains and other so-called "soft tissue" injuries. If physical therapy is prescribed, be sure to keep your appointments and participate actively in the process. Again, if you have to cancel an appointment, be sure to call, but try to avoid cancellation as much as possible.

c. Do what your doctor tells you to do. If your physician prescribes certain medications, therapy exercises, or limitations on activities, be sure to follow your doctor's orders. Failure to follow your doctor's advice can be used against you when it comes time to settle your case, or can be used against you in court if your claim proceeds to litigation.

d. Follow your doctor's advice with respect to work and leisure activities. If your physician advises you to rest, stay home from work, or avoid certain activities, it is important that you follow such advice. If you resist your doctor's advice and do activities that have been limited, it will not only prevent a speedy recovery, but could also affect the legal aspects of your case. Even though staying out of work may have an impact financially, it is important that you follow such advice so that your recovery will be enhanced. Your attorney will attempt to recover lost earnings.

2. How do I pay my medical bills?

Your lawyer will discuss the payment of your medical bills in detail with you. In summary, your medical bills may be paid by one or more of the following methods:

a. Insurance coverage from your own automobile policy under your first party benefits coverage, if you were driving in your automobile and were involved in an automobile collision.

b. Insurance coverage from the person you were riding with if you were a passenger in an automobile that has automobile insurance coverage and if you do not have your own auto insurance coverage.

c. Your own health insurance from your employment benefits package.

d. Your own health insurance that you may have paid for personally.

e. Health insurance obtained by your spouse for your benefit or by your parents if you are under age and living with such parents.

f. Your own personal funds if you were not insured and are able to pay medical bills as they are incurred.

g. Workers' compensation insurance if your injury occurred while you were working on the job and the injury occurred as a result of your employment.

h. The liability insurance coverage for the person, persons or company who caused your injuries. Such insurance coverage will most likely be paid at the time of settlement, court award or verdict rather than during the period that you incur such medical bills. If the Defendant's insurance carrier initially accepts liability they may be willing to pay for medical bills as they incur only if you have no other insurance coverage. You can discuss this option further with your attorney.

i. Other possible sources.

j. If you have no insurance coverage, your medical bills may be able to be paid at a later date when and if your case settles, or a court award or verdict is reached. You can discuss this option further with your attorney.

3. Will the doctors, hospitals and other medical facilities wait for payment if I am unable to pay my bills as they are incurred?

In some cases where there is no immediate method to pay medical bills as they are incurred, some doctors, hospitals, and other medical facilities will wait to be paid for their services if and when the case is finally resolved by way of settlement, court award or verdict. It is important to let medical providers know early in the process if you have no insurance or financial means to pay medical bills as they are incurred. You are ultimately responsible to pay any outstanding medical bills not covered by insurance.

4. How does my lawyer make sure that the doctors and medical facilities will get paid?

Most lawyers have a policy of withholding money from the settlement, court award or verdict to pay those doctors and medical facilities that are willing to wait to be paid when the case is settled. Many doctors and medical facilities require that the patient/client request a letter of protection from your attorney. This insures that your attorney will withhold enough money from your disbursement to pay medical bills directly to the doctor or medical facilities when and if settlement funds are received. These bills are ultimately your responsibility. Therefore, any medical bills known to your attorney will be deducted after the calculation of the contingency fee owed your attorney at the end of the case.

5. Why won't the insurance company for the person or company who caused my injuries automatically pay my medical bills as they occur?

Most insurance companies for the tortfeasor (the person, persons or company who caused your injuries) will not automatically pay medical bills as they occur. There are many reasons for this. One reason is that they do not want to spend a substantial amount of money for medical bills and then be faced with an unreasonable or excessive demand at the time of final settlement. In other words, they do not want to expend a substantial sum of money on medical bills and then be faced with the chance of defending a lawsuit. Secondly, most insurance companies want to conclude or settle the claim with one sum of money. Therefore, most liability insurance companies will wait for the letter of demand from your attorney and then try to conclude the case all at once with one payment.

6. Will my insurance company want to be reimbursed any medical payments paid out for the injuries incurred on this claim?

Medicare, Welfare and most health insurance companies have the right to be reimbursed for any medical benefits paid on a liability claim in which a third party is at fault and there is a recovery of monies. This is called their right of subrogation. They will put a lien on any settlement, court award or verdict you may receive. Your attorney will investigate any subrogation rights of a health insurance company. Your attorney will deduct any lien amount prior to any disbursement to you as a result of a settlement, court award or verdict and pay the insurance company directly. Your attorney, prior to disbursement, will attempt to negotiate the lien amount with the insurance company. This will result in less money you will be responsible for paying back to the insurance company. You are ultimately responsible for reimbursing any lien amounts if the case is resolved in your favor. Therefore any liens will be deducted after the calculation of the contingency fee owed your attorney at the end of the case.

7. How do I keep track of all my bills?

One of the most important things for you to do is to keep an accurate record of your medical bills. This is how you do it:

a. Ask for a medical bill each time you see a doctor or facility.

Maintain a record of your visits and make sure that you obtain a medical bill for each visit to your doctor, hospital, physical therapist or medical facility.

b. Save all prescription bills.

Be sure to save copies of your prescriptions and drugstore charges for medicine that you purchase as a result of your injury.

c. Keep a separate chart with dates, amounts of medical bills, and purchases of medication.

Maintain a separate record which has the date of the medical service or purchase of medication, the amount charged, and how the bill was paid (by insurance, your own personal funds, etc.). This requirement is very important because it will be your actual record of medical bills incurred as a result of your injury.

d. Be sure that your lawyer receives a copy of each medical bill, prescription bill, or other bill related to your injury.

It is important for your lawyer to receive copies of all your medical bills as well as a copy of your medical bill summary when your case is ready for settlement. Even though your lawyer may receive copies of bills directly from the medical facilities, a double-check process will assure that your claim settles for the maximum value. If your lawyer does not have a record of all your medical bills, your case may be settled for much less than its actual value.

e. Keep a record of medical bills even if they are processed through a health insurance carrier.

Even if your medical bills are paid by a health insurance company or your employer, you must still maintain copies for yourself and be sure to get copies to your lawyer.

Your Lawyer

1. How will my lawyer handle my case?

After initial meetings with you, your lawyer will investigate your claim. This usually requires a review of some or all of the following:

- a. Witness statements.
- b. Police reports.
- c. A possible visit to the scene of the incident.
- d. A review of appropriate statutory law (laws enacted by your legislature).
- e. A review of appropriate case law (laws made by judges who interpret statutory law).
- f. A review of all medical reports.
- g. A review of all medical bills.
- h. The possible hiring of an investigator to investigate the details of the incident.

Your lawyer will also contact the insurance company for the person, persons, or company who caused your injuries. After the initial investigation and contact with the insurance company, your lawyer will maintain contact with you to make sure of the following:

- a. That you are following the advice of your physicians and other medical practitioners.

- b. That you are doing your best to improve from your injury.
- c. That you are providing your lawyer with copies of all medical bills and other expenses related to the incident.
- d. That you are providing records of loss of income from your job.
- e. That you are keeping track of potential witnesses in your case.

Medical records will be obtained through the use of authorization forms as discussed below. Your lawyer will review those medical reports as they come in from your doctor and will keep abreast of the applicable law relating to your case.

2. How can I help my lawyer with my case?

The most important thing for you to do is to provide documentation of your medical bills, expenses and loss of income from your employment. The following is a list of things that will also help your lawyer with your claim.

- a. Return all phone calls promptly to your lawyer.
- b. Read all correspondence from your lawyer.
- c. Keep all appointments with medical facilities.
- d. Maintain a file and record of medical bills, lost wages, and other expenses associated with the injury.
- e. Keep a list of witnesses who may testify about your injuries or about the incident.
- f. Take photographs as instructed by your attorney and maintain copies and negatives of such pictures.
- g. Keep a journal of how your injuries impact your work and social life.
- h. Notify your attorney immediately of any change of address, telephone numbers, marital status, change of employment or drastic change in your physical condition.
- i. Answer all questions posed by your attorney truthfully and candidly.
- j. Sign all forms requested by your attorney.

3. Why do I have to sign so many forms?

Doctors, hospitals, employers, and other establishments will not release personal information about you without signed written authorizations. It is against the law, in most instances, to release information about a person, to anyone, including your lawyer, without formal documentation. Therefore, your lawyer will ask you to sign such authorization forms which will allow him or her to retrieve important information about you.

4. How will my lawyer be paid and what is a contingent fee agreement?

In almost all personal injury cases, your attorney will be paid by keeping a percentage or portion of the final settlement, court award or verdict resulting from your injury. The percentage will be discussed with you and will be the subject of what is called a contingent fee agreement. The law requires, for your protection and that of your lawyer, a written contract which specifies the fee he or she will charge so there will be no misunderstanding about how much your case will cost. Most contingent fee agreements provide that you do not have to pay your lawyer for his or her services unless, and until, the case is settled or is resolved by a court verdict in your favor. The agreement will provide that your lawyer will work diligently on your case in exchange for the percentage or portion outlined in the agreement. As discussed below, however, you will be responsible for actual out-of-pocket costs, even if the case is not settled or won. Many Agreements provide that you will be responsible for out of pocket costs as well as attorney's fees if you choose to end the case prematurely, not allowing the attorney to finish his services and therefore not giving him the opportunity to re-coup those expenses. All terms will be listed in your Fee Agreement.

5. What other costs will there be in addition to the attorneys' fees?

The fee for your attorney is based upon his or her work, time, effort and expertise. The attorney's fee also encompasses certain office overhead such as secretarial time, rent, files, and other built-in costs. However, there are also additional out-of-pocket expenses or "costs" which are incurred specifically as a result of your case. Some of these expenses include the following:

a. Fees that doctors and hospitals charge for medical reports. Such reports may cost anywhere from a few dollars for simple copies to \$100 or more for reports that have to be written or prepared specifically by your doctor. Fees owed for medical treatment are not considered "costs" to the litigation. Fees for medical treatment are the responsibility of the client.

b. Photocopy charges, postage and shipping expenses. Insurance companies require significant numbers of copies of medical bills, medical reports, police reports, witness statements, and lost income information. Your law firm has to pay for these photocopies and you will usually be charged a certain amount for each page of copy.

c. Long distance telephone calls. If long distance telephone calls are required, you will probably have to reimburse your attorney for the actual cost of each call.

d. Costs of photographs. Photographs are extremely important in personal injury cases and if your attorney incurs expense in having photos obtained or enlarged, you will be responsible for such costs.

e. Reports of experts. Reports from experts other than physicians may be required in your case and, if so, you will have to pay the costs that such experts charge for their reports.

f. Litigation costs. If your case has to proceed to suit or litigation, there will be costs incurred as a result of the filing of such a lawsuit such as court fees for filing, sheriff fees for service.

g. Court Reporter fees. If your case goes to suit depositions may be required which will incur the expense of a court reporter and to obtain the transcripts.

6. Are the attorneys' out of pocket expenses or "costs" as stated in question 5 above also contingent and if not, do they have to be paid in advance?

The costs outlined above in question 5 are your responsibility even if there is no recovery in your case. In other words, although your attorney's fee is contingent upon a settlement or successful court award, the actual out-of-pocket costs are not contingent upon successful recovery. Your attorney may require you to assist in such costs as they are incurred. Therefore, you may be requested to pay some of the out-of-pocket costs in advance of settlement as the case progresses. The reason for this is that it is not economically feasible for law firms to "finance" personal injury cases. The law provides that out-of-pocket expenses are the responsibility of the client even if the case does not settle. Your attorney may agree to be re-paid the costs at the time your case is resolved. If that is the case and if you obtain a settlement, court award or verdict these costs will then be deducted directly from your disbursement.

The Insurance Companies

1. What will the insurance company for the person, persons or company who caused my injury do about my claim?

After the insurance company has been notified about the claim, a file is established on you and your case. An insurance claims adjuster is assigned to your file by a claims manager or claims supervisor. The supervisor may assign different adjusters to your case as it progresses.

The insurance claims adjuster responsible for your file will maintain contact with your lawyer. The adjuster will also perform an independent investigation of your claim to ascertain the following:

- a. Who is at fault in your case.
- b. Whether or not you bear any fault for your own injuries. This is also referred to as comparative negligence or contributory negligence.
- c. Potential witnesses in the case.
- d. The location of the scene of the accident.
- e. The contents of police reports, Department of Motor Vehicle reports, and any other investigative reports that have been filed in the case.

After the initial investigation, the claims adjuster will request medical reports and any other reports dealing with your injuries. The adjuster will also review documents about your time lost from work. Most importantly, the insurance claims adjuster will want to receive accurate records of your medical bills, prescription bills, hospital bills, therapy bills, and any other actual expenses incurred as a result of your injury. That is why it is very important for you to maintain an accurate account of your medical bills, lost wages, and other expenses which result from your injury.

2. How does the insurance company put a value on my case?

This question is quite complicated. First, the claims supervisor or claims manager will provide that a certain amount be "set aside" as a potential value of your case. This figure is usually called "reserves." Such reserves are the outside value that the company has established on your claim. The reserves may change as the case progresses. In serious cases, such reserves may equal what are called policy limits. Policy limits are the outside limit amounts of liability established in the insurance policy of the person or persons who caused your injury.

During the preparation stages of your case, the insurance company will keep track of your medical bills, lost wages, any permanency regarding your injury, and other factors. The company will also take into consideration the quality of evidence against their insured, the quality of your witnesses and their witnesses, extent of liability on your part, and other important considerations such as previous injuries.

If you had a previous injury in the same area of your body, the insurance carrier will want to see medical records pertaining to that injury. During the course of your claim, your attorney will be notified by the insurance company about the important factors that are being considered in your particular case.

3. Should I communicate with or contact the insurance company for the person who caused my injuries?

Absolutely not! Under no circumstances should you contact the insurance company once you have retained an attorney. If you contact the other person's insurance company, for any reason, you could ruin your entire case with one question or one statement.

Secondly, because you are now represented by a lawyer, the insurance company, in most states, is absolutely prohibited from having any personal contact with you for any reason.

4. Can I contact my own insurance company?

If you have health insurance, medical payments insurance, automobile uninsured or underinsurance coverage, there may be occasions when it is appropriate for you to contact your own company. However, you should always ask your lawyer whether or not such contact is appropriate. Never contact an insurance company without first obtaining approval from your attorney.

5. Will the insurance company for the person who caused my injuries dispute my claim?

If liability and responsibility are well-established in your case -- that is, if fault clearly rests with the insurance company's insured (the person or persons who caused your injury), they will try very hard to settle your claim. Insurance companies usually dispute the following types of claims:

a. Claim in which the fault rests with someone other than their insured. This could mean you or someone else involved in the incident who may have caused your injuries rather than the person who is insured by the insurance company.

b. Claims in which the insurance company and its representatives do not believe that you are injured, or that you were injured as badly as you claim. For this reason, documentation of medical bills, lost wages, and other expenses are extremely important to establish credibility and the existence of your injury.

c. Cases in which you or your witnesses have lied, exaggerated, or fabricated the nature and extent of your injury or how the incident occurred.

6. What can I do to convince the insurance company that my claim is valid?

As stated above, the most important thing you can do is to recover as quickly as possible from your injury. Insurance company personnel tend to believe those people who actively try to recover from their injuries. That is why you must cooperate with your doctor, physical therapist and other personnel who are trying to help you improve from your injury.

Secondly, insurance companies believe those people who can document their injuries through medical bills, credible medical reports and accurate lost wage information that is neither exaggerated nor subject to dispute and interpretation.

Thirdly, insurance companies usually settle cases easier with those clients who have been in active contact and cooperation with their attorney.

In summary, it is important for you to try to get better, keep an accurate record of your expenses, and cooperate with your lawyer and his or her staff.

The Person, Persons or Company Who Caused Your Injuries

1. What happens to the person, persons or company who caused my injury?

After the incident which caused your injury, the person, persons or company that you claim may be responsible for your injury was contacted by the insurance company. Either the person who caused your injury or a representative of the company who caused your injury gave statements and reports to the appropriate insurance claims adjuster. Such statements and reports were probably recorded and there are most likely written reports or transcripts of such statements.

After the insurance company's initial investigation, there is usually little or no contact between the tortfeasors (the person, persons, or company who caused your injury) and the insurance company. In other words, the insurance representative usually does not keep the insured advised about day to day progress in the case. An exception may be medical malpractice cases. Therefore, the person, persons or company who caused your injury is probably going on with their daily lives, hopeful that the case will simply be settled by the insurance company with little or no involvement on their part.

2. What happens to the person who caused my injury if the case does not settle?

If the case does not settle between you, your lawyer and the insurance company and proceeds to litigation (lawsuit), the insurance carrier will again contact the insured. An attorney hired by the insurance company will be assigned to defend and represent the tortfeasor, whether the tortfeasor is a person, persons or company. The insured will be required to participate in the litigation process and will be required to cooperate with the attorney assigned.

It is important to remember that if a lawsuit becomes necessary, it will be brought against the tortfeasor and not against the insurance carrier, even though the insurance carrier will probably be the one to pay the settlement or verdict.

3. What if the tortfeasor was untruthful or not accurate about how the incident happened?

Unfortunately, in many cases, the person or persons responsible for the incident may not tell the complete truth about the incident. It is human nature for many people to deny liability, fault or blame even in cases where negligence or wrong-doing was obvious. Your lawyer has had many cases where the tortfeasors did not tell the truth about the incident. In some cases, the insurance carrier will believe their insured or the insured's witnesses and will deny your claim. In such cases a lawsuit becomes necessary and the case will proceed to litigation and sometimes all the way to trial.

In most cases, however, the truth eventually surfaces and the claim will get settled one way or the other. Your lawyer will investigate your claim in the hope of obtaining witnesses, evidence, facts and law that support the truth of how the incident happened.

4. Can I contact the person or persons who are responsible for my injuries?

Again, absolutely not! If you contact the person or persons responsible, you could jeopardize settlement of your case. Remember that any statement you make, even an innocent comment, could be used against you or misinterpreted. It is not appropriate for you to contact the tortfeasor even if the tortfeasor has not told the truth about how the incident occurred.

Settlement

1. When will my case settle?

It is impossible in the early stages of a personal injury claim to predict when that particular claim will actually settle. Some cases settle in a matter of months after the injury while others can take years to get

to settlement or trial. Your lawyer will usually wait until you have completed recovery from your injury or have at least come close to recovery before trying to settle your case. It is important to know the following before your case is settled:

- a. What is the total of all medical bills?
- b. Will any further medical treatment be necessary?
- c. If further medical treatment is necessary, what is the prediction of its cost?
- d. Are any of your injuries permanent?
- e. If any of the injuries are permanent, how do such permanent injuries affect your earning capacity?
- f. What was your total loss of income and what other employment benefits were lost because of the injury?
- g. Is it likely that you will lose any further income as a result of your injury?

There are other factors that must be taken into consideration before settlement. As the case progresses, your lawyer will have some idea as to the approximate time that the case may be appropriate for settlement.

2. How much is my case worth?

This question is one of the most frequently asked questions and is also very difficult to answer in the early stages. It is virtually impossible to predict the value of a case until all of the information has been collected and you have recovered or almost recovered from your injury. There are many factors that determine the value of a case. They include:

- a. The actual amount of all of your medical bills.
- b. How such medical bills were incurred; that is, from diagnostic tests, treatments, physical therapy, hospital stays, prescription medication, over-the-counter medication, chiropractic care and other treatment.
- c. How much income and other employment benefits were lost as a result of your injury. This would include lost pay, sick leave used, vacation time used, loss of insurance benefits and other losses resulting from your injury.
- d. The actual extent of your injury and how such injury affected your daily life. This would include limitations of household activities, sports and leisure activities, and social life.
- e. Whether or not any aspects of your injuries are permanent. This would also include permanent disfigurement such as scars, blemishes and other disfiguring characteristics.

- f. Whether any of your injuries required hospitalization.
- g. The extent of liability on the part of the potential defendant.
- h. Whether there is any evidence that you were partly at fault for your own injuries.
- i. The status of the law as it relates to your case.
- j. The quality of your witnesses, including those who will testify about the incident, your injuries, and your medical treatment.
- k. Other factors such as pain, suffering, inconvenience and loss of consortium (how the injury affected your marital relationship).
- l. Which insurance company is involved in the case.

The above are just a few of the factors that must be taken into consideration in determining a settlement value. Some factors are more important than others and because insurance companies require specific documentation, it is your responsibility and that of your lawyer to provide the insurance company with as much clear information as possible to support your claim.

3. Who determines the settlement value of my case?

Your lawyer, and the firm in which your lawyer is a member, have a great deal of experience in the area of personal injury law. After evaluating all of the factors enumerated in question 2 above, your lawyer will discuss the case with you to arrive at a possible settlement range.

Once you have agreed upon a general settlement range, your attorney will present a demand to the insurance company in the hope and expectation that the insurance company will pay a settlement within the range determined.

It is important to know that you have the ultimate decision to make, but, because of your lawyer's experience in this area of law, you should seriously and carefully consider any recommendation he or she makes as to the ultimate value of your case.

4. What steps will be taken to settle my case?

After all the investigation and research has been completed, your lawyer will keep in touch with the progress of your recovery. Hopefully, your injury will not be a serious one and eventually it will be appropriate to attempt settlement. After a settlement range has been decided upon, the lawyer will send what is usually called a letter of demand to the insurance company.

The letter of demand summarizes the important factors of your claim and is a formal request to initiate settlement discussions. After the insurance carrier's claims adjuster receives the letter of demand, he or she will meet with appropriate supervisors to obtain settlement authority. Once the adjuster has his final authority figure, he will respond and negotiations between your lawyer and the insurance adjuster will take place.

Some cases can be concluded with a series of telephone conferences, office conferences, and correspondence. The period of time required to complete negotiations usually depends upon a number of factors including the nature of the insurance company, how busy the insurance adjuster is, and other factors.

5. Will the insurance carrier pay the demand figure in my attorney's request for settlement?

In almost every case, the final demand figure issued by your attorney in the first letter requesting settlement is substantially higher than the actual settlement range. This is a common negotiation tactic for personal injury cases.

Because of your attorney's experience in this area of law, a request for settlement will usually be made in an amount that gives both parties a fair amount of room to negotiate. Therefore, do not consider the demand figure to be the actual settlement range of your case.

6. How long does it take to complete settlement after the first letter of demand?

In most cases the amount of time it takes from the first letter of demand to final settlement can be several weeks to a few months or sometimes longer. In smaller, clear-cut liability cases where the injuries are fairly minimal, the process can be achieved in a month or two usually. Every case is different, however, and your lawyer will advise you about his opinion on the amount of time it will probably take to settle your case. There are many factors which affect the response time and the adjuster's final offer. They include:

- a. How many files the insurance adjuster is handling.
- b. How well documented the claim has been during the preparation period.
- c. Whether or not liability is clear on the part of the insurance company's client.
- d. Whether or not there is any comparative negligence on your part.
- e. Whether or not there are any other parties that may be responsible for your injuries.
- f. The internal claims process of the particular insurance company including the number of supervisors required to approve the adjuster's settlement offer.
- g. How reasonable your lawyer's demand figure is.
- h. The time of year (some months are better for settlement than others).
- i. The state of the economy as it relates to the insurance claims process.
- j. Other possible factors.

7. Because the insurance company will undercut my attorney's request for settlement, why not request a very large sum to begin with?

Many people believe that because the carrier will come back with a lower figure than the demand, the attorney for the injured person should request a very high figure to begin with. Such a process never works. If the first demand figure is way out of line, most insurance companies will not even respond to the request for settlement.

Asking for a high figure for settlement that is ridiculous will often delay the process and sometimes will make the insurance company refuse to make any offer at all. Therefore, it is important that the first demand be reasonable at least. Because your lawyer is experienced in this area of law, he will have the best idea as to amount for the first demand figure.

8. After the insurance company and my attorney agree upon settlement, how long will it take to get my money?

After an agreement has been reached between the insurance company and you through your lawyer, it usually takes between two and six weeks to complete the settlement process. There may be exceptions to this range, but the average time to sign all the documents, receive the check, and figure out the exact proceeds for each party usually requires at least a month.

9. What has to be done before I get the money that is due me from the settlement?

First, the insurance company will require that you, and perhaps your spouse, sign a release. This is a document that settles your claim. In the release, you will read language stating that you are forever giving up your right to sue the person, persons, or company who was responsible for your injuries. In exchange for giving up your claim, you will receive a certain sum of money when the insurance company receives the release.

Second, your attorney will negotiate any liens or medical bills owed. This will result in you receiving more of the settlement amount when disbursed.

Third, your attorney will prepare a disbursement letter that will list the settlement amount less the contingency fee per the Fee Agreement, any costs your attorney paid out, liens and medical bills owed by you that your attorney is aware of and finally the balance that will be the amount you will receive. You will sign this disbursement in agreement to the disbursement and the terms.

Last, once the check is received your attorney will have you come in to sign it so it may be deposited into the firm's account. Once the monies have cleared from the bank, final disbursements will be made.

10. After attorneys' fees, medical bills, liens, and costs, will there be anything left for me?

In most cases there should be a fair sum of money left for you to compensate you for pain, suffering, and some loss of income. There are many factors influencing settlements. Such factors include the amount of any outstanding medical bills, liens and cost that have to be paid from the settlement, whether you actually lost income from your job or used sick leave, etc. These will substantially affect the final amount.

You must remember that the law allows you to be compensated for your injury -- to give you compensation for lost wages, medical bills, and a reasonable amount for pain and suffering. The law does not provide that injured parties "get rich" from insurance claims, especially in small cases. Your attorney will do his or her very best to see that you get fair compensation for your injuries.

Litigation if the Case Does Not Settle

1. What happens if the insurance company does not meet our settlement range and the case does not settle?

If the insurance company and your lawyer cannot agree upon the value of your case, it may be necessary to begin a lawsuit. This is also referred to as litigation. The lawsuit will usually be brought against the person, persons, or company who caused your injuries and not against the insurance company unless the case is an uninsured or underinsured motorist case.

In some cases, your lawyer may suggest waiting a period of time before commencing the lawsuit in the hope that the insurance company will increase its evaluation of your claim. However, in cases where the parties are significantly far apart with respect to the value of a claim, litigation is usually necessary.

2. What factors would cause my case to go to litigation?

There are usually several reasons why a case does not settle including the following:

- a. The insurance company believes that you and your lawyer have asked for more money than they are willing to pay voluntarily for the claim.
- b. Liability, that is, "fault," is either being denied by the insurance company or the insurance company believes that you and/or some other party bear some responsibility for your own injuries.
- c. The insurance company, because of internal reasons or company policy, resists payment of your claim and is forcing claimants to go through the trouble of a lawsuit.
- d. The insurance company is stalling for time hoping that you and your lawyer will reduce your value of the claim.
- e. The insurance company does not believe that you were injured, or that you were injured as badly as you claim. Therefore, the company is requiring that you pursue a lawsuit to prove your injuries.

3. How does a lawsuit affect me?

If a lawsuit becomes necessary, your attorney will explain in detail what you will have to do. Usually the process takes the following steps:

a. After final investigation and preparation, your lawyer will file a claim in court by preparing what is known as a Summons and Complaint. This is usually done in the lawyer's office without your involvement.

b. The Summons and Complaint are served upon the person, persons, or company who caused your injuries, and the responsible party is referred to as the defendant. You will be called the plaintiff.

c. After the defendant is served with the complaint, the insurance company will hire a lawyer to defend the lawsuit and that lawyer will file what is known as an Answer to the Complaint. The Answer usually denies responsibility for the injuries, denies the extent of your injuries, and may possibly seek to bring in other parties who might have been involved in the incident which caused your injuries.

d. A process is started called discovery in which both sides seek information from each other. You will be involved in this process. The process includes some or all of the following:

- 1 . Questions, called "Interrogatories," which require written answers.
2. Oral testimony from you and other parties called "depositions." Such testimony takes place in front of the lawyers with a court reporter who takes down the questions and answers in order to prepare a transcript.
3. "Requests for production of documents" in which the lawyers ask for medical reports, witness statements, medical bills, and other documents relating to the case. In most cases, your lawyer will have to send such documents to the other lawyer even if they have already been supplied to the insurance company.
4. "Requests for admissions" which is a process that requires the parties to narrow the issues by admitting certain facts that are not in dispute.
5. Pretrial procedures such as motions in court and other tactics that process the case to trial.
6. Preparation for trial including possible video depositions of your doctors, meeting with witnesses, writing briefs, and appearances of your attorney before the trial judge.
7. The trial, finally, if your case does not settle before the trial date.

4. Is it possible that my case will settle before trial?

Yes. Many cases settle during the lawsuit process while a small minority of cases have to proceed all the way through trial. It is impossible to predict when or if any particular case will settle.

5. What will I have to do if my case proceeds to a lawsuit?

After the lawsuit is commenced, your lawyer will contact you about your duties. You will probably have to answer interrogatories and attend a deposition. During litigation it is important for you to do at least the following:

- a. Stay in touch with your lawyer.
- b. Inform your lawyer of any changes of address, phone number, work status, marital status or changes in your injury.
- c. Respond to your lawyer's letters and phone calls if he or she requests contact.
- d. Prepare and obtain any documents requested from your lawyer immediately after the request.
- e. Keep track of all medical bills and lost income and report such information to your lawyer.
- f. Stay out of trouble which could be used against you in court such as drunk driving, shoplifting and other criminal activities.
- g. Maintain your employment status and avoid confrontations with your employer that could be used against you at trial.

6. Does a lawsuit require a substantial amount of work from my lawyer and, if so, will I be charged extra?

Some contingent fee agreements provide an additional percentage if a lawsuit is required. Your attorney will advise you of this at the time he or she accepts your case. Litigation is a very time-consuming and difficult process. Your lawyer will have to prepare documents for court, take depositions, research the law, correspond with the defense attorney, correspond with you, correspond with your witnesses and doctors and prepare for trial. Your file will grow in size and your lawyer will probably have other people working on your case such as secretaries, paralegals and associates. Therefore, you can expect that your lawyer will be very busy preparing your case for trial.

7. Will I have to answer interrogatories?

Interrogatories are questions sent to your lawyer by the lawyer for the defendant. You and your lawyer may be asked to answer a number of questions, usually 30 or more, with various sub-parts. Some of these answers will be prepared by you and some of them will be prepared by your lawyer.

You will usually be asked about your complete medical history, educational history, work history, and a number of questions about the incident and your injuries. It is important that you take time to prepare your answers carefully and accurately. If you leave something out that is important, or if there is a piece of information that is not accurate, such mistakes can be used against you at trial or at your deposition. It is important to prepare your answers within the time frame requested by your lawyer.

Most clients do not like having to answer detailed questions such as interrogatories and often they put off the task until the last minute. Do not fall into this trap. If you take the time to prepare your interrogatory answers accurately and carefully, you are more likely to have a successful case.

8. What are depositions?

Depositions are very important procedures because a deposition is usually the first time you will actually testify about your case. Depositions take place in the office of one of the lawyers involved in the case. In your deposition, the attorney for the defendant will ask you questions about your injuries, the incident, and background information about you and your family. Your answers will be taken down word for word by a court reporter who will transcribe your testimony. The transcript of your testimony will be read by all attorneys, representatives of the insurance company, and portions may be used at the trial.

9. What if I don't want to have my deposition taken?

Unfortunately, you don't have a choice. If you have commenced a lawsuit involving personal injuries, the law requires that you must be deposed if requested to do so by the other side.

10. Does the person or persons who caused my injuries have to be deposed also?

If your lawyer decides it is necessary, a deposition of the defendant or defendants will also take place. In some cases, your lawyer may believe that it is better not to take a deposition. Your attorney will make that decision.

11. How do I prepare for a deposition?

Your lawyer will assist you in preparing for your deposition. In most cases you will be given plenty of notice so that you will have time to prepare. In addition to advice given to you by your lawyer, you should consider the following:

- a. Dress appropriately as though you were going for a job interview.
- b. Read your interrogatory answers and any other documents your lawyer instructs you to read.

Read them carefully -- don't just skim through them. Preparation will mean a better chance of a favorable settlement.

c. Tell the truth even if you think the answer might hurt you. The worse possible answer is an answer which is a lie. If the defense attorney catches you in a lie, he or she now has the opportunity to destroy your entire case.

d. Don't argue with the defense lawyer. It will never do you a bit of good to argue with the defense attorney.

e. Be polite. It can only help you and will never hurt you.

f. Listen carefully to the lawyer's questions. Do not jump ahead and answer the questions before the lawyer finishes.

g. Think before speaking.

h. Don't agree just because the defense attorney asks you to agree. Some defense attorneys use the trick of making several statements to which you agree. Then, they throw in a final statement which may not be true, but because you are so used to agreeing, you admit something that you should not. Therefore, it is important to listen to each statement or question carefully.

i. Don't answer more than you have to. Some witnesses ramble on and on. Rambling will destroy your case. Simply answer the questions and do not explain your answer unless you are requested to do so.

j. Look the defense attorney in the eye as much as possible.

k. Speak clearly.

12. Why are depositions so important?

There are several reasons why your deposition is important.

a. The defense attorney will be sizing you up. If he or she is impressed with you and your testimony, settlement becomes more likely.

b. The deposition is excellent preparation for trial. It gives you the opportunity to experience testifying.

c. Your testimony, if it is false, can be used against you at trial.

The Trial

1. When will the trial take place?

This question is impossible to answer because there are so many factors which effect when your case will actually be reached for trial. Such factors include:

a. The number of cases waiting for trial in your county or jurisdiction.

- b. The number of judges available to hear trials in your jurisdiction.
- c. Whether or not all discovery, such as interrogatories and depositions, have been completed by both sides.
- d. The type of trial calendar set up in your jurisdiction. (For example; do criminal trials have priority? Is there a so-called "trailing docket"?)
- e. Whether or not the lawyers in the case have other trials pending in other jurisdictions.
- f. Other possible factors.

Your lawyer will be able to tell you approximately when your case will be reached for trial. In some jurisdictions it takes a year or less to get to trial after the suit has been filed. In other states it can take several years.

2. How much notice will I get before the trial?

Usually you will receive plenty of notice to prepare for trial. Unfortunately, in some jurisdictions, you may have to "get ready" a number of times before your case is actually reached. In some jurisdictions, the court will set a large number of cases for trial, but only a few are actually reached. Your lawyer will explain this process to you.

3. What happens in a trial?

In cases which are not complex, the trial process usually involves a specific format. Do not count on television shows to accurately portray how trials actually occur. With some variations, depending on the jurisdiction, your trial will go something like this:

- a. The judge will open the trial by calling the lawyers, clients and prospective jurors into the courtroom.
- b. A jury selection process called "voir dire" takes place. In some states, the lawyers can ask questions of prospective jurors before selecting the jury. This process allows the lawyers to determine potential bias or unfairness on the part of prospective jurors. In other states, the judge questions the prospective jurors.
- c. Jury selection takes place in which jurors are called by lottery fashion. The lawyers may exclude some of the jurors for various reasons.
- d. After the jury is selected (usually 6 or 8 people), the lawyers will make opening statements. These opening statements are brief summaries of the case so that the jury will have a road map of the case. Opening statements are usually short (less than 30 minutes).

e. After opening statements, your lawyer will present your case by calling you and other witnesses to the witness stand for direct examination. Such witnesses may include your doctor, employer, friends, family, and other witnesses who can testify about the incident or your injuries.

f. After each witness has finished direct examination by your lawyer, the lawyer for the defendant will be entitled to cross-examination. That is, you and your witnesses may be asked questions by the other lawyer.

g. After cross-examination, your lawyer may have a few additional questions and this process is called re-direct examination.

h. After your lawyer finishes presenting your case, the defense lawyer is allowed to present the other side of the case by calling witnesses for the defense. Your lawyer will be entitled to cross-examine those witnesses.

i. After both attorneys have finished all questioning and all presentation of evidence, the judge will allow closing arguments. In closing arguments the lawyers have the opportunity to summarize the case to the jury and ask for a verdict. Your lawyer will be allowed to go first, followed by the defense attorney. After the defense attorney finishes his or her closing argument, your lawyer may be offered a brief period of time for rebuttal.

j. After closing arguments, the judge will instruct the jury on the law and how it should be applied to your case. This process usually takes an hour or more depending on the judge. The judge's instructions are the final words heard in the case before deliberation. The judge is not allowed to influence the jury one way or the other as to the potential result in the case.

k. After the judge completes instructions, the jury is allowed to deliberate on your case in a closed room. This process usually takes several hours.

l. When the jury has finished deliberation and reaches a verdict, the judge will call everyone back into the courtroom and the verdict will be announced. You will find out at that time whether or not you won your case and how much money, if any, has been awarded by the jury.

4. What should I remember in order to be the best possible witness?

The trial is the most important part of your case. It is your only day in court and you will probably not get a second chance. Nobody is perfect, but you can prepare yourself to be as good a witness as possible. The following recommendations will assist you to do the best job possible.

a. *Review your deposition transcript and interrogatory answers if your lawyer asks you to do so.* It is important for your trial testimony to be consistent with your discovery.

b. *Do not mention insurance.* If insurance or anything about it is injected into the case, the judge will probably declare a mistrial and you will have to wait for another trial date.

- c. *Dress appropriately.* You should not wear flashy clothes, a lot of jewelry or a lot of makeup. The type of clothing you would wear to a church function or a PTA meeting is appropriate.
- d. *Review your medical history so that you have a good idea about injuries you have had, doctors you have seen, hospitals which have treated you, etc.*
- e. *Never exaggerate.* Do not exaggerate about how the incident happened or about your injuries. An exaggeration will almost always hurt you and never help.
- f. *Don't be a "wise guy."* A courtroom is not the place for being coy, wise or funny. If something happens in the courtroom that is humorous, it is all right to laugh with the jury, but do not try to be a comedian.
- g. *Be courteous to everyone including the defense attorney and court personnel.* Jurors are impressed by polite people. Call the judge "Your Honor," show respect to courtroom personnel, and call the defense attorney "Sir" or "Ma'am" from time to time.
- h. *Never lose your temper.* Defense attorneys know one way to win a case --- get the witness to lose his or her temper. If you feel badgered by the attorney, react courteously. Jurors are impressed by people who can remain calm under cross-examination.
- i. *Listen carefully to each question and take your time to answer.* Do not anticipate. Wait for the questioner to finish before you speak.
- j. *Look at the jurors.* This cannot be stressed enough. Look jurors in the eye when you testify just as if you were talking to your best friend or closest relative. Jurors tend to believe people who can look them straight in the eye.
- k. *Speak clearly and answer with "Yes", "No", etc. and not with words like "Ya", "Ahah", "Um," etc.*
1. *Do not look to your lawyer for answers.* You are the witness -- not your lawyer. If you look to your lawyer for answers, the jury may become suspicious.
- m. *Be yourself.* You are likely to be nervous and this is appropriate because jurors expect that people who testify in court will be nervous. After a brief period of time, you will be comfortable, especially if you are telling the truth.
- n. *Do not put on a show about your injuries.* Jurors are suspicious about people who try to exaggerate or display their injuries when they sit down, get up, walk, etc. Jurors are able to ascertain a phony gesture just like adults know when children are faking illness.
- o. *Tell the truth!* This is repeated because it is so important. There may be things about your case that will hurt you -- no case is perfect. If so, don't be afraid to admit the truth. The defense lawyer would love to catch you in a lie because one lie can destroy your case.

After the Trial

1. If we win, how long does it take to receive the money?

If a verdict is rendered in your favor, it usually takes a few weeks to a month to finalize the results. If the defense attorney does not appeal the verdict, the lawyers will work out the final figures with respect to the verdict, interest, court costs, deductions and attorneys' fees.

2. What happens if we lose?

Hopefully, you will not lose. If you do, your lawyer will discuss the possibilities of appeal. Appeal is usually a very expensive process but your lawyer will advise you whether or not appeal is appropriate.

3. If we lose, is it still possible to get a settlement?

In a few rare cases, the insurance company may be willing to offer a nominal settlement to avoid an appeal. This is not very probable. The best thing to do is to concentrate on winning your case. If your case is clear on liability (fault of the other party) and you have prepared yourself well for trial, the chances are that you will win your case. Justice usually prevails.

Conclusion

Your personal injury case is very important to you. Your lawyer knows this. In today's society, insurance companies have a lot of power, money and influence. However, most insurance companies try to be fair in settling ordinary cases. They do try to compensate people who have been legitimately injured as a result of the negligence of someone else. It is important for you to have a positive attitude throughout your case. This requires making an active effort to recover from your injuries. Cooperate with your lawyer. Be honest about your case with everyone involved. The Constitution of the United States, your state laws and fairness dictate that injured victims should be compensated for injuries resulting from the negligence of a third party. This is the law and it is on your side. Place your faith, confidence, and trust in your lawyer and yourself and you will obtain justice.

Provided by:

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