

56 FREQUENTLY ASKED QUESTIONS ABOUT PERSONAL INJURY CASES

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PRELIMINARY MATTERS

1. WHAT IS A PERSONAL INJURY CLAIM?

A personal injury claim is a claim for monetary compensation for injuries and other harm caused by the negligence of another person or entity. "Negligence" means acting or failing to act the way a reasonably prudent person would act under similar circumstances. Essentially, "negligence" means "unreasonable carelessness." Regardless of how you were injured – whether in an auto accident, a medical accident, a slip or fall, a dog attack, by a defective product or by some other means – your personal injury claim is based in negligence, and you will have to prove negligence in order to obtain fair compensation for your injuries.

2. WHAT DO I HAVE TO PROVE TO ESTABLISH NEGLIGENCE?

In order to establish negligence, you must prove these four elements: duty, breach, cause and damages.

Duty

As a threshold matter, you must establish that the "defendant" (the person you claim is responsible for your injuries) owed you a legal duty of care. A duty of care may arise out of the relationship between the parties (e.g., doctor/patient); or the foreseeability and likelihood of harm to the injured party; or other factors. For example, a person who gets behind the wheel of a car owes a duty of care to the other drivers, bicyclists and pedestrians with whom the road is being shared with. Similarly, a storeowner has a duty – a legal responsibility – to keep the premises safe and clean for their customers. If the defendant has no legal responsibility toward you, then they cannot be held accountable for your injuries.

Breach

A "breach" is a failure of duty. When the defendant acts with unreasonable carelessness or fails to act in a way that a reasonably careful person would, that is a breach of duty. This breach of duty constitutes negligence.

Causation

The defendant's breach of the duty of care must have caused your injuries. In other words, "but for" the defendant's negligence, you would not have been injured.

Damages

You must establish that you were, in fact, harmed by the defendant's conduct. If you suffered no harm, then you have no claim for negligence and no right to compensation, *even if* the defendant's conduct was unreasonably careless.

3. I HAD A FAMILY MEMBER WHO DIED DUE TO THE NEGLIGENCE OF ANOTHER. CAN I BRING A LAWSUIT AGAINST THE NEGLIGENT PARTY?

In most states, a person may file a wrongful death action on behalf of a deceased family member. However, the specific requirements for such lawsuits vary from state to state. If you're considering a wrongful death action, an important threshold issue will be whether you are deemed an authorized party who can bring suit. In some states, the only authorized parties are the deceased's surviving spouse and children. Other states permit other family members, such as the deceased's parents or grandparents, to assert the claim.

4. I WAS INJURED ON THE JOB. DO I HAVE A PERSONAL INJURY CLAIM?

If you are injured on the job and you receive workers' compensation benefits, you are barred from bringing a personal injury claim against your employer. If, however, your injuries were caused by the negligence of someone other than your employer, then you have the right to pursue a claim for damages against that "third-party." This is known as a workers' compensation third-party claim.

PRELIMINARY MATTERS – AUTO ACCIDENT CASES

5. SHOULD I CONTACT THE POLICE AFTER AN AUTO ACCIDENT?

Yes. Generally speaking, if you are involved in an automobile accident in which you are hurt as a result of another driver's carelessness, it is a good idea to let the police know about it. You can do this by contacting the police department directly, or by dialing 911 and mentioning to emergency personnel that you have been hurt in an accident. While 911 telephone dispatchers do not automatically notify law enforcement about reports of automobile accidents in every instance, they generally will do so when the 911 caller states that one or more persons has been injured as a result of the accident.

Why is it so important to get the police involved? The responding officer will use the information gathered at the scene to fill out an official document known as a "police accident report" (sometimes referred to as a "motor vehicle accident report"). The police report will contain valuable information, such as:

- The date, time, and exact location of the accident;
- The identities of the parties involved;
- Detailed information regarding the vehicles involved (including license plate, year, make, model, color, sedan/SUV/coupe, etc.) and information as to whether parts of any vehicle were malfunctioning or defective prior to the accident;
- A summary of any and all injuries claimed to have been sustained;
- A description of any alleged property damage;

- Weather and road conditions at the time of the incident;
- Names and/or contact information for any witnesses (as well as any statements those witnesses may have provided at the scene); and
- The officer's subjective account of what appears to have transpired and why/how it happened (including who may have been at fault).

The police report is a crucial tool relied upon by personal injury lawyers to prove a defendant was legally responsible for an accident and any resulting injuries.

Even if, immediately following an accident, it is unclear whether you have suffered injuries that are serious enough to warrant a lawsuit, your best bet is to call the police so that the responding officer ends up generating a police report. That report will go a long way towards corroborating your version of events. Even if it turns out that you are not seriously hurt, the report may still come in handy (if, for instance, the insurance company tries to pin the blame on you). Simply put, the mere existence of an official police report concerning your auto accident can help to facilitate the process of resolving your personal injury claim.

6. SHOULD I GO TO THE DOCTOR AFTER A CAR ACCIDENT?

Yes. If you believe you have been injured following an automobile accident (or a slip and fall, or any other type of accident), your best bet is to seek medical attention right away. Always err on the side of caution unless you are absolutely sure you're okay. A latent onset of symptoms (i.e. a situation where you don't "feel" your injury until several days or weeks following the underlying trauma that prompted it) may sometimes lead you to believe that you are not hurt when you actually are.

In addition to negative consequences for your health, failure to seek medical attention immediately following your accident can have a negative impact on your personal injury case. For one, the initial delay may raise questions about the seriousness of your injuries. How badly could you have been hurt if you didn't need to go to the hospital or see a doctor right away? Second the delay may raise questions as to the true cause of your injuries. For example, if a period of three months elapsed from the time of the accident until the time you first sought treatment, the insurance company will argue and, should your case go to trial, a jury might find that your injuries resulted from a different accident or event that occurred during that three-month period. Third, the delay might give rise to an inference that you only pursued medical treatment after being persuaded to do so by your lawyer. Finally, the delay may be viewed as a "failure to mitigate damages" (that is, a failure to do what you can to better your situation) because you could have acted sooner to begin the healing and recovery process for your injuries.

7. WHAT IS THE DIFFERENCE BETWEEN PERSONAL INJURY PROTECTION AND MEDICAL PAYMENTS INSURANCE?

Personal injury protection or "PIP" coverage is insurance that covers the policy holder and occupants of the policy holder's vehicle when they are injured in an accident. It is intended to help pay for initial medical expenses and lost

time from work up to the maximum limits of coverage of the policy. Medical payments coverage or “medpay” is similar to PIP, but it only covers medical expenses up to the specified maximum limit of coverage, not lost wages. The limits of both are typically very low. One important difference in many jurisdictions is that medical payments coverage has a “right of subrogation,” whereas personal injury protection does not. This means that if a recovery is made from the negligent party who caused the accident, the insurance company paying medpay benefits has a right to be reimbursed out of the recovery.

8. WHAT IS UNINSURED/UNDER-INSURED MOTORIST INSURANCE COVERAGE?

Uninsured motorist coverage protects a driver when the other driver causes the accident but has no insurance. Under-insured motorist coverage protects a driver when the negligent driver has insurance, but it is not enough to pay for all of the damages caused by the collision.

9. CAN MY HOMEOWNER’S INSURANCE PROVIDE MEDICAL PAYMENTS COVERAGE TO ME AFTER AN AUTO COLLISION?

Yes. Homeowner’s or renter’s insurance policies often contain special provisions for medical payments coverage similar to your automobile insurance medical payments coverage. Medical payments coverage disperses funds for medical bills incurred as a result of an injury sustained on your property or while traveling in your vehicle; fault is not an issue. Each insurance contract will have specific payout provisions, but many homeowner’s and renter’s insurance medical payments policies cover personal injury events. All you have to do is submit your medical bills and/or medical records to receive immediate payment of your benefits. Additionally, medical payments coverage is considered a return of your insurance premium payments and in most states is not considered compensation that would reduce your settlement amount.

PAYING YOUR MEDICAL BILLS

10. SHOULD I USE MY HEALTH INSURANCE?

Yes. It is very common for a medical provider, upon learning your injuries are the result of a personal injury event, to refuse to bill your health insurance provider and, instead, ask you to agree to an attorney-physician lien on any personal injury settlement or jury verdict in your favor. Why? Because health insurance companies contract with medical providers to provide services and treatment at a negotiated (i.e., reduced) rate. If you have ever been without health insurance and gone to the emergency room or had an office visit, then you know that the amount you were required to pay was far higher than it would have been if you had health insurance. When medical providers know that the funds for your treatment will not be coming directly from you, but from either a negligent defendant or a sizable insurance policy, those providers seek compensation above the small contracted amount that has been negotiated with a health insurance plan.

If your medical provider refuses to bill your health insurance, this is a red flag that your medical provider is acting in their best financial interest and *not* in your best interest.

You should always use your health insurance and seek treatment from medical professionals within your health insurance network, if applicable. Using health insurance will increase your net settlement recovery 100% of the time in a personal injury case.

11. DO I STILL HAVE A PERSONAL INJURY CLAIM IF MY HEALTH INSURANCE PAYS MY MEDICAL BILLS?

Yes. The law varies from jurisdiction to jurisdiction, but generally speaking you still have a claim even if your health insurance paid your medical bills. In some jurisdictions, the “collateral source rule” prohibits a negligent third-party from benefiting from your health insurance company paying a claim. Also, in some jurisdictions your health insurer is entitled to be reimbursed out of any recovery you make from a third-party if they have the necessary “subrogation” language included in the health insurance contract. This does not preclude you from making a claim; it only obligates you to reimburse your health insurance carrier when you recover compensation for expenses they have paid arising out of your claim.

12. SHOULD I NEGOTIATE MY MEDICAL BILLS ON MY OWN?

The only time you would need to negotiate your medical bills in a personal injury case is if (a) you do not have health insurance or (b) your insurance denied you coverage for necessary medical treatment. If you have hired an attorney to pursue your personal injury claim, your attorney can negotiate on your behalf. Most of the time, though, you are better off negotiating your unpaid medical bills on your own.

Start by calling the billing department, if there is one, and establishing the total amount of your unpaid bill. Every so often, billing errors happen, and it is good to make sure you and your provider are on the same page about the services you received and the charges for those services. Some medical providers will accept payment in full for a lesser amount if you can pay within 30 days. For those who do not have health insurance, or for those whose health insurance has declined coverage, you could negotiate a total bill reduction in the range of 20%-60%, depending on the medical provider. Offering

to pay 40% of your total amount owed is a good place to start; the billing department or your medical provider may agree or counter with a different number. If negotiating a lump sum reduced amount does not work, your provider might agree to allow the entire balance to be paid on a monthly basis. These monthly payments are usually agreed to verbally over the phone, and a note is made in your file.

Most medical providers are sympathetic and will work with you if you are sincerely trying to pay your bill but are suffering financial hardship, especially if you were injured as a result of someone else's negligence.

13. HOW CAN I PREVENT MY UNPAID MEDICAL BILLS FROM BEING SOLD TO DEBT COLLECTORS?

A common problem for someone with a personal injury claim is unpaid medical bills or unpaid health insurance co-payments or co-insurance amounts. Most medical providers do not have the staff or the time to follow up on unpaid medical bills more than a few times, so after a period of 30 to 90 days, most unpaid amounts owed to medical providers or health insurance providers will be sold for pennies on the dollar to a debt collection agency. Debt collection agencies will harass you via phone calls, emails, and countless letters tacking on late fees and extra collection charges.

The best way to avoid having your unpaid bills sent to a debt collection agency is to set up a payment plan with your medical provider or your health insurance provider. If you absolutely cannot make any payments as a result of a personal injury event, you will have little to no recourse unless you have hired a personal injury attorney. A personal injury attorney can send a cease and desist letter to your medical provider or your health insurance provider to freeze your unpaid debts and prevent them from being sold to a debt collection agency. Many states have laws to protect those injured physically and financially as a result of another's negligence. If your medical provider or health insurance provider sells your debt and reports you to any of the major credit rating agencies, you may have separate remedies available to you under the law. A personal injury attorney will work to protect your rights and to obtain any relief to which you are entitled.

14. WHAT IS A LETTER OF PROTECTION?

A "Letter of Protection" is a tool a personal injury attorney can use to enable his client to obtain medical care without having to pay up front for the services rendered. The attorney sends a letter to the medical provider that promises to pay the medical provider's bills out of any money recovered in the case by way of settlement or judgment (i.e., to "protect" the medical provider). If the case is settled or a jury returns a verdict in favor of the client, the attorney then pays the medical provider directly. The attorney may attempt to negotiate a discount before making payment. If the case does not end favorably for the client (i.e., if no money is recovered), then the client remains fully responsible for the outstanding medical bill.

15. CAN MY HEALTH INSURER FILE A LIEN AGAINST MY CASE?

Yes and no. A lien is a way for a third party to assert and protect a financial interest in your personal injury case; essentially, it is a formal demand for repayment. Your health insurer can file a lien against your case, but doesn't

need to. In many jurisdictions an insurer simply has to send a letter to your attorney or to the insurance carrier for the party responsible for your injuries, notifying them of the provisions in their health insurance contract which state that they are entitled to be reimbursed out of any settlement or judgment you receive on your case. Failure to pay this claim before disbursing funds received by a settlement or judgment that are subject to the claim exposes any party who has notice of the claim to liability.

16. MY DOCTOR IS ASKING ME TO SIGN AN ASSIGNMENT FORM, SO THAT IS PAID OUT OF ANY SETTLEMENT PROCEEDS. SHOULD I DO THAT?

Probably not. Assigning an interest or lien in your case in order to get medical care without having to pay out-of-pocket now is a common way to obtain the care you need when you do not have the funds to pay for that care. However, all assignments are not created equal. The language in the form may vary from doctor to doctor, and in some cases may be detrimental to your interests. You would be smart to consult a lawyer before signing any document that assigns anyone, including a medical provider, an interest in your case.

NEGOTIATING A SETTLEMENT WITH THE INSURANCE COMPANY

17. THE INSURANCE COMPANY TOLD ME THAT I DON'T NEED TO HIRE A LAWYER. IS THIS TRUE?

You do not *need* to hire a lawyer to negotiate a settlement with the insurance company – no law or regulation requires you to do so – but as your claim progresses you may *want* to hire a lawyer to protect your interests.

Once an accident has taken place, the interests of the injured party tend to be very different from the interests of the offending party's insurance company. In all your dealings with the claims adjuster, remember that the adjuster is an employee of the insurance company for the person responsible for your injuries. The adjuster is not your friend, and is not looking out for your best interests. Adjusters are trained and skilled negotiators. Whatever the adjuster may say in the early days of your claim, and regardless of how concerned they may seem, his ultimate goal is to save the insurance company money, not to get you the best settlement possible. Accordingly, you may want to speak to a personal injury lawyer directly to get an accurate assessment regarding your case and a clear understanding of your rights.

18. THE INSURANCE COMPANY ASKED ME TO SIGN A RECORDS RELEASE FORM. SHOULD I SIGN IT?

No – at least not until you consult with a personal injury lawyer. If you are not represented by a personal injury attorney, the insurance claims adjuster might ask you to sign a medical records release form. Even though it might sound like a generous offer – just sign the form and the adjuster will do all the work in gathering your medical records – it is not that simple. The language of medical authorizations can be very broad. You do not want to inadvertently allow the insurance company to go on a fishing expedition through your entire medical history. You are better off gathering these documents on your own, in advance of any negotiations, or allowing your attorney to

gather your medical records and present them to the adjuster.

19. HOW DOES THE INSURANCE COMPANY DECIDE WHETHER TO MAKE A SETTLEMENT OFFER?

Insurance companies do not typically share this information, and there are no set rules or guidelines. Different companies employ different methods to evaluate cases. These methods range from a purely human evaluation to a purely computer software-driven evaluation.

20. SHOULD I TRUST A SETTLEMENT CALCULATOR I FIND ONLINE?

No. Because there are no set rules or guidelines for determining the value of a personal injury claim, any online calculator claiming to have the magic formula is exaggerating its capabilities.

21. WHAT FACTORS WILL THE INSURANCE COMPANY CONSIDER IN EVALUATING MY CLAIM AND FORMULATING ITS OFFER?

The insurance company will consider the following eight factors in evaluating your claim and formulating a settlement offer. Depending on the facts of your case, these factors may have a positive or negative impact on the offer you receive:

1. Fault (or, in legal terms, liability)

Is the defendant (the person you claim is responsible for your injuries) clearly 100% at fault? If not, the settlement value of your case will decrease as your percentage of fault (or perceived fault) increases.

2. Your medical expenses and treatment records

If your treatment is well documented and suggests a serious injury (e.g., an extended hospital stay); your medical bills are proportionate to your injury; and your medical bills correlate with your treatment records, then the settlement value of your claim is increased.

3. The quality of the medical information supporting your claim

If the medical information in support of your claim consists of detailed narrative reports from your treating doctor and detailed office records or nurses' notes, this will have a positive impact on your settlement offer. Conversely, if your medical documentation consists largely of fill-in-the-blank medical reports/forms, this will negatively impact your settlement offer.

4. The nature of your injuries

Rightly or wrongly, insurance companies tend to place a higher value on objectively verifiable injuries ((e.g., a broken bone that is clearly visible on an X-ray or a deep cut that is visible to the naked eye), than on injuries supported by subjective complaints of pain (e.g., whiplash and other soft-tissue injuries).

5. Your lost income, wages, and/or profits

Do you have documented and verifiable proof of your economic losses? If not, this will reduce the value of your claim and negatively impact your settlement offer.

6. The “likeability” factor

Does the insurance company believe that prospective jurors will like you (more than they like the defendant)? This will increase the settlement value of your claim.

7. The quality of your witnesses

Do you have strong witnesses, who are well-spoken and objective, or are your key witnesses biased (e.g., close family members or friends)?

22. WILL MY MEDICAL BILLS BE PAID AS PART OF AN INJURY SETTLEMENT?

Generally, yes. Medical bills for treatment you have incurred and treatment you are likely to incur in the future are an element of your “damages,” which should be factored into any injury settlement, provided that:

- The bills arise out of injuries caused by the negligence of another;
- Your medical bills reflect reasonable charges for necessary medical care; and
- The charges do *not* relate to care for a pre-existing condition; an unrelated condition; or a subsequent injury.

23. IS THERE A MINIMUM PERSONAL INJURY SETTLEMENT AMOUNT THE INSURANCE COMPANY IS REQUIRED TO PAY?

No. Every case is valued on its own facts.

24. CAN I REJECT A SETTLEMENT OFFER?

Yes. You have the right to accept or reject an offer. The settlement process is a *negotiation*, in which give and take is expected. So, for example, if the insurance company makes a lowball offer – that is, an offer that is a ridiculously low and completely outside the bounds of fair and reasonable – you should reject it, especially if it is the adjuster’s first offer. Make a counter offer. The adjuster’s response will tell you great deal about the kind of insurer you are dealing with.

25. THE INSURANCE COMPANY OFFERED ME A SETTLEMENT THAT I THINK IS FAIR. SHOULD I ACCEPT IT?

Before you agree to a settlement, you should consult with a qualified personal injury attorney. This is especially true if it is the insurance company’s first offer and/or your injuries have not yet fully resolved. Unseen injuries can

haunt you for the rest of your life. Valuing a personal injury case can be difficult, even for those who do this on a daily basis. Once you agree to a final settlement, your case is over and you cannot ever come back and ask for more money if your circumstances change.

26. HOW SOON AFTER A SETTLEMENT IS REACHED ARE THE SETTLEMENT FUNDS DISTRIBUTED?

This depends on a number of factors. All liens and other claims (e.g., by doctors, hospitals, health insurance companies) of which the insurance carrier has notice must be resolved before a check can be issued to your or your attorney. This may require your attorney to negotiate with the lienholders for some time. Additionally, if Medicare and/or Medicaid are involved, they have liens which must be settled before any money can be distributed, as a matter of federal law. Lastly, the party with whom you settled (the person or entity responsible for your injuries) will require you to sign a release of claims in exchange for the settlement funds. The time it takes to accomplish these tasks may be as short as a few weeks or up to several months, depending upon the circumstances.

27. WILL I HAVE TO PAY TAXES ON MY SETTLEMENT MONEY?

Personal injury damages are generally considered non-taxable except for monies paid to compensate for lost wages or lost wage-earning capacity. However, you would be wise to consult with a tax attorney or CPA to be certain about your specific case.

28. THE INSURANCE COMPANY IS DRAGGING ITS FEET. SHOULD I TAKE OUT FUNDS THROUGH SETTLEMENT ADVANCE FUNDING?

Many personal injury claims are the result of a traumatic automobile collision. Not only is your vehicle damaged or even totaled, you now have medical bills to pay, and you may have to take some time off of work due to your injuries or lack of transportation. There are no extensions on your rent, utility payments, and sometimes even the payments for a vehicle you can no longer drive. The same type of thing can happen in any other kind of personal injury case. A slip and fall can keep you from returning to work for months because your employer is worried about a worker's compensation claim if you are injured even further. Some employers disregard your injury and just terminate you to hire someone who can work immediately without injury.

Depending on the complexity of your case, you may not see any settlement funds for six months or even two years. How are you to handle such a financial burden? Settlement Advance Funding is a tempting solution. Approval can be granted within a week or two, and you could have a sizeable check in hand. Additionally, if your case goes to trial and you do not receive a verdict in your favor, you do not have to repay your Settlement Advance. However, if your case is successful at trial or you reach a settlement with the at-fault party, you will owe in most cases twice the amount you received back. Most Settlement Advance Funding agreements have steep repayment rates that increase exponentially the longer your case goes on.

Some agreements do not even cap the compensation amount and have led to cases where you might owe over 200% or 300% of the original amount you received. That means if you received a \$1,000 Settlement Advance, you could end up owing over \$2,000 to \$3,000 by the time your case ends. In comparison, in the United States in 2016 the average personal loan interest rate is somewhere between 10% and 12%.

Settlement Advance Funding should only be used as a last resort after all other options have been exhausted, and even then, the smallest amount possible should be requested due to the high repayment rate and rapidly-increasing repayment amount.

29. CAN I BREAK AN ANNUITY FROM A SETTLEMENT?

The answer depends upon the annuity. When an annuity is set up for a minor, often it cannot be sold or broken before the minor reaches the age of majority. Adults typically can break annuities by selling them to companies that purchase settlement annuities. However, the deals offered by these companies are typically much more beneficial to the company than the seller. You should seek the advice of a CPA to be sure you understand the full consequences of selling a settlement annuity before doing so.

30. CAN I GAIN ACCESS TO MY CHILD'S SETTLEMENT MONEY?

Maybe. When a minor's case settles, typically the money is placed in some sort of protective account for the use and benefit of the minor. If it is in an annuity, it is locked in until the annuity pays out or the child becomes an adult and authorizes the sale of the annuity. If the money is placed into the court registry, then to gain access a parent would have to seek and obtain court approval. The court will not approve distribution of the money to the parent without a showing of an appropriate way that the money will be used specifically for the use and benefit of the minor. Caveat: This answer assumes the child is still alive. There may be an exception if the minor dies and the parent is the heir.

VALUING YOUR CASE

31. HOW MUCH IS MY CASE WORTH?

There is no magic formula or code that determines the value of your case. Your case is worth what a particular jury decides it is worth on a given day, and any lawyer who tells you can predict that with any degree of certainty is not being candid. However, a lawyer can look at the facts and the damages involved and give you an idea, based upon personal experience, of what he believes can persuade an insurance company to pay or a jury to award.

32. WHAT FACTORS DOES A PERSONAL INJURY LAWYER CONSIDER IN DETERMINING THE VALUE OF MY CASE?

The value of your claim depends on several factors.

First, how clear is liability? In other words, was it the defendant's fault entirely, or did your conduct also contribute to the happening of the accident and your injuries? The greater your perceived fault, the lower the value of your case. As your responsibility for the incident approaches 50%, the value of your case drops significantly.

Second, how serious are your injuries? Were you diagnosed with a condition that can be verified from an objective medical standpoint? Objective injury cases (e.g., broken bones that can be verified by an X-ray) tend to be more valuable than cases based largely on subjective complaints of pain and injury (e.g., whiplash and other soft-tissue injuries). With subjective injuries, medical experts may disagree significantly as to the "severity" of the condition because the level of pain and suffering may vary significantly from person to person.

A third factor is the nature and extent of medical treatment for the injuries in question. For instance, assume you injured your back in a car accident. Were you put on a regimen of prescription medication to address pain or inflammation from the injury (and if so, do you experience unpleasant side effects as a result of the medication)? Was the pain so severe that you elected to undergo epidural steroid injections on one or more occasions? Did you undergo back surgery or is surgery scheduled for the future? Is the procedure in question a mere discectomy or laminectomy, or is it a vertebrae fusion, which involves placing hardware inside the body permanently? Have you been forced to travel to physical therapy sessions on a weekly basis for the past two years following the accident? The value of your case will go up or down, depending on treatment-related factors similar to these.

Another factor is your strength as a potential witness at trial. Do you have a history of filing personal injury lawsuits for similar claims? How did you perform as a witness during depositions? Would a jury perceive you as credible if the case went to trial?

How much time will have passed between the incident that caused your injuries and the trial? The more time that has passed (e.g., if several years have passed), the lower the value of your case.

What insurance carrier are you dealing with? A smaller, local carrier may be more reasonable in paying claims and reaching compromises short of a lawsuit than a larger, national carrier.

A final factor is the dollar amount of recent verdicts and/or settlements for similar injury cases in the jurisdiction where your lawsuit was or will be filed.

33. WHAT DAMAGES AM I ENTITLED TO RECOVER?

If you were harmed as a result of the defendant's negligence, then you are entitled to monetary compensation (or, in legal terms, "damages" or "compensatory damages") for the harm you have suffered. This may include compensation for:

- Past and future medical expenses;

- Lost wages and benefits;
- Loss of future earning capacity;
- Miscellaneous expenses (e.g., childcare, transportation, medical devices or appliances, etc.);
- Mental, emotional and physical pain and suffering;
- Scarring, disfigurement, and physical impairment; and
- Property damage.

34. ARE THERE LIMITS ON WHAT EXPENSES I CAN CLAIM AS DAMAGES IN A PERSONAL INJURY CASE?

Most personal injury attorneys will tell you that almost everything can be considered damages in a personal injury case, so long as you would not have incurred that expense without the personal injury. However, there are some limits on what you can recover in damages. For example:

If a friend drives you to a doctor's appointment in your car, you may be entitled to reasonable mileage expenses since it is your car and theoretically filled with gas you paid for. However, if your friend drives you in his car with his gas, then your friend is not entitled to recover any mileage expenses, nor are you allowed to recover on his behalf any mileage expenses. It is common for family and close friends to assist with expenses, childcare, and in other ways; it also is common for these individuals to expect compensation if they know you have hired an attorney and a settlement will be coming your way in the future. It is important to explain to your family what your attorney can recover for you and that they may not make a claim for expenses, even though they may spend valuable time and money to assist you during your recovery.

Another limitation on damages is what is "reasonable and necessary." For instance, if your physician allows you to return to work after two weeks, but you still feel poorly and you stay home an additional two weeks, you may not be able to recover lost wages for the additional two weeks since your physician deemed you physically able to return to your job after only two weeks. Using the same transportation example from above, we can conclude that it may be reasonable to take an Uber or a short cab ride to a doctor's visit and have that expense covered. However, if you use a luxury rental service or choose to see a general physician several hours away when you have other equally capable doctors nearby, you may only receive compensation that is reasonable and not the full value of your travel expenses.

Listed below are many common expenses that can be claimed as damages in your personal injury case, but even these expenses will be subjected to the "reasonable and necessary" test:

- Medical bills
- Transportation mileage to and from your medical visits
- Medication costs
- Medical supplies (i.e. slings, crutches, braces, wound care supplies, etc.)
- Lost wages and/or lost business opportunities
- Personal property value (i.e. phone or prescription glasses damaged during event of injury)
- Household and family maintenance expenses (e.g., in-home nursing assistance; daycare or babysitting expenses, etc.)

When in doubt, consult with your attorney as to whether an expense can be claimed as damages in your personal injury case.

35. WILL I BE ABLE TO RECOVER PUNITIVE DAMAGES FOR MY INJURIES?

Probably not. Punitive damages are damages awarded to punish the defendant for some outrageous conduct. This is very different from the purpose of damages awarded in a personal injury case, which is to make the injured party whole – to “compensate” them for the pain and suffering experienced as a result of their injuries.

LITIGATION

If the insurance company refuses to settle your claim for a reasonable and fair amount, it may be necessary to file a lawsuit to obtain compensation for your injuries. The process of resolving your claim through the court system is called “litigation.”

36. HOW IS A PERSONAL INJURY CASE INITIATED?

A lawsuit is initiated by filing and serving a Summons and Complaint. The summons provides all named parties with notice of the lawsuit. You, as the injured party filing the lawsuit, are designated as the “Plaintiff.” The person or entity you claim is responsible for your injuries is designated as the “Defendant.” The summons tells the parties where and when the case will be heard. It also sets out the time limit by which the defendant must respond to the allegations.

The Complaint provides an outline of the plaintiff’s case against the defendant. It outlines who the plaintiff is suing, why suing them, and what is seeking in terms of damages. Once the summons and complaint are filed with the court, copies must be delivered to all parties to the lawsuit. This is known as “service of process.”

Once the defendant is served, typically responds by filing and serving a responsive document called an Answer. The answer addresses every allegation made by the plaintiff in the complaint. It may also set forth various defenses to the allegations. These defenses, often referred to as “affirmative defenses,” are the legal reasons why the defendant claims it should not be held liable for the plaintiff’s injuries.

37. DO I NEED A LAWYER NOW?

Probably. There is no rule of law or procedure that requires you to engage a personal injury attorney to handle the litigation. The court system is open to all, and you may file and litigate your lawsuit on your own. However, the litigation process is governed by a complex set of rules and is subject to strict deadlines. If you are unfamiliar with the governing laws and procedures, you are at a distinct disadvantage. Accordingly, the following frequently asked questions in this section discuss the litigation process in terms of tasks your personal injury attorney would perform on your behalf.

38. WHAT HAPPENS AFTER A LAWSUIT IS FILED?

After the lawsuit is filed, your case will proceed as follows:

Investigation

First, your attorney will continue to investigate and research your case. Depending upon the requirements of the case, your attorney may be assisted by professional investigators, research assistants, and expert consultants. This investigation and research often takes weeks or even months, and during this time your attorney may not need to contact you personally.

Discovery

Discovery is the information-gathering stage of the lawsuit. Broadly speaking, discovery in personal injury cases generally involves: (1) interrogatories, (2) requests for admission, (3) requests for document production, and (4) depositions.

Interrogatories are written questions intended to extract information from a party about the case. The party's answers to the interrogatories are provided in a written response given under oath.

Requests for admission are requests for a party to acknowledge or deny certain facts pertaining to the case. They carry with them penalties for not answering, for answering falsely, or even answering late. Requests for admission are generally only used to establish basic facts. Once a party responds, it eliminates the need for any further discovery on that issue.

Requests for production are demands for copies of documents and other items that the party making the request intends to rely on to support his claims. This may include things such as accident reports, bills, receipts, invoices, inventory reports, business records, or anything else relevant to the case. Requests for production are used extensively in personal injury and medical malpractice cases to obtain copies of the plaintiff's medical records.

Depositions are in-person question-and-answer sessions involving the attorney for one party and a witness for the other party. A court reporter usually is present to create a verbatim transcript of the testimony, and the witness is placed under oath before the questioning begins. Depending on the complexity of the case (as well as other factors such as the attorney's questioning style, the witness' temperament, language barriers, etc.), depositions may be very short in duration or may take several days to complete. Sometimes the attorneys may agree to conduct the depositions of all parties on the same day, while in other situations the sessions may be broken up into parts. Regardless of their particular format, depositions are usually the most important part of the discovery process because of how profoundly they can impact the relative strength of a party's case. For instance, if a personal injury plaintiff presents herself very well during a deposition and comes across as a strong, convincing witness with legitimate bodily injury claims, opposing counsel may be more inclined to settle rather than proceed to trial. On the other hand, if the plaintiff's testimony is riddled with inconsistencies, vagueness, and unclear responses, it may be a sign of a weak case.

When your attorneys receive a discovery request from the opposing party, they will need your help in responding promptly. When your deposition is requested, your attorney will contact you to arrange scheduling the deposition

and to arrange a meeting to help you prepare for your deposition. When the other side sends a discovery request that requires a written response, your attorneys will contact you immediately and give you specific instructions about what to do. Your role will include providing your attorneys with the information or documents necessary to truthfully respond to the request. Your attorneys will also ask you to call and schedule an appointment to go to their office before your response is filed.

Pretrial Motions

Third, as discovery winds down and the trial date approaches, your attorney and the defense attorney will file motions (formal written requests) with the court to try to limit the issues for trial. Two types of motions commonly filed in personal injury cases are motions to bifurcate and motions in limine.

Motion to Bifurcate

It is common for the defendant in a large injury case to file a motion to bifurcate liability from damages. Basically, this is a request to try the case in two phases – first, liability (to determine who is at fault), then damages (if the defendant is at fault, how much compensation is the plaintiff owed). The theory is that by eliminating the damages evidence during the liability phase, the jury will be less likely to impose liability out of sympathy for the suffering that the plaintiff has experienced.

Motions in Limine

Motions in limine (pronounced “LIM-i-knee”) are filed prior to trial. The purpose of a motion in limine is to keep evidence from the jury that may hurt your case and that properly can be excluded under some rule of evidence. Typical grounds for motions in limine in a personal injury case include requests to keep from the jurors:

- Evidence of any prior settlements with other defendants or settlement negotiations with this defendant.
- Evidence of your receipt of workers’ compensation benefits or other benefits.
- Evidence or mention of a pre-existing condition not related to injuries received in the accident.
- Irrelevant, inflammatory, untrustworthy or prejudicial statements attributed to you in medical records.
- Opinions or conclusions expressed by medical personnel in the medical records about how the accident occurred or how you were injured.
- Any mention of prior lawsuits, settlements or claims for injuries to any area of your body other than the areas injured in the accident.
- Evidence of prior bad acts of witnesses.

Trial

The final phase of the case is trial. In a trial, a jury or judge examines the evidence to decide whether the defendant should be held legally responsible for the injuries suffered by the plaintiff. The trial provides the plaintiff the opportunity to present his or her case in the hopes of obtaining a judgment against the defendant. The trial also gives the defendant a chance to refute the plaintiff’s case. A full personal injury trial consists of several phases, including jury selection, opening statements, direct and cross-examination of witnesses, closing arguments, jury instructions, jury deliberations, and the verdict. The majority of personal injury cases are settled long before trial.

39. WHAT QUESTIONS WILL BE ASKED DURING MY DEPOSITION?

A plaintiff's deposition typically focuses on four areas. These are (1) the plaintiff's background, (2) the circumstances of the incident for which the plaintiff is now suing, (3) the plaintiff's alleged injuries and medical treatment as a result of the accident, and (4) the claimed impact of such injuries on the plaintiff's daily life, habits, and routines. Below is a non-exhaustive list of common questions from each category that you can expect to face during your deposition:

Your Background

- Residential address history
- Employment history
- Criminal background (if any)
- Prior civil litigation (as a plaintiff or defendant)

Circumstances of the Incident

- Where the incident transpired
- When the incident took place (i.e. date and time, what day of the week, etc.)
- The physical appearance/layout of the scene (at the time of the accident and currently)
- Weather and lighting conditions
- The sequence of how the incident unfolded
- What you were doing in the moments immediately before and after the incident
- Whether you sought medical attention following the accident
- Whether you spoke with anyone regarding the incident, at the scene or otherwise
- Whether you are aware of any witnesses to the incident
- Whether police and/or medical personnel responded

Your Injuries and Treatment

- What injury or injuries you claim to have suffered as a result of the incident/accident in question
- Any pre-existing health conditions that you contend were aggravated as a result of the accident
- Information regarding all doctors and other medical providers who treated you specifically for the injuries you claimed to have sustained in the case in question
- The timeline of your symptoms (i.e. whether the symptoms were felt immediately or developed over a period of time, the duration of each symptom, whether the symptoms have improved/worsened/remained the same over time, whether you are experiencing any symptoms currently, etc.)
- The amount of time that elapsed between the happening of the incident and the time you first sought medical attention
- Any gaps in your medical care (and if so, the reasons for such gaps and how long they lasted)
- Total costs of medical care (and whether out-of-pocket vs. covered by insurance, etc.)

Impacts

- Whether you missed any time from work as a result of the incident and/or injuries (and if so, (1) the length of time and the total amount of any lost wages you may be claiming for that period, and (2) whether you anticipate missing additional time from work in the future))
- Whether you missed any time from school (if applicable)
- The manner in which your day-to-day activities have been affected
- Whether there are certain things you do less frequently now (or with less skill or intensity, etc.)
- Whether there are things you can no longer do at all
- Whether family and/or personal relationships have been affected

40. WHAT DEFENSES MIGHT I HAVE TO OVERCOME TO WIN MY CASE?

There are three common defenses raised in personal injury cases: contributory negligence; comparative negligence; and assumption of risk. Depending on where your case is filed and the facts of your case, one or more these defense may come into play.

Contributory negligence is a defense to a negligence cause of action allowed in some jurisdictions that bars a plaintiff from making any recovery if his own actions contributed to causing the injury.

Comparative negligence is similar, but this defense permits a jury to weigh the negligence of the plaintiff and the defendant by assigning percentages to each party's negligence. The damages award is then reduced by the corresponding percentage or, if the plaintiff's percentage of fault is greater than the defendant's, no damages are awarded.

Assumption of the risk is a defense allowed in some jurisdictions that bars or reduces a plaintiff's recovery when the defendant proves that the plaintiff was aware of an inherent risk in a particular course of conduct, but voluntarily continued with that course of conduct in spite of the risk.

41. DO I HAVE TO BE PRESENT FOR COURT APPEARANCES?

Usually not. The majority of the scheduled court appearances in your case will be discovery-related status conferences for which only the attorneys for the respective parties must be present. If you are represented by counsel, you are generally not required to come to court for such conferences. Keep in mind, however, that your presence may or will be necessary for other matters, such as depositions, medical examinations, pre-trial hearings, or trial.

42. AS MY CASE PROGRESSES, HOW OFTEN SHOULD I EXPECT TO HEAR FROM MY ATTORNEY?

Except for meeting with you to respond to the opposing party's discovery requests, several months may go by during which it is not necessary for your attorney to contact you in order to do what they must do to prepare your case.

The pretrial work that a lawyer does for you is often done in your absence - in the office, at the courthouse, or elsewhere. During much of this pre-trial work on your case, it will not be necessary for your attorney to be in direct or

frequent contact with you – your case will be progressing even though you have not spoken to your attorney recently. If your attorney needs additional information from you about your case, will contact you.

Being involved in a lawsuit requires patience and often involves waiting: waiting for a report from an investigator or expert consultant; waiting for the opposing side to answer discovery requests; waiting for a response to a settlement offer; and waiting for the court to call the case to trial. Although waiting can be frustrating, it is an unavoidable part of the litigation process. Sometimes, during these waiting periods there will be no new information to report to you. Please be patient, and accept this as a part of the process.

43. WHEN WILL MY CASE GO TO TRIAL?

A trial date will be scheduled based on specific factors related to your case and the jurisdiction where the case is filed. However, most trials do not actually begin on the first trial date scheduled. One reason for this is that judges usually set several cases for trial during a specified two-week period, and then call these cases to trial based upon the age of the case and other factors. If a trial before yours goes longer, your trial date may also be pushed back. Another reason that your case might not actually get called to trial on the first trial date is that the attorney for one of the parties may be in trial in another case at the same time. A party cannot be forced to go to trial if his or her attorney is unavailable because of a conflicting trial setting. If the case is postponed, all your attorney can do is be sure that remains prepared so that the delay will not disadvantage you. Your attorney will notify you in writing of all trial settings in your case, with as much advance notice as possible.

44. IS A SETTLEMENT STILL AN OPTION?

Yes. As your trial date approaches, settlement negotiations likely will intensify. Two main reasons for the renewed interest in settlement negotiations are: (1) your condition has stabilized, so the nature and severity of your injuries is clearer; and (2) depositions have been completed, so the defense has had its opportunity to size up you and your witnesses, including your experts.

45. CAN MY LAWYER SETTLE MY CASE WITHOUT MY CONSENT?

No. The decision whether to settle is yours and yours alone. Your lawyer is forbidden from accepting a settlement offer without your prior approval. Moreover, your lawyer has a professional and ethical obligation to notify you of all settlement offers that are made in the case. If you are not satisfied with the settlement offer, you have a right to let the jury decide your case. By the same token, the defendant also has a right to a trial, and your attorney cannot force the defendant to settle the case.

46. WHAT IS MEDIATION?

Mediation is a non-binding, informal proceeding in which a neutral third party (a “mediator”) attempts to negotiate a settlement. The mediator cannot force a settlement. Rather, the mediator’s role is to keep the parties talking and help the parties explore various settlement options. Any settlement must be agreed upon by all parties.

47. WHAT HAPPENS AFTER THE TRIAL?

If you win your case, the defendant can either pay the verdict or file a motion for a new trial. If you lose, you have the same choice: to accept the verdict or to challenge it. A motion for a new trial gives the trial judge the same chance that an appeal gives the Supreme Court: the right to grant the losing side a new trial if the first trial was not fair or if the trial judge made legal mistakes that make it right to grant the losing party a new trial.

Many people think that an appeal automatically entitles the losing party to a second trial. This is not true. An appeal may or may not be successful. Instead of granting a new trial, an appeals court may order only a small change in the judgment granted by the trial judge. Even if a new trial is ordered, there is no assurance that a second trial will have a different or better outcome.

48. HOW LONG WILL MY PERSONAL INJURY CASE TAKE?

Every situation is different. Many cases settle out of court without a lawsuit even being filed. Some settle during the litigation processor on the eve of trial. Generally speaking, however, cases typically take anywhere from six months to two years before they are resolved. The speed with which cases move through the court system is different in every part of the country. Some jurisdictions are known for relatively fast-moving dockets, while others are bogged down with overloaded judges and case calendars.

YOU AND YOUR PERSONAL INJURY LAWYER

49. WHY DO I NEED AN ATTORNEY?

Having an attorney on your side helps to level the playing field at every stage of a personal injury matter.

During the investigation phase, your lawyer will have access to resources that may allow them to uncover information and evidence that you could not uncover on your own (at least not without difficulty).

During settlement negotiations, an experienced personal injury attorney will be able to recognize and counter the negotiating ploys commonly used by insurance adjusters.

The insurance company has attorneys on staff advising it every step of the way. If you do not have an attorney advising you, then you are at a distinct disadvantage in the negotiations.

If you cannot resolve your claim with the insurance company, and you must file a lawsuit to obtain fair compensation for your injuries, having an attorney on your side – one who knows personal injury law and procedure and is experienced in handling these types of cases – is the surest way to ensure your best interests are protected.

50. WHAT IF I'VE ALREADY TAKEN STEPS INDEPENDENTLY?

You have the right to seek legal advice at any time. Furthermore, many personal injury attorneys will provide you with a free, no-obligation consultation. Regardless of what stage in the process you are in or what actions you have taken, it is in your best interest to consult with a qualified personal injury attorney as soon as possible. This is particularly true if you have been negotiating with the insurance company for some time, but are not close to reaching a settlement. You only have a limited amount of time under the law in which to file a lawsuit to recover compensation for your injuries. (This is called a “statute of limitations.”) Once this time period expires, you are barred from filing a lawsuit.

51. I DON'T WANT TO GO TO COURT; CAN A LAWYER STILL HELP ME?

Yes. Nobody ever really wants to go to court. We would all prefer that everyone just did the right thing and took responsibility for their own conduct, but that does not always happen. What is critical is that you have a lawyer who will make every effort to get your case resolved without having to go to court, but who is also willing to take your case to court if that needs to be done to get you justice. Insurance companies know which lawyers are willing to file a lawsuit for their clients and which ones are not, and they negotiate accordingly.

52. IS MY CASE BIG ENOUGH FOR A LAWYER TO HANDLE?

Whether your case is large enough to handle depends upon a number of factors that must be decided on a case-by-case basis. Personal injury lawyers typically work on a contingency fee basis. This means that you do not pay any legal fees until your case is resolved. Thus, a personal injury lawyer must weigh a number of factors in deciding whether to take a case, including:

- The anticipated cost of litigation;
- The complexity of the case;
- The uniqueness of the legal issues involved;
- The risk of loss;
- The anticipated amount and likelihood of your recovery;
- The extent of your damages; and
- How much time your case will consume, in light of the attorney's existing caseload.

Just because your bills are low does not mean that your case value is low. Nor does one attorney concluding that cannot handle the case mean that no attorney can handle the case. It is wise to talk to several lawyers before concluding that your case is simply not large enough for a lawyer to handle.

53. WILL I HAVE TO PAY A FEE IN ORDER FOR MY LAWYER TO HANDLE MY CASE?

Most personal injury lawyers do not charge an upfront retainer fee. The majority of personal injury cases are handled on a contingency fee basis. This means that the lawyer receives a fixed percentage (usually 33% or one-third) of any monetary damages awarded to the client. If the lawsuit is unsuccessful (i.e. no damages are awarded), the client does not owe the lawyer any legal fee.

In addition to legal fees, lawsuits generate costs and expenses associated with handling the case (e.g., court filing fees, expenses associated with scheduling and taking depositions, fees for obtaining medical records and/or physician reports, fees for experts and other witnesses, postage, etc.). Many personal injury lawyers will advance such costs on your behalf and only require reimbursement if they win your case.

54. WILL THE INFORMATION I SHARE WITH MY LAWYER REMAIN PRIVATE?

Yes. Lawyers are obligated to keep your information private, in accordance with rules governing confidentiality and privilege.

A duty of confidentiality arises on the part of a lawyer whenever you reveal intimate details about yourself or your circumstances in order to obtain legal advice. The duty prevents the lawyer from sharing your information with anyone else. It obligates the lawyer to keep private nearly everything related to your case – even information not obtained from you directly.

A separate, but related, concept is privilege. The attorney-client privilege preserves the secrecy of communications between lawyers and clients. As with the duty of confidentiality, the purpose behind the privilege is to encourage candor. Notably, the privilege stays in effect after the end of the attorney-client relationship. It even survives death.

55. WHAT SHOULD I BRING WHEN MEETING WITH MY LAWYER FOR THE FIRST TIME?

Although every case is unique, the following items will almost always be helpful to your attorney:

- Copies of documents that may be relevant to your case. This may include items such as bills, invoices, receipts, proofs of payment, medical records, tax documents, or email correspondence.
- Copies of your photo ID. Your attorney will likely require copies of the ID for his file. The ID should bear the current, full version of your legal name because it is the name that will be used on all legal documents prepared in connection with your case. Check to make sure that your ID is valid and not expired.
- A short written statement summarizing your accident. Include information such as dates and times, where the accident occurred, and contact information for any witnesses.
- A medical chronology laying out your treatment from various providers. A detailed medical chronology can be extremely helpful to your attorney, especially if your case involves extensive treatment from multiple medical providers over a long period of time.
- Documents supporting a claim for lost wages (if applicable). Consider reviewing your available records in advance of meeting with your attorney so as to get a rough estimate of the total time missed from work as a result of your injuries. Do not worry if this number is not exact.

Try to provide as many of the above items as possible during your initial meeting with your lawyer. If you have time, organize everything together into a folder or file. This will save your lawyer a great deal of time and help expedite the information-gathering process.