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FREQUENTLY ASKED QUESTIONS ABOUT PERSONAL INJURY CLAIMS

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QUESTION: SHOULD I CONTACT THE POLICE AFTER AN AUTO ACCIDENT?

ANSWER: Yes.

Generally speaking, if you've been involved in an automobile accident in which you were hurt as a result of negligence on the part of another driver, it's 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've been hurt in an accident. While 911 telephone dispatchers do not automatically notify law enforcement about reports of automobile accidents in every single situation, they will generally take such action where the 911 caller specifically mentions that one or more persons has been injured as a result of the accident.

Why is it so important to get the police involved? From a litigation perspective, the answer is quite clear. The responding officer will use the information gathered at the accident 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 all vehicles involved in the collision (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 a subjective account from the officer himself detailing 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 plaintiff's lawyers to prove a defendant was legally responsible for an accident and the resulting injuries to their client.

Even if it is not clear immediately following an accident whether you've suffered injuries that are serious enough to warrant a lawsuit, your best bet is to request that the police respond to the scene anyway so that the responding officer ends up generating a police report. If it turns out that your injuries are in fact actionable, that report will go a long way towards corroborating your claims during the discovery phase of your case. And even if it turns out that you are not seriously hurt, the report may still come in handy (for instance in the event that the insurance company tries to pin the blame on you). Simply put, the mere existence of an official police report concerning your auto accident affords you peace of mind because it reduces the likelihood of you being blamed for a car wreck that was someone else's fault.

QUESTION: SHOULD I GO TO THE DOCTOR AFTER A CAR ACCIDENT?

ANSWER: Yes.

If you believe you've been injured following an automobile accident, your best bet is to seek medical attention right away. Always err on the side of caution unless you're absolutely sure you're okay. This is a rule that has already been learned firsthand by anyone who's ever suffered delayed injuries after a collision. 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're not hurt when you actually are.

From a litigation perspective, your failure to seek medical attention immediately following your accident may end up having a negative impact on a future personal injury case. For one, the initial delay may raise questions of credibility concerning the seriousness of your injuries. How badly could you have been hurt if you didn't even need to go to the hospital or see a doctor right away? Secondly, 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, a jury might find that it was possible your injuries could have resulted from a different accident occurring somewhere 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 on your part because you could have acted sooner to begin the healing and recovery process for your injuries.

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

ANSWER: It Depends.

Once an accident has taken place, the interests of an injured plaintiff can be very different from the interests of the offending party's insurance company. Speak to a personal injury lawyer directly to get an accurate assessment regarding your case and your rights.

QUESTION: WHAT ARE THE DIFFERENT STAGES OF A PERSONAL INJURY CASE?

ANSWER: Personal injury cases involve four basic stages: pleadings, discovery, pre-trial motions, and trial.

Pleadings Stage

The first stage of the case is the pleadings stage.

The pleadings stage begins with the filing and service of the summons and complaint. The summons provides all named parties with notice of the lawsuit. It tells the parties where and when the case will be heard. It also sets out the time limit within which the defendant must respond to the allegations made by the plaintiff. The Complaint provides an outline of the plaintiff's case against the defendant. It outlines who the plaintiff is suing, why the plaintiff is suing them, and what the plaintiff is seeking in terms of damages. Once the summons and complaint are filed, copies must be delivered to all parties to the lawsuit. This is known as service of process.

Once the defendant is served, the defendant 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 legal reasons why the defendant should not be held liable for the plaintiff's injuries.

Discovery

The next stage of the case is discovery.

Discovery refers to the pre-trial process where the plaintiff and defendant exchange information they plan to use in support of their claims and defenses at trial. Broadly speaking, discovery in personal injury cases can take one of four forms: (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 plaintiff 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.

Finally, depositions are in-person question and answer sessions involving the attorney for one party and a witness for the other party. The transcript from the session is usually recorded by a court reporter who is present at the deposition table. 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 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 one's case. For instance, if a personal injury plaintiff presents oneself 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 deponent's testimony is riddled with inconsistencies, vagueness, and unclear responses, it may be a sign of a weak case.

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.

QUESTION: WHAT IS MEDIATION?

ANSWER: Mediation is a non-binding informal proceeding that employs a neutral third-party or "mediator" to assist parties in a legal dispute and their attorneys to attempt to negotiate a settlement. The mediator's role is to keep the parties communicating and exploring settlement options to avoid going to trial. Mediation may be a voluntary process or it may be court-ordered. The mediator has no authority to make any party settle the case. Any settlement must be agreed upon by all parties.

QUESTION: WHAT IS ARBITRATION?

ANSWER: Arbitration is an alternative dispute resolution proceeding in which the parties to a dispute resolve their differences by going before an "arbitrator" or panel of "arbitrators," present their case, and let the arbitrator decide the result for them. It is typically less formal and more cost-effective than a lawsuit. The parameters are typically agreed upon in advance or set forth by a contract that controls the parties' relationship such as an employment agreement or purchase contract. The arbitration process may or may not allow some form of limited discovery, including issuing subpoenas for records, depositions and/or live testimony. The arbitration "award" is typically binding, but may be subject to an appeal.

QUESTION: WILL THE INFORMATION I SHARE WITH YOU REMAIN PRIVATE?

ANSWER: 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 relating 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.

QUESTION: WHAT SHOULD I BRING WHEN MEETING WITH MY LAWYER?

ANSWER: 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, street and/or intersection names, 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, consider organizing everything together into a folder or file. This will save your lawyer a great deal of time and help expedite the information-gathering process.

QUESTION: HOW DO YOU DETERMINE THE VALUE OF MY CLAIM?

ANSWER: The value of your claim depends on several factors.

First, is the evidence clear regarding the issue of liability? Was it the defendant's fault entirely, or did the plaintiff contribute to the happening of the accident through his own conduct?

Secondly, how serious are the injuries? Was the plaintiff diagnosed with a condition that can be verified from an objective medical standpoint? Objective injury cases tend to be more valuable than cases where the plaintiff has only subjective complaints. With subjective injuries, such as soft tissue injuries, medical experts may disagree significantly as to the "severity" of the condition because the level of pain and suffering may vary considering from person to person.

A third factor is the nature and extent of medical treatment for the injuries in question. For instance, has the claimant been put on a regimen of prescription medication to address pain or inflammation from the injury (and if so, has the claimant experienced unpleasant side effects as a result of the medication)? Was the pain so severe that the claimant elected to undergo epidural steroid injections on one or more occasions? Did the claimant undergo back surgery or is such surgery scheduled for the future? Is the procedure in question a mere discectomy or laminectomy (as opposed to a vertebrae fusion, for example, which involves placing hardware inside the body permanently)? Has the claimant been forced to travel to physical therapy sessions on a weekly basis for the past two years following the accident?

Another factor is the plaintiff's potential strength as a witness at trial. Does the claimant have a history of filing personal injury lawsuits for similar claims? How did he/she perform as a witness during depositions? Would a jury perceive him/her as credible if the case went to trial?

Finally, another factor is the dollar amount of recent verdicts and/or settlements for similar injury cases in the jurisdiction. Before jumping into the negotiation process with an adversary, attorneys and insurance companies will often consult databases containing information on past settlements and verdicts.

QUESTION: WHAT IS THE DIFFERENCE BETWEEN PERSONAL INJURY PROTECTION AND MEDICAL PAYMENTS INSURANCE?

ANSWER: 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.

QUESTION: SHOULD I CARRY UNINSURED/UNDER-INSURED MOTORIST INSURANCE COVERAGE?

ANSWER: In a liability insurance state, it is very important to carry uninsured/underinsured motorist coverage. Drivers do not always follow the law by carrying insurance. Additionally, the minimum limits are often not enough to cover a serious accident. 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.

QUESTION: IS IT POSSIBLE TO SUE A COUNTY OR CITY?

ANSWER: Yes, in certain circumstances, assuming all requirements have been met.

For the most part, local governments can be named as defendants in civil actions just like private individuals. However, do not make the mistake of assuming that this means the procedure for bringing the lawsuit is the same. Virtually every jurisdiction has established additional procedural requirements that operate as prerequisites to filing suit against the government. An example is the requirement of notice. "Notice" refers to the act of disclosing in advance that you plan to assert a claim against a governmental entity. In other words, you don't even have permission to start a lawsuit against the government unless and until the government decides that you've provided sufficient advanced warning of your litigation plans.

In most jurisdictions, the notice requirements include the filing of something called a Notice of Claim. This is a document outlining the claim or claims you wish to bring against the government. It includes detailed information as to the facts of the incident and what parties were involved. In most jurisdictions, the Notice of Claim must be separately addressed to each and every person or entity alleged to have caused your injuries. Copies of the Notice usually must be sent via certified mail to each and every governmental entity and/or employee that was involved. The Notice of Claim is not filed with the court, but must be mailed (often by certified mail) to each government employee or entity. Some states even require that the Notice also be mailed to some governmental department that has been designated as the recipient of claims.

QUESTION: CAN MY LAWYER SETTLE MY CASE WITHOUT MY CONSENT?

ANSWER: No.

As a client, 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.

QUESTION: WHAT IS A DEPOSITION?

ANSWER: A deposition is a way of obtaining sworn testimony from a party or witness in a legal proceeding. Attorneys for each party, the witness and the court reporter will all be present. Parties to the case also have the right to sit in during the deposition of any other witness and listen. At the outset, the court reporter will "swear in" the witness. Then, the attorney who "noticed" the deposition will start by asking questions of the witness. When the attorney is done, the attorneys for the other parties will each have a turn. The court reporter will record everything said and type it all up into a question and answer booklet format called a "deposition transcript." The deposition transcript can then be shown or read to the court during various stages of the legal proceeding as well as read to the jury during the trial.

QUESTION: WHAT QUESTIONS WILL I BE ASKED DURING MY DEPOSITION?

ANSWER: 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.

QUESTION: HOW LONG WILL MY PERSONAL INJURY CASE TAKE?

ANSWER: Every situation is different. 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.

QUESTION: DO I HAVE TO BE PRESENT FOR COURT APPEARANCES?

ANSWER: Usually not.

Personal injury cases typically don't require the clients presence in court. 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 personally for such conferences. Keep in mind, however, that your presence may be necessary for other matters, such as depositions, medical examinations, pre-trial hearings, or trial.

QUESTION: WHAT IS A LETTER OF PROTECTION?

ANSWER: A “Letter of Protection” is a tool by which a personal injury attorney enables they’re 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 “protect” or pay the medical provider’s bills out of any money recovered in the case by way of settlement or judgment. Once money is recovered, the attorney then pays the medical provider directly. The attorney may attempt to negotiate a discount before making payment. In the event no recovery is made, the client remains fully responsible for the outstanding medical bill.

QUESTION: WHAT IS CONTRIBUTORY NEGLIGENCE?

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

QUESTION: WHAT IS COMPARATIVE NEGLIGENCE?

ANSWER: Comparative negligence is a defense to a negligence cause of action allowed in some jurisdictions that permits a jury to weigh the negligence of the plaintiff and the defendant by assigning percentages to each party’s negligence. The damage award is then reduced by the corresponding percentage or, in some cases where the plaintiff’s percentage is higher than the defendant, eliminated.

QUESTION: WHAT IS ASSUMPTION OF THE RISK?

ANSWER: Assumption of the risk is a defense to a negligence cause of action 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.

QUESTION: WHAT ARE THE ELEMENTS OF A NEGLIGENCE CASE?

ANSWER: In order to prove a negligence case, the necessary elements are: 1) there was a duty to act on the part of one towards another; 2) the defendant breached the duty; 3) there was an injury or “damages” that resulted, and; 4) the breach of the duty proximately caused the damages. Proximate cause means that an event was a “cause in fact” of the damages and that the damages were a foreseeable result of the event in question.

QUESTION: WILL I HAVE TO PAY A FEE IN ORDER FOR MY LAWYER TO HANDLE MY CASE?

ANSWER: 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.

As to the various costs and expenses associated with handling the case (i.e. 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.

QUESTION: WILL I BE ABLE TO RECOVER PUNITIVE DAMAGES FOR MY INJURIES?

ANSWER: Probably not.

It is unusual for punitive damages to be awarded on top of compensatory damages in a personal injury case. The purpose behind punitive damages is 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 plaintiff whole or "compensate" the client for pain and suffering that was experienced as a result of the injuries.

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

ANSWER: In most states, a plaintiff 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 bringing such an action in your jurisdiction, 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 additional family members to assert the claim, such as the deceased's parents or grandparents.

QUESTION: WHAT IS A WORKER'S COMPENSATION THIRD-PARTY CLAIM?

ANSWER: When an employee is injured on the job and receives worker's compensation benefits, the employee is barred from bringing a claim against their employer. If the injuries were caused by the negligence of someone other than the employer, the employee has the right to pursue a claim for damages against that "third- party." This is known as a worker's compensation third-party claim.

QUESTION: WHAT IS THE ATTRACTIVE NUISANCE DOCTRINE?

ANSWER: The Attractive Nuisance Doctrine is a legal theory that holds that when an activity or condition that exists upon a person's property has the tendency to entice children onto the property, the trespasser defense ceases to protect the landowner from liability for injury to those children if the landowner was aware the condition was likely to attract children. Examples of attractive nuisances are pools, lakes and sand pits.