**A GUIDE TO PERSONAL INJURY CLAIMS**

 PREFACE

This outline is intended to serve as an overview of some of the most important legal principles that apply to injury claims.

Worker's compensation (on the job injuries) claims are not addressed in this outline.

This is not intended to be an exhaustive statement of the law nor is it intended to be a substitute for direct legal advice based on a full disclosure of the facts that relate to your case.

1. Medical Care

If you have been injured, your most immediate concern should be to obtain competent medical care. If after an accident you went to a hospital emergency room and were treated and released, you probably were given the name of a physician from whom you could obtain follow up care.

The type of physician who most often treats muscular and skeletal injuries is an orthopedist. If your injuries are muscular or skeletal and you are not being treated by an orthopedist, you should confirm that the treating physician has the necessary skills and experience to properly treat you.

In obtaining medical care, there are some basic rules you should follow:

a. Do not change physicians unless it is absolutely necessary and until you have consulted with us. A change in physicians could well be misinterpreted by the jury that may ultimately be called upon to decide your case or by the insurance company against whom the claim is being made.

b. Be certain that you tell your physician about every problem that you now have, that you believe is due to the accident. If you fail to mention something now and then claim six months later that this problem is due to the accident that may present significant difficulties.

c. If after the accident you are having on-going problems, be certain you see your physician regularly so that his records are clear in recording your continuous problems. Sometimes people who are injured feel that a physician cannot do much to help them. If that is your approach, that is fine, but you should keep in mind that approach may have a negative effect on the value of your claim.

2. Legal Representation

Most attorneys handle injury claims on a contingent fee of thirty three and one third percent (33 1/3%) of the recovery. If there is no recovery, there is no legal fee due. There may, however, be certain expenses associated with pursuing the claim:

- cost of obtaining medical records,

- court costs for filing suit,

- witness fees,

- cost of depositions, etc.

These type of expenses normally are the responsibility of the client.

Once you retain us to act as your counsel, it is critical that you:

a. tell us everything you know about your accident;

b. tell us everything about your medical condition whether you think it is relevant or not; and

c. show us every piece of paper that you have that relates to this accident.

In order for us to competently represent you, we must know everything that may have any bearing on your claim.

3. Dealing With The Insurance Companies

In a typical injury claim there may be as many as two or three different insurance companies involved. There may be an insurance company that represents the party who injured you; there may be an insurance company that insures you and provides personal injury protection coverage; and there may also be another insurance company that insures you pursuant to your health insurance policy.

There are a couple of general rules to be followed in dealing with these companies:

a. Do not discuss the claim with any insurance adjusters or investigators without our approval.

b. Do not send any documents to any insurance company without our approval.

c. Do not sign any releases without our approval.

Most insurance adjusters and investigators are honest and trustworthy, but you should keep in mind that whether they work for your insurance company or the insurance company of the party that injured you, their interests are frequently going to be different from yours.

4. Keep A Diary Or Calendar

Although most injury claims are settled quickly, some of them may take years to settle. Because of this, it is important that you keep a record of how your medical condition changes and keep a record of the time you lose from work.

You should promptly purchase a notebook, diary or calendar and record the following information:

a. any worsening of your medical condition -- stating the date and nature of the change; and

b. any time you lose from work -- including the dates and hours lost.

5. Negligence

Most injury claims are based on the concept of negligence, i.e., that someone other than yourself was negligent and that negligence caused your injury. Negligence is the failure to exercise reasonable care. Exactly what reasonable care is normally depends on the circumstances involved and generally is a determination to be made at trial by a judge or jury.

As the injured party, the burden is on you to prove two things:

a. that the other party was negligent; and

b. that negligence was a direct cause of your injury.

If you were injured on another person's property (in a shopping center), it will also be necessary for you to prove that the owner or manager of the property had knowledge of the defect in the premises that caused your injury.

The other party may assert certain defenses, such as:

a. there was no negligence on their part;

b. even if there was negligence on their part, that negligence did not cause your injury because your medical problems existed before this accident;

c. you were negligent and this negligence contributed to the accident;

d. you knowingly and voluntarily assumed the risk of this injury;

e. the other party was confronted with a sudden emergency, and under the circumstances he reacted reasonably; and

f. the accident was unavoidable and no one was negligent.

The point to be kept in mind is that simply because you have been injured does not automatically mean that you are entitled to recover money. The fact that we have agreed to take your case on a contingent fee basis is an indication that we think you have a case with some merit. There is no way, however, that we can foresee at the outset all of the defenses that the other party may raise and, as such, our overall evaluation of the case may change as the case progresses.

6. Settlement

Most injury claims are settled prior to a lawsuit being filed.

Your case will not be in a posture where serious settlement discussions can be undertaken until either you have completely recovered or you have reached a point where you are not likely to improve any further. At that point, we normally will submit all of the medical bills, medical reports, and claimed lost wages to the insurance company for the other party, along with a demand for settlement in a specific amount. That demand for settlement usually will be higher than we expect the insurance company to voluntarily pay, but it is made with the understanding that there may be several counter offers made back and forth and that eventually a compromise will be reached.

If a settlement is reached, you will have to sign a release that bars any further claims against the insurance company or their insured relating to this accident.

If your physical condition changes after the settlement is reached, you cannot seek additional compensation from that insurance company or their insured. It is important that you understand that the release you sign is final and it bars forever all claims that you have against this other party.

Sometimes a settlement will be reached with one party that preserves your right to pursue a claim against another party, who also may be responsible. Any such partial settlements need to be carefully reviewed by us.

7. Subrogation

Subrogation is a principle that allows an insurance company to recover money they have paid, to or on behalf of their insured, out of the proceeds of their insured's claim against the party responsible for the injury. For instance, if an automobile accident is the fault of another motorist, you may have a claim against your insurance company for the medical expenses you incurred as a result of that accident. If you then pursue a claim against the other motorist and recover money, your insurance company may be entitled to recover from those proceeds the money they paid for your medical expenses. Whether this right of subrogation applies depends on the state in which your policy of insurance was issued. Some states prohibit or limit subrogation.

At the very least, you should be aware of the fact that out of your settlement proceeds some money may have to be paid back to your insurance company.

8. Filing Suit

If your claim cannot be settled, it may be necessary to file a lawsuit to protect your rights. The mere fact that suit is filed does not mean the case will not be settled. The vast majority of lawsuits that are filed are settled prior to trial. The filing of a lawsuit may be necessary to prevent the statute of limitations from expiring. In other instances we may file suit if we feel this would put more pressure on the insurance company to increase their offer of settlement. Within the suit papers we will usually state a dollar amount that we are seeking. This amount is generally on the high side since in some courts a jury cannot award more than what was requested in the suit papers. The reasonable settlement value of your case normally is going to be much less than the amount stated in the suit papers.

The lawsuit that is filed may be filed either in a local court or a Federal court. In most injury cases, in order to file in Federal court the parties must be citizens of different states and the claim must have a value of over $50,000. If these requirements are not met, the case will be filed in state court.

How quickly a case proceeds depends on what court the case is filed in. In some courts there may be a two year delay or more in getting a case to trial.

Once the suit is filed there may be interrogatories (written questions) that you will be called upon to answer with our assistance and you may also have to attend a deposition. A deposition is an oral question and answer period wherein any of the opposing attorneys involved may ask you questions about the accident and your injuries. We will be present with you for this. We, likewise, will have the opportunity to take the deposition of the other parties.

You may also be required to appear for a medical exam by a physician chosen by the opposing attorney. In regard to any such examination there are several things to keep in mind:

a. The examining physician has been hired by the insurance company to express an opinion as to whether you are suffering from the problems of which you complain. He is essentially an expert witness, whose job it is to find any weaknesses in your claim for damages.

b. You should answer the examining physician's questions completely and honestly. Keep in mind that anything you say to this physician he may repeat in the courtroom.

c. Make a mental note of when the exam begins and when it ends, and of all the things the physician has you do during the exam. When you leave the doctor's office jot down on a piece of paper these times and things he had you do. You may have to testify to these things at trial.

Once the suit is filed a trial date will eventually be set by the court. Prior to trial there may be various settlement conferences which you may be required to attend.

9. Trial

If the case cannot be settled, the parties will have to appear at the courthouse for trial. The trial, to some extent, is like an athletic contest, with the lawyers arguing the facts and law and cross examining witnesses; the judge acting as a referee and deciding the legal issues; and the jury (if a jury has been requested) acting as the ultimate decision maker as to who is telling the truth and whether you should be awarded any money.

The general procedure that is followed at trial is as follows:

a. If either party has requested a jury trial, potential jurors will be brought into the courtroom. The judge will question the jurors as to whether there is any reason why they could not be part of the jury for this case. The judge may then allow the attorneys to question the jurors in order to give the attorneys some sense of which of these people should or should not sit on the jury. Some jurors may be excused at this point by the judge. The attorneys then will have the right to 'strike' certain jurors from the list for any reason. The jurors that remain will be sworn in to act as the jury in this case. This procedure may differ somewhat from court to court and from judge to judge. The jury panel that is finally sworn in will normally consist of anywhere from six to twelve jurors, depending on what court you are in.

b. Once the jury is sworn in, we will make an opening statement to the jury outlining the facts of the case. The other attorney will then have an opportunity to make an opening statement.

c. Once the opening statements have been completed, we will start presenting evidence to prove our case. This evidence will consist of testimony from witnesses (including yourself) and relevant documents. The other attorney has the right to cross examine any persons who testify.

d. When we have presented all of the evidence we intend to present, the opposing attorney will normally make a motion to dismiss our case. Usually, a motion at this stage is denied but if the judge feels that the case does not present any factual issues for a jury to decide, he may dismiss the case at this point.

e. If this motion to dismiss is denied, the opposing attorney will have the opportunity to present his evidence to refute our evidence. We will have the right to cross examine any witnesses he presents.

f. At the conclusion of the evidence we may present additional evidence to rebut evidence presented by the opposing attorney.

g. The opposing attorney may then renew the motion to dismiss he had previously made. Assuming this motion is denied, the judge will instruct the jury as to what legal principles apply.

h. The attorneys will then make their closing argument to the jury as to why the case should be decided in favor of their client.

i. The jury will then be sent to the jury room to deliberate and reach a unanimous verdict. The verdict will either be in our favor for a certain sum of money or in favor of the defendant, in which event you receive no money.

Whatever decision is reached by a jury is subject to being reviewed by the judge. For instance, if the verdict is too high, based on the evidence, the judge can reduce it or set it aside and order a new trial or he can overturn the verdict and enter final judgment for the other party. Judges do not very often do this, but they do have the authority to do so.

j. If either party is unhappy with the outcome of the trial, an appeal may be filed to a higher court. An appellate court only has the authority to correct legal errors committed by the trial court, it cannot retry the case. If the appellate court finds a substantial legal error, it may send the case back to the trial court for a new trial.

 **Conclusion**

Although the vast majority of injury claims are settled before a suit is ever filed, they can on occasion become rather complicated.

It is critical that while your claim is being handled you keep in contact with our office, keep us informed as to your medical condition and, likewise, keep your physician informed as to your condition.

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