

WHAT HAPPENS IN A PERSONAL INJURY CASE?

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From Negotiating With the Insurance Company to Trial

You have been injured in an accident. What happens now? The first step is for you to receive the medical care necessary to get yourself better. Until you are recovered from your injuries or have reached maximum medical improvement your attorney will not be in a position to evaluate your case and make a decision as to whether to begin settlement negotiations with the insurance company or file a lawsuit (also know as Complaint).

Once a case is settled it can never be reopened. All injuries and problems are compensated in a personal injury case at one time by the at-fault party's insurance company. If you discover a problem after you have reached a settlement there is nothing you can do. Once a case is settled it is over. We must make sure we know everything that is wrong with you and the problems the accident caused before these decisions are made.

Once you have recovered or reached maximum medical improvement all your medical records should be obtained and evaluated. At this time a decision will be made as to whether to begin settlement negotiations or to file a lawsuit.

Almost all insurance companies now use a computer program to determine the value of your personal injury claim (including your pain and suffering). The purpose of these programs is to legitimize the lower offers that the insurance company wants to make. There are over 10,000 items that can be entered into these programs in a single personal injury case. It is important that your attorney understands how these programs work. By pulling out information from your medical records that will be considered by the programs and providing these items to the insurance company your attorney can make sure that all items are considered and consequently you receive a better offer.

Once an offer is made a decision is made as to whether to accept the offer. This is your decision which will be made by consulting with your attorney. If a settlement is accepted the case is over. If a settlement is not reached a lawsuit is filed so that the Court can decide how much you should receive.

Trying to negotiate a reasonable settlement with the insurance company can be a waste of time, frustrating and futile if your attorney is not familiar with the claims settlement process. More and more insurance companies are taking a very aggressive stance in settling accident claims. This is happening with greater frequency. Certain insurance carriers have a reputation for making unreasonably low settlement offers, even if the injuries are severe. Many insurance companies are using computer programs to validate these offers. This takes the settlement power away from the claims adjuster and systematizes it. In most cases a fair settlement can still be negotiated. If this cannot be accomplished your option is to litigate your case by filing a lawsuit.

To start a lawsuit, papers must be filed in Circuit Court and a filing fee paid. The legal names for these are a "Summons" and "Complaint" When a person files a lawsuit he or she is called the "Plaintiff". The person or corporation that is being sued is called the "Defendant". The Plaintiff must personally serve (deliver) a copy of the Summons and Complaint on the Defendant. This can be done by certified mail, by sheriff or by a special bailiff.

Once a lawsuit is filed, the Court sets deadlines, including a trial date. These deadlines, and in particular a trial date, can help move your case toward a settlement.

You only have a certain amount of time to settle your case or file a lawsuit. In Kentucky this time is two (2) years from the date of the accident or two (2) years from the date of the last medical no-fault payment is made not to exceed four (4) years. This deadline is called the "statute of limitations". Do not wait to try to settle your claim right before the statute of limitations

period runs or ends. This is dangerous. Do not wait to hire an attorney right before the statute of limitations is about to expire. Many attorneys, including myself, refuse to accept a case where there may be insufficient time to investigate the case, file suit and locate and personally serve the Defendant. It takes time to make sure that there is a case, who the defendant is and who there agent is for service of process. Many corporations have different subsidiaries and different names they assume making it difficult to locate and serve the correct defendant.

After the lawsuit is filed and the Defendant is served, both sides participate in a process of asking for and exchanging information about the case. This process is called “discovery”. Each side is allowed to investigate and find out what evidence and witnesses may be used at trial by the other side. The discovery process usually includes sending or answering written questions (called Interrogatories) and Requests for Documents. The Defendant’s attorney will also be allowed to access your medical records and work history. This may include your financial records.

The discovery process also includes depositions. A deposition is a face-to-face meeting where the attorneys are allowed to ask a witness questions under oath while a court reporter transcribes every word. Sometimes depositions are taken by video. Any witness that may offer testimony at trial can be deposed, including you, your doctors, your friends, your family and the Defendant. If your deposition is requested, it is very important that you prepare for it with your attorney. Your conduct at the deposition will influence the value assigned to your case and affect whether the case will settle before trial.

When a lawsuit involves a claim for personal injuries, the Defendant is usually permitted to have a doctor of their choice examine you. This is called an Independent Medical Examination (IME). The independent does not mean that the opinion is unbiased. The doctor is hired by the insurance company. It only means that the examination is independent of the doctor patient relationship.

Depending on the complexity of the case, the discovery phase can take many months or sometimes years. When discovery is completed, and each side knows what evidence will be offered at trial, the parties may conduct additional settlement discussions. The Court will usually order mediation. In mediation, the parties hire a retired Judge or an experienced attorney who will assist the parties in reaching a settlement. Mediation can be voluntary or Court ordered and is nonbinding (unless a settlement is reached). A mediation session is also confidential. Anything that is said during the session cannot be used at trial. Many times mediation can be used to successfully resolve a case.

If you fail to settle the case after the discovery process has ended, the case will then proceed to trial. Each side has the option of trying the case before a Judge or Jury. A jury trial occurs in 99% of all personal injury cases that are tried.

A jury trial will take several days. All the evidence is presented to a jury of 12 people who will make the decisions as to what your case is worth. The process is complicated and will not resemble a T.V. trial. The phases of a trial include Voir Dire (jury selection), opening statements, the Plaintiff's case, the Defendant's case, rebuttal, closing arguments, jury instructions and deliberations. Even if you are successful at this point and receive a plaintiff's verdict the case may not be over. The defendant can make a motion for a new trial and then appeal your case to the Kentucky Court of Appeals. This process can take years. Sometimes there is a legitimate issue. Other times the defendant hopes that the case will settle for less than the verdict amount.