

WHAT HAPPENS IN A PERSONAL INJURY LAWSUIT?

(A GUIDE FOR THE CLIENT)

This general outline will help you to understand how your lawsuit will proceed. We will keep your case moving as quickly as possible, but we have to deal with the schedule of doctors, witnesses, lawyers and judges. Please keep in mind that delays are common and unavoidable. It is almost impossible to finish a case in less than two years.

I. INITIAL INTERVIEW.

The first time we meet with you we gather basic facts, explain the process of the lawsuit, and answer any questions you may have. We will provide you with our instruction sheets and questionnaire, and have you sign the necessary papers.

II. INVESTIGATION.

We then interview witnesses, secure and review employment, medical and other records, and locate expert witnesses if required. Essentially, we are gathering evidence to support your case. This may take a good deal of time, depending on the complexity of the case.

III. RESEARCH.

In order to properly represent you, we study the applicable law, examine similar cases, and read medical articles if appropriate. We spend as much time as necessary seeking answers to all the potential defenses, interviewing defense witnesses and preparing the necessary briefs to explain the relevant cases and statutes to the court.

IV. SETTLEMENT NEGOTIATIONS.

In some cases, it is appropriate to open negotiations at this point in the case process. However, in most instances we wait until after filing the lawsuit. As a matter of strategy, we sometimes let the defendant open negotiations. Each case is very different and depends on many factors, such as strength of proof, theory of liability, defendants, insurance companies, and lawyers on the other side, etc.

V. ADMINISTRATIVE PROCEDURES.

In some types of matters, a complaint must be filed with an agency of the state or federal government. There are very short and important deadline for these filing. Once we file, we have to wait for agency action before we can even start your lawsuit in district court. We must meet the jurisdictional requirements, so it is especially important for you to keep us aware of your whereabouts during the time your complaint is pending in the agency.

VI. FILE PETITION OR COMPLAINT.

This is a document that we draft and file with the court that outlines your claim and notifies the defendants officially that you are seeking damages because of their conduct. It *does not* include a specific amount. The defendants then are required to answer your claim by admitting or denying each statement that we make. That answer is usually filed within 20 days.

VII. INTERROGATORIES.

Written questions asked by each side to the other are then filed. They must be answered under oath. They include background information, education, expenses connected to the incident, etc. Each side has either 30 or 60 days to answer. However, many times, it takes longer than that to prepare and provide answers.

VIII. REQUEST FOR PRODUCTION OR DOCUMENTS.

Another tool for learning about the other side's case is to ask that they disclose relevant documents. We can make those requests at any time and often as we proceed, we will learn of many different documents or pieces of physical evidence that we will wish to examine. The other side may, of course, file requests for production of our evidence. The time for answering these pleadings is also 30 or 60 days. Again, delay is very common and often unavoidable.

IX. DEPOSITIONS.

After interrogatories are answered, we will want to ask the defendants questions in person, and they will want to ask questions of you. A discovery deposition is the means by which each side learns the facts and contentions of the other side. If there are experts, opposing counsel will also want to question them. Fact and damage witnesses are also deposed. This is sometimes the lengthiest part of the pretrial procedure, because of the difficulty of scheduling enough time for several busy people to get together for these depositions.

X. PRETRIAL CONFERENCE.

A pretrial conference is a meeting of the attorneys for all parties before the judge who will be presiding at the trial or some other judicial officer. These conferences, which occur two to four weeks before the trial, are routinely held in all lawsuits filed in federal district courts and are optional in state court proceedings. The upcoming trial is discussed and the parties advise the court as to the trial's expected length. In addition, the parties generally will be asked to submit trial briefs, requested jury instruction, exhibits, pretrial motions and a list of witnesses at this conference.

XI. TRIAL.

Before we get to this point, we will have endeavored to settle your case for an appropriate amount. However, we are always preparing for the possibility that such a settlement will be impossible. We will be continuously working on and thinking about what kind of jurors we will want to hear your case, what we will say to them at the beginning of the case, what witnesses and other evidence we will need to prove your case, what we will ask the judge to tell the jury about the law, and what we will say to the jury in our closing arguments. You will have several opportunities to discuss this process before it begins.

The most important thing to remember throughout your entire case, from the initial interview to trial, is to tell the truth. You have hired us to speak for you, to explain how your injuries occurred and what amount justice requires that you be given. *Unless you level with us at every stage, we cannot do ours jobs properly.* We will be as accessible as possible, provide you with our best judgment about the strengths and weaknesses of your case, and advise you about the applicable law. In return, we expect your complete cooperation, and your complete honesty. Together we can work toward a fair and equitable result.

This general outline will help you to understand how your case will proceed. We will keep your case moving as quickly as possible, but we have to deal with the schedules of doctors, witnesses, lawyers and judges. Please keep in mind that delays are common and often unavoidable. It is almost impossible to finish a case involving personal injury in less than two years, but we try to make every effort to see that your case is resolved to your satisfaction before this time period.

FREQUENTLY ASKED QUESTIONS (FAQ'S) ABOUT YOUR PERSONAL INJURY CASE

NOTE: If you need legal consultation, due to our busy schedule, please make an appointment to personally meet Mr. Gagne or one of his associate attorneys; otherwise a legal assistant will be happy to help you over the telephone with routine matters.

(Please take a few minutes to read.)

1. Why retain a lawyer?

This is an important question, one that many lawyers fail to discuss with their potential clients I think because it is so clear *to them* it is the smart move that they assume everyone knows the following facts.

An attorney knows *the law* and how to *discover* and *develop* the facts as well *as which facts matter* and which do not.

Your lawyer is there with the knowledge and experience to develop and gather the relevant and important evidence to **make** your case. He is also experienced at dismantling your opponent's case.

An attorney is experienced at obtaining a **full** settlement from an insurance company or defendant, and knows how much your claim is worth.

There exist many traps that adjusters and opposing counsel sets fro the unwary client. Competent legal counsel helps you avoid these traps.

Retaining a lawyer shows that you are serious about your claim and adds to your credibility in the eyes of the insurance adjuster or opposing attorney.

Lawyers are trained negotiators.

A lawyer can refer you to the proper doctors.

A lawyer can be *objective* about your claim.

Remember the old adage: "*A person who represents himself has a fool for a client*"- - *Oliver Wendall Holmes, Supreme Court Justice.*

These are but a few of the reasons why experienced injury attorneys handle the vast majority of claims.

2. What are the lawyer's responsibilities?

You hired me and my office to handle your personal injury claim. My job is to gather the facts and research the law that will persuade the insurance company to fairly and fully compensate you for your injuries. South Carolina statues provide that in order for you to file a lawsuit, the lawsuit must be filed and served within three years of the date of the incident.

3. Will you handle my property damage?

Usually the client handles her own property claim, as the insurance company will often make you a fair offer on your damage as this is not often in dispute. However, as your attorney, I will help you settle your property claim if a disagreement does arise between you and the insurance company. I caution you to talk to the insurance

representative about your property damage only. DO NOT DISCUSS YOUR INJURIES, as doing so may have an adverse effect on your case. If the insurance representative insists on discussing your injuries, please refer him to me.

4. *With whom may I discuss the case?*

Discuss your case only with me, your lawyer, or a member of my firm. I will not discuss your case with anyone except representatives of the opposing party, except with your consent.

5. *What are my responsibilities?*

Since you have been injured, it is **crucial** that you make and keep your doctor or chiropractor appointments. This ensures that you will eventually heal, and gives me a basis for making your claim at the end of your treatments. Failure to keep your medical appointments will result in my withdrawal from your case.

Additionally, you are ultimately responsible for paying your medical bills. It is my job, however, to see that the insurance company compensates you enough so that will not be a problem. Sometimes a medical care provider will send me a *lien*, which is nothing but notice that the provider wants to be compensated when the case settles.

When I receive a lien, I may, by law, have to pay the provider out of the insurance proceeds. Not all providers send a lien. When a provider fails to send a lien, I will, of course, forward the money to you at the settlement of the case. It then becomes your responsibility to pay the provider. Understand also that if you are receiving Medicare or Medicaid it may take several months to disburse your settlement because by law these liens must be satisfied before any money is disbursed to any party.

Finally, please call this office when you have finished going to the doctor. Do not depend on your medical provider to inform us.

6. *Suppose I don't have a doctor, can you refer me to one?*

Yes. I know medical professionals willing to take your case on a contingency basis; however, it is preferable that you see your own doctor if you have one and trust him. I will refer you to specialists. Our goal is to see that you receive the very best medical care available. If you do not like the doctor I refer you to let me know as soon as possible and I will send you to another.

7. *What happens after my doctor has finished treating me?*

After your doctor has finished treating you and you have reached maximum medical improvement, I will make a claim to the appropriate insurance company. I know that you are anxious to see your claim settled, but I cannot make a claim until you have finished treating with your doctor. After you have finished treatments, call my staff, and I will order your medical reports and medical bills.

8. *What do you do with the reports and bills?*

After I receive the medical reports and bills, I will write what is called a "demand letter" outlining your medical costs, lost wages, out of pocket expenses as well as other damages resulting from your injury, and I will submit it to the insurance adjuster handling your case.

FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT YOUR WORKERS' COMPENSATION CASE

NOTE: If you need legal consultation, due to our busy schedule please make an appointment to personally meet Mr. Gagne or one of his associate attorneys, otherwise a legal assistant will be happy to help you over the telephone with routine matters.

(Please take a few minutes to read)

1. What is worker's compensation and what are my rights when I get hurt at work?

Worker's Compensation is a law enacted decades ago that basically states that if you are injured at work in an accident, the employer and his insurance carrier are responsible for paying your damages. You have a right to receive payment for your medical bills, partial or permanent disability and temporary compensation while you are unable to work as well as permanent disability compensation once you have been released by your doctor. As your attorney, we are now a team: you must communicate with me regarding the status of all your benefits and medical progress. Please call us on these issues so we can timely manage your case.

2. What must I do to collect temporary compensation?

Go to either the company doctor or your assigned doctor and tell him if you are unable to fulfill your work duties. He will probably write you an excuse. Make sure you keep these excuses as they are necessary to collect any unpaid temporary compensation. Also, it is imperative that you keep your doctor's appointments.

3. What must I do when I am first injured?

After you are injured, you must tell your immediate supervisor that you have been hurt. He in turn must notify the worker's compensation coordinator for your employer. The employer should schedule you to see a company doctor for a variety of reasons: diagnosis, referral, excuse from work, etc.; however, many employers are reluctant to do this. That's where a lawyer comes in. As your attorney, I will demand that you see an authorized physician. In most cases, the employer will comply once it knows that you have retained an attorney.

4. Do I have to see the company doctor?

Yes. The law requires you to see the "authorized physician". It is my experience, however, that these physicians are biased toward the employer and often do not provide the optimum of care. You do, however, have the right to get a second opinion. As your attorney, I will refer you to a physician willing to take your case and provide that opinion.

5. If I am unable to work, how will I get paid?

The law states that you are entitled to temporary compensation while you are out of work equal to two-thirds of your average weekly wage. This will continue until you are able to return to work. If you are not receiving temporary compensation, you must tell me immediately. You will only get temporary compensation if a doctor, usually only the company doctor who is "authorized", gives you a work release. Be sure to keep a copy of these work releases after you have given them to your employer and give them to me. I will forward them to the company's adjuster to prove that you are unable to work and therefore get your temporary compensation started.

IF YOU ARE NOT RECEIVING YOUR TEMPORARY COMPENSATION, YOU MUST CONTACT US IMMEDIATELY SO WE CAN BEGIN WORKING ON IT.

6. Can I get fired for filing a claim?

Absolutely not. The law strictly forbids an employer firing or otherwise retaliating against an injured worker because he has filed a workers' compensation claim. If a claimant is fired, we may file a lawsuit called a "retaliatory discharge claim".

7. How long will I have to see the doctor?

You must see your doctor as she requires. You cannot miss an appointment without a good excuse you risk losing your benefits. After a period of time, the body will heal to the point of "maximum medical improvement" -- MMI. This either means that you have totally recovered or that you have recovered to the point that you cannot get any better. Once you reach MMI, we will draft an offer based on your disability rating. See question #7.

8. What happens if I reach a point where I am not completely cured but I cannot get any better?

Unfortunately, this is a common occurrence. In that case you are "disabled". In most instances you will be disabled to a certain degree. For instance, in most cases, if you have hurt your back, you will not be disabled 100%, but perhaps 40%, 30%, 20% even 5%. It is your degree of disability that will determine the amount of your final compensation award. Your degree of disability is often disputed between your attorney and the opposing attorney that will sometimes require a hearing to resolve. Many cases settle just before the hearing.

9. Will you represent me at the hearing?

Yes. I will represent you at the hearing and through the appeals process if necessary. If we go to a hearing and win, it may take up to 180 days to receive your check. Also, you have 14 days (from the date the order is signed) to appeal the order if you are not satisfied with it.

10. What if I am injured while working through someone else's negligence who is not a co-employee?

In that case you will be able to recover from both the person who was negligent and your employer. However, to avoid "double dipping", if you recover from the negligent person, the employer's insurance may have what is called "subrogation rights", which means that the employer's insurer has the right to reclaim money paid to you out of your settlement.

11. If and when I do settle my case with the employer, may I make a claim again if I am reinjured?

That depends on whether you "agree to settle" or "clinch" the settlement. If you sign a Clincher, you are forever barred from claiming for the same injury. On the other hand, if you sign an Agreement to Settle, you may make a claim for a change in condition.

12. If I am fired from my job, may I collect unemployment?

You may always apply for unemployment, and I encourage you to do so regardless of the circumstances of your termination. If you are unable to seek employment because you are injured, you will most likely be rejected for unemployment benefits.

13. Who should I talk to about my case?

Talk only to me, your attorney, or a member of my staff. I cannot stress this enough. Do not talk about your case to co-workers, supervisors and especially to any adjusters. If the worker's comp. coordinator at your office has a question, please direct him/her to me in a polite yet firm manner.

14. How long will this process take?

It is the policy of this office to file a request for a hearing immediately upon signing a client. It takes between 6 and 8 months to get a hearing before a commissioner. As noted most cases settle before a hearing.

15. Should I borrow money elsewhere before my insurance check arrives?

No, this is a bad idea. You are never 100% certain that a case will settle for an exact amount. Better to sit tight and wait for the process to run its course before spending money before you have it. Remember; don't count your chickens before they hatch.

We understand that you have been drained financially by your accident but let me know your creditors, and I will let them know you are expecting an insurance check. You might want to turn to family member to help you over the hump.

16. How often will you or your office contact me?

Now, you may not hear from us for a while. Don't let this bother you. Just keep going to the doctor and call us if there are any problems with your benefits or medical care. We cannot settle your case until you have reached MMI. Notify us immediately upon your reaching MMI (released from your MD) of if there is a problem with your benefits. If you are unsatisfied in any way with the attorney or staff handling your case, simply call my office and schedule an appointment to see me, Thomas Gagne. I am always available to you for an appointment.

17. How long do I have to file a claim?

In General you have 2 years from the date of injury to file a claim in SC.

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