

Your Personal Injury Claim: What To Expect

Personal injury litigation and personal injury trials can be ordeals. However, the better prepared you are for what is likely to happen during a personal injury lawsuit, the better you will get through it. The following is an overview of what may happen with your claim over the next several months or even years. Every claim is different and what may have happened in connection with another person's claim may have little, if any, application to your situation.

Your Case May Take a Long Time to Resolve: Expected Timeframe

Resolving personal injury cases, and civil litigation in general, can take a long time. It's frustrating, but there is no way around it. Small cases can often get settled within one year or less but, if you are involved in even a medium-sized case, it can often take several years from the date of your injury until the day that you receive your settlement money. The judicial system is often a story of hurry up and wait. You just have to be prepared. There is generally little that I, as your lawyer, can do about it.

Steps Leading up to Filing a Lawsuit

1. If you are seeking or have sought medical treatment, please faithfully follow the advice of your doctors and keep all scheduled appointments. Aside from the fact that this will bring about your recovery, it will also prevent the other party's insurance company from claiming that some of your medical problems were not that serious or were caused by your failure to follow your doctor's orders. It is also best to avoid consulting with more doctors than is necessary, lest it seem like you are opinion-shopping or trying to run up your medical bills.
2. Unfortunately, accident claims often seem to move slowly. Until you have fully recovered from your injuries, or you have otherwise stabilized, it is unwise to attempt to settle your claim. For that

reason, it is necessary for us to wait until your medical treatment is completed before we can prepare your claim and try to get the best possible settlement for you. Even after your medical treatment is completed, we must often wait a month or more before the medical records that we request are prepared and sent to us.

3. In some cases, we are able to settle accident claims through negotiation - without having to file a lawsuit. However, this still requires significant work on our part and takes time to establish the facts in your case. After our initial client interview with you, we evaluate your claim and determine any deadlines that apply. We locate and/or contact the opposing party's insurance company, giving them notice of the claim. We gather all the evidence we can, including police accident reports, medical records and bills, and necessary affidavits, photographs, drawings, reports, etc. that are pertinent to your case. We interview witnesses regarding what they saw and heard. We analyze the legal issues related to the case, including comparative negligence and any damage limits and deadlines that may apply. We review the medical records and discuss the injuries and prognosis with your physicians, if necessary. We find out, by reviewing your insurance policies and through discussion with the insurance company, whether there are any valid liens (including any "subrogation" liens) that must be repaid by you out of any settlement or judgment.
4. After gathering all the relevant information, we prepare a complete "demand packet" which we send to the insurance company for the opposing party to see if we can settle the case without the need of filing suit. This is a complex and comprehensive document which asserts and documents our claims and evidence. The one exception to this is when the statute of limitations is about to expire and we have to file suit to protect your claim. After the insurer responds to the demand packet, we discuss the case status with you and decide whether further settlement negotiations should be pursued or if suit should be filed in the case.
5. The steps leading up to the decision whether to file suit could take 3-6 months or longer from the time that your medical treatment ends or when you have stabilized.

A Lawsuit is Filed and Served on the Defendant

After establishing that a legitimate case exists, and that there are no procedural hurdles like an expired statute of limitations, and if the opposing party's insurer disagrees with us regarding the value of your claim, then we will file a personal injury petition. The petition is the first official document in the case, laying out in very broad detail what the plaintiff claims the defendant did. After the petition is filed, it may take a month or more to locate the defendant and "serve" the petition on him or her. Serving the petition basically means physically delivering the petition to the defendant in a way that can be proved later, ensuring the defendant cannot later claim not to know about the lawsuit.

The Defendant Hires an Attorney and/or Answers the Lawsuit

The defendant will typically have approximately one month to file a response to the lawsuit. If the defendant has insurance, then the defendant must notify his or her insurance company as soon as he or she knows about the lawsuit (which is a strict requirement in insurance policies). The insurance company will then supply and pay for its own lawyer if the defendant has not already hired one and if the insurance company decides that the claim is covered under its policy, which it sometimes denies. If the insurance company validly denies coverage for a claim, it will be very difficult to obtain a recovery from an individual or small company, even if they are clearly liable and you are seriously injured. In some instances, the defendant may hire an attorney directly. Either way, a defendant will have approximately one month from when he or she is served with the lawsuit before he or she needs to acknowledge the lawsuit by filing an "answer."

Pre-Trial Litigation

In the pre-trial process, both sides will ask each other for evidence and witness information in a phase called "discovery." In the early stages, it may be necessary for you to complete written answers to questions sent to us by the other party's insurance company. These questions are called interrogatories. You will be asked to produce certain documents that are in your possession for review by the opposing attorneys.

You also may have your deposition taken, which is a process that allows the opposing attorney to ask you questions in person about the accident. This is a simple matter, and we will prepare you for your deposition and be present with you while it occurs. In addition, you may be asked to undergo an independent medical examination. This is a process in which the other party's insurance company arranges at their cost for a doctor to examine you. From time to time, both sides will also appear in court to inform the judge of how the case is proceeding, to agree or not agree to mediation or arbitration, to adjudicate disputes about the scope of discovery, and to set a trial date. You will not need to appear at these court hearings.

This process of discovery and intermittent court appearances can take months and even years, with the trial date frequently being set back. Eventually, once the discovery process appears to have proceeded as far as it can, and as the case moves closer to trial, the parties will significantly ramp up effort as they engage in mandatory settlement conferences, make motions to determine what evidence will be allowed at trial, select a jury, etc.

Finally, the trial will begin and, for a typical personal injury case, last several days. At trial, the judge or jury will determine if the defendant is liable and, if so, how much the defendant is required to pay out in damages. After trial, either party can initiate an appeals process that can last from several months to several years. After the appeals process has been exhausted, a losing defendant will be obligated to pay the damages established at trial or on appeal. However, please note that obtaining a judgment from the judge and jury does not guarantee that the defendant will be able to pay the judgment amount. The defendant's insurance company will also not typically be required to pay any judgment amount beyond its policy limits. Forcing defendants to pay judgments from their own resources and/or assets is often difficult or impossible.

Settlement is Very Likely

Most cases settle before trial. At *any* point in the process described above, the parties can settle and end the case. What is more typical, particularly if the initial evidence establishing liability and/or damages is inconclusive, is that a settlement is reached after the discovery process has gone on for a while.

Your Personal Injury Lawsuit: What to Expect

The Litigation Process Can Be Confusing

The judicial system and the litigation process are confusing. Pleadings, motions, hearings, interrogatories, discovery, document requests, continuances, adjournments, negotiations, deadlines! These common concepts and occurrences in litigation can be very confusing to the layman.

You Will Lose Some of Your Privacy

When you file any kind of lawsuit, you will lose some of your privacy. If you file a lawsuit, the defense attorney has the legal right to ask you many intrusive questions and demand that you produce many different kinds of documents about your personal, medical, financial, and employment history for many years in the past, even many items that do not appear directly relevant to your claims. You may also be required to take some time to sort through items in your possession for documents potentially responsive to requests from the other side.

At a deposition, a defense attorneys may often ask you detailed questions about every job that you have ever held since many, many years ago, every injury that you have ever had in your life, every lawsuit or workers' compensation claim that you have ever filed, every doctor that you have seen for the previous 10 years, and so on. You are only required to respond to the extent of your memory, but you must do so to the extent that you can.

Defense attorneys can demand your tax returns and medical records for the previous five or seven years. They might demand all of your medical records relating to injuries that do not seem related to those at question in your lawsuit. They might try to subpoena all of your employment records from every employer that you have ever had.

This is invasive, intrusive, and highly annoying. But the bottom line is that, for the most part, judges nationwide allow defense attorneys in personal injury lawsuits to obtain much of this information. Litigants

are allowed great latitude in seeking information about their adversary's legal claims and arguments, from plaintiffs as well as defendants. This is just something that you will have to be prepared for.

Be Prepared to Be Videotaped/Followed/Called by Investigators

If your personal injury case is anything but a small case, the insurance company might hire a private investigator to follow you around with a video camera. If the investigator catches you doing something that is inconsistent with your testimony and doctor's orders, that will hurt your case. Some investigators will even pretend to have a flat tire, and will knock on your door and ask if you can help them change their tire. If you have a potentially big case, this is just another hassle that you will have to deal with.

Testimony Can Be Confrontational – Don't Lose Your Cool

When the defense attorney confronts you face-to-face for questioning at your deposition and at trial, he/she might go after you hard if he/she thinks that you might lose your cool. Juries do not usually like angry plaintiffs, even if the plaintiff might have a legitimate reason to get angry.

If the defense attorney can get a plaintiff to lose his/her cool, the plaintiff's chances of winning the case decrease. You lose your focus when you lose your cool and often say things that you will later regret. When you are sitting across from the defense attorney at your deposition and at trial, be prepared to be confronted. Know what the weak points of your case are, and be prepared for probing, even insulting questions about them. Be able to calmly explain even the weakest parts of your case without losing your cool. The jury will appreciate your ability to stand up under pressure, and will hopefully reward you for that.

Keep Lines of Communication With Your Lawyer Open

Don't let the litigation process overwhelm you. Ask your lawyer about anything that you don't understand. Ask sooner rather than later. When you understand what's going on, you'll be better prepared

to deal with it. Please make sure to inform us of any changes to your address, health or employment situation, or contact information.

How You Can Help Your Personal Injury Case

We want to provide you with the very best legal representation and we ask that you give careful consideration to these recommendations:

1. Please do not discuss the details of your accident with anyone because this may compromise attorney-client confidentiality. Other people could interpret things you say in many different ways. Tell anyone who tries to get information from you that you have been advised by your lawyer not to talk about the claim. A representative from the other party's insurance company may contact you in an attempt to discuss the details of the claim with you. You should tell that individual to contact me and then you should contact our office. **MOST IMPORTANTLY, DO NOT POST ANYTHING ONLINE REGARDING YOUR CASE.**
2. Please maintain a file folder where you can keep all information you receive concerning your claim. This information should include any personal written notes, photographs, medical bills, medical records, witness statements, etc., including materials that you receive after hiring me as your attorney. Please promptly forward me any new materials that you receive regarding your case.
3. One of the first things you should do after you are injured is write down everything you can about your accident, including details of your injuries and their effect on your daily life. These notes can be very useful two or six or ten months later, when we put together all the important facts into a final demand for compensation. Having notes to remind you of the details of what happened, and what you went through, is both easier and more reliable than counting on your memory. Get into the habit of taking notes on anything you think might possibly affect your claim and carry it through the entire claims process. Whenever you remember something you had not thought of before --

while you're in the shower, just before you fall asleep, as you're biting into a pastry -- write it down and put it with your other notes. Here are some specific things about which you should make notes:

- a. **The Accident:** As soon as your head is clear enough, jot down everything you can remember about how the accident happened, beginning with what you were doing and where you were going, the people you were with, the time and weather. Include every detail of what you saw and heard and felt -- twists, blows, and shocks to your body immediately before, during, and right after the accident. Also include anything you remember hearing anyone -- a person involved in the accident or a witness -- say about the accident. If you were in a vehicle accident, please also make notes of everything that the other driver did or said at the scene of the accident. Identify any witnesses and try to confirm what their full names are and what they may have seen, before they move, forget, or their phone numbers change, or they are contacted by the other side. Once you hire us as your attorney's we will try to do this, but this is good general advice for anyone involved in an injury claim.
- b. **Your Injuries:** In the first days following your accident, make daily notes of all pains and discomfort that your injuries cause. You may suffer pain, discomfort, anxiety, loss of sleep, or other problems which are not as visible or serious as another injury but for which you should demand additional compensation. If you don't make specific note of them immediately, you may not remember exactly what to include in our demand for settlement weeks or months later. Also, taking notes will make it easier for you later to describe to an insurance company how much and what kind of pain and discomfort you were in. In addition, writing down your different injuries may help your doctor diagnose you. For example, a relatively small bump on the head or snap of the neck may not seem worth mentioning, but it might help both the doctor and the insurance company understand why a bad back pain developed several weeks after the accident. Also, by telling the doctor or

other medical provider about all of your injuries, those injuries become part of your medical records that will provide evidence later that such injuries were caused by the accident.

- c. **Economic or Other Losses:** You may be entitled to compensation for economic loss and for family, social, educational, or other losses, as well as for pain and suffering. But you will need good documentation. Begin making notes immediately after the accident about anything you have lost because of the accident and your injuries: work hours, job opportunities, meetings, classes, events, family or social gatherings, vacation, or anything else which would have benefited you or which you would have enjoyed but were unable to do because of the accident.
- d. **Conversations:** Make written notes of the date, time, people involved, and content of every conversation you have about your accident or your claim. In-person or telephone conversations worth noting may include those with any witness, adjuster, or other insurance representative, or with medical personnel. **As a general rule, please do not provide any written or recorded statements to anyone without my prior approval or speaking with me beforehand.**
- e. **Return to the Scene:** You may want to return to the scene of the accident to take notes or pictures or locate and talk to witnesses who may help your case. The first few days immediately following an accident are often the most important for finding and preserving evidence of what happened -- and documenting your injuries. You should take the following steps as soon as you are able. If an accident occurred somewhere other than in your home, return to the scene as soon as possible to locate any evidence and photograph any conditions you believe may have caused or contributed to the accident. You may be amazed to find something you were not aware of when the accident occurred but which may help explain what happened, like a worn or torn spot on which you fell or a traffic

light that isn't working. Also, while looking around you may find someone who saw what happened or knows of other accidents that happened in the same spot.

- f. **Continued Medical Treatment:** Take written notes of your past or ongoing medical treatments that you are receiving as a result of the injury sustained from the accident. The diary should be kept on a daily basis. It should include notes about pain you experience, visits to doctors' offices, the dates of any physical therapy, the dates on which you are able to stop using such things as neck collars, crutches, etc., the number of pain pills you take each day, dates when you are able to resume doing things that were not possible during early recovery, and all other details pertinent to your medical condition. Please keep a small notebook handy where you can write down this information.
4. Take photographs of the accident scene from a number of different angles -- particularly your view of things right before the accident -- to keep a good picture of it in your mind and to give to us later on to indicate how well prepared you are to get the settlement you deserve. Photograph the scene at the same time of day as your accident occurred, and for vehicle accidents, the same day of the week, to show the appropriate amount of traffic.
5. Protect physical evidence. Who was at fault for an accident is sometimes shown by a piece of "physical" evidence -- something you can see or touch, as opposed to a description of what happened. Examples include a broken stair that caused a fall, the dent in a car showing where it was hit, or an overhanging branch that blocked visibility on a bike path. In addition, physical evidence can help prove the extent of an injury: Damage to the car can demonstrate how hard a collision was, for example, and torn or bloodied clothing can show your physical injuries dramatically. Try to preserve any physical evidence exactly as it was at the accident. If you can't preserve the actual object, take photographs of it. You can later show your evidence as proof of what happened.
6. Locate witnesses. A witness to an accident can be immensely valuable to you in making your case to an insurance company. Witnesses may be able to describe things about an accident that confirm

what you believe happened, backing up your story. Also, they may provide you with information you were not aware of but which shows how the other person was at fault. Even a witness who did not actually see the accident may have seen you soon after you were injured and can confirm that you were in pain or discomfort. Alternately, a witness may have heard a statement made by another person involved in the accident indicating that someone other than you was at fault. However, time is of the essence. If witnesses are not contacted and their information confirmed fairly soon after the accident, what they have to say may be lost. People's memories fade quickly, and soon their recollections may become so fuzzy that they are no longer useful. Also, a witness might no longer be around if you wait too long; people move frequently.

7. Document your injuries. The best ways to preserve evidence of your injuries are by promptly reporting all of them to a doctor or other medical provider, and by photographing any visible marks, cuts, bruises, or swelling, including any casts, splints, bandages, or other devices. Without an early medical record of all your injuries, and photos if possible, it will be more difficult to later convince an insurance company that you were injured in the ways and to the degree you claim you were. Visible injuries heal and will not look as serious later, and failing to seek immediate treatment can lead an insurance company to believe that your injuries were not so serious, or even that you invented or exaggerated them after the accident.
8. Request your medical records and billing statements, and please retain and keep all documents given to you by your health care providers. Medical records are a key element in your case because we will need to prove that the accident -- and not a previous medical condition -- caused your injuries. We will also obtain your medical records and billing statements. Keep track of all the medical providers you see. If you cannot tell us where you have gone, it may be very difficult or impossible for us to locate the facility, and records of your treatment proving that it occurred and cost you money.
9. Be proactive in obtaining compensation for your property loss and/or damage. If any vehicles, clothing, or other items were damaged as a result of the accident, you'll likely be entitled to

reimbursement for repairs or compensation for the fair market value of the property that was lost. We are prepared to assist in this process of recovery for your property damage, but typically our typical fee structure would also apply so it makes more economic sense for you to deal directly with property damage claims while we provide you general guidance and focus on seeking recovery for your bodily injury claims.

Thank you again for selecting Kitchens & Associates to represent you in your case. This process may be trying and confusing at times and will take longer than expected, but your patience is appreciated and your diligence in documenting your case will go a long ways towards maximizing the value of your claim.

As a final note, we are happy to schedule periodic appointments to discuss the status and progress of your case, and we strive to return every telephone call within 2 business days. However, please remember that our office handles many other cases as well and may not be able to return your calls immediately, visit with you if you stop by our office unannounced without a scheduled appointment, or recall every detail about your case when you contact us. If you have not heard from us for a while, that does not mean we are not working on your case. Indeed, we strive to work on and resolve your case with minimal time imposition on our clients.