10 Steps to Justice: Anatomy of a Lawsuit

Judging by some of the TV commercials we see for personal injury attorneys, a reasonable person might conclude that it's easy to get rich by suing someone else – but the truth is very different.

A personal injury (P.I.) lawsuit is a serious, time-consuming undertaking. It demands the professional expertise of an attorney and his or her staff, and patience on the part of both the attorney and her/his client.

Unfortunately, many people do not have a sufficient understanding of the processes involved in a P.I. lawsuit.

This article is intended to provide you with a brief explanation of the steps involved in pursuing a case to a just conclusion. If you or someone close to you has been injured in an automobile accident or other kind of incident, such as a slip-and-fall, due to someone else's carelessness or negligence, this information should be helpful to you.

(Note: The steps described below all relate to the filing of a lawsuit in Florida, but there are some preliminary actions you should take in any case. For example, in the event of an automobile accident, there are several immediate actions you must take to protect your rights, including contacting law enforcement and notifying your insurance company. If you are injured, you must also see a doctor within two weeks of the accident. Generally speaking, you have four years to file a lawsuit after an incident or accident in Florida, but it is always best to see an attorney as soon as possible, as there are exceptions.).

1. Initial interview/consultation

Most personal injury attorneys offer a free conference so that the attorney and prospective client can get acquainted with each other and discuss the basic facts of the case. We like the term "interview" because it enables the client to decide whether to hire the attorney; and we like "consultation" because it gives the attorney enough information to recommend whether or not the client's case is likely to be strong enough to give her/him a good chance of prevailing. This first meeting usually lasts for about an hour. It is important to be completely honest with your lawyer. Anything you say to your lawyer is protected by attorney/client privilege and he or she cannot disclose what was said without your permission. Even things that may hurt your case need to be discussed. It is much better to be fully honest at the beginning, even with negative facts, so that your attorney can properly prepare for it. One of the worst things that can happen is for the other side to find out about something negative before your own attorney.

2. Investigation

After the client has decided to hire the attorney, the work of building the case begins. First, the attorney and staff will review all of the relevant facts, information, and any available data. The information and data to be reviewed includes police reports, medical records, correspondence, photos, videos, and digital recordings. Attorneys have access to a wide range of resources for such investigations, so, depending on the circumstances, your case may also involve a private investigator and a public records search.

3. Evaluation

Following the investigation, the case must be objectively assessed to determine what kind of settlement (or verdict) is most likely to result. A host of factors are taken into account in this evaluation. Those factors are typically liability, causation, damages, and available insurance. When investigating liability, based on the available evidence, a determination is made as to who the attorney believes a jury would find at fault for the accident, and whether his or her client had any fault for causing the accident as well. Causation is the link between the liability and damages. Did the accident cause the injuries claimed? The attorney will look into any prior injuries his or her client may have had, or other medical issues that are similar to the ones being claimed due to the accident in question. Damages are the main determining factor as to the value of the case. There are economic damages, such as past and future medical bills and past and future lost earnings, and there are non-economic damages such as pain and suffering. The last factor is insurance. Does the at fault party have insurance to cover the client's damages? If not, does the client have uninsured motorist coverage if the accident was a car accident? Finally, the evaluation will assess the case for any technical or legal issues (e.g., the statute of limitations).

4. Settlement negotiations

In most personal injury cases, the negotiation phase of the process begins with a "demand letter," which is essentially a statement of the facts of the case and the reasonable value of it. It is possible to reach a satisfactory solution without going to trial, depending on the timing and amount of the demand, and the way in which it is presented. Following the delivery of the demand letter, the negotiation process may involve multiple telephone calls and/or letters with insurance adjustor(s). Negotiations can continue after filing a lawsuit (if a settlement cannot be reached pre-suit), and it may start, stop, and start again, even after a trial verdict.

5. Filing

If the insurance company refuses to pay a fair value to the injured party for their damages, a lawsuit is typically filed. This does not necessarily mean that a case will go to trial, although sometimes it will. It just means that a complaint is filed with the Court. Once a lawsuit is filed, the defendant (person being sued) typically has 20 days to file an answer to the complaint. Once that is done, the discovery phase of the litigation can begin.

6. Discovery

Both parties in the case have the right to make a formal investigation of the issues in the case and to collect information from the other side. Attorneys can get that information from almost anyone who knows anything about your case. That begins with obvious sources such as witnesses and doctors, but may also include neighbors, friends, and co-workers. This investigation typically includes one or more of each of the following:

Request(s) to produce – This calls on the other party to provide documents, like correspondence, witness statements, insurance policies, and physical evidence, which can then be reviewed and copied.
Request(s) for admissions – This document "asks" a party to admit or deny a series of statements of fact or law. It helps your attorney narrow down the most important issues in the case.
Deposition(s) – This is sworn testimony, in question and answer form, taken out of court. It might be recorded on video, but it's always recorded on paper by a court reporter. If you are deposed, you will have the opportunity to review the transcript of your deposition to ensure what you said was recorded accurately.
Interrogatories – Interrogatories are written questions that are answered under oath, typically before a deposition, to allow the attorney to have some information as to what the person will say prior to the deposition.

7. Mediation

Prior to trial, most courts will require the parties to attend mediation. Mediation is an informal settlement conference where the parties meet with a neutral individual, typically a lawyer or former judge, who attempt to facilitate a settlement. Anything said at mediation is confidential, and, if the case does not resolve,

nothing said at mediation can be used during the trial. Many cases settle at mediation, which is why mediation is generally required. Even if a case does not settle at mediation, many times issues can be narrowed or you can gain a better understanding of the other side's case and better prepare for trial. Negotiations can and typically do continue even after mediation, and a case can settle at any time, even as you are walking into the courtroom or during the trial.

8. Trial

Once discovery is complete, a party can notice the case for trial. It can take several months or more for a case to actually go to trial after a notice for trial has been filed, depending on a number of factors. The most significant factor in determining how soon your case is heard is the court itself. Court systems across the nation are understaffed and under strain, and the 19th Circuit of Florida, which includes the Treasure Coast, is no exception. Once a trial date has been set, a stressful period begins for all concerned. Pre-trial preparation is intensive and all-consuming. There will be last-minute maneuvers and motions; and, very often, as the case moves closer to an actual trial date, the parties return to settlement negotiations. There are a lot of procedural issues to be addressed once the case is on a trial docket. Your attorney will likely be filing motions, pre-trial statements, marking exhibits, and organizing witness testimony. The bulk of the preparation for trial occurs in the few months leading up to trial. Unfortunately, it is possible to do all of this preparation, have witnesses ready to testify, and then the Court continues your case to the next trial docket, whereby a lot of the work and waiting happen all over again.

9. Settlement

If a settlement is reached at any point in the process, the next step is for the attorney to collect the settlement payment and request reductions to any outstanding medical bills and liens. Once the final amount of medical bills and liens are determined, then the funds can be disbursed to the client. The client will receive a closing statement showing all the money that was received as well as the details regarding any fees, costs, and other items that will be paid out of the settlement funds.

10. Post-trial

Your attorney's work continues after a verdict or settlement has been reached -- even under optimum circumstances. In the best-case scenario, he or she will just be handling the collection of the award. In that case, attorneys are required to follow strict rules for handling money for clients, and receiving and processing the funds usually takes a couple of weeks. However, collecting the awards ordered by the court may sometimes be difficult as verdicts can be appealed. This scenario requires additional litigation.

Throughout all of this, it is important that you think of your attorney as your partner in an ongoing endeavor. Like all good partnerships, the relationship that develops as you work to achieve the best possible outcome is one that is built on trust and respect. You place your trust in his or her judgment, and he or she returns that trust by relying on the information you provide. Together, you build your case in pursuit of justice.

Located in Historic Downtown Stuart (FL), Zweben Law Group has been dedicated to helping injured people receive the compensation they deserve since its founding in 2001. Led by Gene Zweben, the firm offers legal services in the areas of Personal Injury, Wrongful Death and Family Law.

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