

PERSONAL INJURY SETTLEMENTS: FREQUENTLY ASKED QUESTIONS

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SETTLEMENT

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PRELIMINARY

QUESTION: WHY DO I NEED AN ATTORNEY?

Answer: You need to beware that insurance adjusters are trained to get you to say and do things that harm your case and save them money. They have attorneys on staff advising them every step of the way. Their job is exclusively to save their insurance company money. The only way you can put yourself on an equal playing field is to hire your own attorney.

QUESTION: WHAT IF I'VE ALREADY TAKEN STEPS INDEPENDENTLY?

Answer: You have the right to seek legal advice at any time. Furthermore, many personal injury attorneys will provide you with a free, no-obligation consultation. Regardless of what stage you are in or what actions you have taken, it is in your best interest to consult with a qualified personal injury attorney as soon as possible.

QUESTION: HOW LONG DO PERSONAL INJURY LAWSUITS TAKE?

Answer: Many cases settle out of court without a lawsuit even being filed. Some settle during the litigation process as well. However, when a lawsuit has to be filed and the case must go all the way to trial, the litigation process can average 1-2 years depending upon the complexity of the case, the number of cases on the court's docket, and the issues involved in the case.

QUESTION: I DON'T WANT TO GO TO COURT; CAN YOU STILL HELP ME?

Answer: Yes. Nobody ever really wants to go to court. We would all prefer that everyone just did the right thing and took responsibility for their own conduct. But, that does not always happen. What is critical is that you have a lawyer who will make every effort to get your case resolved without having to go to court, but who is also willing to take your case to court if that needs to be done to get you justice. Insurance companies know which lawyers are willing to file a lawsuit for their clients and which ones are not. We will do what we can to get your case settled and to reduce any bills you may owe, without you having to go to court.

EVALUATION

QUESTION: IS MY CASE BIG ENOUGH FOR A LAWYER TO HANDLE?

Answer: Whether or not your case is large enough to handle depends upon a number of factors that must be decided on a case-by-case basis. Personal injury lawyers typically work on a contingency fee basis. Thus, we must weigh the anticipated cost of litigation, complexity of the case, uniqueness of the legal issues involved, risk of loss, anticipated amount and likelihood of recovery, extent of damages and availability of time in light of our existing caseload. Just because the bills are low does not mean that the case value is low. Nor does one attorney concluding that he cannot handle the case mean that no attorney can handle the case. It is wise to talk to several lawyers before concluding that your case is simply not large enough for a lawyer to handle.

QUESTION: HOW MUCH IS MY CASE WORTH?

Answer: There is no magic formula nor code that determines the value of your case. Your case is worth what a particular jury decides it is worth on a given day and any lawyer who tells you he can predict that with any degree of certainty is not being candid. However, a lawyer can look at the facts and the damages involved and give you an idea based upon personal experience of what he believes he can persuade an insurance company to pay to settle a claim based upon the facts. Thus, you should ask this question to an attorney to whom you present all of the facts.

QUESTION: WHAT DAMAGES AM I ENTITLED TO RECOVER?

Answer: What damages you may recover depends upon several determinative factors such as: the venue of your lawsuit, the causes of action you may bring and the injuries you have suffered. Typical personal injury damages include:

- 1) Medical expenses incurred in the past and future
- 2) Lost wages and wage earning capacity in the past and future
- 3) Pain and suffering in the past and future
- 4) Scarring and disfigurement in the past and future
- 5) Property damage
- 6) Physical impairment in the past and future
- 7) Mental anguish in the past and future

In addition, there are a number of damages available in wrongful death claims for qualified plaintiffs, including:

- 1) Loss of consortium in the past and future
- 2) Loss of household services in the past and future
- 3) Loss of society and companionship in the past and future
- 4) Burial expenses
- 5) Loss of inheritance

Punitive or exemplary damages may also be available in both of the above situations depending upon the law of the jurisdiction in which the lawsuit is filed and the facts of the case.

MEDICAL

QUESTION: ARE MEDICAL BILLS INCLUDED IN A BODILY INJURY CLAIM?

Answer: Yes.

QUESTION: DO I STILL HAVE A CLAIM IF MY HEALTH INSURANCE PAID MY MEDICAL BILLS?

Answer: Yes. The law varies from jurisdiction to jurisdiction. The collateral source rule prohibits a negligent third-party from benefitting from your health insurance company paying a claim in some jurisdictions. Also, in some jurisdictions your health insurance is entitled to be reimbursed out of any recovery you make from a third-party if they have the necessary “subrogation” language included in the health insurance contract. This does not preclude you from making a claim; it only obligates you to reimburse your health insurance carrier when you recover funds for expenses they paid for from a negligent tortfeasor.

QUESTION: CAN MY HEALTH INSURER FILE A LIEN AGAINST MY CASE?

Answer: Yes and no. Technically, they do not need to file a lien. In many jurisdictions an insurer simply has to send a notice letter to your attorney or to a negligent third-party insurance carrier notifying them of provisions in their health insurance contract that state that they are entitled to be reimbursed out of any settlement or judgment you receive upon your case. Failure to pay their subrogation claim before disbursing funds subject to the claim exposes any party who has notice of the subrogation claim to liability for the claim.

QUESTION: MY DOCTOR IS ASKING ME TO SIGN AN ASSIGNMENT FORM SO THAT HE IS PAID OUT OF ANY SETTLEMENT PROCEEDS. SHOULD I DO THAT?

Answer: Assigning an interest or lien in your case in order to get medical care without having to pay out of pocket now is a common way to obtain the care you need when you do not have cash to pay out of pocket. However, you should consult a lawyer before signing any document that assigns anyone, including a medical provider, an interest in your case.

QUESTION: SHOULD I GET MY OWN MEDICAL RECORDS AND/OR BILLS?

Answer: If you are able and have the time to obtain the medical records and bills, this can help a lawyer prepare and present your case to an insurance company sooner. However, many personal injury attorneys are willing to have you sign an authorization to release records and do the leg work for you.

SETTLEMENT

QUESTION: THE INSURANCE COMPANY OFFERED ME A SETTLEMENT WHICH I THINK IS FAIR. SHOULD I ACCEPT IT?

Answer: You would be wise to seek the advice of an attorney about the specific facts of your case before accepting any settlement. Unseen injuries can haunt you for the rest of your life. Valuing the various elements of damages can be difficult even for those who do this on a daily basis.

Once you sign a final settlement, your case is over and you cannot ever come back and ask for more if your circumstances change. Before you settle, you should consult with a qualified personal injury attorney.

QUESTION: HOW SOON AFTER A SETTLEMENT IS MADE IS MONEY RECEIVED AND DISTRIBUTED?

Answer: How long it takes to get paid can depend upon a number of factors. Health insurance companies typically have the right to assert liens against the case. Hospitals have statutory liens automatically granted against the case. All liens and subrogation claims of which the insurance carrier has notice must be resolved before a check can be issued to your or your attorney. This may require your attorney to negotiate with the claim holders for some time.

Additionally, if Medicare and/or Medicaid are involved, they have liens which must be settled before money can be distributed as a matter of federal law. Lastly, the settling tortfeasor will require a release be signed and exchanged for the settlement funds. The period to accomplish this may be as short as a few weeks or it may take several months, depending upon the circumstances.

QUESTION: HOW DOES THE INSURANCE COMPANY DECIDE TO OFFER A SETTLEMENT?

Answer: Insurance companies do not typically share this information. There are no set rules, formulas or guidelines. Different companies employ different methods to evaluate cases that range from a purely human evaluation to a purely computer software-driven evaluation.

QUESTION: SHOULD I TRUST A SETTLEMENT CALCULATOR I FIND ONLINE?

Answer: No. There are no set rules, formulas or guidelines to determine a case value. Thus, any online calculator claiming to have the magic formula is exaggerating its capabilities.

QUESTION: ARE MY MEDICAL BILLS PAID IN AN INJURY SETTLEMENT?

Answer: Medical expenses incurred in the past and future are an element which you can recover if you prove that the expenses were caused by the negligence of another and were reasonable charges for necessary medical care. However, there are many factors which can cause you to not be able to recover all of your medical expenses such as: failure to prove the charges were reasonable, failure to prove the service were necessary, care for preexisting conditions, care caused by subsequent injuries, care necessitated by unrelated medical conditions, and damage reductions for contributory or comparative negligence.

QUESTION: IS THERE A MINIMUM PERSONAL INJURY SETTLEMENT AMOUNT?

Answer: No. Every case value is determined on its own facts.

QUESTION: CAN I REJECT A SETTLEMENT OFFER?

Answer: Yes. You have the right to accept or reject an offer.

QUESTION: WILL I NEED TO PAY TAXES ON MY SETTLEMENT MONEY?

Answer: Personal injury damages are generally considered non-taxable except those recoverable for lost wage or lost wage-earning capacity. You should consult the advice of a tax attorney or CPA to be certain about your specific case.

QUESTION: CAN I BREAK AN ANNUITY FROM AN AUTO ACCIDENT SETTLEMENT?

Answer: The answer depends upon the annuity. When an annuity is set up for a minor, often it cannot be sold or broken before the minor reaches the age of majority. Adults typically can break annuities by selling them to companies that purchase settlement annuities. However, the deals offered by these companies are typically much more beneficial to the company than the seller. You should seek the advice of a CPA to be sure you understand the full consequences of selling a settlement annuity before doing so.

QUESTION: CAN I GAIN ACCESS TO MY CHILD'S SETTLEMENT MONEY?

Answer: Depends. When a minor's case settles, typically the money is placed in some sort of protective account for the use and benefit of the minor. If it is in an annuity, it is locked in until the annuity pays out or the child becomes an adult and authorizes the sale of the annuity. If the money is placed into the court registry, then to gain access a parent would have to seek and obtain court approval. The court will not approve distribution of the money to the parent without a showing of an appropriate way that the money will be used specifically for the use and benefit of the minor. Caveat: This answer assumes the child is still alive. There may be an exception if the minor dies and the parent is the heir.