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Injury Case Roadmap:

The Legal Process for Personal Injury Cases

BY EDDIE E. FARAH & CHARLIE E. FARAH, ATTORNEYS AT LAW

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It is becoming evident that trying to negotiate a reasonable settlement with an insurance company is a fruitless effort. More and more insurance companies are taking a very aggressive stance in settling accident claims, basically telling claimants to take what they have to offer or leave it. This has come about as a result of a change in the way insurance companies view claims. In years past, insurance companies were run by insurance professionals who would evaluate a claim and would pay based on the actual fair value of the claim. However, as insurance companies more and more are being run by "bean counters," their objective is not to pay a reasonable amount but keep as much money for the insurance company as possible because shareholder profits are their main and only concern.

Carriers have a reputation for making unreasonably low settlement offers regardless of the severity of the injuries. Oftentimes, insurance companies talk about negotiating a settlement before a lawsuit is filed just to obtain as much information as possible about you, your lawyer and your doctors. This can result in an unfair advantage to the insurance company, not to mention a complete waste of time and effort for you.

For this reason, it may be in your best interest to file a lawsuit as soon as possible and then continue trying to negotiate the claim through the lawsuit process. Once a lawsuit is filed, the court will set certain deadlines, including a trial date. This means that your case will move to a conclusion along a certain designated timeline. Insurance companies will use that time to try to learn as much as they can about you and your case so that when your lawsuit is filed they have a head start. The Statute of Limitations in Florida for a typical personal injury case is four years and a lot of lawyers, knowing that a lawsuit is going to have to be filed, will try to use that period to negotiate a settlement with the insurance company. On the other hand, insurance companies are using that time to drag out the negotiations, frequently asking for more information which only helps them defend their claim once a lawsuit is filed.

In North Florida, typically a case can be brought to trial within a year or a year and a half from the date it is filed. In addition, circuit judges in the entire State of Florida are under mandates from the supreme court to move cases along as quickly as possible so victims can have their day in court. When the court sets

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deadlines, particularly a trial date, these deadlines can help push the insurance company to make reasonable and diligent efforts to settle the case.

To initiate a lawsuit, papers must be filed in circuit court and a filing fee paid. These papers are called the "complaint" and the "summons." The person who files the lawsuit is called a "plaintiff" and the person or corporation that is being sued is called the "defendant." The plaintiff, through his attorney, must personally serve a copy of the complaint and the summons on the defendant. You only have a certain amount of time to file your lawsuit and then personally serve the defendant. In the State of Florida, the time for an auto accident case is four years from the date of the accident. This deadline is called the "Statute of Limitations." It is a dangerous practice to wait to settle or file your claim right before the Statute of Limitations period expires because, if you cannot serve the defendant with the complaint and summons in a timely fashion, your case could be dismissed. In addition, in the event you do not serve the proper defendant, your case could be dismissed and no settlement would be made. A lot of times you may find that there may be more than one person responsible for the accident and if you don't have all the responsible parties' names in the complaint prior to the Statute of Limitations cutoff date, you will lose your ability to make a recovery against the other defendants. This is why you should not wait to hire an attorney until right before the Statute of Limitations is about to expire. For this reason, not many attorneys, including our firm, refuse to accept a case where there may be insufficient time to investigate the case, file suit and locate and personally serve the defendant(s).

After the lawsuit is filed and the defendant is served, both sides participate in what is typically known as the "discovery" process where the parties are required to exchange certain information about the case. Each side is allowed to investigate any evidence the other side plans to present and the names of witnesses who will testify and what they will testify about at trial. This discovery process may entail responding to certain written questions (called "interrogatories") and requests for documents and other tangible materials that are relevant to the case. The defendant's attorney may also be allowed to access your

When your deposition is taken, it is very important that you prepare for this with your attorney.

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medical records, work history, your financial records and is entitled to send you for a medical evaluation concerning your injuries to a medical professional chosen by the defendant. The defendant may also be allowed to require you to be evaluated by a vocational rehab specialist in the event you are claiming a reduced income for your injuries. The discovery process may also include "depositions." A deposition is a face-to-face meeting where the attorneys are allowed to ask a witness or the plaintiff questions under oath as a court reporter records the session. Any witness who may offer testimony at trial can be deposed. A deposition may also be taken from your doctors, your friends, family members and any expert who can be expected to testify at your trial. When your deposition is taken, it is very important that you prepare for this with your attorney. After a deposition, the defendant's attorney will produce a report that he sends to the insurance company, outlining his evaluation of your claim; i.e., how you present yourself as a plaintiff. Insurance companies place a lot of weight on how well you do at your deposition. It has been shown that those plaintiffs who present themselves well at a deposition typically present themselves well in front of a jury and that the verdicts are generally higher for those plaintiffs who present themselves in a manner that is perceived as genuine and honest. It has been our experience that juries award full damages to people they like and reduce recoveries for people they do not like. Your conduct at the deposition can influence the value assigned to the case and also affect the likelihood that the case will settle before trial.

In the State of Florida, when the defendant requires that a plaintiff submit to a medical examination by a doctor chosen by the defendant, the law allows the plaintiff's lawyer or a representative of the plaintiff to attend that medical examination. Many times, the plaintiff will videotape the medical examination. We have found that a lot of medical doctors working for the insurance company will not perform a thorough examination of our client's injuries and merely "rubber stamp" the defendant's position that our client is not as severely injured as he or she may claim.

When the discovery process is completed and each side knows what evidence will be offered at trial, the parties will conduct settlement

Many times, mediation can be used to successfully resolve a case.

negotiations. In Florida, the parties are required to attend a mediation prior to actually going to trial. The mediation is ordered by the court and both parties are required to attend. Although there is no requirement that you settle your case at mediation, any agreement reached is binding and your case will be considered settled. The mediator chosen is typically agreed upon by both sides. A mediation session is confidential so anything that is said during the mediation cannot be used at trial. This means that any settlement offers discussed during the mediation are not binding and cannot be revealed at trial in the event the case is not settled at mediation. A lot of times, people are willing to accept a lesser amount in settlement at mediation to prevent the necessity of going to trial. However, if the case does not settle at mediation, there is nothing to prevent the plaintiff from demanding more money than they were willing to accept during the mediation session. Many times, mediation can be used to successfully resolve a case. Mediation sessions can occur in one day or last for several days, depending on the size and/or complexity of the case.

In addition, when cases are not resolved at the initial mediation, subsequent mediations can be agreed upon in an attempt to move the case to a conclusion.

If you fail to settle your case at mediation, it will then proceed to trial and your case will be decided by a jury. The court requires that certain documents must be filed and exchanged between the parties within certain times before the trial date. These documents may include witness lists, exhibit lists, motions, trial memorandums and jury instructions.

In Florida, a civil jury consists of six people. The jury pool is made up of persons who have a valid Florida driver's license.

The better your case is prepared during the discovery process, the more the insurance company will be motivated to make reasonable and diligent attempts to settle the case. ■

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- Workers' Compensation
- Social Security
- Slip & Fall
- Trucking Accidents
- Maritime Law
- Boating Accidents
- Nursing Home Abuse
- Animal Attacks

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