

MAXIMIZING RECOVERIES IN AUTOMOBILE ACCIDENT CASES

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vs.

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ALABAMA LAWYERS ASSOCIATION CONFERENCE

SANDESTIN, FL

MAY 16-19, 2019

I. CONSIDERATIONS FROM THE PLAINTIFF'S PERSPECTIVE

- A. **Start with a thorough interview of client.** It is imperative that you speak with the client directly as they are more knowledgeable than you about what occurred and the nature of their injuries. Discuss subjects such as the client's medical history, prior lawsuits, arrests, bankruptcy, work history and marital status, as these issues may affect the claim down the line. Also try to assess the client's credibility during the meeting and use this time to build a sense of trust between you and the client. It will come in handy down the line.
- B. **Conduct a complete investigation.** Make sure you collect witness statements, police reports, medical reports and anything else related to the accident. You may need to hire private investigators and accident reconstruction experts. They can gather added physical evidence, such as pieces of the vehicle. The other party's insurance company will collect all sorts of information which may be used against your client. You'll be at a serious disadvantage if you don't conduct a thorough investigation to help support your client's claim, as you have the burden of proof.
- C. **Get photographs and video of all important elements in your case:** All vehicles involved, the point of impact, the location of the vehicles' rest and the accident scene. Look for dashcams, traffic cameras or video from surrounding businesses. Also document any lacerations, bruising or scarring of your client's injuries before they heal. Photographic or video depictions are vivid evidence of what your client experienced. As they say, a picture is worth a thousand words. Juries find photos and videos to be powerful proof of your injuries.
- D. **Make sure that the client gets appropriate and timely medical treatment.** Many clients are unsophisticated about the types of medical treatment they may need. If a client has memory loss and broken foot, chiropractic care may not be appropriate. Insurance companies will not reward a client for taking Epsom salt baths and popping over the counter pain medication to deal with a torn rotator cuff. Encourage them to seek treatment early, as a delay will be used against them by the insurance company. Also emphasize the importance of them attending all scheduled appointments and filling all prescriptions.
- E. **Don't allow your client to release your client's medical records to the other party's insurance company!!!** Many accident victims make the mistake of signing a release for the other party's insurance company. This gives your opponent access to your medical records. YOUR client's insurance company is entitled to their medical information. but the other party's insurance company should NOT have this information. They will use it against them down the line.

- F. **Get the insurance company to set up a high reserve account.** After an accident, the insurance company establishes a reserve account to cover all the costs they expect to pay for your client's claim. The amount of money put on reserve is based on whatever facts the insurance company has soon after the accident occurs. If the reserve set aside for your injuries is greater than your damages, you shouldn't have much trouble collecting for your injuries. But if the reserve is too small, you'll need to get the reserve increased.
- G. **Have the client keep a day-by-day diary of their injuries.** If the case goes to trial, your client needs to be able to tell the jury how many days, weeks or months they were in pain, how long they suffered from headaches, how long they had to assistance dressing and bathing. Keeping a daily log allows the client to refresh his/her memory and give a detailed account of what occurred to them post accident.
- H. **Know all your client's damages.** They may include: (1) cost of medical treatment, (2) pain and suffering for injuries, (3) loss of income for time off work, (4) loss of consortium, (5) loss of business, (6) cost of a rental car, (7) cost of repairs, (8) cost of hiring a housekeeper, (9) cost of hiring an in-home nurse, (10) cost for psychological counseling caused by stress or some other aspect of the accident, (11) cost of hiring a taxi service to and from your doctor's office - and ANY OTHER money the client paid out or lost as a result of their injury.
- I. **Keep all bills and receipts related to the accident.** Have the client save their bills and receipts. Remember that as the Plaintiff, you must be able to prove the amount of your client's damages. Be sure to save everything: doctor bills, hospital bills, pharmacy bills, co-pays and all other bills you incurred because of your accident.
- J. **Know your sources for insurance coverage.** In many cases an injured victim can legally collect from two or three different insurance policies at the same time. Yet many lawyers don't know where to look for various insurance coverages.
- K. **Make sure client remains under doctor's care until released.** Many people stop going to their doctor when they feel better, before the doctor releases them from treatment. Make sure your client continues going to the doctor until the doctor releases them! The doctor knows the complications that could result from your client's particular injury.
- L. **If needed, send previous high jury verdicts from that venue.** Out of state adjusters may not be able to appreciate the differences between various regions of the state. Jury verdicts may help them gain that understanding.
- M. **Negotiate hospital bills, subrogation and liens.** This will ultimately put more money in the client's pocket and make the settlement more palatable to the client.

II. DEFENSE FACTORS THAT ARE CONSIDERED WHEN EVALUATING A CASE

A. Severity of Injuries

The severity of the claimant's injuries play a significant role in the value of their settlement. Claimants who suffer serious or life-threatening injuries are far more likely to get large settlements, especially when compared to claimants who retain all movement or who make spontaneous recoveries. With more severe injuries, the claimant's eligibility for pain and suffering-related damages typically climbs higher.

A personal injury claim goes beyond pain and suffering or your medical bill reimbursement. Claimants may also seek compensation for mental anguish and the loss of income. More severe injuries more significantly inhibit a claimant's future earning power, increasing the potential value of a settlement.

B. Medical Bills

One of the primary purposes of a lawsuit is to recover the claimant's out-of-pocket expenses, while funding medical expenses that are expected to be incurred in the future. For these reasons, the current value of medical expenses, as well as the future medical costs likely to be incurred, are key components in the settlement negotiation process.

In many personal injury cases, medical bills constitute the bulk of a settlement or jury award, so high medical bills, as well as severe injuries that make costly future bills likely, both increase your case's value.

C. Evidence

The primary benefit of settling the case is that enables both parties to avoid the uncertainties and costs of going to trial. For this reason, the other party will have a stronger incentive to settle the case if your evidence is strong. Say you're suing a recreational facility for a million dollars. That facility is unlikely to shell out such a huge sum if you can't even prove that the facility was the proximate cause of your injuries. Conversely, if you have an avalanche of undisputed evidence, the other party might be afraid of being harshly penalized by the jury, thereby giving them a strong incentive to settle—even for a large sum.

D. The Plaintiff

Like it or not, the person the patient is now and was before the injury matters in court. When determining whether to settle, the other party will assess how sympathetic the jury is likely to feel toward the injured patient, how believable the testimony is, and how tragic the injuries will seem to outsiders.

The plaintiff's lawyer will be interested in crafting a narrative that emphasizes the loss to the injured patient, society, and their family resulting from the injury. The more compelling that narrative is, and the more damage of any sort the patient has encountered,

the more likely they will be to get a large award at trial. That translates into a significantly higher likelihood of a large settlement offer.

E. Age and Health

Younger plaintiffs can typically expect to get higher settlements, since they have more years of life ahead of them and therefore more medical bills. A longer life span also means that the injury has been a greater loss. After all, is depriving you of 5 years or 40 years of physical activity more damaging?

Likewise, juries may look at overall health when deciding a case. A young person who was in excellent health may have lost more than an older person whose health was already deteriorating. Defense lawyers are keenly aware of this fact. For this reason, they sometimes offer young, healthy plaintiffs higher settlements.

F. Reputation Concerns

One of the primary benefits to defendants of settling cases is that it protects their reputation. They can seek a sealed settlement, and avoid a long and ugly courtroom battle that gets them nothing but bad press. For this reason, the more damaging your case might be to the other side's reputation, the more compelled the defendant will be to settle.

G. Legal Issues

Many plaintiffs are surprised to learn that facts, evidence, and eyewitness testimony don't come into play until relatively late in the lawsuit process. Early on, your lawyer and the other side will fight about jurisdictional issues, legal precedent, and your eligibility for certain types of damages.

If there are legal issues in contention—such as whether your case was filed within the statute of limitations, or the possibility that the defendant is entitled to some form of immunity—you might not get a settlement offer until the lawyers in the case have submitted a number of motions. This process can take anywhere from a few months to several years, and its length is partially dependent on the complexity of your case and the amount of evidence involved.

When the law is clearly on your side, as well as when the judge has repeatedly ruled in your favor on issues that were in contention, the other party is more likely to award a higher settlement value to your personal injury case.

H. Factors that indicate that a higher multiplier might be applied to calculation of your medical expenses:

- hard injury -- meaning a broken bone; head injury, joint injury, wounds, vertebrae injury, nerve damage
- medical expenses that are primarily for treatment
- medical treatment by a medical doctor, clinic, or hospital
- prescribed medication related to the injury
- long-term injury treatment period
- long recovery period

- permanent injury -- such as a scar, stiffness, weakness, or loss of mobility
- physical or emotional distress resulting from the injury, and
- daily life disruptions -- missed school or training, missed vacation or recreation, canceled special event.

I. Factors that indicate that a lower multiplier may be applied to calculation of your medical expenses:

- soft tissue injury -- such as sprain, strain, or bruise
- a large part of your medical expenses are for diagnosis rather than for treatment
- medical treatment by non-M.D. providers
- no medication has been prescribed in connection with your injury
- only brief medical treatment (a few visits to the doctor, for example)
- a short recovery period for your injuries
- no residual or permanent injury, and
- no physical or emotional problems other than original injury.

J. Other Factors That Affect Compensation

After the settlement formula is applied, the opposing party will look at the other legal and practical issues that help or hurt the overall strength of your case.

K. Factors likely to get you higher compensation after the formula is applied include:

- no shared fault for the accident on your part
- your organization and calmness in connection with the claims and settlement process
- the insured on the other side is not credible or sympathetic
- witnesses who bolster your case, and
- some “dramatic” advantage.

L. Factors likely to get you lower compensation after the formula is applied include:

- A finding that you shared some of the blame for the accident or your injuries
- disorganization or impatience on your part
- a sympathetic insured on the other side, and
- no witnesses that bolster your side of the case, or witnesses who favor the insured.