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PERSONAL INJURY CLAIM



Drew Law Firm



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UNDERSTANDING YOUR PERSONAL INJURY CLAIM

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We created this information to help you become familiar with how a personal injury case is generally handled, and to tell you how you can help your attorney to obtain justice in your case.

If you have any questions after you have read this pamphlet, please contact your attorney and he/she will be happy to discuss this with you. Your attorney will do the best that he/she can to answer all of your questions.

Here are some general conditions that ordinarily occur in a personal injury case. Some of these things you may already know, but at the same time, you may not be familiar with all of them.

Because each case is different and has many unique features, it is impossible to cover all aspects of your individual case in this short pamphlet. Please understand this pamphlet is not intended to constitute specific advice on your case.

You should rely upon the specific advice and directions that come from an attorney.

INVESTIGATION OF YOUR CASE

An adequate and complete investigation of your case is essential to its success. Insurance companies hire people specifically to investigate claims. They do this for a purpose which is to limit their exposure on claims. Therefore, it is most important that the facts of your claim be examined and preserved to protect your rights.

Usually when an attorney takes on a case, they establish an investigation file after the first interview. The file is then assigned for investigation under the supervision of an attorney. In most cases, an attorney obtains a complete police report, interviews the police

officer, obtains statements from witnesses, photographs vehicles involved, photographs the accident site, and attempts to assemble all of the information that is available regarding how the accident occurred and who was responsible. Customarily, lawyers send letters requesting a report regarding the client's medical treatment. In most cases, a lawyer personally interviews the attending physician prior to the time a request for a written report is sent regarding a client's medical condition.

After a preliminary investigation is performed and the medical records are received, clients are generally contacted with the results. At that time the future course of action is discussed.

In most cases the investigation continues, even after a lawsuit is filed. Facts on clients' claims are collected on a regular basis. The best way to protect the rights of an injured person is to collect all facts that are available.

Interrogatories are written questions which the attorney for either side may submit to the other. They have to be answered in a prompt manner, usually within 30 days. When interrogatories are sent to an attorney for a client to answer, the attorney expects that the answers will be returned promptly. Any delay in

returning these questions will only delay the lawsuit.

WILL MY CASE BE SETTLED PRIOR TO GOING TO TRIAL?

Not every case settles before a claim must be filed with the court. Your attorney will discuss the specific pros and cons of either attempting to settle your case prior to filing it, or filing the claim with the court. Just because a lawsuit is filed does not mean it cannot settle before going to court. When an attorney files a claim on behalf of his clients, it is done to protect their rights and to seek maximum damages for their injuries.

In attempting to evaluate a client's case and to advise them on settlement value, there are many important factors. Two of the most important factors are:

1. How certain is the attorney that he/she can prove that the defendant is responsible for the damage that was done?
2. What is the extent of the damage done to the client?

The specific facts pertaining to both of these factors are discussed in detail with the client before a settlement offer is made.

HOW IS A LAWSUIT ACTUALLY BROUGHT?

In an actual lawsuit papers are filed with the court, and there is a plaintiff and a defendant. The plaintiff is the injured person(s) and the defendant is the person(s) who injured you. The papers state the general nature of the claim of the plaintiff. The defendant then has generally 30 days to file a response. In the response the defendant states the nature of their claim in the suit.

New clients often ask "How much are we going to sue for?" In almost all cases a specific amount is not requested when the suit is filed. It is usually too difficult to tell what the actual value of the case is right when the case is filed. Usually, "fair and reasonable damages" is what is asked for.

Since the value of the case depends on accurate documentation, clients should

be sent monthly reports. These reports are used to keep the attorney abreast of what is going on in the clients' lives. They are extremely important in that they give the attorney a paper trail on a client's recovery process from their injuries.

WHAT HAPPENS AFTER A LAWSUIT IS BROUGHT?

Under the laws of Iowa there are no longer secrets in lawsuits. The defendant in a case is entitled to ask reasonable questions about the accident and how injuries have affected the injured person and their family. An attorney's policy should be to answer all legitimate requests by the defendant, fully and truthfully.

Once a lawsuit has commenced, the plaintiff and the defendant have the right to obtain information about the case by depositions and/or interrogatories.

Discovery depositions involve the taking of verbal testimony from a person while under oath. If a client's deposition is taken, the attorney is always present with

them. A court reporter is present and takes down the sworn testimony. Before the deposition of a client is taken, their attorney will take all the time necessary to go over the types of questions that will be asked so there will be no surprises.

Interrogatories are written questions which the attorney for either side may submit to the other. They have to be answered in a prompt manner, usually within 30 days. When interrogatories are sent to an attorney for a client to answer, the attorney expects that the answers will be returned promptly. Any delay in returning these questions will only delay the lawsuit.

WHAT HAPPENS AFTER THE JURY MAKES DECISION ON MY CASE?

You will be notified of the decision of the jury on your case. If you are not happy with the results, you must tell your attorney immediately. There is a 10 day time limit from the date of the jury verdict to file a Motion for a New Trial. There is also a 30 day time limit from the date of the jury verdict to appeal to the Supreme Court. It is your responsibility

to notify your attorney if you want to file a Motion for a New Trial or to appeal your case. Remember, the defendant in your case also has the right to appeal if they are not satisfied with the results.

THINGS YOU CAN DO TO HELP YOUR CASE

One of the first things an insurance company wants is a list of "special damages" which you have incurred as a result of your injury. Special damages mean the out-of-pocket expenses such as doctor bills, hospital bills, other medical bills, loss of income or earnings that have occurred as a result of the accident, and any property damage that resulted from the accident. You should be as complete as possible when compiling this information. Just as important is that you keep track of how the injury has affected your life and the life of your family. It is advisable to keep a diary of daily events so they can be remembered at a later date.

In most lawsuits there are certain types of damages that you may be entitled to recover. Some of them are:

1. Past pain, suffering, and mental anguish;

2. Future pain, suffering, and mental anguish;
3. Past loss of income;
4. Future loss of income and decrease in your earning capacity;
5. Past and future loss of function of mind and body;
6. All out-of-pocket expenses such as doctor bills, hospital bills, and other medical bills and property damage; and
7. Loss of Consortium on behalf of your parent, spouse and/or your children. Consortium includes the loss of companionship, services, society, and fellowship that is central in a family relationship. It can include the loss of a spouse's services in such ways that a spouse renders services to the family, including yard work, maintenance, housekeeping, cooking, companionship, love, and even sexual relations. Your attorney should discuss the advantages and disadvantages of pursuing these damage claims with you. Not every case should have a loss of Consortium claim filed.

You are entitled to the best medical care available for injuries caused by the accident. It is important that you continue to go to your doctors, as long as

your injuries continue to bother you. You should relate to the doctors truthfully and fully all symptoms affected by the accident. You should realize that medical treatment often takes time to obtain results, and often the possibility of a doctor's diagnosis being accurate is improved by opportunities for further examination. As long as there is something legitimately wrong with you, you should assist the doctors in making their diagnosis and in providing proper treatment by continuing to obtain needed medical care. You should cooperate with your doctors in every way.

One nightmare that haunts every trial attorney is the possibility that a case will settle, and later that attorney finds out for the first time from his client that there were additional injuries or damages. You should keep your attorney informed on how rapidly you recover from the injury, which had never been brought to his attention. This can be particularly devastating, because once a case is settled you cannot reopen the claim for any reason. You should not discuss the details of your accident or injuries with persons not entitled to the information. It is possible that an individual from the company you were injured at, their insurance company, investigators, or even attorneys, may contact you and want to speak to you directly about the case.

If this occurs, you should refer those individuals to your attorney. Do not make statements to any person without your attorney's specific approval. If you have already made statements to an insurance company representative, or anyone else, tell your attorney immediately so he can get a copy of the statement.

COMMON QUESTIONS BY INJURED INDIVIDUALS

1. How long do I have to bring my lawsuit?

By law, a claim must be filed with the court within a time period. If the claim is not filed within the time limit, it can be barred forever. There are many rules in the state of Iowa that control the time periods that you have in which to bring a case. Ordinarily, two years is the proper time period. However, in certain situations the time limit can be as low as six months. You should make sure to discuss this with your attorney.

2. What do I do about bill collectors?

Because you have been injured and are not able to work, you will find that many creditors will be calling you on the phone requesting payment for medical bills. Although attorneys cannot protect you completely, they should discuss your situation with any bill collector or creditor who calls. Many times an attorney will be able to secure an agreement from these people to leave you alone until the claim is resolved.

3. Can my own negligence affect the value of my claim?

The answer is yes. If a jury would find that you were negligent, it may reduce the value of your claim. Under Iowa law the faults of both parties in a claim are considered. This is called "comparative fault." Under present rules governing comparative faults, you may be as much as 50 percent at fault and still recover 50 percent of your damages. If, however, your fault is greater than 50 percent, you will not be able to recover your damages. You should discuss the implications of this with your attorney.

4. What if the other driver in an automobile accident is uninsured?

Unfortunately, many times someone who injures another does not carry insurance. However, this does not necessarily mean that there is no money available for your

damages. If your vehicle was insured at the time of the accident, you should have "uninsured motorists" and "underinsured motorist" coverage.

5. I don't know any lawyers, how should I choose one?

You should choose a lawyer that you are comfortable with and one you feel is knowledgeable on personal injury law. You should ask a prospective lawyer some of the following questions:

- **Do you regularly handle personal injury claims?**
- **Do you normally represent injured people or defendants or both?**
- **Who in your office will actually be handling my case?**
- **How do you charge for your time?**
- **Do you currently have the time to give my case the attention it needs?**

CHECKLIST

This checklist is designed to furnish your attorney with information that is of great importance in the preparation of your case for both trial and settlement purposes. It is essential that you complete the list and review it from time

to time, and that you keep your attorney informed of any changes.

1. It would be most helpful if you keep a daily diary of your activities, with an emphasis on restrictions of your activities, specific pains, frequency of pain, frequency of medication taken, and the kind of medication taken. A diary such as this will be useful to you at the time of trial to help refresh your memory as to the occurrences that otherwise might be forgotten. Many clients use the diary to also keep track of time lost from work, doctor appointments, and other notations concerning their damages. Make sure you note at the top of the page, "Information for my Attorney." This will keep the diaries from being discoverable as it constitutes information protected by the attorney client privilege.
2. Be sure to keep all potential items of evidence such as clothes, shoes, physical objects that you had with you at the time of the accident, or that reflect the damages caused by the accident. Your attorney may need to use these objects as evidence at your trial.
3. One item in which you have primary responsibility is to obtain all of the medical billings related to your injury. You can simply determine the amount of your bills by calling all of the providers

where you have been seen and request an itemized statement. They will be happy to do this. Remember, all billings for tests (x-ray, MRI, CT scan, EMG, blood work) recommended by the doctors must also be requested. Often times these are by separate business entities.

4. Once you obtain your medical billings, you need to send them to us, email them to us, or drop them off at the office immediately. We will submit these billings at the time of trial. Even if health insurance has paid your bills, you need to find out your medical charges. If there are co-pays due or outstanding balances, you will need to provide that information to us so we can submit them to the jury. Almost all health insurance contracts today have provisions in them which require repayment from liability insurance for billings paid. That is the reason that we still need to submit all of the bills, even if they have been paid by health insurance. Time is of the essence for you to obtain your medical billings. If we do not receive your medical billings within 30 days of trial, we most likely will not be able to submit those to the jury for payment. If we then obtain a settlement or award on your case, those medical billings, whether submitted or not, will be your responsibility. We will take the information that you provide to us and

prepare a medical bill summary for your review.

5. Keep your receipts for the following items and supply them to your attorney:

- a) hospital bills
- b) doctor bills
- c) nursing bills
- d) ambulance bills
- e) drug (medicine) bills
- f) all other expenses you incur as a result of the accident including travel to and from the doctor & hospital.

6. Additional expenses including help around the home and/or in your business (babysitters, domestic, or yard assistance). When you purchase prescription medications, please ask the druggist to prepare your bill so that it only lists the medications that are related to your accident. Don't submit bills that contain non-related medications, it will make it appear that you are claiming compensation for expenses not related to your injury. If you use nonprescription medication (such as aspirin) which is purchased in bottles or other containers, please save these containers since your attorney may wish to introduce them into evidence as proof of the quantity of medication you have taken.

- Don't discuss the details of your case with your doctor, your primary concern with him/her is to get treated and get well. Oftentimes doctor notes reflect conversations about your case such as "Bill is anxious to get his case settled." The insurance company and their lawyer generally see your medical records, and it will not help your case to have them reading information like this.
- Don't sign anything until checking it out with your attorney.
- **Notify your attorney of any change of addresses, email addresses, phone numbers employment, or any other facts which might possibly affect your case.**
- If your physical condition changes and the doctors contemplate further medical procedures, let your attorney or his staff know.
- Because you have been injured, you may be under surveillance at any time and subject to being photographed by the defendants. Pictures do not always tell the whole story about your condition, and they can be used against you. If you engage in difficult activity, keep records of how you feel afterwards.
- **Any post you make on any social network site or any information that you allow to be posted on any social network site can be requested by the insurance**

company. Govern your conduct accordingly.

STATEMENT OF POLICY

Our law firm is only interested in representing those people who have legitimate causes of action and a good faith basis upon which to seek recovery. The filing of a claim or suit solely to coerce a settlement or to harass another could be illegal and could render the client liable for malicious prosecution or abuse of process.

We urge potential clients to make their own independent investigation and evaluation of any lawyer being considered. The determinations of the need for legal service and the choice of a lawyer are extremely important decisions and should not be based solely upon advertisements or self-proclaimed expertise. A description or indication of limitation of practice does not mean that any agency or board has certified a lawyer as a specialist in the indicated field of law, nor does it mean that such a lawyer is necessarily any more of an expert or competent than any other lawyer. This notice is required of all communications by Rule of the Supreme Court of Iowa.



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