

A Free Guide For Florida Injury Victims

HOW TO SETTLE YOUR PERSONAL INJURY CLAIM WITHOUT A LAWYER



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How to Settle Your Personal Injury Claim Without a Lawyer

An Overview of this EBook

This book was mainly written for individuals who are contemplating handling their own personal injury case. However, it will also be helpful to those who have hired a lawyer and want to understand some of the issues in a personal injury claim. Either way, it is important to know that pursuing a personal injury case is likely going to take more time and effort than most people think it will and it is likely to be difficult no matter how straightforward the case appears to be.

In addition to issues of fault and damages, many other issues are involved that are generally not known to the non-personal injury lawyer or layperson. For example, if you have your own health insurance, or if you are on Medicare or Medicaid, you have to contend with these entities' right to be paid back all or a portion of what they have paid on account of your injuries. Depending on whether state or federal law applies, you will likely have to reimburse some of your settlement money to an insurer that paid for the medical bills associated with your injuries. It usually takes a significant amount of time and effort to resolve these liens. If you do not protect Medicare's, Medicaid's or your health insurer's right to be repaid at least a portion of what it has spent on account of your injuries, you may face repercussions, including legal action.

What You Will Learn in This eBook?

There are multiple aspects to a personal injury case. First, there is the issue of **liability**. Who is at fault or legally responsible for the incident? Was the incident a "legal cause" of your injury and damage, a task which is not as easy to prove as it may seem. Additionally, you will learn the types of **damages** that you can claim in a personal injury case as well as how to determine the reasonable value of your case. Lastly, you will learn other important tidbits of information useful when handling your personal injury case without a lawyer.

What Are Some Common Types of Personal Injury Cases That Can Be Settled Without A Lawyer?

There are many types of personal injury cases. Automobile accident cases and slip/trip and fall cases are the most common. Other types of personal injury cases may involve medical malpractice, product liability and injuries caused by animals. There is probably almost no situation where a lay person can successfully represent him/herself in a medical malpractice or product liability case. The issues in those case are quite complex. However, in an automobile accident or fall down case involving relatively minor injuries, a person not versed in the law might be able to obtain reasonable compensation without the services of an attorney.

What Does Liability Mean?

To be liable means to be “legally responsible.” Most personal injury cases involve the concept of negligence. “Negligence” is simply the failure to use reasonable care under the circumstances. It could consist of doing something that a reasonably careful person would not do under similar circumstances, or it could consist of *not* doing something that a reasonably careful person would do under similar circumstances.

In some automobile negligence cases and in almost all fall-down cases, the person or entity against whom a claim is made will argue either that it was not negligent or if there was negligence, the claimant (person making the claim) was also negligent. This is known as either comparative or contributory negligence.

Under the negligence law of a few states, if the claimant (plaintiff) were even 1% at fault and the defendant were 99% at fault, the claimant is barred from collecting anything. That is known as the common law of contributory negligence, which existed in Florida until 1973.

Many states, such as Florida, have evolved into comparative negligence states. Damages are awarded in accordance with each parties' percentage of fault. For example, if you are injured in an auto accident and the other driver is found to be 70% at fault (negligent) and you are found to be 30% at fault, with total damages awarded being \$100,000.00, the judgment (or your award) will be \$70,000.00. Under comparative negligence, the damages are reduced by the percentage of fault attributable to the plaintiff.

Comparative negligence cases can lead to a counterclaim being filed by the defendant against the plaintiff. When a lawsuit is filed to recover damages for injuries resulting from an auto accident, the plaintiff could face a counter-suit if the other driver contends that his or her injuries resulted from the plaintiff's negligence. Under those circumstances, if you have an automobile bodily injury liability insurance policy, your insurance company will hire a lawyer to defend the counterclaim brought against you.

There are many times when the issue of negligence is not difficult to prove, or is even admitted to by the defendant. For instance, in rear-end car accidents, the defendant's insurance company typically admits that its insured, the offending driver, caused the accident. However, the insurer will most likely contest whether the accident was a legal cause of the injuries, meaning, the insurer often argues that the claimed injuries were not caused by the accident.

When Can You Seek Damages For Your Injuries?

The law does not presume that somebody is legally responsible for the injuries you sustain in an accident. As explained above, you have to prove *liability*, or legal responsibility; this usually, but not always, involves the issue of *negligence*.

When a person slips and falls at a store on a liquid substance that somehow came onto the floor, the store owner or operator is not automatically responsible for the injuries caused by that fall. One has to prove that the store owner either had actual knowledge of the condition on the floor that

caused the fall or should have known of it, or that the condition which caused the fall was created by a store employee or the store's negligent method of operation. This is often a difficult task to prove. Hopefully, there is clear surveillance in the store which shows the area for at least thirty minutes before the incident through several minutes after the incident. However, surveillance is a two-edged sword. It can disprove your case as easily as it can prove your case.

Many times a trip and fall or slip and fall is the sole fault of the person falling. For example, if you fail to see an ordinary curb and trip over the curb or unknowingly step off of it and injure yourself, there most likely will not be a personal injury liability case.

In terms of proving fault, many times in automobile accident cases, fault is not contested. If you are sitting at a red light, and someone strikes your vehicle in the rear, that person will be at fault almost 100% of the time. Other situations are less clear and involve questions of **disputed liability**. Someone may have violated the right of way at an intersection, but the other driver might have been going well over the speed limit. Both drivers may be considered to have been at fault in causing the collision.

What Are The Different Types Of Damages You Can Collect?

Before you attempt to settle your case without a lawyer, you should become familiar with the types of damages you can recover. In many instances, you can recover not only past and future medical bills but also past and future lost wages and pain and suffering damages, although special laws apply in Florida for the recovery of pain and suffering damages in motor vehicle crash cases.

Medical expenses include both paid and unpaid bills, including prescriptions, therapy and any devices that had to be purchased as a result of the injuries, such as a cane. If medical bills have been paid by health insurance, the health insurance company will likely be entitled to be reimbursed some or all of what it has paid out on account of the injuries. You can recover future

medical bills (medical expenses that you are probably going to incur after settlement) if your doctor states that more likely than not you will need treatment in the future and the doctor explains the nature, duration and cost of the treatment.

Loss of income damages is similar to medical expenses. It is another element of economic damages. It is often fairly easy to prove. If a victim of negligence misses four months of work as a result of an accident and is a W-2 employee and doesn't get paid for the time missed, then the claimant can recover for the time missed. Even if you had to use your vacation time and you were still paid in part or in whole, you should still be able to collect for the entire time as you had to use a valuable fringe benefit as a result of the negligence. If you had to use sick, there is a better argument for that you should not be allowed to recover for those days that you utilized sick days.

If you can prove that your injury will affect your ability to earn money in the future, you can recover for loss of ability to earn money in the future, sometimes referred to as loss of earning capacity. However, you have the burden to prove to the insurance company that you either will not be able to work as much in the future or that you will not be able to obtain a higher paying job as a result of the accident.

The next item of damages is what is commonly referred to as non-economic, or pain and suffering damages. Actually, those damages are for pain and suffering, disability, mental anguish, loss of the capacity to enjoy life, as well as scarring or disfigurement. You have to show to the adjuster that your injury has affected your ability to lead the life you had prior to the accident. Perhaps you can no longer play tennis or play it as often or as well as you played in the past. You might possibly be a lover of plants and spend much time in a garden. If an injury has adversely impacted your ability to participate in the hobbies and recreational activities that you enjoyed prior to the accident, then you are entitled to obtain reasonable compensation for that loss. However, there is no exact standard for measuring these damages and one jury may award much more than another for the same condition. Likewise, one adjuster may be more impressed with your pain

and suffering than another, although most insurance adjusters have handled so many cases that they categorize your injuries and know the amount that they will offer for each injury based upon past experience.

Will Any of Your Injuries Be Permanent or Will All of Your Injuries Resolve?

It is important that you seek treatment for your injuries as early as possible, though many people understandably wait a few days to see if a condition resolves on its own. If your pain/injuries fully resolve and do not reappear within a reasonable time thereafter, chances are that you have not suffered a permanent injury, impairment or disability. However, if your injury persists and an MRI or other diagnostic test shows objective evidence to corroborate the injury, then you may have sustained a permanent injury.

Please note, after you have completed medical treatment, there is no requirement that you settle your case quickly, unless the statute of limitations is approaching. In that event, you must file a lawsuit to prevent the statute of limitations from expiring.

Assume you have slipped and fallen at a grocery store from water that has leaked from a freezer and you obtain medical treatment from an orthopedic doctor for a knee injury. If an adjuster for the store calls you after you have visited the doctor several times (but have not completed treatment) *and offers you \$2,500.00 to settle your case*, **you absolutely should not settle the case at that time if you are still in pain and unsure as to the ultimate outcome of your condition.** You should wait to make sure that your treatment is substantially, if not fully, complete. If your injury significantly improves in a relatively short period of time thereafter and it remains in good condition for another month or two, then it might be safe to settle the case on your own at that time, assuming your treating doctor is convinced that the injury probably will not return.

In the pre-lawsuit stage of a personal injury case in Florida, if your injury has fully healed in a short period of time and the store offers to settle for a

reasonable amount, then the decision whether to accept the settlement becomes a business decision.

For instance, assume an injured person incurred \$1,000 in medical bills, and finishes treatment. The store offers \$2,500 to the injury case. The claimant can pay his doctors (and also attempt to negotiate the bills lower) and still have money left over-which is ordinarily tax free. Therefore, if you haven't sustained a significant injury, or if it will be hard to prove that the injury is related to the accident, it might be worthwhile to try to settle your own case. Remember that if you hire a lawyer, you will have to recover more money just to net the same amount, as the lawyer will usually be paid one third of the gross settlement as a fee, though some lawyers might agree to accept a lower contingent fee if the case settles very quickly.

If you obtain a settlement offer, it is a good idea to at least talk with an experienced personal injury lawyer and explain your situation. Some lawyers might not provide you with a recommendation. Others attorneys might venture an opinion, free of charge.

What About Repaying My Health Insurer or Paying Unpaid Medical Bills?

As previously stated in this ebook, you are usually obligated to protect the rights of any entity that paid all or some of your medical bills as those entities have the right to recover all or some of the benefits paid, depending on what type of plan it is. Furthermore, you may have signed letters of protection for the benefit of your health care providers, promising to pay any outstanding balance out of a settlement. Also, many hospitals in Florida have an automatic lien on your settlement for the unpaid charges on account of injuries you sustained in an accident.

These complicated issues create traps for lay people not versed in all areas of personal injury law. Should you slip and fall on something in a store and you sustain a minor injury, if the store or its insurer makes a reasonable offer to you to settle the case, then it may be prudent to accept the offer without hiring the services of an attorney. However, the store or its insurer

will require that you sign a release promising to pay any medical or health insurance liens out of the proceeds of the settlement. Then, you should request that your health insurer or medical provider accept less than it has paid to resolve their liens on your settlement proceeds. Make sure any agreement by a medical provider or health insurer to accept less than the full amount is in writing and signed by an authorized representative.

What Preparatory Work Do You Need to Do for Your Case?

Take pictures of the damage to the vehicles involved in the crash as well as pictures of the scene if you are physically able to do so. Often, that is not plausible as you may be too injured to even think about taking pictures. The same is true in fall down accidents. If you are able, take pictures of the condition which caused the fall and the surrounding area.

Try to obtain the names and contact information of any witnesses. Some people willingly cooperate and even provide you with their names and contact information. Most people are hesitant to become involved.

Some people hurt in slip and falls walk out of the business establishment without reporting it. Do not make that mistake. Let an employee, preferably a store manager, know that you are hurt from a fall and explain the cause of the fall.

Seek timely medical treatment. Often, when people sustain injuries, they think, *"I'll give it a few days and see if it gets any better."* If you are in substantial pain, seek immediate medical attention. The more time that elapses between the incident and the initial medical treatment, the harder it is to prove that the incident caused the injuries. That is not to say that you cannot wait a day or two if the initial pain is not that terrible. However, if the pain persists and does not improve (or even gets worse) over a few days, you should seek medical attention.

If you see a physician for your injuries, make sure to follow the doctor's instructions. If you are referred for physical therapy, do not miss therapy

visits. If you are prescribed medication that the doctor says you must take, then take it in accordance with the instructions, unless it causes intolerable side effects.

When you initially see a doctor, it is very important to provide him or her with an accurate medical history. Too many times in personal injury cases the claimant has had prior complaints of pain to the same parts of the body injured in the accident, but neglect (sometimes intentionally) to tell the doctor of this prior history. It is vitally important to provide the doctor with an accurate medical history in order for the doctor to relate your injuries to the accident. Your doctor should ask you about your medical history. If you withhold important medical information from your treating doctor, you are doing yourself a disservice. Your credibility is the most important part of your case. Too many times people try to manipulate the system but deceit will only hurt your case. Eventually, your prior medical history will be discovered. Usually, a liability insurer will know if you have had other personal injury claims and settlements.

So those are the things that are important to do at the beginning.

To sum up:

- Document what happened;
- Collect witness information;
- Take photos;
- Make sure that the business owner or operator knows;
- Seek medical treatment.

Handling the Insurance Adjuster and the Insurance Company

Claims adjusters are not the highest paid people in the world. These people maybe make \$30,000 to \$45,000 a year in the first couple of years.

Meanwhile, they speak with claimants who make demands for incredible sums of money. So many adjusters start out with, and they have also been

trained to have, an attitude of skepticism towards every single personal injury claim.

Some adjusters have been in their field for decades. They have negotiated thousands and thousands of claims and have seen it all. Adjusters may be very nice to you. However, their job is to be is to try to settle the case as cheaply as possible. (Once you have a lawyer, the adjuster is ethically bound not to contact you directly.)

Most claims adjusters are not bad people, but they view your case with skepticism, as they have seen claims that have been fraudulent or that have been exaggerated. There are plenty of valid cases where there are significant injuries. Adjusters want to get those cases settled. However, they always want to settle them for a little as they possibly can in order to save the insurance company money.

Negotiating Tactics to Use with Adjusters

You may be able to develop a rapport with the insurance adjuster. When I personally negotiate, I rarely will tell the adjuster *“this is the greatest case in the world.”* I strive to be honest. *“I see your position is this. Our position is this. And so a reasonable settlement value would be this amount.”*

Understand that many adjusters only have limited authority to settle. Once a certain offer is made, the adjuster may have to seek authority from a supervisor or claims committee to obtain additional authority to settle. Often times those higher up in the insurance company will not authorize an increased offer.

As an individual negotiating, be honest and be realistic. If you sprain your ankle in a slip and fall and it hurt for two months and then resolved, do not demand \$50,000 to settle the case, unless for some reason you could not work for those two months and you lost tens of thousands of dollars in wages.

Be candid. If you have been in a prior accident, don't intentionally neglect to tell this to the adjuster if asked. Insurance companies can use their computers to vet claims and discover lies and omissions about prior claims. Do not underestimate your case, but also do not overestimate it, either.

Should You Allow Recorded Statements and Access to Your Medical Records?

Never give a recorded statement, unless you are suing your own insurance company, in which event it might be required pursuant to the terms of your insurance policy. For example, if you are handling an uninsured motorist case in Florida (a claim against your own insurance company due to the fact that the other driver had little or no bodily injury liability insurance) you have to provide a recorded statement under oath to your insurer. However, if you slip or fall at a supermarket and the store's insurance company wants to take a recorded statement, you are not obligated to do so.

MEDICAL RECORDS

With respect to medical records, you will need to produce medical records or fill out a form to let the insurance company access medical records from the doctors who you treated you and perhaps from other doctors you saw before the accident for a similar condition. Understand that the insurance company is not going to offer you money without seeing documentation and evidence of an injury.

Dealing with Your Medical Providers

Again, you need to be candid. Doctors sometimes take down the wrong history about the accident, so be watchful and make sure the history is accurate.

The doctor will ask: "What happened? How did the injury happen?" You do not have to go into tremendous detail, but provide enough for context. For instance: *"I got into a car accident: another vehicle broadsided me after*

failing to yield the right of way.” Or: “I slipped and fell on water at the grocery store and landed on my right side hard.”

Give an accurate account. The doctor will want to know mechanism of the injury. Tell the doctor what symptoms you are having, and answer the doctor’s questions as honestly as you possibly can.

If something is wrong with your arm, the doctor may take an X-ray. If something is wrong with your back, you may need an MRI of your back or X-rays of your back.

Any medical treatment you received before the accident is very important. Sometimes doctors come to court and testify that their patient gave a history of never having had any prior problems to the areas of the body about which the patient is claiming injury from the accident. If there was a prior injury to that area, then the doctor’s opinion could be effectively nullified. This could prevent you from obtaining any recovery. Plus, it makes you look untruthful.

To sum up: provide an accurate history as to what happened. Be upfront about relevant prior medical conditions. Continue to follow your doctor’s advice and treatment regimen.

Should You Keep a Journal of Your Injury Recovery?

Many people do keep a journal or diary, but I do not necessarily recommend this practice. Note important dates in your treatment. However, you do not need to maintain a detailed diary or journal. If the case goes to court, the lawyer for the defendant might ask you to produce your diary or journal. Although there is an argument you may not have to turn it over to the opposition, you do not want to risk a judge requiring it.

Should You Take Pictures of the Injury Over Time?

If you sustained bruising or bad scarring from the injury, you should take pictures once a week at the beginning. It is very important to document the injuries. Often, the full extent of an injury cannot be known until the bruising and swelling decrease and ultimately disappear.

To reiterate: it is important to take pictures. Document the injuries. Document any damage to your vehicle. Take pictures of the area where you fell. Pictures-pictures-pictures – especially if they help you!

The Role of the IME (Independent Medical Exam) and How to Handle It

“IME” is the biggest misnomer in the practice of all personal injury law. It’s not really an “Independent” Medical Examination. It is really a compulsory medical examination. Normally, it can only be required once you are in a court case (litigation), although if the claim is against your own insurer, it can probably require that you appear for an examination before a lawsuit is filed. That is pursuant to the terms of the insurance contract.

Just recognize that many doctors who perform IME’s make hundreds of thousands of dollars or more per year performing these examinations at the request of insurance companies. These physicians will usually conclude that: a) you do not have a permanent injury from the accident; or b) your injury or surgery was not related to the accident. They are going to minimize your injuries in almost all instances.

The IME doctor will ask about preexisting conditions and prior medical history. In a lawsuit, the lawyer for the defendant will have forwarded the pertinent medical records from both before and after the accident to the doctor for his or her review. The IME doctor will prepare a lengthy report detailing all the prior medical records as well as medical records after the accident. The goal is to try to minimize your injuries or to try to make the injuries appear to be unrelated to the accident.

Repairing Your Vehicle and Getting Paid for the Damage To it

If it is a case of undisputed fault, the other driver's insurance company may agree to pay for all your property damage. It may tell you where to have it fixed as many insurers have preferred repair shops that guaranty their work. If there is a dispute about who was at fault, it get more complicated. The insurer may say *"No, we are not going to fix it"* or *"okay, we will pay 50%, because we think you were 50% at fault."*

If that happens, seek compensation from your own insurance company. If you have collision insurance, it is usually is subject to a deductible of \$250 or more.

Many people do not like approaching their own insurance company for money, because they think doing so will result in increased premiums in the future. But if the other insurer will not pay for the property damage, then your insurance company has to pay, regardless of fault, minus the deductible. If your insurance company believes that the other driver was at fault, it could bring a case of subrogation against the other driver and his or her insurance company.

What You Need to Know About Demand Letters

If you are handling a case on your own, typically there will not be a demand letter. Usually your lawyer writes a demand letter.

If you *are* going to write a demand letter, however, you just write to the adjuster or send him or her an email. In it, you should say: "This is my demand for settlement. I was injured at such and such as a result of negligence..." Then give a brief description of the accident. Don't go into too much detail. Definitely put on the top of this communication: **"Settlement Negotiations: Privileged."** You do not want anything you say in this communication to be used against you. When you declare something a "settlement negotiation," it is not admissible in court.

Detail what happened, almost like you are a news reporter: “As a result of the negligence of your insured, I sustained these injuries. I saw the following doctors. I sustained these medical expenses and lost wages.” Include any documentation that you believe proves your case. Send relevant medical records, if you have not done so. Send your tax returns, if you need to prove lost wages, or a statement from your employer that says: *“because of this accident, you missed X amount of work and X amount of pay.”* In addition, talk about your pain and suffering and how the injury has adversely impacted your life.

When you make a demand, taking into account all the facts of the situation. Determining what to demand can be very difficult. Ask for a reasonable amount. Why? Because if you do not settle the case and you go to court, you are not limited in what you can recover to the amount which you demanded to settle the case. Let’s say you are willing to settle your case for \$25,000, and the insurance company only offers you \$5,000. If the negotiations end at that point and the matter is litigated, it becomes a court case. The jury will never know about the pre-lawsuit settlement negotiations. You can ask the jury to award you \$100,000 *and the jury will never know that you would have settled for much less than that.*

This works both ways. The insurance company’s lawyers can argue that you should not be awarded anything at trial, and you are not permitted to tell the jury that the insurer was *“willing to pay \$5,000 or \$10,000 in settlement.”* You can always ask the judge or jury to award you an amount more than what you would have accepted to settle before a lawsuit was filed.

The Insurance Company’s Response

There is no mandated timetable in which an insurance company, through a claims adjuster, has to respond to a demand for settlement. Often a lawyer who is demanding the insurance policy limits will give a definitive amount of time in which the offer will remain open. In the event the demand is not accepted and the case goes to trial and results in an award larger than the

insurance limits, then the insurance company might have to pay for the total amount awarded as it did not agree to pay the demand for the insured's policy limits when it had the opportunity to do so. The insurance company exposed its insured to a personal judgment above the policy limits.

A claims adjuster may write you with an offer or call you. Cases are often settled orally and then the claimant has to sign a release. Many times the adjuster and the claimant will go "back and forth" several times, where the claimant lowers his or her demand incrementally and the adjuster increases the offer until, hopefully, a settlement is reached.

How Insurance Companies Justify Low Offers

First, an insurer will test your resolve to determine how desperate you are for money or how interested you would be in filing a lawsuit. The assumption is that you probably do not want a long, drawn out process. Alternatively, the adjuster may deny liability on the part of the insured or the adjuster may contend that the accident did not cause the injuries. That is why you might not be offered anything. This happens fairly frequently.

Many times, the insurer will make a token few-hundred-dollar offer. This is usually done to test your resolve. An insurer's goal is to settle each case as cheaply as possible.

If you receive an offer that you do not believe is fair, communicate with the adjuster and express your concerns. Reject the offer and make a counter-demand if you want. You will be able to tell how reasonable the adjuster is pretty early in the process.

Deciding whether to accept a settlement offer is a value judgment and a business decision. There are risks involved in taking a case to court. The court process can take years. Again, the opinion of a lawyer may assist you in determining whether the offer is sufficient.

You could hire a lawyer and bring a lawsuit. But then there are added expenses and attorney's fees (a higher contingent fee in a lawsuit) that you need to consider. The point is that when evaluating your options, you need to become a business person and assess the pros and cons of accepting an offer. Consider your financial condition as well as the time and aggravation of a court case in your calculus.

Appreciate what is likely going to occur in a lawsuit. You will have to appear for a lengthy deposition. You will be required to answer questions under oath in writing. You will have to attend mediation and possibly trial. You run the risk of losing and possibly owing the other side money. Then again, you could wind up with a great verdict at trial.

Some people have unrealistic expectations. They think a jury is going to award them a fortune and make them a millionaire even with a relatively minor injury. You must manage your expectations.

Personal Injury Cases in Context

A general theme of this book is that these cases are a lot more challenging and less lucrative than many people believe.

You will hear on TV about the dramatic, big cases – the ones with huge amounts of money. Many times, those are from default judgments, and they are never going to be collected anyway. Sometimes, they are lowered.

The average jury verdict in a personal injury case is relatively small. Those settlements do not make for good press. The large awards do, though. Sometimes, reporters do not include all the important facts or misrepresent the facts so the average reader is amazed at the result: *“Wait a minute, this person burglarized a store and got money for stubbing his toe while escaping?!”* Something is likely missing from that report. Outrageous results like that, when they (infrequently) happen generally are reversed on appeal.

When to Stop Working Your Own Case and Call an Attorney

Here are some signs that it's time to reach out for help:

- You are overwhelmed with what you are being asked to produce;
- You are having trouble understanding the system or understanding why the adjuster is asking certain questions;
- You receive a final offer that you believe is insufficient to settle the case.

Will Hiring a Lawyer Result in a Higher Settlement Offer?

Often, but not always, hiring a lawyer will result in a higher settlement offer than one received during self-representation. However, will that higher amount be sufficiently to justify hiring a lawyer? If it is a very serious injury and there is abundant insurance coverage, it probably is advisable to hire an attorney from the beginning.

Personal injury cases have many traps for the unwary. One such trap is settling your case before determining approximately how much you have to pay for your unpaid medical expenses and how much you have reimburse your health insurer if it has paid for some of your bills. Almost always, your health insurer has what is known as a right of subrogation or reimbursement. Medicare and Medicaid have a right to be paid back or all some of the money they paid on account of an injury. If you work for a large company, your health insurance might be governed by a 1974 law known as ERISA. Many times, health plans governed by ERISA require that every penny the Plan has paid must be paid back when there is recovery, regardless of the difficulty with the case or the amount of liability insurance. However, usually you can convince the Plan to accept less than 100% of what it has paid if you explain the difficulties with the case. It is difficult for the untrained lawyer to resolve issues involving subrogation or reimbursement rights.

Another challenge might be proving fault, usually meaning proving negligence. For instance, it may be difficult to prove that a storeowner knew or should have known about a spill on a floor. It could be hard to prove how fast a vehicle was going before an accident, even with hiring an expensive expert witness.

Conclusion

People always want to save money. Some people may balk at hiring a lawyer in a personal injury case, as the lawyer takes a percentage of the recovery as a fee. But usually it is foolish to go it alone, because it is a maze. Personal injury law has become so complicated over the last several decades. Laws have changed. Requirements for lawyers also have changed, especially with respect to areas like Medicare and reimbursing health insurance companies.

There are many nuances and traps for the unwary. That is not to say that you cannot represent yourself and try to obtain a settlement, especially if the injury is not significant. However, if there is a significant injury, or if the insurance company is not taking you seriously, contact an experienced personal injury lawyer to guide you through this most difficult process.

Good luck with your personal injury case. Please reach out to us for a free consultation about your case or call us with any questions about the concepts in this book.

About The Author

Alan Sackrin has been a personal injury lawyer since 1982. He is a partner at Sackrin & Tolchinsky, P.A. and has been a Florida Bar Board Certified Civil Trial Lawyer since 1991. He has been lead counsel in over 100 trials and arbitrations in State and Federal Courts throughout Florida and has been involved in over fifty appeals. He can be reached at (954) 458-8655.

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