

# Lowcountry Injury Law

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## **PERSONAL INJURY CASE - GENERAL INFORMATION**

Dear Client:

Since you probably do not know what to expect as we process your claim for injuries, we would like to acquaint you with the general pattern of how we handle cases of this type. We feel it will be helpful to both our Clients and to ourselves if they know in advance what to expect.

### **CLIENT'S DO's AND DONT's**

Before proceeding with your lawyer's responsibility in this matter, it is important that you recognize and understand certain aspects of your responsibility for your own case:

1. DO NOT discuss your damages, injuries, or the accident with any insurance adjustor, including your own. DO refer all inquiries from insurance agents to your attorney for handling.
2. DO NOT discuss your case with anyone other than your attorney or your doctors (or spouse, of course).
3. DO tell you doctor about all symptoms and problems related to your injuries – it is very important to have medical documentation of all injuries and related problems. Do not minimize or exaggerate your symptoms – be honest. DO be aware that anything you tell your doctor that could negatively impact your case could end up in your medical records (i.e., you tripped and fell because you were not paying attention; you are suing because you need money; a prior or subsequent injury may be the real cause of your condition; etc.). Do not gratuitously give information to your doctor that is not directly related to your treatment.
4. DO keep us advised of the progress and status in your medical treatment, i.e., you were referred to a new doctor; started physical therapy; had to go to the hospital for a condition arising from the accident-related injuries, etc.
5. DO notify us when you have been released from all medical treatment.
6. DO keep a diary-journal that describes your complaints of pain and discomfort. (We can furnish you with a Medical & Expense Diary-Journal.)
7. DO keep records of the dates and mileage to and from any doctor's office, or other health care provider.
8. DO obtain a receipt and keep a record for all drugs, appliances or bills incurred as a result of your injuries. Bring copies of all bills arising as a result of your accident to this office for inclusion in your file.
9. DO request from your employer, if employed, that s/he furnish this office with a summary of your lost time from work and the attendant lost wages. We will give you a form entitled, "Request for Verification of Wages", to be used for this purpose.
10. If you are self-employed, DO keep a record of the time you are unable to work or perform your duties.
11. DO notify us if, after first consulting us, you miss work because of your injuries.
12. DO bring to our office any documents your receive from any insurance company relating to your claim.
13. DO NOT sign any documents relative to this claim without first submitting them to your attorney for review.

14. DO notify us at once of any change of address, employment or of any other fact which might affect your case.
15. DO NOT request that this office advance you funds based on your potential recovery. This practice has been specifically defined as unethical by the South Carolina Supreme Court and attorneys can no longer lend or advance funds to clients in this fashion.
16. DO NOT make repeated phone calls to office to ask “what’s going on.” We promise to keep you informed of important developments in your case. Be patient.
17. DO USE E-MAIL to communicate with our office (and attorney) whenever appropriate, as this is often the most efficient way to ask questions (and get a quick response) and provide us information, and gives us a better record of communications and retention of important information.

### **INITIAL STEPS AND OBTAINING INFORMATION**

We will notify the other party's insurance company that you have retained us as your attorney. We will also request the insurance company to give us a copy of any statements you may have given them.

In auto accident cases we will obtain an official accident report from the South Carolina Highway Department.

Letters are sent to all medical providers and facilities involved in your treatment, notifying them that you have retained us to represent you and requesting your medical records. A request is made that they give no information to any insurance adjuster for the defendant insurance company at the same time.

If you so request, we will send “protection” letters to your medical care providers with whom you have incurred a bill as a result of this injury, advising them of our appearance in the matter and indicating that any unpaid medical bills will be paid from any recovery made in your case. This is done because many creditors are willing to wait for the payment of their bill if they have reason to do so.

Any police officers who may have been involved will be interviewed, witnesses will be contacted, photographs of the accident scene will be taken. Any necessary information from employers, schools, or other persons will be obtained. If necessary, an investigator will be hired by us to assist us in this investigation.

It is essential that we have your cooperation in helping us gather the facts about your case.

### **EVALUATION**

It is important to know that no case is settled until the exact nature of the Client's medical condition has been determined and all investigation has been completed. The time-frame varies for gather obtaining all information necessary and, in some cases, it is impossible to obtain the necessary medical information because the doctor cannot answer many questions until treatment has been completed. Sometimes we have to wait several months or more from the date of the accident before we can receive a final medical report from your doctor about your medical condition. One of the most difficult requests we make of our Clients is patience.

As soon as the investigation has been completed and all necessary medical information obtained, we will sit down with you and evaluate your case with you. No settlement figure is ever submitted without the Client's consent. In most cases we will attempt a settlement with the insurance company before a lawsuit is filed.

### **STARTING A LAWSUIT**

If settlement cannot be reached with the insurance company, your attorney will consider the advisability of filing a lawsuit. In some cases, however, it is important to start a lawsuit immediately. No lawsuit will be started without your permission and a comprehensive explanation as to why your attorney thinks a lawsuit is necessary.

A lawsuit is started by delivering to the other party a paper called a Complaint which indicates to the party of fault that (s)he is being sued as a result of the accident that caused your injuries. The other party is called a defendant. The defendant takes these papers to his/her insurance company which delivers them to its lawyers. The lawyers then deliver to us a paper called an Answer, which contains the legal defenses to the claims presented in the Complaint.

Although a lawsuit may be started, settlement is always possible and is very often made just before trial. However, in the past few years, in less complicated cases, insurance companies or their attorneys have been more willing to conduct early mediation in order to try and settle cases without incurring substantial litigation expenses in defending the case.

One year from the date of filing a lawsuit, the case is put on the Jury Trial Roster after which the parties shall be prepared to try the case. Cases are called for trial in the order of which they were filed. Sometimes, usually in more complicated cases, a Scheduling Order is entered that will extend the time for completing Discovery and getting the case ready for trial. In more complicated cases, a case can take up to two years from filing to get to trial, but generally cases will be called to trial 12-18 months after filing.

## **DISCOVERY**

Once the lawsuit has been started, both sides have the right to obtain information about the case by discovery deposition, interrogatories and request for documents.

Discovery deposition is the testimony of some party or witness given under oath in the presence of attorneys for both plaintiff and defendant, and before a court reporter who takes down the testimony.

Interrogatories are written questions which either attorney may submit, and which have to be answered in writing under oath within 30 days of being received by them in the mail.

Request for documents are written requests for production for the other party to produce all relevant documents, photographs, videos, e-mails, exhibits, or any other tangible evidence which may help support a claim or defense or in determining what evidence may be used at trial.

Your attorney generally uses all of these discovery methods to help investigate the facts, prove liability and damages, and to evaluate the merits of the case. The defendant's attorney will also use these procedures to determine and evaluate all aspects of the case.

Under the laws of South Carolina, there are no longer any secrets in lawsuits of this kind. The attorneys for both sides take depositions and submit interrogatories to assist them in finding out all the facts. At any time throughout this period, the possibility of settlement may come up again and your attorney should endeavor to discuss settlement with defendant's attorney as the case moves along.

You must bear in mind that it is the prerogative of the defendant, or his/her insurance carrier acting on their behalf, to take the case to trial. That is, while your attorney may be of the opinion that the case should be settled without taking incurring substantial time and expense in litigation and trial, and while your attorney may present all documentation possible in support of his position, he cannot require a settlement. Therefore, despite all efforts to the contrary, your case may be tried in Court. However, an estimated 98% of all cases are settled out of Court.

## **MANDATORY MEDIATION**

In most of the larger counties in South Carolina, Court rules now require that most types of personal injury cases go to a settlement mediation conference before the case can proceed to trial. Mediation is a highly effective form of settlement conference in which a trained and skilled neutral (the mediator) facilitates communication, reconciliation and negotiation between the parties, in order to achieve the voluntary and mutually acceptable resolution of disputes. Mediation is practical, relatively informal, and unencumbered by courtroom procedures or legal technicalities. In most cases, mediation is significantly less expensive than continued litigation. A Mediation conference must be held within 300 days after the filing of the action. Pre-suit medical malpractice mediations are required to be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. The mediator's fee is split between the parties involved in the case.

## **TRIAL**

The great majority of cases never are tried, even though lawsuits are started. Often, however, they are settled within just a few days before the trial date. If your case cannot be settled for a fair amount of money, your attorney will, with your permission, proceed to trial. Before going to trial, the few weeks before the trial date are spent by your attorney in detailed preparation of your case for trial. What is expected of you at trial will be explained to you in minute detail well in advance of your going to the Courthouse.

Once all discovery is complete, the case is ready for trial. You will receive notice from our office a few weeks prior to the term of court in which your case might be reached for trial. You must realize that we have little control over how quickly or if your case will be reached during any particular term of Court. Cases are reached in the order in which they appear on the calendar. Further, since it often happens that many cases are settled at the last minute just prior to trial, the result in many instances, is very little notification prior to your being called to Court. For example: At the commencement of Court, your case may occupy position #50 on the roster, and some 20 cases preceding it are set for trial. If all preceding cases were actually tried, your case could not conceivably be reached in a two-week term. However, you will be notified to be on stand-by just the same. If, after the trial of two cases, numerous subsequent cases are settled, you could be called on 24 hours notice to come immediately to the Court room for your trial.

This situation requires your cooperation under what might comprise rather trying circumstances. Every effort will be made to afford you as much notice as possible in order that little disruption to your normal schedule will occur.

Depending on the severity of your damages and injuries, questions of liability, and the number of witnesses required to prove your case, a trial may take 1-3 days, for most cases. Only very involved matters will require any additional trial time. These might include premises liability cases, death cases, cases involving a defective product, etc.

### **VERDICT OR SETTLEMENT**

You are the final judge of all offers in settlement which are received, considering, of course, the professional judgment and advice of your attorney. If the case is not settled, the jury, composed of twelve persons in State Court and six persons in Federal Court, will make the decision in the form of a verdict. In South Carolina, the jury's verdict must be unanimous – they must all agree on liability and the amount of damages. This verdict must be based on the law as the Judge charges it, or explains it to the jury. The amount of the verdict is generally solely within the jury's discretion and generally, is not appealable unless it is shockingly high or inadequate. However, certain errors of law committed by the Judge during trial are appealable. Only in these specific situations can you assert grounds for an appeal. You should bear this in mind, therefore, when considering and weighing all offers of settlement which may be proposed.

### **DAMAGES**

The following factors constitute compensable damages in a personal injury action:

#### **Kinds of Damages**

1. Actual or Compensatory;
2. Punitive.

#### **Actual or Compensatory Damages Include:**

1. Medical Expenses: Hospital, doctor's bills, prescription costs, etc.;
2. Automobile Damages: Total loss; Repair costs; Loss of Use - Rental value of substitute automobile during repair of your vehicle; Depreciation - Any automobile, after damaged, loses some of its previous value;
3. Lost Wages (Past, Present and Future);
4. Travel to and from the doctor's offices;
5. Babysitting expenses during visits to doctor;
6. Mental anguish, shock and emotional upset;
7. Pain and suffering incurred from the injuries;

8. Impairment to health and enjoyment of life;
9. Disfigurement; and,
10. Future or prospective damages where there is a permanent physical impairment, as may be determined by jury based upon the Mortality Tables, used to compute life expectancy.

It should be noted that Items 6-10 are solely within the discretion of the jury, inasmuch as no fixed value can be attributed to each. These actual or compensatory damages are awarded to the person injured or damaged (plaintiff), if he proves the other party (defendant) violated some duty to the Plaintiff. In other words, the test is whether or not the defendant was negligent, or did he fail to exercise "due care" toward the Plaintiff, and thereby cause injury or damage to the Plaintiff?

The comparative negligence doctrine applies if the defendant is able to show that you contributed to the accident by some negligent conduct on your part. A plaintiff may recover as long as the percentage of fault attributed to him or her (as determined by a jury) is not greater than that of all defendants, and the plaintiff's recovery would be reduced in proportion to the amount of his or her negligence. If a jury determines that the plaintiff is more than 50% at fault in causing the accident, he or she would be barred from any recovery for damages.

#### Punitive Damages Include:

Punitive damages may be awarded by a jury where the defendant has not only been negligent, but also grossly negligent, or reckless. These damages are given in South Carolina as a "...vindication of a private right..." or to deter the defendant from similar conduct in the future. These amounts are also solely within the discretion of the jury, and are only awarded when exceptional circumstances exist.

These damages also apply in cases where a Plaintiff is injured by a product, in what is known as a products liability action. In South Carolina, 402-A of the Restatement of Torts is the law which provides for "strict liability" of the manufacturer of a product, which by virtue of defect or design, is unreasonably dangerous to the consumer. These damages also apply to other tort actions such as defamation, slander, abuse of process, malicious prosecution, electrical cases, etc., although in those actions, the terms may vary slightly.

### CLOSING YOUR CASE

Upon conclusion of a successful settlement or verdict, and after receipt of the insurance company check, which usually occurs within two weeks after settlement, our office will notify you to come in and complete the closing documents. You will be supplied with a Settlement Statement which outlines completely all expenditures made in litigating your case, the attorney's fees authorized by your Attorney's Representation Agreement and the net proceeds to you. At this time, the case is concluded and the medical records, depositions, photographs and other documents which are contained in your file are yours to keep, if you so desire.

### CONCLUSION

The information contained in this pamphlet is necessarily general. Each and every case we have in our office is handled on an individual basis.

We will make an effort to keep you informed by sending you copies of correspondence and other papers, but it is impossible for us to call you and give you a report on your case every week. On the other hand, if you have any questions at any time about your case, do not hesitate to contact our office.