The Basics of Litigation

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While every case is different and exceptions to the general rules are uncommon, most civil damage claims contain some or all of the following stages:

-Investigation
-Preliminary Evaluation
-Filing Suit
-Procedural Challenges
-Discovery
-Settlement Negotiations
-Trial

Investigation:

A thorough investigation of a claim is absolutely essential if the claim is to be successfully settled or successfully prosecuted through trial. Our investigation begins the first time we interview you and it generally continues in some form until the case is finally resolved.

When you are interviewed for the first time, we obtain information about the circumstances of your case including important dates, times, places and people. The questions asked of you during the interview are all designed to help us get to know you and your case as well as possible. Answer the questions accurately and in detail, and if you later realize that you made any mistakes or omitted any facts that could possibly become important to us, please tell us immediately. Remember, telling us too much is always better than not telling us enough.

After the initial interview, a file is opened on your case and the case is assigned to one or more of our attorneys, a paralegal and secretarial and clerical support personnel. Each person has important responsibilities in preparing your case for trial, and your full cooperation with each member is essential.

The attorneys and paralegals discuss your case and decide on an investigation strategy. In a case involving an automobile accident, for example, the strategy will probably include obtaining all relevant police reports, interviewing police officers, passengers and witnesses, photographing the automobiles, and the crash scene, and gathering hospital and doctor's records. Sometimes experts are hired to reconstruct the way the accident happened based upon available physical evidence. Doctors and medical providers are retained to prove your injuries. This same process generally occurs in other cases such as breach of contract claims or property disputes.

As much information is gathered as feasible relating to how the accident occurred, what factors contributed to causing the accident, and what damages resulted from the accident. Often you can't evaluate adequately without defendant's depositions. Frequently filing suit must occur to gain enough data to properly evaluate the case.

Preliminary Evaluation:

After the initial investigation, we will assess the strengths and weaknesses of the case and the case will be evaluated for settlement purposes. A wide variety of factors are taken into consideration when attempting to predict the dollar value of a civil case, some which include:

1. How strong is the case? How sure are we that we are going to be able to prove that the defendant is at fault?

2. To what extent if any, might our client's own fault have contributed to the problem?

3. How much sympathy will the defendant be able to generate in the eyes of the jury? If the jury likes the defendant and feels sorry for him, the jury may be less likely to find in our favor or award damages against him.

4. How will our client relate to the jury?

5. Do any technical legal obstacles stand in the way of recovery?

6. How great are the tangible out-of-pocket losses?

7. What are the damages?

8. Does the defendant have the financial resource to pay the full measure of damages,

and if so, what kind of collection problems might arise if he/she does pay voluntarily?

9. Is there insurance to cover all or any portion of the defendant's liability for damages?

10. How strong of a defense effort are we likely to encounter?

11. How long is it likely is it to take us to recover for you if the matter is fully litigated through trial and appeal?

12. How much will it cost to properly prosecute the case through to conclusion?

13. What does the client want to do?

Our responsibility is to help identify and understand all of the factors that influence the value of your claim. We provide you with the benefit of our collective experience and training, but the ultimate responsibility and final decision to accept or reject a settlement rest with YOU.

If a preliminary evaluation can be completed before actually filing the lawsuit and you reach a decision on the settlement amount you will be willing to accept, then the settlement negotiations are begun on your behalf.

This same process applies if we are defending you in any matter.

Filing Suit:

Formal litigation is begun by filing a document with Court called a COMPLAINT. The complaint contains a general statement of the facts on which the claim against the defendant is based. Is it the first document the defendant receives telling him that he is being sued and the reason he is being sued.

The complaint does not usually state the amount the plaintiff is suing to recover, except to state whether that amount is more or less than Fifteen Thousand Dollars ($15,000.00). The reason for that allegation is that $15,000.00 is the dividing line between the jurisdiction of the two trial court levels in Florida. Cases with a possible value over $15,000.00 are tried in Circuit Court.

When you receive a copy of the Complaint, check it to be sure it is factually accurate. Bring any inaccuracies to the attention of your attorney.

When your case is filed, it is assigned to a specific trial judge who generally remains responsible for all hearings and other matters relating to the case through its finals disposition. The judicial assignments are on a blind rotation basis. We do not pick to whom your case will be assigned.

Procedural Challenges:

A variety of alternatives are available to the defendant in responding to the service of a Complaint. The most common response is to challenge the legal sufficiency of the Complaint through pleading called a MOTION TO DISMISS. Motions to dismiss seek to point out technical deficiencies in the way the Complaint was drafted. If a motion to dismiss is filed, the motion is set for a hearing before the trial judge who will either grant or deny the motion. When motions to dismiss are denied, the defendant is then required to answer the Complaint. If the motion is granted, the Plaintiff is given a chance to amend the Complaint to correct the defect. The defendant can again challenge the new Complaint and the plaintiff can continue to amend as long as the judge permits the process to go on or until the defendant's motion to dismiss is denied.

When the defendant answers the Complaint, he/she may include affirmative defenses, a counterclaim, a cross-claim and/or a third party claim along with his answers.

AFFIRMATIVE DEFENSES: Legal reasons why even if the allegations in the Complaint are true, the plaintiff should not win.

COUNTERCLAIM: A related Complaint against the plaintiff brought by one of the defendants.

CROSSCLAIM: A related Complaint of one defendant against another defendant.

THIRD PARTY CLAIM: A related Complaint of one defendant against someone who was not named as a party.

The filing of a complaint does not put the case in line for a trial. Before the case is qualified to be set for trial, all of the defendants must be served, technical challenges must be defeated, and answers must be filed be each defendant. If any defendant files affirmative defenses or third party claims against someone else, those pleadings must be answered.

Only when the last answer is in, is the case considered to be "at issue" and ready to be placed on the trial calendar. The amount of time it takes to get a case at issue by defeating all of the technical and procedural challenges may vary greatly from case to case depending on the number of parties, the number of claims and the complexities involved in those claims. Some cases can be placed at issue in less than sixty (60) days, while others may take longer than a year.

When the case is at issue, a NOTICE FOR TRIAL is filed and the case is set down on a trial calendar. The average interval between filing a notice for trial and scheduled trial date is from six to nine months.

Discovery:

After a lawsuit is filed, all of the parties to the lawsuit have a right to conduct a formal investigation of all the issues raised in the pleadings. This formal investigation is called pre-trial "discovery" and it involves a variety of available procedures. The most commonly used discovery procedures are:

DEPOSITIONS - The taking, in question and answer form, sworn, stenographically recorded testimony from any party or potential witness. Depositions may also be tape recorded and/or video recorded under some circumstances.

Although the judge is not present during a deposition, the testimony is given under oath, subject to the laws of perjury, and may be used for a variety of purposes at a later trial. The rules regarding deposition questions are less restrictive than rules that apply at trial, permitting the party taking the deposition to explore any area that might "reasonably lead to the discovery of admissible evidence".

REQUEST TO PRODUCE - A pleading identifying documents or other physical evidence a party is obliged to provide for inspection and copy by an opponent.

INTERROGATORIES - Written questions put to an opposing party which are answered in writing and under oath. Interrogatories are in an alternative means to obtain the same kind of information available through deposition.

REQUESTS FOR ADMISSION - Statements of fact or law which a party is obliged to either admit if true and accurate, or deny if untrue or inaccurate. Statements admitted cannot thereafter be challenged or contested. Requests for Admissions are used to narrow the contested issues at trial.

Through the use of these discoveries procedures and others available under the Florida Law, there are very few secrets or surprises

Settlement Negotiations:

Most cases are susceptible to settlement. Because of the cost of litigation and the risks involved, settlement is many times better than going to trial. It is for this reason that the court system encourages parties to try to settle the disputes.

Settlement negotiations are an art form. The timing of a settlement demand, the amount of the demand and the way it is communicated are all important. While you must decide the final amount or terms you will accept, often the best way to convey the offer should be left to the attorney. There is no time limit on settlement negotiations. They may begin at any time. They may be interrupted and then resumed repeatedly. They may continue up to the time of and even after a jury verdict.

Remember, a settlement guarantees you recovery, but a settlement is a compromise. Your case is unlikely to settle unless you are willing to give up something. In most circumstances, the only way to get 100% of the

value of your claim is to accept the risks associated with trial. Even the strongest of claims could be lost before a jury. No one can GUARANTEE success in litigation, but if settlement negotiations are unsuccessful, we will make every reasonable effort to maximize your chances for success at trial.

Courts typically require the parties to attend mediation. Mediation conferences are privileged and confidential. This is to encourage candid discussion and to promote settlement talks free from the fear that someone may gain an advantage if the talks are unsuccessful. At mediation, a mediator is hired to meet with the parties to encourage settlement. The mediator is not a judge. He or she is there to try to get the parties to look at the strengths and weaknesses of each other's cases and then work out a settlement. Often the settlement can include terms and conditions that a court could not include.

Trial:

If the case cannot be settled, the matter will be presented before a judge or jury. Whether the case will be heard by a judge or jury depends upon the type of case and whether you and your attorney, or the other side, wants to have a judge or jury decide the case.

If a jury is to hear the case, jury selection will occur. This is where the attorneys will select from a pool of jurors who will be seated to hear the case. Each party will have the opportunity to object to any potentially biased juror.

At the start of the trial, the attorneys will give an opening statement-a road map of what the attorney expects the evidence to show.

During the trial, each party will present its evidence. This may be through the testimony of the parties, witnesses, or experts. This may also be by the introduction of documents and photographs. There are very specific complicated rules of evidence that apply to each item or matter that can be presented. You will need to discuss each and every piece of the "evidence" that will be produced at trial with your attorney to determine if such evidence can be stated or shown.

The attorneys for the parties will then be given the opportunity to present a closing argument to summarize the evidence and tell the judge or jury what he or she wants to happen.

The judge or jury will then deliberate and decide the outcome of the trial and provide its judgment or verdict.

What is the cost?

While most personal injury and medical malpractice cases are handled on a contingency basis (fees are only due if a recovery is achieved), litigation is typically handled on an hourly basis. The attorneys and paralegal staff keep track of their time and the client is billed at the rate charged by each. There are also costs involved including filing fees, copies, court reporter fees and publication costs. You need to discuss these fees and costs with the attorney.

The hiring of an attorney is an important decision that should not be based upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.