THE SEVEN STAGES OF A CASE

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If you have a case, the process of getting recovery can be very frustrating. Much frustration comers from not knowing what is going on or what is going to happen next. Multiplying your frustration are stories that people have had their case settled in just a few months or even weeks. Some cases can be resolved quickly, but whether your does depends on the facts of the case and the people involved. Thus, so you can understand the process, you should understand what stages your case will go through. Most cases have seven stages. They are (1) injury, (2) treatment, (3) investigation, (4) negotiations, (5) lawsuit/litigation, (6) mediation, and (7) trial/appeal.

1. The Injury Stage

Injury: The event that starts a case: A case or claim starts when an injury has occurred. When you are in a car wreck, it is when the wreck happens. Normally the event is over quickly, but it could be a series of events that leads to a case. For example, in some medical malpractice cases, it could take several months of treatment that lead to the injury. In a toxic exposure case, the exposure could be over months, or even years.

All states have a statute of limitation that require a suit to be filed by a certain date, often two years from the date of injury. Thus, determining when your injury occurred is important so you can know what date you have to file suit. Be careful. Some states have one-year statutes, and some have three. In some instances, you may have quite a while to file, but you may have to give a notice to a state agency in just a few months or weeks from the date of injury. You should consult a lawyer to know exactly when you have to proceed.

What should you do if you have been injured: the number one thing to do is go get treatment. Do not worry about having a case until after you have seen the doctors. Your first worry should always by your health. If you're hurt, see a doctor. Once you have started getting medical care, worry about a case.

Things you can do to help your case: besides seeking treatment, you might ask if there is any evidence you need to gather. If you are in a wreck, get names, addresses, and phone numbers of witnesses. If you have been to the emergency room, save the papers, bills and receipts you get. If you have been given things from the person who caused your injury save them. In short, save anything germane. If you were in a wreck, save repair bills and estimates. If people give you business cards, save them. A wise policy is to get a folder or notebook and start putting everything in it.

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2. The Treatment Stage of a Case

Treatment: During this stage, you know you are injured, and almost always know how. The most important thing for you to do is get medical treatment. That's true whether you have a case or not. Get medical treatment because if you are hurt, you need to get better. Don't wait to find out if you have a case because only a fool would allow his injuries to fester just because he might not have a case. That said, during this stage, you second concern should be gathering evidence. Sometimes state officials will gather evidence, too. That's good if they do, but you should consider hiring a lawyer at this stage as well. A lawyer can gather evidence for you, and help you in preserving it by telling you what to get and how.

Your case cannot and should not settle at this point. During the treatment stage, settling would be like buying a car you have never seen or drove. You have no ideas what problems it may have or what condition it is in. Complete treatment and allow your doctors to determine what problems you have now, and what problems you may have in the future.

The possible **problems** you may have at this stage are varied. The biggest is getting someone to treat you. If you have health insurance, the problem you may have is simply getting through your health insurance's red tape. If you don't, the biggest problem is paying for it.

Lawyers sometimes have doctors that they can refer you to who will extend credit and wait for payment until the end of the case. That may be the only way you can go to the doctor. Its our policy to recommend that you seek help through you own insurance first. Although this may increase your own personal hassle, you avoid being personally liable for your bills if you cannot recover.

Additionally, insurance companies try to prejudice juries by introducing the fact that the lawyer helped you get to the doctor. If you don't have insurance, you should probably call some doctors and see if they will take you without a lawyer and without insurance. If you find one, go see him. After you have been turned down several times, try contacting a lawyer to see if he can get you to a doctor.

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3. The Investigation Stage

Investigation: Actually, investigation starts at the beginning of the case and is usually carried on by a number of people. In a car wreck, the investigation may begin immediately when someone writes down the names and addresses of the people involved and any witnesses. In the case process, there is a time period after which you have completed treatment and your lawyer may be reviewing the case. Normally, he'll order copies of your medical care and other documents in order to determine what your case is worth.

Though there may be little for you to do at this time, you should not ignore your ability to help at this stage. Keep a folder and collect every bill, letter, anything you get that concerns your case. When several things have been gathered, take them to your lawyers office and turn them, or at least

copies of them over to him. He can sort out what is important and preserve them to use at trial or negotiations in your case.

If you have completed treatment, you may be anxious to settle your case, but you need to understand that you lawyer needs to get copies of the medical records, bills, reports, and sometimes witness statements or governmental records to ascertain a value on your case. This process *usually* takes about one to two months to get those records and bills. It sometimes takes longer because those having your records may not respond promptly.

You can help at this stage by doing two things. First, at the moment your doctor has released you, call your lawyer and let him know. He can then order your bills and records promptly. Second, make sure he has been informed of all the doctors you have. If you have kept a folder and turned that over to the lawyer, this should be no problem.

It is possible that your treatment could carry on so long that a suit will have to be filed before the investigation is complete. The statute of limitations will dictate the latest time to file suit. If you will require surgery, then it is likely that you will have that surgery well over a year after the wreck. In which case, a suit will probably be filed before your treatment is done.

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4. The Negotiation Stage

Negotiation: Once you have completed treatment, and your lawyer has all your medical records and bills, your attorney will usually forward that on to the insurance company's adjuster. Most of the time, he, or she, will also make a "demand" which is an initial offer to settle for a certain amount. The insurance company adjuster will review the records, bills, and any information that they have gathered in their own investigation. If you are lucky, your case will settle at this point.

The negotiation process often resembles trading a flea market. Your lawyer might start making demands higher than insurance company will ever pay, and the insurance company's adjuster will make offers lower than they are willing to pay. The critical thing is determining what your case is worth, and there are several factors that determine value.

Valuation of your case: there are two basic concepts that determine the value—Liability and Damages.

Liability is the likelihood that a judge and jury will hold the defendant responsible under the law for injuries you have. Liability can be very complicated and turns strictly on the facts of a case, but in most instances the law that determines liability is negligence. Negligence is the failure to use ordinary care. Although there are several exceptions, a person or company will likely be liable if their failure to use ordinary care actually caused your injury.

Damages are the likely amount of money that a judge or jury would find you are to receive as compensation. Although there may be other factors, such as punitive damages, most of the time damages are determined by the four basic elements: (1) lost wages, (2) medical bills, (3) impairment, and (4) physical pain and mental anguish.

Role of insurance: You may be wondering why are we talking about the liability of company or person when there is an insurance policy. There is a very common misperception that an insurance policy will pay damages regardless of the facts. Although there are some types of policies out there that do, the vast majority of cases involve liability insurance. Liability insurance is not insurance that covers the injured person. It is insurance that covers the negligent person or company for claims brought against them. For example, if you are rear-ended by another driver, in most states, you will have to bring a suit or claim against that driver. Car insurance normally includes liability insurance, so his insurance will pay you if it believes he is responsible for causing the wreck. (Note there are some states that have "no-fault" insurance which pays regardless of fault, but in those states its your policy paying you, not the person that caused the wreck. There are 12 no-fault states).

Problems preventing settlement: the most common problems preventing settlement are disputed liability, disputed injury, or disputed damages (when the extent of the injury is disputed).

Disputed liability: when the insurance company says they are denying liability, they are claiming that the insured (the person or company who you claim caused the accident) is not legally responsible. They may be claiming that you caused the wreck. For example, in a rear-end collision case, they may be saying that even though you were rear-ended it was not the insured's fault because you pulled in front of him and caused the wreck.

Disputed injury: Most disputes in cases revolve around injury. The insurance company or defendant may be more than willing to admit that they caused an accident, but not that they hurt you. And even more often, they deny they hurt you very badly.

Prior Injuries: It is very important if you want to protect the value of your case to let your lawyer know if you have had any prior claims or injuries. During the entire process, tell no lies, especially about this. In today's world, much information is kept about you that you don't know about. Prior cases can be found in public records, and if you have had a prior claim, an insurance company is likely to still have records about it to share with the insurance company you are now claiming against. If you forget about a prior claim, or lie about it, it will likely be brought up to embarrass you. It will be used against you. Thus, you hide prior claims and injuries at your peril. If an insurance company has information about other claims, they may likely be unwilling or reluctant to pay your claim. They may believe the injuries you are now claiming are the same injuries you have claimed in the past.

Insufficient Information: Another major problem when trying to settle is missing or insufficient information. Many times there may be questions raised that can't be answered without a suit. Court cases give both sides the right to issue subpoenas that can compel people to testify and turn over documents. Before a case is filed, people can only make requests, and they have little authority to force anyone to cooperate. For example, many cases involving intersection

collisions turn on disputes as to who had a green light. Witnesses may not be willing to give a statement as to who had green or red light. And even if they are, without examination by both sides, it may be impossible to decipher each side's story. Thus, many times a case has to be filed before either side is ready to settle.

Have realistic expectations: another big reason cases do not settle promptly is one side does not have a realistic grasp of what their case is worth. To avoid this, ask your lawyer what your case is worth. If you don't trust him, you might go and see another lawyer who is experienced in personal injury claims and agree to pay them for their time (a half hour consultation would be appropriate). Most will tell you honestly if your current lawyer is adequately representing you. (Be leery of someone who just wants to take over the case, you could end up owing two separate lawyer fees).

Settlement or Lawsuit: If you cannot get a decent offer to settle, you will have to file suit. Before suit is filed, you need to be aware that in most cases, additional expenses will decrease the amount you get. Thus, if your lawyer is advising you to take an offer, and you want to file suit, you may be reducing your net recovery. Thus, even if an offer goes up after suit, you may receive less. So, be realistic and make sure you have a lawyer you can trust.

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5. The Litigation and Lawsuit Stage of a Case

Litigation & Lawsuit: This is the stage where suit is filed, and your lawyer starts dealing directly with their lawyer. This process begins when your lawyer signs some paperwork and sends it to the court clerks to open a file. This stage can be divided into several sub-stages. Sometimes these stages overlap, and may occur at different times but generally follow in this order:

FILING SUIT: a suit is filed with the court clerk's. A judge is normally assigned and a cause number given to the file. A suit consists of papers informing the court and the defendant the nature of your claims.

SERVICE: After suit is filed, the court issues papers that tell the defendant to answer the lawsuit. This is given to either a sheriff, constable, or a process server. One of those three goes and finds the defendant and traditionally puts the papers in his hand. Most of the time, this take just a few days or weeks, but if a defendant is hard to locate, it could take months, or in very rare instances, years.

ANSWER: once the defendant gets served, he has, depending on the rules in the court or state where the case was filed, a few days, typically 20 to 30 days, to answer. He normally answers by filing written papers with the court denying your claims and giving a copy to your lawyer. If he does not answer, you may take a default against him or her.

DISCOVERY: this is the most time consuming part of the case, and after the answer is filed, it can continue right into the time of trial. **WRITTEN DISCOVERY:** It almost always begin with written discovery, usually called interrogatories (which is legalese for written questions), requests for production (which request you to turn over documents, pictures, and the like), and may include some other general information you have to provide by the rules. Another type of written discovery is requests for admissions, which is require you to admit or deny what you will contend at trial.

DEPOSITIONS: usually after written discovery is exchanged, your lawyer and the other lawyer arrange to take depositions. A deposition is a live question and answer sessions. The other lawyer will usually come to your lawyers office and ask a bunch of questions about your case. There will be a court reporter present who will type down every question and every answer. When the questioning is done, the reporter will send a written copy to both lawyers. This is one of the most important parts of your case process. The most important thing is DO NOT LIE, and be real careful about remembering past injuries and claims. If you are caught lying, the value of your case will plummet, and do not think you will not be caught. More information is available on you than you probably know about yourself, so if you forget a prior claim, there is probably a record of it somewhere, and a lawyer can issue a subpoena to prove you did not disclose it.

DOCUMENT DISCOVERY: all along, the other side and lawyer, will often request documents from others. In some cases, the opposing lawyer may request medical records that you have incurred as a result of this case, or other cases. This may be done by authorization to get that information, or by subpoena.

INVESTIGATION: the investigation stage that started right after the injury, can continue right into trial. Additional witnesses may be located, and then later called to trial. So, during the discovery period, both parties may do additional investigation to gather more evidence. **You can help** by making sure your lawyer knows all potentially helpful and harmful facts about your case. Another helpful thing to do is give your lawyer a list of potential witnesses telling him what each could testify about. Be sure to include friends and family who could testify to how badly you were hurt and what you have had to do to overcome your injuries.

NEGOTIATION AND SETTLEMENT: There was probably a period just before suit was filed that negotiations fell apart. Through the discovery process, both side will learn more about your case. This may spark more negotiations, and hopefully your case will settle. If not, many courts will order the case to mediation, which is the next step.

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6. Mediation

Mediation is a settlement conference. Both sides appear before a mediator, who acts like a settlement referee. Though the rules varies from state to state, the basic rules are usually the following:

- the mediator is to be neutral;
- both sides are to be present either in person or with a representative with full authority to resolve the matter; and
- what happens at the mediation is confidential and not admissible in court.

Most of the time, mediation has been ordered by court. Thus, if the parties fail to participate, then they could be penalized by the Court.

Mediation is not Arbitration: Mediation is sometimes confused with arbitration. Arbitration is more a like a brief trial where parties present some evidence to an arbitrator. Then, the arbitrator makes a decision. Whatever he decides, the parties are bound by it. Mediation is not like that. **A Mediator's role is to help the parties settle, not force them to do so.** Thus, a mediator may make suggestions to the parties, but he cannot dictate a result. An arbitrator decides the case, but a mediator tries to get the parties to come to an agreement.

How it works: both sides appear before the mediator at the same time. It usually takes place in the mediators office. The mediator will usually meet separately with both sides and briefly introduce himself. Sometimes, but not always, the mediator then meets with all everybody in the same room. After the mediator explains the process in this meeting, each side will gives a brief opening statement setting forth their position. The parties then go to separate rooms.

At this point, the mediator goes back and forth trying to get the two sides to reach an agreement. During this period, the mediator may discuss the issues freely with each side. Mediators are trained not to reveal facts they learn to either side without permission of the side who has revealed those facts to them. Skillful mediators will try to get both sides to assess their own weaknesses to get them to resolve their cases.

If an agreement is reached, many mediators will then draft summary of the agreement and both sides, or their representatives sign it.

Preparation: Most of the time, both sides will do some preparations, but since it is non-binding and somewhat informal, preparations will usually be limited. In minor cases, its not unusual for both sides to show up without any preparation. The clients should defer to their lawyers, and ask if they should bring anything or prepare.

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7. Trial and Appeal

Trial: some lawyers have a habit of telling non-lawyer friends and acquaintances they see at the court house something like, "Its so nice to see you, but I am very sorry that I am seeing you here ." Except for some lawyers and judges, people hate going to court, and for good reason. Witnesses often feel humiliated, litigants ignored, and someone loses. Sometimes both sides loose. People even hate jury duty which takes them away from their lives, jobs, and family.

If all attempts to resolve your case fail, you are going to trial. It will usually take up more time, resources, and energy than the most experienced lawyers will predict. Contact your lawyer prior to trial and let him know that you are willing to prepare in whatever way he says. Many times lawyers will prepare late in the evening because there will be less distractions, so if he asks that you come to his office late, oblige. He is probably trying to fit you in at a time which allows you both to prepare without disturbances. Some will give you some material to read and study. If so, do it. Getting ready for trial is like getting ready for a comprehensive exam being given by the cruelest professor. You may ask what could be on the exam, and they will point to the course book and say anything in there.

To do well at trial you should probably study the deposition you gave thoroughly. Try not to contradict yourself, and above all don't lie. If there is something you are afraid of, tell your lawyer right away. If you haven't disclosed something, you better tell him, or her, right away. Walking into an ambush is a sure way to loose a trial. You may review your medical too, because most questions will center around you injuries.

A pre-trial hearing is usually held just before trial to determine whether some bits of information will be admitted. Next, a panel of potential jurors is brought, and in most states, the lawyers are allowed to ask them questions. Some objections may be brought to the judge regarding particular jurors based upon what they said. Then, both sides are usually allowed to eliminate some of the possible jurors regardless of the reason (as long as its not based on a forbidden reason such as a jurors' race). After that, the court tells the jurors which ones are going to serve. Some courts do this days or weeks in advance of trial, but others go directly to trial.

Trial usually starts with both sides giving an opening statement to the jury. During opening statement, both sides state what they believe the case is about and what they believe the evidence will be. The plaintiff then calls witnesses and presents his case. Then, the defendant usually, though he is not required, presents his own witnesses. After that, both sides argue to the jury. The jury then decides based upon written questions the judge has given them.

Appeal: if you loose or believe the award is too low, most of the time, appeal is not a realistic option. The majority of cases that go to courts on appeal are not overturned. Higher court judges are reluctant to change a lower court ruling. More importantly, though you can appeal a judge's decision, you seldom can appeal a jury decision. A judge decides questions regarding the law, but a jury decides questions regarding fact. Courts of appeal generally do not look at facts decided by a jury. As long as there is some, even if slight, evidence to support what they decided, that is it. If you are the plaintiff,

that also means that they may disregard your evidence by finding it *not credible*, which is legalese meaning they do not have to believe your evidence.

What can be appealed are a judges decisions on the law. So if a judge would not allow some evidence to be presented that should have been, or allowed some that should not have been, that could be appealed. if a judge gave the wrong set of instructions to the jury, that could be appealed.

However, appellate courts often refuse to overturn a case even if a judge made a mistake. Many courts require you to show that a bad decision caused harm or caused an improper verdict. In short, to win on appeal is a not likely, and should be done only in rare cases. The best thing to do is talk to your lawyer and ask him if he thinks it is worth it. If he says its not to him, it is probably not for you either. Likewise, many, if not most, trial lawyers do not appeal your case, and most may either withdraw or have a provision in their contract that does not require them to appeal. Thus, if you want to appeal, you may have to pay for it yourself.

Perhaps that is why Abraham Lincoln told young lawyers to encourage their clients to settle cases if they can. "Discourage litigation," he said. "Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser -- in fees, expenses, and waste of time."