

## **Personal Injury Lawsuits: What They Are and How They Work**

A personal injury lawsuit is simply a legal action, brought in court, by someone who has been injured (either physically or emotionally) by another person, usually by way of an accident, fall, or product malfunction. There are many phases to a personal injury lawsuit, and it's often difficult to predict how long it will take to resolve a case. This article will take you through each phase of a typical personal injury lawsuit.

### **The Accident**

When an accident occurs, it is important to record as much data as you can about the circumstances surrounding the accident as quickly as you can. For example, if you are involved in a car accident, you might want to call the police to have them make a report about the scene, such as the position of cars, skid marks, and so on. If possible you should have someone take photos or videos of the scene of the accident as soon as possible after the accident. You might record a torn carpet, damaged step, or spilled food that has caused a fall or skid marks and broken glass from a car accident. You will also want to get the names and contact information of any witnesses to the accident. Anyone who is injured in an accident should seek medical care as soon as possible to find out what injuries have been caused by the accident and to minimize injury. Documenting these details early on will help you determine key issues, such as fault and amount of damages, when the time comes. It will also keep you from forgetting important details.

### **Contacting an Attorney**

Unless your injuries were very minor (i.e. very minor soft tissue injury from a 5 MPH fender bender), you should consult with an attorney very soon after your accident. A good personal injury attorney can help you gather key evidence and provide valuable advice on how to document your injuries and damages. Under no circumstances should you talk to an attorney representing the other person in the accident, the other person's insurance company representative, or sign any documents, before consulting with your own attorney first.

### **Demand Letter**

If you believe you're entitled to compensation from the other party for your injuries, your attorney will usually send a demand letter, either to the other person (or their attorney) or to the other person's insurance company. The letter will give the relevant facts about the accident such as the time and place and cause of the injury, describe your injury, and ask for a specified amount in settlement of the case. A demand letter usually gives the other parties a specified time to respond.

### **Filing a Lawsuit**

If your case is not settled, the next step is for the person who has been injured to file a lawsuit. The person filing the suit is called the plaintiff, and the document the plaintiff files is usually called a complaint. The party being sued is called the defendant. A third party serves the complaint on each of the defendants, and the defendants have a specified time to reply to it, such

as 20 to 30 days. This reply is usually called an answer. All documents, including the complaint and the answer, are filed with a local court. The plaintiff usually chooses the court, although, under certain circumstances, a defendant may seek to have the lawsuit moved to a different court.

### **Discovery**

After the lawsuit has been filed, the parties have an opportunity to get information from each other about the case. This can be in the form of written questions, sworn testimony in front of a court reporter, and requests for documents and things. For example, a plaintiff who was injured tripping on a step may want to find out if other people had tripped on the same step before the accident. This information would be used to show that the owner knew the step was dangerous and should have foreseen that someone might be injured in a fall (a necessary element to prove negligence on the part of the owner). On the other hand, the owner might want to find out if the plaintiff had been injured before to argue that the injury claimed was not caused by the fall on the steps.

### **Pre-trial Motions**

Before the case is set for trial, the attorneys in the case may make various legal arguments about the case in the form of motions to the court. These might concern the adequacy of the complaint or answer, disputes about discovery, or an argument that one party's case is so strong that he or she is entitled to judgment in his or her favor without a trial.

### **Settlement**

When the case is finally ready for trial, many courts require the attorneys to meet with a judge for a settlement conference where the judge tries to help the parties reach a settlement agreement before going to trial. In some places the parties are referred to mediation before a case can be set for trial. In mediation the parties themselves might be present and the session is directed by a mediator instead of a judge.

### **Trial**

If all efforts at settlement fail, the case will be set for trial before a judge or jury—whichever the plaintiff chooses. The parties will present witnesses, cross-examine the other parties' witnesses, present evidence, and make arguments. At the end, the finder of fact (judge or jury) will enter a verdict for the plaintiff or defendant. If the verdict is for the plaintiff, the finder of fact will decide on the amount of damages.

### **Arbitration**

Arbitration is an alternative to the trial process. Arbitration is similar to a trial, but is conducted before an arbitrator or a panel of arbitrators. In binding arbitration the decision of the arbitrator or panel is as final as the trial court's verdict. Parties to a lawsuit can agree to enter arbitration and are required to submit to arbitration in some contracts. For example, if you sign a contract with a

health care provider that has an arbitration clause, if that person injures you, you may be bound by the agreement to use arbitration. Arbitration is usually less expensive than litigation and may be quicker.

### **Appeal**

Either party can appeal if there was a significant legal error in the trial. To “appeal” means you take the case to a higher court to review any legal errors you think may have been made by the judge or jury. For example, a plaintiff might appeal if he thinks he lost his suit unfairly or would have gotten more in damages if the judge had not refused to admit something into evidence. A defendant might appeal if, for example, she thinks there is a valid legal basis to argue that the award for damages given to the plaintiff was too large.

### **Collection**

When the lawsuit is finished, when an appeal is completed or a verdict entered that isn't appealed, the plaintiff still has to collect the damages that have been awarded from the defendant. Some defendants are unable to pay damages, and plaintiffs usually name more than one defendant if possible to make sure they are able to collect enough to cover their damages and litigation costs. For example, a teenager driving a pizza delivery car probably won't have enough personal assets to cover damages from a serious car accident. In that case, the plaintiff may collect from the employer or the employer's insurance company.

If defendants don't pay the damages awarded by the court, states have procedures similar to the discovery process that allow the plaintiff to find out where the defendant's assets are and to collect as much of the damages as possible.

### **Do you need an experienced personal injury attorney?**

There are times when an accident attorney is not needed. This is usually the case when the injuries are very minor and there are no disagreements about who was at fault and who should pay (and what amount should be paid). Often, however, things are not so simple. If you were involved in a more serious accident, you should contact a personal injury lawyer right away.