

WHAT TO EXPECT

FILING A LAWSUIT

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I. INTRODUCTION

There are many reasons you may be faced with the need to file a lawsuit in order to pursue your claim:

1. The insurance company will not respond to our demands for settlement;
2. The insurance company has denied responsibility / liability for your claim;
3. The insurance company offers an inadequate sum to compensate you for your injuries; and
4. Your "*Statute of Limitations*" is nearing and you have not completed treatment.

In North Carolina, the law says we must sue the person who was "at fault" in the accident within a certain time period. You CANNOT sue the insurance company. In fact, you cannot mention the existence of insurance at anytime throughout the jury trial of your case. The time period in which you must file your lawsuit is called your "Statute of Limitations" and is different for different types of cases.

When we file a lawsuit against the "at fault" person, the insurance company will hire a lawyer to defend the lawsuit and the "at fault" driver. The lawyer who defends the "at fault driver" is known as defense counsel, opposing counsel, or defense attorney.

The litigation process is **very** time consuming and there is a great deal of work that has to be done by both the attorney and the client. There will be a lot of time demands and work that the client will need to do during the pursuit of their lawsuit. Please read the below information carefully as the time demands and deadlines are extremely important to your case.

The following is a summary of the process of Litigation and what you can expect to happen during the course of your case while it is in Litigation.

II. PREPARING FOR LITIGATION

Before beginning the Litigation stage of your case there is some additional information we will need to obtain from you. Please provide the following information at the time of your Litigation meeting with the attorney that will be representing you or as soon as possible:

- Names of **all** your medical providers that you have seen for the ten years prior to the accident. Please include **all** providers including but not limited to the following: primary care physicians, dentists, pharmacies, chiropractors, physical or occupational therapists, hospitals, clinics, radiologists, orthopedics, rehabilitation centers, pediatricians, obstetrics, medical equipment companies, doctors billing services, emergency service providers, ambulance providers, psychiatrists, etc.;
- If you are making a lost wage claim, we will need tax returns dating from the five (5) years prior to the accident through current;
- If making a lost wage claim, we will need to obtain a copy of your employment file from your employer and will need for your to sign an employment record release;
- Any and all photographs or videos that you have related to your injuries, the vehicle you were in or of the accident scene;
- Any and all correspondence or documents that you have received from the defendant, the defendant's insurance company or defendant's attorney relating to your accident;
- If you have not provided a copy of your declarations page from your auto insurance company, we will also need a copy of this; and
- Any document or item that is relevant to your case.

III. STARTING THE LAWSUIT

The litigation stage of your case begins with the filing of a lawsuit. Your lawsuit is started with a simple pleading called a “**Complaint**”. Once we draft the Complaint, we will then file the Complaint with a form called a “**Civil Summons**” with the Clerk of Court at the courthouse. There is a required filing fee to file these documents with the court. The current filing fee is \$110.00. We will choose which court to file the lawsuit in based on residency and the value of your case. Once the lawsuit is filed, you will be referred to as the “**Plaintiff**”. The “at fault” driver is referred to as “**Defendant**”. You will receive a “Filed” copy of the Complaint once we receive it back from the Court.

After the Summons and Complaint are filed, they are then served upon the Defendant via certified mail, FedEx and in some cases by Sheriff. The insurance company is also served with these documents via certified mail, which prompts them to hire a defense attorney. Should you have underinsured or uninsured coverage we will also serve your insurance company with these documents. This is our way of notifying your insurance company that there may be a potential claim.

After the Defendant is served, he or she has 30 days (through his or her attorney) to file an “**Answer**” to our Complaint. Please note that the defense attorney may petition the Court for an extension of time to respond to our Complaint which will allow them an additional 30 days to file their Answer, so, it may be 60 days from date of service before we receive their Answer. In this Answer, the Defendant will admit or deny our allegations. The Defendant may also raise certain defenses to our claim. Depending on whether or not defenses are raised, we may have to file a responsive pleading called a “**Reply**” within 30 days of receiving the Defendant’s Answer.

Once the Complaint, Answer and Reply are completed (which can take up to 90 days from the date of service), then we will move on to the **Discovery Phase** of Litigation.

IV. DISCOVERY PHASE

The discovery phase describes the length of time in your lawsuit where both sides will have an opportunity to “discover” information about the other side. This phase usually takes about four (4) months to complete. There are four (4) main ways to “discover” information about the other side:

1. Interrogatories

These are written questions (not exceeding 50 in number) requesting certain information about the case. We have 30 days to answer these questions once they are served upon us. Even though we will have a lot of the information based upon our investigation of your file, the defense will invariably ask us questions we could not anticipate. When we receive these questions in our office, we will send you a copy to answer, usually requesting that you schedule a phone conference with our law clerk within 10 days. It is extremely **important** that these questions be answered in the time frame requested by your attorney as the court sets strict deadlines for the final answers to be due. If the answers are not provided on time, the Court could require you to pay costs and attorney’s fees to the defense attorney. We will provide you with a sample set of anticipated questions to aid in the discovery phase of the litigation process.

2. Requests for Production of Documents

These are also written questions but particularly ask for certain documents. Again, we have 30 days to answer these questions so it is imperative to get information your attorney asks of you in the required time frame. We will provide you with a sample set of anticipated questions to aid in the discovery phase of the litigation process. Refer to “Section II Preparing for Litigation” for a list of items that we anticipate needing.

3. Requests for Admissions

These too, are written questions, but basically asking you to admit or deny certain facts. We will most often be able to answer all of these questions based upon information in our file. However, the attorney may need additional information. You also have 30 days to answer these questions, but this time frame, every question is deemed “admitted”. This could seriously affect your case, especially if the defense were to ask a question such as, “Admit you were not injured in this accident”. If we do not deny this within 30 days, it is deemed admitted and you are essentially admitting you were not injured in this accident.

V. DISCOVERY PHASE CONT.

4. Depositions

These are questions that are asked of you in person, by the defense attorney, after you are put under oath by a court reporter. You can guarantee that the defense attorney will want to take your deposition at some point in the discovery phase and you, as the Plaintiff, are required to attend. The deposition is usually held in your attorney's office and your attorney will be present with you. The deposition will usually last 1-2 hours. Your testimony is taken down by a court reporter and then typed into written transcript. This transcript can be used later at trial to impeach you if your testimony changes any. Therefore, it is important to be well prepared for your deposition. We will want to meet with you prior to your deposition to go over your testimony and give you a chance to review your case in more detail.

VI. MEDIATION PHASE

In Superior Court, North Carolina has implemented a mandatory mediation. This means that the Court will order all of the parties involved to sit down and try to settle the case. This is done in front of an independent mediator who will facilitate settlement discussions and help to try to resolve the dispute. The mediation has a scheduled deadline from the Court and must be completed before going to a jury trial.

It is mandatory that you, the Plaintiff, attend the mediation. Mediations can last a few hours or can actually take all day in an attempt to settle the case. The Plaintiff and the Defendant have to pay the mediator for his/her time spent mediating your case. The average mediation fee costs around \$400.00 per party. There are no guarantees that your case will settle at mediation. If the case cannot be settled, then the next step is to try your case in front of a jury.

VII. JURY TRIAL

The last stage of your case is the actual jury trial. The frustrating part is waiting for a court date. Your court date is set by either the judge or the trial court administrator. It can take a long time to actually get your case heard in front of a jury. For example, your

case may be set for a particular week, but there may be several other cases ahead of you and your case may not get reached that week. Then you must wait for another setting.

In addition to being present during the actual trial, there is a lot of work you must do to get ready for the trial in preparing for your testimony. Your attorney will want to meet with you prior to the trial to prepare you and your witnesses.

VIII. RISKS OF A LAWSUIT

The ultimate risk of your lawsuit is that there is just no guarantee what a jury will do. Most of the counties in our area support very conservative juries, meaning the verdicts are not very large. Unfortunately, we live in the age of Tort Reform, and many people (jurors) are already biased against people who bring lawsuits for personal injury. This explains why the insurance companies often deny claims, forcing people into court with no guaranteed outcome. Jurors have been very unsympathetic since September 11, 2001. The tragedy visited upon so many brave Americans makes motor vehicle accident injuries seem insignificant to many jurors.

IX. COSTS

As mentioned above, it costs a great deal of money to pursue a case through litigation. The following is a breakdown of the normal costs that are associated with a lawsuit:

- Filing Fee \$110.00
- Service Fees \$35.00
- Depositions of Fact Witnesses \$450.00 each
- Mediation \$400.00
- Expert Witness Review of Medical Records \$500.00
- Expert Witness Trial testimony \$2,500.00 to \$5,000.00 each
- Exhibits \$200.00
- Subpoenas \$25.00

The above quoted costs are for an average personal injury case. In cases with serious injuries and large amounts of medical treatment, the costs could be significantly higher because we have to have professional exhibits made and depose numerous doctors.

These costs are in addition to attorney's fees.

X. SUMMARY

Pursuing your case through litigation takes a great deal of effort and money on your part. You will be required to help provide your attorney with information and documents in certain time frames that cannot be ignored. In addition, your time is required at depositions, mediations and at trial of your case.

We believe it is important that you are aware of the serious nature of your case before we file a lawsuit. The Court and judges will not abide by neglect and your failure to cooperate can result in serious sanctions against you by the Court. Therefore, your utmost attention and cooperation is demanded when we file a lawsuit. If you cannot take the time or the effort to be involved in your case 100%, then you do not need to pursue your case through litigation. This needs serious thought by you, the client. In addition, you need to be sure you understand the risks and costs as outlined above.

We have some clients who are very adamant that they want us to file a lawsuit, and then will not give us the time, cooperation, and energy that is necessary. In at any time you cannot meet the deadlines that are imposed upon us by the Court, or cannot cooperate with the prosecution of your case, then we will withdraw from representation of you immediately.

Most of all, it is important that you be patient with your case. The biggest frustration our clients have is that it takes so long to get the case concluded. You can rest assured that we move the case as quickly as possible, but the ultimate setting of your case for trial is not within our power and we must be at the beck and call of the Court. Unfortunately, our Courts are quite clogged with cases such as yours, and that is why it can take more than a year to get your case concluded. If you are looking for a quick resolution to your case, it will not be found through the litigation process.

In closing, we invite you to either call or set up an appointment if you have questions or concerns about this information provided to you. We strongly believe that the client should be well informed and be perfectly at ease with the litigation process. It can be a stressful and time consuming pursuit, but one that we are certainly willing to take you through if you are willing to put in the same effort.

We look forward to fighting for your rights throughout this process.