

A CONSUMER'S GUIDE TO A SUCCESSFUL PERSONAL INJURY CLAIM



**TIPS AND ADVICE TO ENSURE THE
BEST OUTCOME FOR YOUR
PERSONAL INJURY CASE.**

MATERIAL PROVIDED BY:

DICAUDO & YODER, LLC

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INTRODUCTION

Each year on Ohio's roadways there are thousands of motor vehicle accidents resulting in injury and death. According to the Ohio Department of Public Safety, there were 300,164 motor vehicle accidents in the state in 2010, resulting in 984 deaths and 74,427 injuries.

Many of those injured and the families of those that are killed go under or uncompensated because they do not have the knowledge to ensure they are adequately reimbursed for their loss or injury. This book is meant to provide information to those that have recently been involved in or know someone that has been involved in a motor vehicle accident that lead to injury or death.

Following the advice and tips contained in this book will help to ensure that, should you or someone you know or love be injured in an automobile accident, you are successful in pursuing a claim for compensation. In the event that this informational booklet does not answer all of your questions, feel free to contact the attorneys of DiCaudo & Yoder, LLC at any time. They will be happy to speak with you regarding any legal issues you may be experiencing.

CHAPTER ONE THE ACCIDENT



The short period of time right after a driver is involved in an accident is critical for preserving evidence that could prove invaluable in support of a personal injury claim. In order to ensure that such evidence is properly collected and maintained, there are several steps you should take immediately to ensure you protect your right to compensation.

First, you should call the local police or 911 in the case of an emergency. The police will be able to control the accident site and collect information to be incorporated into the police report. This may include taking photographs, interviewing witnesses, and, in some cases, gathering physical evidence.

Relying on the police to collect all the necessary data, however, can be risky and you should attempt to gather as much information as possible on your own. Writing down the contact information of involved parties and witnesses, taking photos when possible, and obtaining a copy of the police report are all good practice. Police reports sometimes leave out or skew key information in a way that may not accurately reflect how the incident actually transpired. Gathering one's own evidence is the best way to protect against such an occurrence.

Get treated for injuries! Unless you are 100% positive you have not suffered any injury, it is imperative that you visit a hospital or medical professional immediately after the accident. Most people never know the difference between extreme and minor injuries after a car accident, because they often get worse with time. Especially problematic are head, neck, and spine injuries, the severity of which can take weeks or years to manifest. Often, the most contested issue that arises in personal injury litigation is not whether

the opposing party is liable, but for how much. Medical treatment records are key in establishing the degree of compensation due to an injured party.

Refrain from talking about the accident. Once you've gathered all the information you can, don't say anything about the accident. Don't try to put the blame on anyone else, don't get angry or upset, and, most importantly, don't apologize or admit fault.

DID YOU KNOW?

According to the Ohio Department of Public Safety, each day in 2010 there were approximately 2.7 fatal car crashes 298.0 injuries caused by car crashes.

There were also 221,597 crashes involving property damage, averaging out to 607 such crashes per day.

CHAPTER TWO DEALING WITH AN INSURANCE ADJUSTER



One of the first people to call after a driver has been involved in a car accident will invariably be an insurance adjuster. Normally, when a car accident occurs, the first thing that happens is an insurance claim is filed. Soon after, an adjuster will be assigned and will begin to investigate the claim. As part of that investigation, the adjuster will attempt to make contact with the parties involved in the accident, usually within 24 hours of the incident. Often, the adjuster will personally show up to the injured person's house.

A typical adjuster will attempt to settle the claim as soon as possible for the lowest amount they can. Remember, an adjuster's success, and therefore indirectly their salary, is based upon their ability to save the insurance company money by settling claims for low amounts, often much less than the claims are actually worth. Therefore, it is important for any individual who has been involved in an auto accident that has been contacted by an adjuster to make an independent evaluation of the value of their claim.

Something many drivers forget in the confusion and stress that may accompany a car accident is that there are two parts to their claim, one is the property damage claim and one is claim for injuries. Normally, the extent of damage to one's vehicle is quickly ascertainable by obtaining mechanic's estimates. However, the injuries which may accompany a car accident may not manifest right away and therefore can easily be overlooked until it's too late. This is why it is a good idea to be patient and not to accept any settlement from the adjuster until your medical status is certain. If this is the case, the adjuster will likely ask for a medical authorization to obtain medical bills and records. Beware, however, that such authorization could be very broad and grant the adjuster access to records unrelated to the accident.

It is most important to remember that no matter what the adjuster says or does, it is their goal is to minimize liability and pay the least amount of money on behalf of the insurance company. The more money they pay you, the less money goes into the insurance company's pocket and the less money they will eventually be paid.

CHAPTER THREE CHOOSING THE RIGHT ATTORNEY FOR YOU



Often, the most important step a person can take in successfully pursuing their personal injury claim is choosing the right attorney for their situation. In meeting with and ultimately deciding on a personal injury lawyer, you should keep the following questions in mind.

1. How does the attorney bill and how much will your case cost?

Many people shy away from discussing billing and fees with their attorney at first, waiting for him/her to bring it as a matter of course. There is no need, however, to be afraid to talk with your lawyer about how he/she bills for the work they will do on your behalf. In fact, your attorney should be very open and willing to talk about exactly how you will be billed for his/her services.

The large majority of personal injury cases are taken on a contingency basis, wherein the attorney will be entitled to a percentage of any money collected on your behalf. However, be wary of any attorney who is not at least willing to explain how his/her fee will be calculated. Further, look out for certain “hidden costs” such as filings fees and expenses that may not be covered by the contingency agreement.

2. Is the attorney going to be able to respond to your needs as a client on an ongoing basis?

One of the most often heard complaints regarding attorneys is that they are unresponsive to their clients. Attorneys who fail to communicate with their clients on a regular basis are usually not indifferent to the problems of those they represent, but rather are too

busy handling other issues to reply. These attorneys usually lack the administrative support required to keep an office running smoothly, and are forced to manage day-to-day tasks on their own. On the other hand, an attorney with an experienced staff doesn't have to worry about running the office, and therefore has more time to attend to his/her clients' needs.

When searching for an attorney to represent you, make sure that he/she has a staff that is able to deal with the issues that accompany the day-to-day operation of a law office, such as answering phone calls. Your attorney may not always be able to speak with you immediately, but you want to be sure that someone can, whether it be a paralegal, secretary, *etc.* Indeed, sometimes it may be easier, if you have a simple question, to ask someone on your attorney's staff rather than trying to reach him/her directly.

3. Is the attorney experienced in the area of personal injury law?

Today, most attorneys practice in a particular field of law such as bankruptcy, divorce, or, in your case, personal injury. Though it is common for many attorneys to have experience in the area of personal injury, they rarely are able to master all aspects of the field by handling the occasional car accident case. Accordingly, it is important to beware of any attorney

who professes to practice in the area of personal injury but does not make it a major part of his/her practice.

When looking for a attorney well-versed in personal injury practice, ask him/her about the experience he/she has working in that area. If he/she actually has experience in the area of personal injury, he/she should be able to recount at least one recent case he/she worked on and the result. Also, don't be afraid to ask your attorney for some references. If he/she is really as good as he/she claims, your attorney should have no problem providing you with a list of references that will verify his/her reputation.

4. Is the attorney listening to your problems, asking questions, and giving feedback?

The easiest way to tell if an attorney is listening to your problems is to listen to him/her. A skilled attorney will ask questions in order to get a good sense of exactly what your legal issue is and how he/she is going to deal with it. Be careful here, though, because each attorney has his/her own style when approaching a client's legal problem. One attorney might let you talk for an hour and then spend the next thirty minutes asking you questions, while another may interrupt you after five minutes. Also keep in mind that your case may not require a lot of background and just because your

attorney does not ask you a lot of questions does not mean that he/she does not care about your problem.

5. Has the attorney explained the potential for success in your case and his ability to devote time to it?

The cold, hard truth is that many personal injury cases, although meritorious, are not winnable. There are a myriad of reasons why any particular case will not be successful. There may not be enough evidence in your favor or the defendant doesn't have any money for you to collect.

Your attorney should explain to you the chances that your case will be successful and what your potential options are now and in the future should you hire him/her. It is also important to make sure that your attorney will devote sufficient time to give your case the best chance of success. Ask your attorney how difficult he/she thinks it will be to win your case and how much time he/she will spend on it. A quality attorney will discuss the pros and cons of your case with you and then make a determination as to your chances of success.

Be leery of the attorney who attempts to tell you what your case is worth upon your initial consultation. That attorney has probably not seen the accident report, reviewed medical records or spoke to witnesses.

Attorneys who attempt to do this are normally not skilled in the personal injury field and are quoting a high figure to try to persuade you to hire them. Use your common sense and ask questions.

QUICK TIP

State and local bar associations often offer free or reduced-cost attorney referral services which help put individuals in contact with reputable legal representation.

Ohio's State Bar Association has such a service located online at:

<https://www.ohiobar.org/Pages/Find-A-Lawyer.aspx>

CHAPTER FOUR
EVALUATING YOUR
PERSONAL INJURY CLAIM



Generally, a person can not walk into an attorney's office with a personal injury claim and expect the attorney to evaluate their case with any precision. The problem in predicting the value of any given case stems from the fact that each claim is unique and is affected by a great number of factors.

Some such factors are:

- Severity of Injuries.
- Severity of Vehicle Damage.
- Presence and Severity of Permanent Disability.
- Lost Employment Opportunities and/or Wages.
- Mental and Physical Pain and Suffering.

Ultimately, a case that goes to trial will be decided by a jury. That jury will decide how much money to award and, because each juror will bring their own personal biases with them, different juries often arrive at different verdicts under the same or similar set of circumstances.

Recently, calculators claiming to accurately evaluate your personal injury claim have been popping up all over the internet. Often, these calculators will ask you to fill out an online questionnaire and then use that information to provide a ballpark figure of the value of your claim. While these calculators may include many important factors such as financial impact, loss of earnings, and severity of injury, they are unable to account for the pain, suffering, and mental anguish that accompany an injury.

Because any of the above-mentioned factors can have a significant impact on the value of your particular personal

injury case, evaluation of any claim is best performed by an experienced personal injury attorney. Good personal injury attorneys know how to minimize negative aspects of your claim and emphasize positive ones. Further, an experienced personal injury attorney will be familiar with the problems that often arise in dealing with personal injury claims. For advice on how to choose your personal injury attorney, refer to Chapter 3 of this booklet.

CHAPTER FIVE RESOLVING YOUR CASE



There are several potential avenues of dealing with a personal injury claim, the favorability of which varies depending on a variety of factors. Most well known of the potential resolutions to a case are settlement and trial, the former becoming more prevalent with each passing year. Over the last several decades, the number of civil cases ending during or after trial has declined from 11.5% in 1962 to a mere 1.3% in 2006.

Perhaps less well-known types of resolution are the mechanisms known as arbitration and mediation. Often

confused with each other, both are types of dispute resolution that are conducted outside of the court system, however, several key factors differentiate them.

Both arbitration and mediation employ a neutral third party that “referees” the dispute. Arbitration is usually legally binding, meaning that the decision of the arbitrator is final. Further, although arbitration is sometimes conducted with a single arbitrator, more commonly, each side selects an arbitrator and those two arbitrators then select a third arbitrator. The dispute is then presented to the three arbitrators chosen, with a majority of the arbitrators rendering a written decision.

Mediation, on the other hand, is usually less formal than arbitration and is generally conducted before a single mediator whose purpose is to facilitate an eventual resolution of the dispute.

Choosing which type of resolution strategy is best for your claim involves the weighing of various factors that reflect both favorably and negatively on the strength of your case. An experienced personal injury attorney will possess the necessary knowledge and ability to determine which legal avenue is best suited to the resolution of your case.

QUICK TIP

In order to discourage unreasonable delay in bringing civil lawsuits, all states have established certain time limits within which the action must be brought known as the "statute of limitations." Generally, the statute of limitations begins to run when the right to take legal action arises, or in legal terms "accrues." If an action is not brought within the specified period, subject to certain exceptions, a court is barred from hearing the case.

In Ohio, the statute of limitations on personal injury cases is two years, and begins to run at the time of the accident. Any claim brought outside the two year statute of limitations runs the risk of being dismissed as untimely.