

Personal injury lawsuits

Evaluation of personal injury cases is partly art and partly science; those who have done it often are usually better at it than those who have only contemplated their own injuries.

BY BRADLEY J. WOODWORTH, Esq.

NOTE: No two legal situations are exactly alike. This column discusses general legal principles only. For specific advice to rely on you should consult a qualified attorney.

Maybe you have taken the day off work and are home watching daytime TV. You see the fifteenth commercial from some lawyer telling you that if you've been hurt in an accident, call so-and-so. No doubt you've seen or heard reports in the newspaper about enormous sums of money awarded to someone run

. Counsel

over by a bus or injured in an accident. If you were ever injured in an accident, you want to know if you or someone else is responsible for paying the medical bills, your lost wages, pain and suffering and other items of legal damages.

Those injuries which give rise to a legal right to compensation from a third party are called "torts" by lawyers and "personal injuries" by most others. There are two kinds of torts: those based on negligence, and those based on intent.

There are many kinds of negligence torts: motor vehicle accidents, medical malpractice, so-called "slip and fall" cases, tavern owner liability and injuries to reputation, to name a few. All of these kinds of personal injuries require some negligence on the part of the other party before you can recover any money from them (or their insurance company).

"Negligence" is something of a technical term, and whether someone's conduct in a particular case did or could constitute "negligence" depends on the particular facts. Sometimes a tragic accident occurs without anyone's being negligent — what you might call a "true accident" in which you probably have no legal right of recovery.

Because it is difficult to determine on your own whether you may be entitled to a recovery, I always advise contacting a lawyer when you have been significantly injured, to get help in evaluating your case. Negligence cases are usually handled by attorneys on a "contingency fee" basis. This means that you won't have to pay the attorney for their time spent preparing and investigating your case unless you win a settlement or collect a judgment in your favor. The attorney then gets an agreed upon percentage of your recovery (typically 30% to 50% depending on whether trial or an appeal is involved).

It is important to know that litigation costs cannot be done on a contingency basis. The ethical rules for lawyers require that the client remain responsible for costs, such as expert examinations and reports, filing fees, court reporters and the like. Some attorneys will advance these costs on your behalf (permitted by the ethics rules) and then recover these costs from the settlement or judgment. Other attorneys may require you to pay the costs as they come up, or even to deposit funds with the attorney to cover costs sure to come up. Be sure to talk with your lawyer regarding how costs are handled on contingency cases.

Another whole category of torts is not based on negligence, but on the "intent" of the other party (they must have intended their action, or intended to harm you). These torts include assault and battery, false arrest, wrongful discharge from employment, trespass and conversion (sort of like theft of personal property). Whether there may be liability in a particular case will depend on its facts, and again, I sug-

gest consulting an attorney for help in evaluating your claim.

Evaluation of personal injury cases is partly art and partly science. Those who have done it often are usually better at it than those who have only contemplated their own injuries. For this reason, consult an attorney early. Valuable evidence is available at the time of an injury, which becomes harder to preserve as time passes. Critical evidence can make or break your claim and an attorney should be able to help preserve it. Also, the law has different time factors that you can't know about. For example, if a city policeman falsely arrests you, you have only six months to give notice of your claim, or it is forever lost! To protect all your rights when you have been injured, consult a lawyer early on.

A special note on motor vehicle accidents is in order. Oregon law requires all drivers to be insured for personal injury and property damage liability. Your insurance policy provides (because the law requires it) that your insurance company will pay your medical expenses and a portion of your wage loss. This is true whether you or the other driver were at fault. Then the insurance companies figure out between the two of them who foots the bill in the end. Also, not all drivers carry insurance. If you are in an accident with an uninsured vehicle your policy will cover some of your damages. You should consult an attorney if you have any questions about your rights under your policy, or your insurance company denies you personal injury payments.

An additional concern with insurance companies is when they try to rush you into settling your claim. Sometimes the other driver is clearly at fault, and the insurer will come to you with a check and a release. If you are not yet medically stable, and have future medical bills, or injuries that do not heal, you may be stuck with a small immediate settlement rather than the larger one you may be entitled to later. In general, consult an attorney before settling any personal injury claim directly with an insurance company.

Bradley J. Woodworth

Ohio-born Brad is a graduate of Oberlin College and Northwest School of Law. He is president of the board of directors of Outside In. Prior to law school he was a therapist at the Men's Resource Center.

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