

WHAT HAPPENS NEXT?

THE LEGAL PROCESS ROADMAP FOR PERSONAL INJURY CASES

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THE LEGAL PROCESS FOR PERSONAL INJURY CASES

The process of a personal injury case can be lengthy with many important decisions along the way. It is important to have an experienced personal injury lawyer with you by your side at every phase of the process in order to have the best chance of getting the best results possible.

To help you understand the process, I have summarized the procedures that are normally taken in our office.

1. Determine if There is a Case. This is the absolute first step. Immediately upon accepting a personal injury case, our office begins investigating the “three legs” of an injury case. Without any one of the three legs, there is no case. Those legs are (1) determining who is at fault for causing the accident, (2) were there any injuries caused by the accident, and (3) what insurance is available for compensation.

2. Now That It Has Been Determined There is a Case, We Create a Demand Package and Send It Out. A Demand Package is a compilation of all records and

evidence that is sent to the insurance company in an attempt to resolve the personal injury claim without filing a lawsuit. The Demand Package can be 1 to 3 inches thick and can be several hundreds of pages in length, including these types of documents:

- Police report
- Photographs of the vehicles involved
- Property damage reports
- Ambulance reports
- ER reports
- All doctor reports and bills
- All diagnostic test reports
- Prior medical records, if relevant
- Final medical reports
- Expert witness reports
- Witness statements
- Evaluation of future medical expenses
- Evaluation of loss of future earning capacity



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- Statement regarding the effect of the accident on the victim and family members

The Demand Package includes a letter from our office that summarizes all the facts and information about the case and demands that the insurance company pay a certain amount (decided by the client after hearing our recommendation) by a certain date, usually within 30 days.

3. Negotiate the Claim With the Insurance Company. After the insurance company receives the Demand Package and evaluates the claim, they then will make an initial offer to settle the case. Sometimes this initial offer will be the maximum limits of the insurance policy and will be accepted by the client. Other times they will offer less than the full policy limits and the negotiations are now in full swing. We will consult with our client about the strengths and weaknesses of their case and make recommendations on how to proceed now. The final decision is always up to the client, but it is important to listen to the lawyer's advice (another reason to get an experienced attorney). At this point negotiations and offers to settle can go back and forth

numerous times before an offer is accepted (a settlement) or a lawsuit is filed.

4. Filing a Lawsuit. Sometimes a reasonable settlement can be reached without filing a civil lawsuit. In many cases, we attempt to settle our client's claims by sending a "settlement demand package" to the defendant's insurance company.

Often times, though, trying to negotiate a reasonable settlement with the insurance company is a waste of time. More and more insurance companies are taking a very aggressive stance in settling accident claims. Certain insurance carriers have a reputation for making unreasonably low settlement offers, even if the injuries are severe. The insurance companies use pre-lawsuit negotiations to find out as much as possible about you, your lawyer and your doctors. This can result in the unfair advantage to the insurance company not to mention a complete waste of time and effort for you.

For these reasons, it may be advantageous to file a lawsuit immediately and then continue negotiating the claim if possible. Once a lawsuit is filed, the court will set certain deadlines including a trial date. These

deadlines, and in particular a trial date, can help motivate the insurance company to make reasonable and diligent attempts to settle the case.

To start a lawsuit, papers must be filed in court and a filing fee paid. These papers are called a "summons" and "complaint." When a person files a lawsuit he or she is called the "plaintiff." The person or corporation that is being sued is called the "defendant." The plaintiff must personally serve a copy of the summons and complaint on the defendant. You only have a certain amount of time to settle your case or file a lawsuit and then personally serve the defendant. In California, this time is usually two years from the date of the accident. This deadline is called the "statute of limitations." It is a dangerous practice to wait to settle your claim right before the statute of limitations period expires. If you have to file suit right before the deadline and you cannot find the defendant or if you serve the wrong defendant, your case could be dismissed and you get nothing. For this reason, you should not wait to hire an attorney right before the statute of limitations is about to expire. Many attorneys, including myself, refuse to accept a case where there may be in

sufficient time to investigate the case, file suit and locate and personally serve the defendant.

After the lawsuit is filed and the defendant is served, both sides participate in a process of asking for and exchanging information about the case. This process is called "discovery." Each side is allowed to investigate what evidence and witnesses may be used at trial. The discovery process may entail sending or answering written questions (called interrogatories) and requests for documents and other tangible materials that are relevant to the case. The defendant's attorney will also be allowed to access your medical records and work history, including your financial records.

The discovery process may also include depositions. A deposition is a face-to-face meeting where the attorneys are allowed to ask a witness questions under oath while a court reporter transcribes the session. Any witness that may offer testimony at trial can be deposed, including you, your doctors, and your friends and family. If your deposition is requested, it is very important that you prepare for this with your attorney. Your conduct at the deposition can influence the

value assigned to the case and also affect the likelihood of whether the case will settle before trial.

When a lawsuit involves a claim for personal injuries, the other side may be permitted to have their own doctor examine you. Therefore, the discovery phase may also include a request by the other side that you submit to a medical examination and/or psychological evaluation.

There are specific criteria to be satisfied before an involuntary medical examination of the plaintiff is allowed. In my office, we have a fairly specific stipulation that must be signed by the other side which imposes several conditions and restrictions on how the examination may proceed.

5. Mediation is Ordered in the Case Management Conference by the Judge in Most Cases in California. In nearly every California personal injury case, the judge will order the parties attend a mediation before the case can be tried before a jury. Mediation is when both sides sit down together in a conference room with a mediator. Mediators are usually attorneys or retired judges that have special training in

helping to settle cases. Present in the mediation are the lawyers for all sides and their clients, an insurance company adjustor, and the mediator. Both sides take turns explaining their side of the case and can present exhibits. Negotiations then begin with each party going to a separate room. The mediator then performs a type of “shuttle diplomacy” going back and forth between the parties trying to arrive at a settlement.

If a settlement is reached in mediation the insurance company will write a check to the injured person within 2 to 3 weeks, then the lawsuit will be dropped and the case will be over.

6. Trial in Front of a Judge and Jury.

If the parties fail to settle the case after discovery has ended, the case will then proceed to trial. The trial can last anywhere from a few days to a few weeks depending on the number of witnesses and how long they testify. The trial can cost anywhere from \$20,000 to \$100,000 to present. A jury consists of 12 people, plus 1 or 2 alternate jurors. These 12 strangers will decide the case and how much money (if any!) is to be awarded.

There is no way to accurately predict what a jury will decide. Attorneys and insurance companies use their past experience to make educated guesses regarding the outcome of the case. **This is another reason to get an experienced attorney to help you decide if your case should go to trial.**

7. Appeals Following Jury Verdict. Appeals can attack the rulings of the judge, the jury verdict, and in some cases the conduct of the lawyers. Appeals can take years to resolve. If the appellate judges order a new trial, the whole process starts over.

ABOUT THE AUTHOR

Ross Jurewitz is the principal attorney and manager of the San Diego litigation firm, the Jurewitz Law Group. Mr. Jurewitz's practice is dedicated solely to representing people injured in accidents.

Mr. Jurewitz was born in Pomona, California in 1974, and spent almost all of his early life living in the Los Angeles area in Claremont, California. He graduated from Claremont High School and moved to San Diego, California in 1993 to attend college at the University of California, San Diego. He received his B.A. degree in 1997 with a major in Political Science and a minor in Law and Society. Following college, Mr. Jurewitz attended the Washington College of Law at American University. Mr. Jurewitz is licensed to practice law before all courts in the State of California.

Mr. Jurewitz has been exclusively representing injured people for nearly 10 years. In 2002, he joined the prestigious San Diego personal injury law firm of Hoey and Morgan, representing injured people in litigation as trial counsel. In 2004, Mr. Jurewitz formed the partnership of Wick & Jurewitz where he blended the tools and resources of a large law firm with the

personal touch found in a small, personal law firm to provide injury accident clients with excellent service and results.

Continuing that same philosophy, Mr. Jurewitz formed the Jurewitz Law Group in 2007.

In his spare time, Mr. Jurewitz enjoys spending time with his wife, Lee, and their two dogs, Ace (an American Bulldog) and Blackjack (a German Shephard mix) in their coastal North San Diego County home. Mr. Jurewitz also enjoys playing golf, traveling, and spending the fall rooting for the University of Texas Longhorns football team.



