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- The Inland Empire Law Group pushes hard to secure proper personal injury recovery for our clients.
- David H. Ricks & Associates primarily focuses on business related matters and litigation of all matters handled by us.
- Check out our educational videos at youtube.com/davidrickslaw -There are more being added nearly every week.

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Injury Claim Edition

GETTING A JUDGMENT IS NOT THE ULTIMATE GOAL IN A LAWSUIT

Let's first understand the meaning of a judgment. A judgment is a document issued by a Court generally after a trial, or presentation of evidence. This document indicates a judge or jury's decision as to who is the winning party in a lawsuit. I often tell my clients that a judgment is nothing more than a piece of paper. If that document can be used to secure a financial recovery, then it really has meaning. Before commencing a lawsuit, a person needs to be pretty confident that they can be successful if the claim goes to trial. In other words, the plaintiff (the person bringing the lawsuit) needs to be sure that the supporting facts and law are aligned in the plaintiff's favor before beginning a claim. The next step of evaluation, is determining whether the defendant, (the person or business being sued), has the financial ability to pay the claim through settlement or by way of a judgment entered in the plaintiff's favor. Just because the court says the defendant owes the plaintiff money, does not mean the defendant has the ability to pay that judgment, or is willing to voluntarily pay the judgment. In light of all the circumstances of the claim, the ultimate goal of any claim should be to secure the best economic result for the claim, whether by settlement or judgment.

Before beginning a lawsuit, a plaintiff with his or her lawyer, needs to know what source of funds will be available for the case, either through settlement, or by enforcement through a judgment. If a litigant does not understand the potential for recovery before going into a lawsuit, then substantial amounts of money can be needlessly spent without any way to offset those costs with a financial recovery from the opposing party. So let's look into some of the sources of funds which may impact the direction a claim may take to secure the best economic result for a plaintiff.

Start with the example of an injury claim, where damages were caused to property or person. In these types of claims, the most likely source of financial recovery will be from an insurance policy issued to the defendant for situations where the defendant causes harm to another's person or property. The amount of the available insurance can have a dra-

matic effect on the decision to move forward with a lawsuit or to settle a claim. If person get hit from behind on the freeway and the victim of that crash suffer significant injuries, knowing the amount of available insurance and/or assets will be helpful in deciding whether taking the matter to trial or settling the case is in the financial best interest of the injured person. When a defendant who causes an accident has no insurance or only the California state minimum insurance coverage of \$15,000 per individual and \$30,000 per accident, going all the way to a judgment and getting a large judgment will have little recoverable value so long as the defendant has no significant personal

assets to pay for the judgment. Going all the way to trial can result in significant expense which ultimately depletes the money available for the injured party. If the recovery can be made without this added expense, then the injured person can realize a greater financial recovery. Experience tells us that most people with assets have larger insurance policies. Those with little to no assets generally have smaller or no insurance policies. So knowing the amount of available insurance, and possible recoverable assets, is an important

part of the process in deciding to settle a claim or proceed to trial.

If under the same circumstances as the example above, the defendant driver has a large insurance policy, then proceeding forward for a full recovery from the at-fault driver's insurance company makes much more sense. The expense of pressing forward with a lawsuit is more likely to be offset by a judgment for the full amount the damages, rather than settling a claim for below its proper value. Alternatively, if the damages exceed even a larger insurance policy, and the defendant has assets to contribute to the payment of those injuries, then further financial recovery may be available under the right circumstances.

A more challenging situation is where there is no insurance coverage for the type of claim brought by a plaintiff. Complaints for breach of contract or collection, for example, do not have insurance coverage to help pay the obligation. Also, many of these cases are performed on a pay as you go basis, instead of a contingency fee arrangement with the lawyer. Thus, a



THE NECESSARY ELEMENTS TO AN INJURY CLAIM

Negligence. Causation. Damages.

If any of these elements do not exist, you cannot succeed on an injury claim.

Negligence. Sometimes proving the other party's negligence is relatively simple. Negligence for causing a rear-end collision, for example, might be admitted so there is no need for further proof. But just because the insurance company admits fault on behalf of its insured, does not mean that the insurance company will accept everything else you claim. If negligence is disputed entirely, or partially, your lawyer has to draw the facts together to prove the accident was caused by the fault of the other party. Proof of these facts come from several sources. Witnesses might have seen the conduct of the responsible party and can testify to the negligent act. In other situations, a person might have violated a rule or regulation thereby causing injury to another. Negligence is defined as the failure to use reasonable care to prevent harm to oneself or to others.

Causation. After negligence is established, or at least partially established, then you have to prove that negligence actually caused the injuries suffered. Sometimes proving a connection between the negligence and the injury is difficult, other times, it is straight-forward. As an example, a back injury may be complicated by pre-existing degenerative conditions or a prior injury. The back condition may have been further aggravated from the collision and separating the two injuries becomes tricky. In the end, we rely on medical doctors and experts to help us with more complicated claims.

Damages. Finally, there is the issue of damages. Damages are derived from several

sources. These are divided between economic and non-economic damages. Economic damages consist of things such as medical expenses, loss of earnings or wages, property damage or other monetary losses. Non-economic damages include, pain, suffering, disfigurement, anxiety, emotional distress and similar losses. Based upon the facts we are presented with, we negotiate to recover a proper amount of money to be paid by the insurance company or defendant for a client's injuries, including both economic and non-economic damages. The damage value of a claim is very complex. Depending on the insurance company and insurance adjuster, the adjuster is going to attempt to assign as small of a value as possible to settle the claim. In contrast, our objective is to provide the necessary information and support to allow us to argue for the best financial recovery available to our clients under their individualized circumstances. We utilize our skills and training to present the facts of the case as applied to the law. We utilize physics to understand the collision and injuries. Then from experience and research we set case values and the costs of taking the case to trial. We then consider the client's immediate needs and desires. Finally, we press on the adjuster using our reputation for being a tough firm that is willing to take a case all the way to trial if necessary.

During the process of us establishing liability for the claim, we are working in partnership with our clients. Our clients should be getting the medical care and attention they need to heal and should provide our office all the information necessary to prove each element required for a successful injury claim. If we have been able to secure reasonable cooperation from the insurance company, we can resolve our client's claim before filing suit. If we cannot resolve the matter before filing suit, then we continue pressing forward through the court to find justice for our clients. Without our clients, we cannot do our job. Without our efforts, the true value of the claim would not be reached.

GETTING A JUDGMENT IS NOT THE ULTIMATE GOAL IN A LAWSUIT— Cont.

plaintiff and his or her attorney, need to be much more selective as to how much money to spend before pursuing a judgment against a defendant. A defendant who is struggling financially, is insolvent, who will resist collection efforts following a judgment, or a defendant who will seek the protection of the bankruptcy courts may alter the way a plaintiff looks at a lawsuit. The most unpleasant experience in these types of cases is spending good money on legal fees and costs, in an attempt to "collect" money from a defendant who will never pay the obligation even when there is a judgment imposed.

Contrary to the belief of some, getting a judgment is not the ultimate goal in a claim or lawsuit. The ultimate goal is securing the best financial result for the plaintiff by collecting a proper recovery for the damages caused by a defendant. The decision as to how to get the best recovery for a claim is most often impacted by available assets from the defendant or an insurance policy. While there are so many variations to each claim, a customized evaluation must be conducted in each case to determine which is best for the specific plaintiff. Nothing replaces proper research, and planning to achieve the best outcome for someone who has suffered a loss at the hands of another.



Without our clients, we cannot do our job. Without our efforts, the true value of the claim would not be reached.



FAQ: What Happens During Negotiation With an Insurance Adjuster?

I have run across several clients, and potential clients, who have stated words to the affect of: "I was hurt by the other person, they just need to pay what I want." Well, it just does not work that way. That is why having a lawyer assisting you in resolving your injury claim is a good idea. First, during the negotiations, the injury victim is responsible to prove, three things: negligence, causation and damages. These are the required elements in an injury claim. Through written and oral communications between the lawyer and the adjuster, the injury victim must convince the adjuster that a viable claim exists and deserves appropriate compensation.

Most negotiations begin with a

demand package. This demand package is generated at or near the completion of a client's treatment for the injuries suffered, or earlier under certain circumstances. It consists of a multi-page letter outlining the details of the injury producing event, with an explanation as to why the opposing party is at fault. If there are legal violations, where a law was broken, these violations are outlined and presented to strengthen the claim. Medical and billing records, police report, loss of earnings documents and other supportive documents are gathered and presented with the demand package. A demand for policy limits or for a specific number is made to the adjuster, along with a time limit to respond.

The adjuster reviews the de-

mand package and provides a response. This adjuster will either respond in writing or by phone. The response could be an acceptance to the demand, or a counter-offer, or an outright rejection. This is where we utilize our experience, our talents at negotiation and our tenacity for our clients to overcome the objections raised by the adjuster who wants to pay as little as possible for the claim. Ultimately, after several rounds of negotiations and exchanges of information, we either reach a compromise and agreement or we file suit to continue our efforts to secure the best result possible for our client. The negotiation process continues until the claim is resolved, terminated or tried to a judge or jury.



Recent Success - Trial Results in a Great Verdict

I recently had the privilege of taking a case to trial where the insurance company would just not accept the true value of the claim. This accident occurred when our client was hit by a driver who ran a red light and struck the side of our client's small truck as he went through an intersection. Our client suffered a hip labrum tear from the impact. Our client needed surgery, but the cost of the surgery was going to be about \$80,000.00 and he could not get the surgery without the proper compensation from the

insurance company. After multiple unsuccessful attempts to settle the case for the insurance policy limits, and one attempt to settle the case for below the policy limits, we took the case before a Riverside County jury.

The trial lasted a week. During the trial, we utilized the testimony of our client's treating physicians to establish the nature and magnitude of the injury and the need for future surgery. The defense retained an expert orthopedist who only

testifies at trial for the defense. The results of the trial was a judgment for nearly double the policy limits. We were pleased with the result. In addition to the judgment, we were able to recover nearly all out of pocket costs from the opposing side which helped us increase the amount we were able to deliver to our client. When we do not believe the insurance company is being fair with our clients, we will push a matter to trial, if trial seems like the best direction for our client's financial recovery.

When we do not believe the insurance company is being fair with our clients, we will push a matter to trial

What's David Up To These Days?

There are certain events and times in a father's life when he is filled with joy over his children and their successes. One of those times involves graduation from college and even more so when your child earns a master's degree. In April, I was beaming with pride as I watched my oldest daughter receive her master's degree from Brigham Young University, the same place I received my law degree exactly 30 years earlier. I look forward to seeing her additional accomplishments in the future. As my oldest daughter leaves college my youngest son earned acceptance in the very select finance program at BYU, considered the best program in the nation. Then there are those moments when you get to celebrate your first grandson's first birthday. Yes it has been an eventful time for my family. I am so grateful to be a part of this wonderful ride we call life. Not only has it been eventful on the home front, but our office has seen major changes. In May, we wel-

comed four new employees to the firm. These new employees are talented and excited to be part of our growing law firm. We look forward to working with Amanda, Jessica, Miriam and Yvette. We think they will serve you and us very well. We extended our sincerest best wishes to those who have left the firm to pursue new adventures in their lives.

As a final note, this is my 30th year of law practice. It has been an honor for me to represent and assist so many people. Thank you for your trust, confidence and your referrals. I look forward to providing many more years of service to you and our community.

