

## Considering Whether To File An Injury Claim

By Mike Bottaro, Esq.

As a personal injury lawyer, I am often approached by injured people who have questions about the process of making a legal claim. Many times, a person prefaces their questions with a phrase along the lines of, “I am not the type of person to sue.” This honest and natural reaction can lead to further discussion about the civil legal process. I have written this guide to help explain the personal injury legal process.

**A. When you make a legal claim, you remain in control. Many claims are settled efficiently, confidentially, and without you having to file a lawsuit.**

First, when you have been injured, it is most important to seek medical help. Your health is always priority number one. Next, you should consult with an experienced personal injury attorney, because a personal injury attorney can assist you with dealing with your medical bills, insurance company, lost wages, property damage, and considering whether to make a legal claim.

One popular misconception about deciding whether to make a legal claim involves the use of the term “sue.” Many mistakenly believe that bringing a legal claim necessarily means “suing,” i.e. filing a lawsuit and then engaging in a long, involved legal battle in court. The reality is that it is often in both the insurance company’s interest and in your interest to try to resolve your claim confidentially before going to court. This is because lawsuits and trials are time consuming, costly, and can yield uncertain results.

You should understand that in many cases, a settlement can be reached confidentially and without having to file a lawsuit. The secret to increasing your chance to achieve such a result is through hiring the right attorney. The right attorney is one who you trust and feel comfortable working with to competently handle a personal injury case. Is the attorney's practice completely devoted to personal injury? Has he received recognition from other judges and lawyers? The insurance companies know who the local attorneys are who are dedicated to personal injury and who, if pushed, will file and prosecute a lawsuit. The reality is that insurance companies are more likely to offer a better settlement to a claimant who is represented by a credible, reputable personal injury lawyer. This type of lawyer does much more than simply shuffle your medical records off to the insurance company. Rather, an experienced personal injury lawyer understands how to investigate and put together an airtight case before actually filing suit.

In the majority of personal injury cases, including in virtually every car accident case, I will make every effort to settle your case before filing suit. This settlement process will be attempted as efficiently as possible, but only after I have fully investigated and put together your case. In short, your case will be presented to the insurance company as if it were going before a jury. The insurance company, more times than not, appreciates this level of preparation and proceeds to engage in meaningful settlement negotiations. If the insurance company does not offer you fair market value, then it knows that your attorney will follow through with his threat of filing suit and proceeding towards a jury trial. It will then be your choice, as the client, as to

whether you are willing to accept the insurance company's settlement or whether you would like to proceed with filing a lawsuit.

**B. The business of insurance is intended to provide security and certainty to both you the injured party and the person or business who contributed to your injury.**

Some people believe they would never bring a legal claim because they are philosophically opposed to the idea of "suing." They believe that "suing" is an act of aggression or some similar form of intentional conduct towards another human or business.

But if you have been seriously injured through the acts or omissions of another, then you need real help. You may have lost wages, medical bills, and permanent injuries that forever change your life. In short, you need legal justice. We have already discussed that the mechanics of making a legal claim do not necessarily involve "suing." In fact, there is very little burden to the at-fault party when you make a legal claim. This is because in most cases, the at-fault party has bought insurance to provide financial security and legal counsel for this very occasion. None of us are perfect. In the vast majority of cases, the at-fault party was not acting intentionally and did not mean to cause you injury. Nonetheless, you have been injured. I have purchased insurance to provide me with the peace of mind that if I ever did injure someone negligently, my insurance company would be there to provide coverage, handle the claim, and provide me with an attorney. In short, by buying insurance, the at-fault party has already paid for your legal claim. The at-fault party need do very little other than provide a statement to the insurance company of what occurred.

Even in cases where you know the at-fault party, it is wise to follow through with making a legal claim. For example, many injuries occur at a friend's house or in a vehicle driven by a friend, or at a landlord's apartment. You may feel uncomfortable about making a legal claim against a friend, friend of a friend, or landlord. This is understandable, but you should consider the following: First, if you have been injured, you need financial help. Second, by making a claim, you are protecting yourself and your friend, landlord, etc. This is because the insurance company and your lawyer will ensure that the claim is handled properly, with all documents written and signed. By not making a timely claim, you risk losing your claim forever. For example, your injury may worsen over time to the point where you cannot return to work. And the at-fault party has a duty under the policy to inform the insurance company of the claim. If you or the at-fault party delay in telling the insurance company about the claim, then later the at-fault insurance company may have grounds to deny coverage. Without coverage, you would be forced with the decision to not seek any financial compensation or to sue your friend, neighbor, landlord, etc. personally. None of us would want to be left with that choice. The bottom line is that if you have been seriously injured, you need to think about these issues and talk it over with an experienced personal injury lawyer.

I have written this guide to help injured people understand some of their legal rights and to provide a basic overview of the legal process. If you have further questions or would like to discuss your situation confidentially and at no cost, contact me, Attorney Mike Bottaro, at The Bottaro Law Firm, LLC, toll free 866-LAW-9700, local (401) 383 – 5007, or through our website [www.bottarolaw.com](http://www.bottarolaw.com).

## **Evaluating Your Case And Its Value**

**By Mike Bottaro, Esq.**

People who have been injured want to know: (1) Do I have a case?; and, (2) If so, what is the value of my case?

I have written this guide to provide citizens with an overview to answering these questions. Once you contact me at The Bottaro Law Firm, LLC, we will begin the process of answering these questions for your specific case. I will provide you with a free, confidential consultation. I invite you to review this guide and then contact me so that we can get to work today on evaluating your case.

### **1. Do I have a case?**

There are many factors and possibilities to consider. To start with, within personal injury law, there are many different types of legal claims. We need to understand exactly what happened to you that caused your injury. We can apply the facts of your case to the relevant legal principles.

I handle all types of personal injury cases from the more common motor vehicle collision to the more complex product liability and medical malpractice cases. For simplicity here, let's take a common example and suppose you were involved in an auto accident where another driver rear-ended you. You were taken from the accident scene to the hospital. At the hospital, you were diagnosed with a fractured leg. We would claim that the driver who struck you was "negligent." To prevail on a negligence claim, we must establish that the other driver: (1) owed you a legal duty; and (2) breached that duty; (3) causing you; (4) damages.

As to (1), the law provides that all drivers owe other drivers certain duties to operate their vehicles in a safe manner. Therefore, we would be able to establish that the driver who rear-ended you owed you a duty of care.

To evaluate whether you would prevail on element (2), we would need to understand the specific facts of the accident to determine who a jury would likely determine to be at fault. This might entail not only listening to you tell us about the accident, but also conducting our own investigation. In addition, a jury is entitled to apportion fault between more than one party. In our example, there is a legal presumption that a driver who rear ends another driver has acted negligently that is advantageous to the injured party's claim.

As to (3) and (4), the at-fault driver is only responsible for the damages that he caused you. In some cases, the issue of "causation," meaning whether the at-fault driver caused you injury can be complex and hotly disputed. In our example, the driver would be legally responsible for the property damage that he caused your vehicle in the accident and also for injuries he caused you in the accident, such as the fractured leg (assuming that you did not already have a broken leg before the accident). In a negligence action, you may recover different types of damages as discussed in the next section.

In this example, if you establish these four (4) elements, than a jury may consider awarding you money damages. Let's proceed to look at some of the factors that go into awarding you money damages.

## **2. Assuming I have a case, what is my case worth?**

There are two principles to understand. First, although we are all sometimes uncomfortable talking about money, the truth is that the civil legal system is designed to fairly compensate those who have suffered personal injury. Second, it is equally true that, generally speaking, the civil justice system is only designed to fairly compensate those who have suffered personal injury. This means that neither the most skillful lawyer nor the most compassionate judge can ever undo father time. Those of us in the legal system simply can never replace what you, the injured party, have lost. The law cannot erase permanent physical scars, or miraculously bring someone back to life or out of a wheelchair. Nor can we force the other side to admit they were wrong or to apologize to you. Therefore, we are primarily interested in the business of recovering money damages for you.

Once you understand these two central principles, we can begin to discuss the monetary value of your case. While there are different types of damages available depending on the legal claim at issue, let's stick with our auto accident example for negligence. If the case proceeds to trial, jurors decide whether to award money damages, and if so, in what amount. Jurors also determine the percentage fault of the parties, which also affects the ultimate award of money to you.

In a negligence claim arising from a car accident, putting aside some differences between Rhode Island and Massachusetts law, you can seek money damages in the following categories:

- Lost Wages
- Gross Reasonable Medical Expenses Related to the Incident
- Pain and Suffering

- Permanent Impairment (including scarring)

Lost wages and medical expenses can usually be readily calculated. However, predicting what a jury might award you for recovery for pain and suffering and/or any permanent impairment is an imprecise science. Some factors that can affect such an award include the severity of the injury, the length of hospital stay and treatment, your past medical history, your efforts in following your doctors' instructions, and how the injury has affected your life to date, and in some cases, will affect your life into the future.

Jurors not only determine the amount of damages, if any, to award you, but they also determine the percentage fault of each party in causing your damages. This means that if you have suffered \$100,000 in damages and the jury finds that you were partially at fault by 40%, then your gross award will be reduced by 40% to \$60,000.

Finally, trial and juries are unpredictable. Therefore, there are some statistics and probability to consider. That is, even under the most favorable facts, no case is a 100% guarantee to result in a plaintiff verdict. Jurors bring their own collective experiences to the process. We have seen differences in personal injury jury awards from county to county. There is always a chance that one side will lose at trial.

Insurance companies and their lawyers will examine these factors and arrive at a range of what any given jury might award you. This is the "trial value" of your case.

But most cases do not go to trial. It typically takes at best, over two years (and in many cases much longer), to get to a trial date. And this comes after the litigation process, which includes filing a lawsuit and conducting depositions and other discovery. This process takes time and costs money, money that comes out of your pocket if we

win your case (at The Bottaro Law Firm LLC, we offer a “No Fee Guarantee” where, we will eat the costs if we do not win).

Thus, both insurance companies and personal injury plaintiffs are generally interested in trying to settle the case before a trial. This is known as the “settlement value” of your case and will necessarily be a compromise between what you might be awarded at trial and the likelihood that you would receive less (or lose) at trial. *But to achieve a fair settlement value, you need a lawyer who prepares your case as if it will go to trial, with experience dealing with insurance companies and trying cases to verdict.* At our firm, we take pride in giving your case personal attention and preparing your case properly, so that when we enter the negotiation process, we can achieve the highest settlement offer possible. Then, the choice to settle your case or proceed to filing a lawsuit and heading towards trial is, and always will be, your choice. We will work with you to analyze the various factors of time and money to consider.

I hope you found this guide helpful and I encourage you to contact me, Attorney Mike Bottaro at The Bottaro Law Firm, LLC toll free 866-LAW-9700, local (401) 383 – 5007, or through our website [www.bottarolaw.com](http://www.bottarolaw.com) for a free confidential consultation.