

Injury Accident Guide



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Disclaimer: Each case is handled on an individual basis and is different. Results may vary.

1. Attorneys

A. Misleading Insurance Information

If insurance companies were fair, I would not have a job. Insurance companies spend billions of dollars per year on tort reform and advertising against trial attorneys and injured victims. How dare you make a claim when it affects their bottom line? The latest gimmick is a business owner that exposed his workers to asbestos and the victim is dying of mesothelioma. Folks, I have no pity on a business owner who subjects his employees to one of the most brutal deaths, then cries out if you sue me you will put me out of business. The poor men or women are dying brutal deaths and the injury has caused financial ruins. The business owner acts like he is more concerned about his bottom line than the dying worker.

Corporate America and big business have made it a point to go after trial attorneys. Insurance companies also take out billboards, run commercials, and sometimes try to influence our system.

Insurance is to cover the negligent acts of another person. If you are injured as a result of the negligence of another person, the law gives you the right to recover damages.

B. Murphy Law Firm

I represent injured people, and I am proud of it! We only want justice for injured victims. If insurance companies were fair, you would not need me and victims would never have to go to court.

Murphy Law Firm was established in 1993. We represent injured victims. The personal injury lawyers, Peyton Murphy, Scott Emonet, and Joe'l Freeman handle all types of injury cases. The value of the cases we handle range from \$500 to multimillion dollar verdicts.

Our attorneys never shy away from going to trial. We are ready, willing and able to represent any type of injury case to a judge or jury.

Since 1998, over 50 million dollars have been recovered for injured victims.

C. Questions and facts you need to know before hiring an attorney

1. What type of legal problems does the lawyer handle most often?
2. Does the lawyer work for insurance companies?
3. How long has the lawyer been practicing law?
4. Will your lawyer go to court?
5. What fees will your lawyer charge?
6. How much actual court experience does the lawyer have?
7. What is your lawyer's opinion on settlement versus trial?
8. Will your lawyer provide references (i.e. other clients and attorneys)?

There are many types of lawyers. The right lawyer has substantial experience handling cases specific to yours. The guidance of the personal injury lawyers at Murphy Law Firm will prove helpful in navigating the complex legal and medical issues that arise from personal injury cases. Many personal injury claims can't be resolved without filing a lawsuit.

Peyton Murphy, Scott Emonet, and Joe'l Freeman are not afraid of litigation. The strategy is to give the client the highest quality of representation by exceeding expectations. Aggressive legal representation and innovative courtroom presentation help juries and judges understand we want justice.

We welcome all questions from any potential client.

D. Costs of Hiring an Attorney

The law of Louisiana requires a plaintiff sign a contract when a contingency fee agreement is entered into between a client and attorney. The normal contingency fee agreement is 1/3 (33%). However, Murphy Law Firm has a policy that the clients always make more money than the attorney. You are the injured victim and you should receive the money you deserve.

There can be additional hard costs when hiring Murphy Law Firm. For example, we sometimes have to order medical records and bills, conduct depositions, hire expert witnesses, obtain witness statements, photographs, and police reports.

As a client of Murphy Law Firm, we go after all court costs and interest at trial. Our goal is for you to be completely satisfied with the services and results of Murphy Law Firm.

2. Legal Issues

A. Statute of Limitations

Statute of limitations (also referred to as Prescription Date) determines the amount of time you have to file suit. Different types of cases require suit to be filed at different times. An automobile accident has a one year prescription date; therefore, suit must be filed within one year from the date of the accident. Medical malpractice cases have a one year prescription date from the date of the malpractice with a maximum of three years.

Don't wait to hire an attorney! It is always best to file suit well before the statute of limitations. If the defendant is served with a copy of the Petition for Damages before the Statute of Limitations, defects in the Petition for Damages can often times be corrected.

B. Comparative Fault

Peyton Murphy, Scott Emonet and Joe'l Freeman understand more than one party may be at fault or a plaintiff may share in responsibility. The plaintiff's recovery may be resolved by the percentage of fault.

If a plaintiff receives an award of \$100,000 and is held 30% at fault, then the plaintiff would recover \$70,000. Also, if multiple defendants are at fault, Defendant #1 being 60% and defendant #2 being 40%, then Defendant #1 would pay \$60,000 and Defendant #2 would pay \$40,000. The final number of your loss may vary and can alter who pays certain amounts of damages.

C. How long does it take?

Several factors determine the length of time of a case, but the main thing is the length of your medical treatment, the number of parties involved, and the judge assigned to your lawsuit. Once you are released from the doctor or reach maximum medical improvement, we will attempt to settle the case. If a settlement cannot be reached, Murphy Law Firm will file suit.

If suit is filed, it depends on how big your case is and what judge is assigned to your case. We do not delay cases. After the defendants file an answer, it is office policy to request a status conference to get deadline dates.

3. DO'S & DON'TS

A. After the Accident

i. Hire an Attorney

You do not need an attorney for every case. However, the industry has become a system of not accepting fault and avoiding to pay what you deserve. Every potential client should consult with an attorney, but only hire an attorney that will fight for you and provide services that are beneficial to you. If you hire Murphy Law Firm, we want you to be comfortable and knowledgeable about us. We want to have a good relationship with our clients. Our goal is for you to be satisfied with the results!

ii. Photos

After any type of accident, please take photographs of the scene, property, and injuries. Photographs are one of the easiest ways to prove who is at fault, damages to property, and the extent of a client's injuries.

Cars, intersections, offshore rigs, property defects, medical devices, cuts, bruises and scars help judges and juries understand liability and damage issues of a case. If you do not have a camera, use a cell phone. Also, the photographer needs to date and sign the photos, so they are admissible at trial.

iii. Witnesses

Witnesses are very important from a liability and injury aspect of any case. Any witness to an accident can help prove liability. Additionally, it is very helpful to have a corroborating witness testify to the amount of pain you experienced, the difficulties in your daily activities, and your relationship problems.

Your communication with defendants (including insurance companies) and witnesses are discoverable and admissible at trial.

iv. Adjustor

Adjustors are not your friends. If adjustors were fair to victims of an accident, you would not need me. Insurance adjustors are trained to pay you as little as possible. Any time you talk to an adjustor, assume you are being recorded. We treat everyone with respect, but will not accept the adjustors' value of your case. The experienced trial attorneys at Murphy Law Firm can give you a legal opinion you can respect.

v. BE TRUTHFUL!!

This is the most important advice lawyers can give clients. **BE TRUTHFUL!!** Your truth and veracity about the accident and injuries are always an issue. If you're not truthful about any aspect of your medical history, the accident, your personal life, or any other information supplied, the defendant will try to claim you are not being truthful about your injuries, which will affect the outcome of your case.

Insurance companies do not like good, honest, truthful people.

vi. Potential Defendant's Information

Obtain any and all possible information about the defendant. The information allows the case to move forward in an efficient manner. When we investigate the defendant, it allows us to locate insurance, assets, witnesses, criminal charges (DWI), service information, proper corporate names, etc.

Individuals do not like to be defendants. Often Defendants do not accept responsibility, but it is our goal to hold them accountable for their negligence.

Be aware that some conversations you have with a defendant are admissible at trial. You should not talk to the Defendant unless it is absolutely necessary. Never give any type of statement to the defendant unless you've consulted with an attorney.

vii. Recorded Statement - NEVER!!!

The only time a statement should be recorded is during a deposition. If an insurance company or defendant takes a recorded statement, they often try to use it against you during your case. No insurance policy requires you to give a statement, but only cooperate.

Facts and injuries must be detailed, accurate, and truthful. The adjustors are trained to ask questions in a way most beneficial to their defense.

What benefit is it for you to give a recorded statement? NONE.

viii. Medical Release and Loss Wage Release

Do not sign medical releases or lost wage forms unless it is for your attorney. The medical records and lost wage release are used to gather medical records and bills and lost wage information.

This information is how we prove your claim. You should never sign a blanket release.

ix. Mitigate Your Damages

A plaintiff has an obligation to mitigate damages. Mitigation refers to the plaintiff making reasonable efforts to minimize the effects of the injury. If the defendant can show that the plaintiff failed to mitigate damages, the plaintiff's recovery may be reduced.

The plaintiff should take a proactive approach when dealing with medical needs. If you do not attend your scheduled doctor's appointment, it could be considered you did not mitigate your damages. Insurance companies use this as a defense in an attempt to pay less money.

4. Medical Treatment

A. Seek Medical Attention:

If you are injured, you should consult with a physician immediately.

The defendant's insurance company often considers when your initial doctor's visit occurred. Additionally, the sooner you seek medical care, the faster you can recover from your injuries. Also, do not jeopardize your health by not seeing a doctor.

B. Follow Doctors Instructions

Follow the doctor's advice and orders. Medical documentation is information used to determine your damages.

Murphy Law Firm does not give medical advice, however, would like you to see a specialist for your type of injury. Your recovery is important and could be jeopardized or delayed by not following your doctor's advice.

Medical treatment is used to prove your injuries. Following recommended treatment will require you to be consistent. Gaps in treatment can only hurt your case and can affect your health.

Remember being a good client can only help your attorney obtain satisfactory results.

C. Tell Everything Bothering You

Your medical history must be accurate! When you seek medical attention, tell the doctors about your previous medical treatment and everything bothering you as a result of your accident. This is how the doctors arrive at their opinions to relate your injuries to your case. Also, this allows Murphy Law Firm to make a claim for all your injuries.

5. Damages

A. Special Damages

i. Medical expenses

Past, present, and future medical expenses are an element of damages that Murphy Law Firm will collect for you. It is easy to calculate past and present medical bills, but often we must request opinions from your treating physician or experts to calculate future medical expenses. Life care plans are sometimes necessary for severely injured victims.

Additionally, some insurance policies contain medical pay provisions. Medical payment coverage lowers usual and customary charges for reasonable and necessary medical services incurred because of bodily injury sustained by an accident.

Our approach is to make sure you get the necessary medical attention, and then the final settlement or judgment will work out. The attorneys at Murphy Law Firm want you to get good quality healthcare and force defendants to pay all reasonable medical expenses.

ii. Lost Wages and Loss of Earning Capacity

Lost wages will be recovered if you have medical documentation supporting your inability to work. You are entitled to past, present, and future lost wages.

We use tax returns, W-2's, paycheck stubs, and contracts to prove your lost wages.

Future lost wages require an opinion for your treating physician. Your physician testifies to work restrictions. You may also have loss of earning capacity or full disability. Once the doctor gives an opinion, a vocational rehabilitation expert will meet with you to determine if any job matches your skills in relation to your medical restrictions. Then, an economist is necessary to provide a present value of future wages.

These wages are considered special damages that must be accurately proven.

B. General Damages

This part of your damages is what we can not place a specific number on. This number can vary by large amounts on each case. This damage includes pain and suffering, loss of enjoyment of life, loss of consortium, and mental anguish.

General damages are not a fixed number. The value of cases from Livingston, East Baton Rouge, West Baton Rouge, Ascension, and Feliciana can be different.

The personal injury attorneys at Murphy Law Firm stay updated on the value of cases in jurisdictions around the state of Louisiana. Our goal is to make defendants pay an equitable amount of general damages.

C. Property Damage

Property damage to your car, house, and things you own may vary depending on the adjuster and insurance company. Often, we must hire an expert in the field of your property in order to prove the actual amount of damages.

Depreciation may be part of your claim, but we must hire people that can report and testify to the value.

If you receive a number you are not happy with, please do not be alarmed. For example, repair shops will supplement the bill and often handle any additional damage charge.

If the defendant contests liability, then recovery of property damage can be delayed. Sometimes, we may recommend that you use your insurance policy to pay property damage, and your insurance company will have the right to intervene or subrogate once we file a Petition for Damages.

D. Rental Cars (Auto Accidents)

Do not drive your car if it is not safe or legal to operate. You are allowed to get a rental car of similar type. Your policy may give you only certain amounts of money per day, but defendants cannot determine this number.

The insurance company or defendant must pay reasonable rental expenses until your vehicle is repaired or you receive a check, if totaled.

Your personal insurance policy should be used to cover insurance responsibilities when renting a car because defendants are not responsible for any type of extra insurance coverage you receive.

E. Towing and Storage Fees (Auto Accidents)

The defendant's insurance company is responsible for towing and storage costs. The car should be removed as soon as possible. Do not let your car stay at a storage facility too long because you could be held responsible if the delay is your fault.

F. Spousal Claims (Loss of Consortium)

Loss of consortium is a claim that may be made by the plaintiff's spouse, child, parent, brother, sister, or grandparent for their damage from the injured person. This claim is for loss of love, companionship and moral support, decreased sexual relations, inability to perform household services, and plaintiff's inability to participate in the family unit. Wrongful death cases include loss of consortium for certain family members. The value is often not large unless your spouse has suffered a debilitating injury or wrongful death. When Murphy Law Firm represents married couples, we do not file a consortium claim unless your spouse agrees to hire us.

The defendant's will ask about the extra duties/chores you are responsible for around your house, your sexual relationship with your spouse, and anything you do to help your spouse.

There can be advantages and disadvantages about making a claim for loss of consortium which should be discussed with your attorney. It is considered a separate claim, but part of the total claim of an insurance policy.

6. Health Insurance, Medicaid, Medicare, and Worker's Compensation

A. Health Insurance

A private health insurance company that pays benefits for you has the right to place a lien on your case. This entitles the health insurance company to get reimbursed when the case settles.

Private health insurance companies cannot require reimbursement from your case if you are not made whole and often times will work with the injured party's attorney.

ERISA plans have different rules which often entitle them to full recovery. An ERISA plan establishes minimum standards for pension plans in private industry and provides for extensive rules on the federal income tax effects of transactions associated with employee benefit plans.

B. Medicare

This is a federal government's healthcare program for those 65 or older or those under 65 who are disabled, suffering from permanent kidney failure or diagnosed with Lou Gehrig's Disease. Medicare must be reimbursed for payments made or can reasonably expect to be made by a 3rd party.

C. Medicaid

This is a state government's need-based healthcare program administered by each state. By accepting Medicaid benefits, you agree (by law) to reimburse the state for injury-related care if you recover from the party responsible for causing your injuries.

D. Worker's Compensation

If you are injured while working and a 3rd party is responsible for causing your injuries, any money paid by workers compensation must be reimbursed when your case settles or judgment is obtained.

7. Phases of the Case

A. Brief Overview

After your Petition for Damages is filed, the Defendant will have 15 days to answer the Petition after service of citation. Once the Answer is received, we file for a Status Conference with the Court. At the Status Conference, the judge and attorneys will work out deadlines to conduct discovery, file motions, etc. and to file a Pretrial order. After the Pretrial Order is finished, the court will provide a Pretrial Conference to set a trial date. A determination of Judge v. Jury Trial and the number of days for trial will be finalized at the Pretrial Conference.

B. Discovery

During the discovery phase a plaintiff and defendant will answer Interrogatories, Request for Production of Documents, and Request for Admissions.

- Interrogatories are written questions submitted to an opposing party.
- Request for Production of Documents is a request to another party within the lawsuit that they provide specific documents or other tangible items to inspect or copy.
- Request for Admissions is a party's written factual statement served upon another party within the suit who must admit, deny or object to the questions or statements contained in the request.

The next stage will be your deposition. During the deposition, the attorneys will ask questions about you, your family, work history, jobs, the accident, injuries, medical care, and disabilities under oath in front of a court reporter. Here is the magic formula to the client doing a great job: be polite, non-confrontational, and truthful.

C. Time

The length of time depends on several factors. The complexity and nature of your medical treatment, number of parties involved, and the judge all determine the length of time for your case.

Once suit is filed both parties conduct discovery. Once discovery is completed, we will obtain a trial date. Normally, we can get a trial within 4 months to 2 years.

You should realize the value and time of each case is different!

GLOSSARY

Adjustor: An employee of an insurance company whose job is to assess damages.

Answer: A defendant's first response that addresses the merits of the case by admitting or denying plaintiff's allegations set forth in the Petition for Damages. Answers must be submitted within certain time limits.

Comparative Fault: The recovery of an injured person who has contributed to his own injury by his own sub-standard conduct must be reduced by the percentage of fault attributable to him.

Contingency Fee: A fee charged for an attorney's services only if a recovery is made in favor of the Plaintiff.

Defendant: A person sued in a civil case.

Deposition: Out-of-court sworn testimony taken of the parties and witnesses in a case.

Discovery: The process of finding or learning information that relates to the case from parties, witnesses, and documentation evidence.

Economist: A professional who specializes in economics and is often used as an expert witness to determine economic damages.

Expert Witnesses: A person who has extensive education or experience on a particular subject.

General Damages: Money won in a lawsuit for injuries suffered for which there is no exact dollar value which can be calculated (such as pain and suffering, inability to perform certain functions, and mental anguish).

HIPAA: An acronym for Health Insurance Portability and Accountability Act, which sets forth particular guidelines to obtain a patient's medical records through a medical release signed by the patient.

Interrogatories: A written question sent to another party in a law suit, which must be answered within a certain period of time during the discovery phase of litigation.

Jurisdiction: A court's authority to hear a case.

Lien: A legal right or interest that a creditor or party has in another person's property or lawsuit.

Life Care Plan: A plan created for injured plaintiffs, which outlines their annual and lifetime costs for long-term care over their life.

Loss of Consortium: A loss of the benefits that one spouse or close relative is entitled to receive when the other family member has been injured and is unable to perform normal duties in the relationship.

Loss of Earning Capacity: A loss sustained by an injured person relating to the inability to work and perform the same type of job functions as before the injury i.e. loss of earning power.

Loss of Enjoyment of Life: A loss by an injured person who is unable to function and perform certain things that were previously enjoyed before the injury.

Lost Wage Release: An authorization signed by a person granting someone the ability or authority to obtain certain information from their employer regarding lost wages, salary and other employment information.

Medical Release: An authorization signed by a person granting someone the ability and authorization to obtain certain information from the person's employer regarding lost wages, salary and other employment information.

Mesothelioma: A lung disease primarily caused by exposure to asbestos.

Mitigation of Damages: A principle which requires a plaintiff to make reasonable efforts to help minimize the effects of the injury they sustained by the Defendant.

Negligence: The failure to exercise care that a reasonable person would have exercised in a similar situation.

Plaintiff: The party who brings or files a civil lawsuit to court.

Pleadings: Every legal document filed in a lawsuit, including but not limited to petition, answers, motions, and memorandums.

Prescription Date: A rule that establishes certain time limits to file a lawsuit, if expired all rights associated with the injury are forever lost. (Also called Statute of Limitations).

Pretrial Conference: An informal meeting in which all attorneys meet with the judge to discuss trial matters, such as deadline dates, trial date, evidence, motions, witnesses, etc.

Pretrial Order: A court order establishing the procedural rules and deadlines, trial date, claims, defenses, stipulations, witness list, exhibit list, etc. of the parties.

Request for Admissions: A formal written request sent from one party to another asking them to admit, deny or object to the substance of the statements within.

Request for Production of Documents: A formal written request from one party to another asking for specific documents or tangible items they have in their possession.

Special Damages: Damages alleged to have been sustained and must be specifically claimed and proved in order to receive compensation.

Status Conference: A conference held with all attorneys involved in a case and the judge which establishes deadline dates and addresses any issues or concerns to move the suit along through the judicial process.

Statute of Limitations: A law which sets the maximum period which one can wait before filing a lawsuit. (Also called Prescription.)

Subrogate: For a debtor to allow another debtor to have priority in a claim or lawsuit.

Tort: A civil wrong for which a remedy may be obtained.

Venue: The proper place in which a lawsuit may be filed which has some connection with the injury, crime, or parties involved.