

**ALL ABOUT YOUR
PERSONAL INJURY CLAIM**

Prepared By

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INJURY CLAIMS * CRIMINAL DEFENSE

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A personal injury claim can be one of the most devastating experiences of a person's life. Medical bills lost wages, pain, suffering and loss of enjoyment of life from an automobile accident, oilfield accident, slip and fall or insurance claim can be a nightmare to the injured person unfamiliar with the process.

At the Titus & Murphy Law Firm, we help injured persons through the myriad of paperwork, dealing with insurance adjusters and bringing the claim so that they receive full and fair compensation. We have prepared these materials to help you understand the process we must go through in bringing your claim.

Please read it, keep it, and read it again and again. It should help you with information, instructions, and hopefully ease your fears as we work your claim to conclusion. Remember, the information in these materials is generic in nature to all claims, but each claim is different, based on the particular facts. How your claim fits in these concepts will be the responsibility of you and your lawyer, who will need your help.

What is my case worth?

While this is probably the most asked, this question is impossible to answer until your case is over. Ultimately, a case is only worth either what the tortfeasor (or usually their insurer) will pay in a settlement, or what a jury would award at the end of a trial.

Either the insurance adjuster or jury will evaluate your case on liability and damages. Bad facts on either basis can limit or completely eliminate any recovery.

What is liability?

What we call liability is the determination of the legal basis on which damages can be recovered. Several types of cases that give rise to liability are automobile wrecks, slip and falls, oilfield accidents, job discrimination, etc.

Auto cases:

Negligence is the legal theory of liability in most auto wrecks. Negligence occurs when one party has a legal duty to act as an ordinary, reasonable and prudent person, and fails to do so. For instance, every driver of an automobile must stop at a red light, yield the right of way, etc, i.e. to follow the "rules of the road." Failure to stop at the red light is a breach of the "tortfeasor's" legal duty which creates the tortfeasor's "liability" - his/her duty to pay for the damages caused by their breach of duty.

How do we prove liability?

We must immediately collect all evidence of liability, whether by witnesses or physical evidence.

Any person who was an eye witness or was even at the scene of the accident, we must find and interview. Please give us the names, addresses and telephone numbers of all possible "witnesses." We'll take their statements, get what they know now before their memory fades or they move away and cannot be found.

Physical evidence is just as important. Bring us all photos of the scene, of your car and the tortfeasor's car, before they are repaired or somehow change. A police report, news videotape, etc. can be lost if not secured without delay. Save everything!

A list of physical evidence which you should save is:

- Diary
- Photos of both the damage
- Cast/Brace
- Missed days of work and wages lost
- Prescription bottles

What items can be considered in determining damages?

Money is paid for "damages" incurred* which are caused by the tortfeasor's liability to fairly compensate you. Damages which can be collected in most cases are:

- Property Damages
- Medical Bills Incurred
- Future Medical Expenses
- Non-Medical Expenses
- Lost Earnings
- Lost Earning Capacity
- Loss of Household Services
- Past-Pain & Suffering
- Future Pain & Suffering
- Nature, Extent & Duration of the Injury
- Loss of Consortium (Care, society and companionship of a loved one)

Only in limited cases can "punitive" damages be collected. These damages are based on grossly reckless or outrageous conduct - such as a drunk driver. Punitive damages are to punish the wrongdoer, and are in addition to actual damages.

How long before we can settle my case?

We will not attempt to settle your case until the full measure of your damages is known. In a personal injury case, that means we will not begin making any offers of settlement until you have

reached "maximum medical improvement" (MMT) from your injuries.

MMI comes when your doctor says you're either fully recovered from your injuries, or have plateaued at a level which is as good as you'll ever recover.

When you reach MMI, we then for the first time can KNOW the extent and permanency of your injuries, and what residual effect they will have on your life, work and family. We can calculate the specific monetary loss and ask for opinions of future care and its cost.

Hopefully you can see that until MMI, settlement is premature and involves guesswork that does not help us get your full and fair compensation.

BE PATIENT! Everybody's body heals itself at a different rate, as do different types of injuries. Minimal sprain/strain may be resolved in a few weeks. Major spinal injuries can take years to reach MMI and have significant residuals.

Remember the old commercial, "We'll sell no wine before it's time?" That concept applies here as well, and your case is certainly more important than a bottle of wine!

In the meantime, lots of work needs to be done to get your case ready to settle or try. You are the best resource we have to collect the necessary information to work up your claim.

Must we wait to get my car fixed?

No - property damage repairs can be done separate from the settlement of your injury claim. If yours is an auto case, get three estimates and submit them to the tortfeasor's insurer as soon as you can. Also, submit your expenses for tow services, rental cars, mileage to secure the repairs, etc.

Rarely do we get involved on the claims for fixing your car. The cost of repairs is easily determined by a body shop and other expenses are only reimbursable if actually incurred. Every dollar recovered is needed to get your wheels back in operation - if we charged our contingent fee on amounts recovered for the repair of your car, there would only be 2/3 of the amount needed for its repair!

Remember, before you sign anything, make sure it applies to the property damages only and does not waive further claims for your injuries - sometimes called "bodily injuries" by insurers.

What should I do to help my injury case?

We want your doctor to see you as soon as possible and to closely monitor your recovery. The doctor will be a vital witness in your case to explain your injuries, how they have or will, effect or limit you, why medical costs were necessary to do and reasonable in amount, etc.

Your compliance with the treatment program is critical, not only to your recovery, but to development of this important witness.

See your doctor as often as he wants and do what he tells you. Make all appointments, describe all your complaints, symptoms and limitations.

Oh, how many times has an insurer argued that "there must be nothing wrong with him because he doesn't go to the doctor!" or "Your client has missed 1/3 of his appointments so he must not hurt that bad!"

We do not like to direct medical care. You should see your regular doctor and if a specialist is needed, have your regular doctor refer you to a specialist

At Titus & Murphy, we do not direct medical care. However, those doctors who understand the legal process and have experienced success with former clients include:

Back/Neck Injuries:

Dr. Peter Saltzman (505) 327-0333
1750 E. 30th
Farmington, NM 87401

Knee/Shoulder/Hand injuries:

Orthopedic Associates (505) 327-1400
2300 E. 30th St. Bldg D Suite 101
Farmington, NM 87401

Durango Orthopedic (970) 382-9500
1 Mercada St. Suite 202
Mercy Medical Center
Durango, CO 87301

Chiropractic:

Matt Verstraete, DC (505) 326-5476
2130 Farmington Ave.
Farmington, NM 87401

C. W. Rowse (505) 327-4845
2904 N. Hutton
Farmington, NM 87401

Do not shy away from a doctor who has treated the injured part of your body before. **THAT IS THE DOCTOR YOU SHOULD GO SEE!** That doctor can best describe the difference between past complaints and new injuries. You may only recover for the new injury or aggravation of a pre-existing condition. **MAKE SURE YOU TELL THE DOCTOR HOW THIS INJURY IS DIFFERENT!**

How do I prepare myself to be a witness to help my own case?

We encourage all our clients to keep a diary on a calendar. Go to a bookstore and buy a calendar that has big enough boxes for each day to write in notes. Each day you should note medical appointments, lost work, pain complaints, loss of hobby or activities you might otherwise have enjoyed (softball, horseback riding, even picking up your child).

If trial is 2-3 years after the accident, these details can get lost in your memory unless you document them. (What did you have for lunch three weeks ago?)

HELP YOURSELF! Damage claims are built like a jigsaw puzzle - one small piece at a time. Your calendar puts these small pieces in place so we can see the big picture. Periodically, we will ask for your calendar/diary. You must keep it or you are limiting your evidence to your memory.

If I can't pay my bills, can I borrow money against my settlement?

No - It is unethical and we could be disbarred for loaning clients money. Ethic rules do however allow us to advance litigation costs for your case for which you will be billed monthly.

What Other Possible Benefits are Available?

Recovery of benefits for your injury many times takes a long period of time. Other benefits may be available to compensate you during the case:

- 1) **Social Security:** If you will be totally disabled for twelve months or longer, you should apply for Social Security Disability through the local Social Security office. If you are denied these benefits, don't be discouraged. Most people are denied, no matter what their injuries. Appeal any denial. If you get to the stage which requires a hearing before an Administrative Law Judge, we can represent you at that stage of the case.
- 2) **Company disability programs:** Many employers have as a part of their company benefit package sick leave, vacation or disability programs (both short term and long term). Take advantage of these benefits. Apply for them and demand the company pay them pursuant to the summary plan description in the company manual or other documents that the employer has available. If you don't have these documents or manual, ask the personnel manager for a copy. Let us know of the receipt of denial of any benefits.

- 3) Unemployment compensation: If you become unemployed during our case, apply for unemployment compensation at the Department of Labor. New Mexico law requires you to register for unemployment compensation when you first become unemployed, even if you are presently ineligible to receive benefits because you are disabled. Don't be discouraged. Register now, so benefits will be available when you are eligible.
- 4) Medical pay/uninsured motorist: If you were injured in an automobile wreck, the insurance policy on the car in which you were riding should have medical coverage and/or uninsured motorist coverage. Make a demand on the insurance carrier to pay these benefits. Get us a copy of the policy and declaration page so we can help you coordinate any available benefits.
- 5) Health insurance: Though someone else may ultimately be responsible to pay your medical bills and other damages, health insurance coverage might be the easiest source of payment of your medical expenses. Use these benefits, if available, to pay for necessary medical reimbursement in most cases. Get us a copy of your health insurance policy if you are having medical expenses paid by health insurance.
- 6) V.A. or P.H.S. programs: Some of our clients are military veterans and may get benefits through the United States Veteran's Administration; Veterans may have free medical care at the local V.A. clinic; Indian clients have free medical care at the P.H.S. hospital. Take advantage of any such programs available to you.
- 7) Other government programs: If you are unable to return to your former job, the State Division Vocational Rehabilitation will provide free retraining in appropriate cases. Apply for these services if you need help getting back to work. If you have no income or other available asset to support yourself and your family, don't be embarrassed to apply for welfare, food stamps or other social programs.

If any of these programs or benefits are available to you, apply for them. Don't wait for the responsible party in the injury case we are handling to pay for your lost wages, medical expenses or other damages. You should coordinate all the above benefits available to you to ease the financial burden of your injury. Please allow us to aid you in receipt of any of these benefits which might be available to you.

What to bring to our office to help us prepare your case:

1. 5 years income tax returns
2. Medical bills (paid or unpaid)
3. Insurance policy on your car and car in which you were riding (if different)

4. Copies of any statements previously made to anyone (opposing side, your insurance carrier, etc.)
5. Names of any witnesses of the accident known to you
6. Photographs
 - of vehicles
 - of scene of accident
 - of client showing injury, hospital braces, casts, etc.
7. Repair bill on vehicle
8. Repair estimates on vehicle
9. Purchase invoices and estimates of value of personal property damaged or lost in accident (including vehicle, clothing, jewelry, cameras, and all other property damaged in collision)
10. Correspondence with insurance company and insurance adjusters
11. Business cards from insurance company agents and adjusters, opposing driver, etc.
12. Copy of official accident report form
13. Wage loss statement from employer showing time and wages lost from work
14. Copies of check stubs and/or other records showing hourly rate of pay, number of hours working, etc., at time of accident
15. Any medical or hospitalization policies
16. Copies of any application for other insurance benefits
17. Copy of any application for unemployment benefits
18. Copy of Certificate of Title of vehicle involved in collision
19. Secure date on the vehicle inspection date, place of inspection and inspection sticker number
20. Secure wrecker bills
21. Make copy of current driver's license and license held at time of accident

General Instructions - What to do and don't do:

1. Do not talk to insurance adjuster
2. Do not sign anything without your attorney's permission
3. Keep a diary of your trips to all doctors, hospitals, therapists and notes of your pain with times and dates
4. Keep all your medicine bottles and containers (as possible evidence at trial)
5. Bring or send all future medical bills to attorney's office
6. Keep a record of all out-of-pocket expenses, including travel expenses for medical treatment
7. Report any suspicious action such as someone taking pictures, movies, etc.

We at Titus & Murphy seek to provide maximum recovery for your injuries in an efficient, expedient and effective manner. Feel free to ask questions. We will try to send you copies of all

our work and keep you fully informed. No settlement or offers of settlement will be made without your authority. This is your case - BE INVOLVED!