



Injury Case Roadmap - The Legal Process For Personal Injury Cases

By [Christopher M Davis](#)

Often times 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 carriers have a reputation for making unreasonably low settlement offers, even if the injuries are severe. Often times 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 Washington, this time is usually three years from the date of the accident.⁴ 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 insufficient 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.

Depending on which county your lawsuit is filed in and the complexity of the case, the discovery phase can take many months or sometimes years. When discovery is completed, and each side knows what evidence will be offered at trial, this is the time when the parties may conduct settlement discussions. Sometimes the parties will engage in alternative ways to resolve the case, like mediation. In mediation, the parties agree to hire a retired judge or an experienced attorney who will assist the parties in reaching a settlement. Mediation is voluntary and nonbinding (unless a settlement is reached). A mediation session is also confidential so anything that is said during the session cannot be used at trial. Many times mediation can be used to successfully resolve a case. Mediation sessions can occur in one day or last several days depending on the size and/or complexity of the case.

If you fail to settle the case after discovery has ended, the case will then proceed to trial. Each side has the option of trying the case before a judge or jury. If a jury is requested by one side, a jury demand must be filed in court and a fee must be paid. The court rules usually require that certain documents must be filed and exchanged within 30 to 60 days before the trial date. These documents may include witness and exhibit lists, motions, trial memorandums, and jury instructions.

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