

11 FACTORS THAT AFFECT THE VALUE OF YOUR PERSONAL INJURY CASE

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WHAT IS MY CASE WORTH?

In the early stages of a case, it is just about impossible for a personal injury lawyer to answer that question with any certainty because there are too many unknowns:

What were the circumstances leading up to the accident? How were you involved in the accident? What is the extent of your injuries? How will your medical history impact your case?

Every injury accident involves these unique issues and more. There are, however, certain constants that run through every case, and your personal injury attorney can rely on these in estimating what your case is worth. Regardless of how you were injured, the following eleven factors will have a significant impact on the value of your claim.

1. COMPARATIVE FAULT OF PARTIES INVOLVED

How strong is your evidence that the defendant (the person you claim is responsible for your injuries) was at fault?

Were you at fault, in any way? Everyone evaluating your case – your personal injury attorney, the insurance adjuster, the jurors – will weigh the strength of your case against the defendant’s case with respect to fault or, in legal terms, “liability.” If the defendant’s liability is absolutely clear, the value of your case is increased; if your conduct contributed to your injuries, or could be perceived as having contributed to your injuries, your “comparative” fault will reduce the value of your case. As your responsibility for the incident approaches 50%, your chances of prevailing at trial drop significantly.

2. MEDICAL EXPENSES AND TREATMENT RECORDS

Your medical expenses will be a primary concern of the insurance adjuster evaluating your claim for settlement purposes. The adjuster will consider:

The nature of your treatment: Do your medical bills reflect a hospital stay, physical therapy, medical and osteopathic treatment, diagnostic tests, orthopedic devices, and prescription pain medications? A hospital stay will be stronger evidence of an injury than will a few chiropractic sessions, a series of negative diagnostic tests, and over-the-counter analgesics.

The proportionality of your treatment: Do your medical expenses appear to be out of proportion to your claimed injuries? If so, the value of your claim may be reduced.

The correlation between your medical bills and your treatment records. If you claim certain medical expenses, but have no documentation of treatment that correlates with the claimed expense, that bill is not likely to be paid. Even worse, the insurance adjuster may wonder if other aspects of your claim are being padded or exaggerated.

Here is the bottom line: If your medical bills are well documented and relate to actual injuries, your claim will be worth more than if your medical bills do not correspond to specific treatment records or relate to tests that revealed no discernible injury.

3. QUALITY OF MEDICAL INFORMATION

The quality of the medical information available in your case can greatly impact its value.

The strongest type of medical information is a narrative report from a well-respected medical doctor, explaining the nature of your injuries. A narrative report is one in which the doctor uses his own words to tell (or “narrate”) the story of your injuries, including your diagnosis, treatment, and prognosis. The more detailed, fact-specific, and decisive a narrative it is, the more it will help your case. Broad generalizations or hedging (“maybe” “possibly”) will be less helpful.

Detailed office notes, typed so they are legible, also add value to your personal injury claim, as do detailed hospital nurses notes.

4. NATURE, SEVERITY AND EXTENT OF YOUR INJURIES

Fair or not, insurance companies (and most jurors) place a higher value on some injuries than others.

Specifically, injuries that can be readily documented and confirmed by objective evidence are worth more than injuries that cannot be established by an objective medical test. This means, for example, that a broken clavicle is worth more than a “whiplash,” or a strained back, or mental and emotional pain and suffering. In most cases, a broken bone will heal faster than these “subjective” injuries, but because jurors can see a broken bone and empathize with the injured person, they tend not to question the legitimacy or severity of the injury.

Likewise, if your doctor has indicated that any aspect of your injury is “permanent,” this factor, alone, will increase the value of any settlement by a fairly substantial amount. Your medical bills can be low, your loss of income can be low and your injuries may be fairly minimal, but if you have some permanent impairment, scarring or disfigurement, the settlement value will increase. Again, because claims adjusters and jurors can see this type of injury, it is worth more than a subjective claim of pain or other injury that cannot be objectively verified.

Finally, a pre-existing injury to the same area of the body for which you are now claiming an injury may lower the value of your claim. If, for example, you injured your knee while skiing several years ago, the insurance company may argue that your current problems stem from that previous skiing incident, not from the more recent auto accident.

5. LOST INCOME

The value of your case is proportional to the amount of money you have lost in terms of wages or salary or profits.

In most cases, this type of economic loss can be easily and accurately calculated and documented. For example, an hourly wage earner who produces a letter from her employer, supported by personnel records, documenting X number of hours lost at Y dollars-per-hour, will have a strong case for recovering the full amount of her losses.

In other cases, the calculation is not so straightforward. A self-employed business owner who keeps poor records, or a waitress who earns a good portion of her wages from (unreported) tips, will have a much more difficult time recovering the full amount of her economic losses.

6. COLLISION DAMAGE

Were you involved in an auto accident in which you sustained a significant whiplash or other soft-tissue injury, but your car sustained little more than a scratch?

These types of moderate impact/significant injury collisions are not uncommon. Car bumpers are designed to absorb a greater impact today than they were even ten years ago. Jurors, however, don't often see it this way. Most jurors come to court believing that a person cannot be seriously injured in a minor impact collision. For these jurors, the greater the damage to your vehicle, the greater the value of your case. Your personal injury attorney may be able to persuade the jurors and/or the claims adjuster of the severity of your injuries by obtaining photos of all the cars involved in the accident.

Significant damage to the defendant's vehicle may be sufficient objective proof to convince an insurance adjuster or a jury that you sustained more than minimal injuries.

7. THE "LIKEABILITY" FACTOR

Will jurors like you? Will jurors like you more than they like the defendant? If the answer to either of these questions is "yes," you may get a higher settlement offer from the insurance company.

Consider the type of defendant you are dealing with. "Bad" defendants are easily recognizable – the building owner who refused to fix the stairs, despite repeated warnings they were dangerous; the pharmaceutical company that continued to manufacture a drug, despite knowledge of dangerous or potentially lethal side-effects; the repeat-offender drunk driver; the bartender who served an obviously impaired person. In most cases, however, you will be dealing with a "good" defendant who made a poor choice or who was not as careful as he should have been in that particular moment. Those defendants – e.g., the elderly driver; the mother distracted by her infant crying in the backseat; the neighborhood business owner who didn't see the grape on the floor -- tend to lower the value of your case because jurors will have some sympathy for their situation. In these cases, jurors may be hesitant to blame the defendant too harshly, reasoning "There, but for the grace of God . . ."

8. QUALITY OF WITNESSES

Do you have strong, objective witnesses on your side, or is your strongest witness a family member or close friend?

Is your treating doctor willing and able to testify regarding the nature and severity of your injuries, your treatment, and your

prognosis for recovery? Your case is only as strong as your evidence, and your evidence is only as strong as your witnesses.

9. INSURANCE COMPANY

Just like people, some insurance companies are more generous than others.

Large, national insurance companies tend to be very conservative (i.e., tightfisted) with their settlement dollars, especially in smaller cases. These carriers have the resources and the time to take a case to court, even if they know they will lose that particular case and dozens more like it. The cost to defend a minor auto accident case is usually under \$10,000, which is sometimes close to the value of the case itself. Large, conservative insurance carriers often are willing to pay this price to send a message to other injury victims and their lawyers.

10. WHERE YOUR CASE IS SEATED

Where you file your claim can have an impact on the value of your case.

Jurors in some states, counties and cities traditionally render low personal injury verdicts. Conversely, jurors in other jurisdictions (e.g., New York, Florida and California) tend to award higher jury verdicts. You and your personal injury attorney must consider the history of jury verdicts in the particular location where your case is seated. You can bet the insurance claims adjuster will take this information into consideration before making any settlement offer.

Your personal injury attorney also will consider the governing law in your jurisdiction. Will a state law or local ordinance make it more difficult for you to prevail at trial? Did a judge recently rule in favor of the injured party in another case with facts similar to yours? If the law is on your side, your personal injury attorney can use this as leverage to enhance the settlement value of your case.

11. PASSAGE OF TIME

In general, the longer it takes a small personal injury case to get to a jury, the lower the jury's verdict will be.

If, for example, you filed your lawsuit almost a year after the accident, and it takes another five years for your case to get to trial, the jury will be hearing about events that happened several years ago. Jurors may find it hard to empathize with you, especially if your claim is for pain and soft-tissue injuries, which lasted just a few months and have long been resolved.

IN CONCLUSION

The eleven factors listed in this booklet, as well as other factors unique to your particular situation, will impact the value of your case. An experienced personal injury lawyer can analyze the strengths and weaknesses of your case, within the framework of these factors, and help you make informed decisions about how best to resolve your claim.