

FIREFIGHTERS' NEWSLETTER

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HOW MUCH IS YOUR PERSONAL INJURY CASE WORTH? *FACTORS THAT AFFECT THE VALUE OF YOUR CASE*

By Dana Cutting, Esq.

One of the most curious aspects of our legal system is the process of valuing a personal-injury claim. On the one hand, we understand that we cannot put a price tag on human suffering. On the other hand, this is precisely what the law requires us to do.

The law recognizes that a personal-injury defendant cannot undo a plaintiff's injury, pain and suffering. Money damages are intended to make the

plaintiff "whole." Of course, money by itself will never restore the plaintiff to health, but it

does provide some measure of justice, and eases the burden of living a life with pain. It certainly helps make up for the economic loss sustained after a serious accident.

So how is the value of your injury case determined? In every lawsuit, both sides are trying to determine how a jury will view the case. Even cases that do not go to trial (and, most don't), are viewed through this lens. Ultimately, the value of any case is what the jury says it is, or what the parties believe a jury would say if the case went to trial. In order to settle the case, the plaintiff (injured party) must be offered enough money to make it worthwhile to forego a jury trial.

Factors that determine what your case is worth

Here are some of the obvious, and less obvious factors that affect the value of a case:

➤ **Liability** - No case has value simply because the plaintiff was injured. In order to recover, the plaintiff bears the burden of proving that the defendant is legally responsible for the injuries, that is to say, that the defendant was negligent, and the negligence led to the injury. Without a finding of liability against the defendant, the value of a case is \$0, no matter how severe the injuries.

➤ **Comparative negligence** - Juries are normally asked to apportion fault for the injuries between the plaintiff and defendant. A monetary award will usually be reduced in proportion to the percentage of fault that the jury assigns to the plaintiff. For instance, in a typical car accident case, both drivers can be found at fault. If our injured client is found 25% at fault, and the jury awards him \$1 Million, the Judge will reduce the award by \$250,000. Fortunately, comparative negligence does not apply to firefighters injured in the line of duty

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Dana Cutting



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is not permitted to assign any degree of fault to the injured firefighter in these cases.

Juries are also sometimes asked to apportion fault between multiple defendants, and sometimes non-parties. Generally, if the jury finds that a defendant's fault is equal to or greater than 50%, the defendant will be liable for the entire amount of damages. If the defendant's degree of fault is less than 50%, it will only be responsible for its proportional share of the damages. In some types of cases, including automobile cases, this rule does not apply; the defendant must pay the entire award if it found to bear at least 1% responsibility for causing the injuries.

➤ **Proof of injury** - Generally speaking, more serious injuries are worth more money. Evidence of the severity of an injury is gleaned from treating and examining doctors, medical records (including prior medical records that prove that you were healthy before your accident) and operative reports, results of diagnostic tests such as x-rays and MRIs, from the testimony of friends and family, and from the testimony of the injured person. The value of your case rests heavily on the strength of this evidence.

➤ **Permanence** - Some plaintiffs make a full recovery from their injuries, and some do not. Plaintiffs who have not fully recovered are entitled to damages for future pain and suffering. The value of this will turn on the plaintiff's age (i.e., is the plaintiff a young person who must now endure many decades of pain?); the severity of the injuries; and whether the condition is likely to improve or worsen over time. If so, will the

plaintiff require future surgery? If the answer is yes, the jury will likely award more money.

➤ **Loss of enjoyment of life** - A component of "pain and suffering", juries are instructed that they may compensate personal injury plaintiffs for the loss of enjoyment of life that results from the injuries. This includes the ability to perform daily tasks, and to participate in activities that were part of the injured person's life before the injury. For instance, if a firefighter loses his career due to a motor vehicle accident, we would argue that he should receive compensation for the loss of his career. In some catastrophic injury cases, we hire videographers to file "day

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in the life" videos. A picture is worth a thousand words, and videos can help convince a jury to award the millions of dollars that a case is worth.

➤ **Lost earnings** - Injury victims are entitled to recover for both past and future lost earnings incurred as a result of the injuries. This number varies greatly from case to case. Some plaintiffs lose virtually no earnings; they are compensated for their time out of work during the time it takes to convalesce. Others are unable to return to work at all after an injury. We often hire economists to compute and explain this loss to a jury.

➤ **Past and future medical expenses** - Plaintiffs are entitled to compensation

for the out-of-pocket costs they incur for medical expenses. Sometimes the amount is trivial; for example, most firefighters have their medical expenses paid by the Fire Department and pay very little money out of pocket. On the other hand, where a plaintiff requires lifelong intensive care, the cost will be substantial.

➤ **Venue** - Lawyers know all too well that oftentimes, the location of the courthouse can drastically change the value of the case. Historically, it has been recognized that jurors in certain counties are more conservative when it comes to compensating injury victims. Thus, for example, the very same injury can be worth less in Nassau and Westchester Counties than in the Bronx and Brooklyn.

➤ **Jury Verdict Reporters** - A number of publishers compile jury verdicts and settlements to assist lawyers in determining the value of an injury. In other words, lawyers can find out what juries awarded in similar cases.

It's not what you get - it's what you keep

Just because a jury awards millions of dollars to the plaintiff, does not mean that the plaintiff will actually receive that amount. Courts routinely reduce excessive jury awards (these reductions don't make the headlines - only astronomical verdicts make your favorite tabloid's front page). If the court believes that the award is too high, it can throw out the award and order a new trial on damages, unless the plaintiff accepts a lower amount. In arriving at a settlement, both parties look not only to what juries award, but to what courts permit the plaintiff to keep.

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Available insurance - You can't get blood from a stone. If a defendant is uninsured, or inadequately insured, a plaintiff may never be adequately compensated. Sadly, some of the most worst offenders are the very ones that lack assets and insurance. This is one reason why we are always remind-

ing our clients to purchase additional uninsured motorist insurance. You must protect yourself and your family in case you are injured in a car accident due to the negligence of an uninsured driver.

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We hope that this article has helped you

understand the "law of damages" a little better. Feel free to call our office hotline anytime - 1-888 FIRELAW (1-888-347-3529) for a free consultation to discuss your potential injury claim. We are also happy to give you a free "second opinion" if you or your friend already have a lawyer. Stay Safe!

WHAT'S TAKING SO LONG FOR MY CASE TO SETTLE?

By Dom Penson, Esq.

One of the most widespread perceptions about personal injury lawsuits is that they can take a long time to conclude, sometimes many years. As a lawyer who represents victims of personal injury, I am often asked why.

In fact, cases move through the legal system today far faster than they did 20 years ago. That is because the courts have instituted numerous reforms to minimize delays and speed the process of getting to trial. Still, New York State courts hear more than 3 million cases each year. Even today, some cases may take years to resolve, especially in the busiest counties.

Some cases are more complicated than others, requiring more time and work to resolve. In our firm, we handle all sorts of personal-injury cases, from simple cases, involving a trip and fall, or an intersection accident with two cars, to complex cases involving medical malpractice, or a massive fire where numerous firefighters are injured, and multiple governmental agencies conduct investigations.

Whereas the simple cases may be ready for trial just a few months after they are started, the complex cases may take several years because they require the exchange of a blizzard of documents, a dozen or more depositions, extensive motion practice, and repeated pre-trial court appearances.

The "X Factor" - Your Doctor

Finally, there is also the "X-factor" presented by your treating doctor. When will he be able to write a comprehensive report that definitively describes your prognosis? Will you need future surgery? If so, when? What permanent physical restrictions does he believe you will have? If your surgery is scheduled within the near future, your lawyers should wait until your doctor does the surgery and see how well you come through it. It would be irresponsible for a lawyer to settle any case until your doctor lets us know whether or not you are permanently disabled. Another factor may be whether your doctor believes you will need even more surgery in 10 years.

For instance, many knee surgeries are deemed "successful" if they permit a firefighter to return to work. Nevertheless, the surgeon may feel that, notwithstanding the short-term success, your knee is close to being "bone on bone". He may tell you that you are a candidate for total knee replacement in the future. This is a huge factor in determining the value of your case. No lawyer should ever settle a case or push it to trial until he gets a prognosis like this in writing from your doctor, and exchanges it with the defendants.

Unfortunately, getting your doctor to write his report can sometimes take months. Sometimes we find out that your treating doctor refuses to come to court. We then need you to see another doctor who is willing to review all your medical records, examine you, write a report, and agree to testify. All this can delay your case even longer.

For you, as clients, what's most important is to be sure that your attorneys are communicating the reasons for delays. Your attorneys must also reassure you that they are working hard to resolve your case as successfully as possible, whether that takes three months or three years. Whatever attorney is handling your case, it's YOUR case, whether simple or complex, and you have the right to know what's happening, and what to expect as the case progresses. Don't be shy. If you have questions, call your attorney. Get informed. The better you understand the legal process as it applies to your case, the better you will understand what to expect and how long it will take.



Dom Penson



WHEN YOU SHOULDN'T SUE

Believe it or not, for every ten calls we take from prospective clients, we accept just one case. In other words, more often than not, we advise people not to sue. Why would a lawyer turn down cases? Because not every wrong should be redressed through the legal system, and it is our job to let you know when it's in your interest to forego a lawsuit.

Sometimes, it's just not worth it

Litigation isn't cheap. In fact, done right, it can be inordinately expensive. It costs money to obtain medical records, hire investigators, retain experts, and depose witnesses. And the longer litigation drags on, the more expensive it gets.

Ultimately, at least some portion of these expenses are deducted from your award. But it's not only the expenses that add up. Personal-injury attorneys work on a contingency-fee basis; usually 1/3 of any settlement or verdict will go to the attorney handling the case. With minor injuries, especially when there is a chance that litigation will drag on for a long time, there is often little upside

to bringing a lawsuit. There has to be the potential for a real recovery to the client, otherwise, it is simply a waste of your time.

Sometimes, you have to think long term

Firefighters routinely get hurt on the job. But if a firefighter filed suit every time he got hurt, he'd have trouble convincing a jury that any single accident was solely responsible for his injuries. Here is a hypothetical example: firefighter "A" sprains his knee while fighting a fire. He is out of work for several weeks and requires physical therapy, after which he feels fine and returns to work. He decides to sue, and he ultimately gets a small recovery. Later, he has another accident - and this time, the injuries are worse. He needs surgery to the same knee. If he brings a lawsuit again, the defendant will surely point to the previous lawsuit and attribute at least some of the damage to the old injury. After all, the firefighter thought it was bad enough to warrant a lawsuit.

A full recovery doesn't mean it's not worth it

All of this is not to say that it's never worthwhile to bring a lawsuit for smaller injuries. Sometimes factors weigh in favor of bringing suit, even when the injuries heal quickly and completely. For example, some fractures heal very well; the plaintiff may make a complete recovery, without surgery, in just a few months. But the nature of the injury, a fractured bone, may make it worthwhile to bring the lawsuit, especially when liability is clear. The same goes for an injury that requires a long period of convalescence and treatment.

Sometimes it's clear that a person's injuries are severe enough to warrant a lawsuit. But sometimes it isn't. It always makes sense to talk to a lawyer if you have questions about whether you should bring a lawsuit for your injuries.

Please don't hesitate to call us at 1-888-FIRELAW (1-888-347-3529) for a free consultation whenever you get hurt. Know Your Rights!

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