



Lifecycle of a Personal Injury Lawsuit. Up to this point, we have attempted to resolve your personal injury claim with a representative of the other party's insurance company without litigation. When negotiations with the insurance adjuster fail, for whatever reason, it is necessary to sue the other party in a court of law. In Nebraska, the statute of limitations for a negligence claim against a private party (person or business) is four years from the date of injury. This would include slip and falls, dog bites and car accidents. Intentional torts (like assault and battery) and medical malpractice suits have a shorter statute of limitations.

When we sue the party that caused you injuries, the insurance company will hire a lawyer to defend that person in court. From this point, we will no longer be dealing with the adjuster, but with an attorney. There are advantages and disadvantages to litigation. One advantage is that documents the insurance adjuster may have previously refused to disclose to us are now discoverable and can be subpoenaed. The judge will also set deadline for when certain tasks should be done. Sometimes the judge sets the trial date out farther than the client would like, but this is done to give both parties ample time to prepare their case and engage in discovery (which is detailed below).

Filing a lawsuit may prompt the insurance company to offer a settlement to dispose of the matter. On the other hand, the insured, their attorneys, or the insurance company may choose to drag the matter out for as long as they can. From the time the law suit is filed, it may take up to a year or longer to reach a settlement or a verdict.

One disadvantage of litigation is that there are costs associate with it, such as filing expenses, deposition expenses and expert witness expenses. While our office typically fronts these expenses, you will be responsible for these costs whether you achieve a favorable settlement or the jury awards you zero dollars, as outlined in our fee agreement. This document will outline the phases of a lawsuit so that you will know what to expect when we file suit against the other party.

- 1. Filing Complaint.** The first step to filing a lawsuit is to file a complaint in a court of law. The complaint will identify the parties involved in the dispute, briefly state your version of the facts, list the legal theories under which the other party is liable (usually that is some form of negligence), state that you suffered damages as a result of the other party's conduct or inaction, and demand that you be made whole for your injuries.
- 2. Service of Process.** Once we have filed a lawsuit against the other party, it is necessary that the other party is formally notified of the lawsuit. The law requires that individuals are served, personally, with a copy of the complaint. This is usually done by the local sheriff or a constable. This process can take a couple of weeks to complete.
- 3. Defendant's Answer.** Once the Defendant is served, they are allotted thirty days to respond to the complaint. During this time, the insurance company hires a lawyer to represent the other party (because the insurance company would have to pay in the event of a verdict or settlement. The Defendant will typically deny most of the allegations in the complaint, i.e. "we aren't liable and the plaintiff is not hurt." The defendant may also allege that your own conduct contributed to the accident/incident.
- 4. Discovery.** During the course of a legal proceeding, both parties are entitled to request certain information. The purpose of this is to narrow the issues in dispute at trial and compel the parties to disclose information necessary to prosecuting or defending the case. When we were negotiating with the insurance company, the insurance company may have refused to disclose their policy limits or their photos of the accident scene. Because we have filed a lawsuit, we can now access that information. One advantage of litigation is that often, the judge will set forth a timeline by which all discovery must be completed. Often, this process can last for several months.

 - a. Written.

 - i. **Interrogatories.** Interrogatories are written questions each party sends to the other as a part of the discovery process. In a personal injury case, these questions will cover topics including but not limited to: your medical treatment as a result of the damages; your medical bills; your prior medical treatment and conditions; whether or not you've had prior personal injury claims; whether or not you've had subsequent injuries. We will help you craft your answers to the interrogatories. We are also permitted to send interrogatories to the defendant. Our interrogatories vary depending on the nature of the case.

- ii. **Request for Production of Documents.** Both parties are allowed to request documents necessary to prove or defend their case. Typically, the opposing counsel will request your medical records; any pictures from the accident; prior wage history (if you're claiming you've lost wages as a result of the accident); and social media information. We are similarly permitted to send the defendant a request for production of documents. Our requests will certainly include a copy of their insurance policy and any photos they have of the scene of the accident or incident.
 - iii. **Requests for Admissions.** This form of written discovery is a little less common than interrogatories or requests for production of documents. The request for admissions will contain a list of questions or statements and ask you to admit or deny the truthfulness of each statement. For example, "Please admit or deny that you were traveling northbound on 52nd street". What is important to note about Requests for Admissions is that you have 30 days to respond to them. If you fail to respond within 30 days, each statement is deemed admitted. This is why it is important for you to maintain communication with your attorney during this process.
 - iv. **Rule 35 Defense Medical Examination (DME).** In a personal injury (or worker's compensation) lawsuit, the Defendant is permitted to request a mental or physical examination of you if your mental or physical condition is in controversy. In a personal injury claim, your physical condition will always be in controversy. These examinations are sometimes deceptively titled an "Independent Medical Examination", or an IME. These examinations are conducted by doctors who often work for the insurance companies. In the event you receive a negative IME/DME, this is not necessarily the end of your case. We can refute the DME with evidence from your treating physicians (this is sometimes known as a "battle of experts."). At the end of the day, the doctor conducting the DME is not the trier of fact, the jury is. The best advise I would give to you is to be honest and polite to the examiner and do not exaggerate any symptoms.
- b. **Deposition.** A deposition is out-of-court oral testimony conducted by the lawyers in the presence of a court reporter. Your deposition will most likely take place at our office. This is where the defendant's lawyer asks you questions. The deposition will

likely start with opposing counsel asking you how the accident or incident occurred. The lawyer will try to get you to testify or admit that you contributed to the accident in some way. He or she will ask you if you were on your cell phone or if you saw the other vehicle or dangerous condition that caused your accident. We will meet with you before your deposition to prepare you for any traps the opposing counsel may have. The opposing counsel will also ask about your damages, medical treatment and work history. He or She may produce prior medical records or ask some embarrassing personal questions to make you feel uncomfortable. Most people have had some medical issue before the accident. Please discuss those with us beforehand so that we can best prepare for those questions.

5. **Mediation.** After discovery has concluded, or mostly concluded, the court may order the parties to attempt to mediate the dispute. At mediation, we will meet with the opposing party and/or their attorneys. A neutral, third-party, known as the “mediator” will oversee the meeting. The mediator’s role is to facilitate interaction and communication between the parties and assist them in negotiating a settlement. This is typically an all-day process. The mediator will meet with everyone together initially, then talk to the parties separately about their concerns. The mediator may frankly tell each party what the strengths and weaknesses of their cases are. If a settlement is reached in mediation (which is fairly common), then your case will conclude here.
6. **Trial.** Sometimes, for whatever reason, the parties just cannot reach a settlement and must have a trial. This puts it into a judge or jury’s hands to decide if and how you should be compensated for your injuries. A case can settle at any time before trial. It is not uncommon for parties to settle on the day of trial or even in the middle of trial. About 95% of personal injury cases will settle before trial.
 - a. **Pre-trial motions.** In the weeks leading up to trial, either party may file a motion to exclude certain evidence or witnesses. These hearings are usually handled between the lawyers and the judge.
 - b. **Witness and Exhibit List.** At this point, we should already know what evidence, exhibits, and witnesses we are putting before the jury. You, the injured party, are obviously one witness. Other individuals that witnessed the incident or accident may be called to testify. We will also need to name your medical providers as witnesses so that they can testify to the necessity of your medical treatment and whether or not it is related to the accident or incident. Other witnesses may include expert accident

analysts. Obviously, we will have to submit your medical bills and records into evidence to prove your damages.

- c. **Jury Selection.** Before trial, we will get a list of names of potential jurors for your case. We will have a chance ahead of trial to review these names and exclude any potential juror for cause. A potential juror may be excluded from the jury if they have a conflict of interest with any of the parties. Before trial commences, we will meet with the potential jurors. Both lawyers and the judge will ask the jurors questions, in a process called “voir dire”. The purpose of voir dire is to determine potential biases in the jury and eliminate certain jurors that may be biased.
 - d. **Opening statements.** Before trial commences, either party may make a brief opening statement to the jury. We will introduce ourselves and you to the jury. Here, we will tell the jury what we intend to prove and what the evidence will show. We will also tell the jury what relief we are seeking.
 - e. **Examination of witnesses.** Just like the depositions, you will be asked questions. This time it will be in court, on a witness stand.
 - i. **Direct Examination.** For part of your testimony, we will ask you more open ended questions, which may be answered by a narrative. This is where you tell your story to the judge or jury. We will want to focus on two things: 1) liability (that it was the other guy’s fault) and 2) your measure of damages.
 - ii. **Cross Examination.** Just like in the deposition, the opposing counsel will also ask your questions. Their goal is to try to minimize your injuries or attack your credibility. The closer we get to trial, the more time we will spend preparing you for the same.
 - f. **Jury instructions & deliberation.** At the end of the trial, after both sides have put on evidence, the judge will instruct the jury about the relevant laws that should guide its deliberations. Both lawyer will submit proposed jury instructions to the judge before trial, and the judge will make the final decision about which jury instructions to use. The jury is the judge of the facts and credibility/believability of witnesses. The jury will decide if the other party is responsible for your injuries and what amount of money will fairly compensate you for your injuries.
7. **Appeal.** Parties have 30 days from the date of the verdict to file a notice of appeal. When you appeal a case, you allege that the trial court committed some error during the course of litigation that resulted in an adverse verdict. In a personal injury case, the assignments of

errors would typically be that the trial court improperly instructed the jury on some issue of law or that the court erred in admitting or excluding certain evidence. The appeal process takes several months.