

## ANATOMY OF A PERSONAL INJURY LAWSUIT

In our society, there will always be disagreements, disputes, and injuries that are often the fault of someone else. We are able to bring our issues before judges and juries to be settled by our equals. There are many complex legal principles that can give individuals the ability to get fair compensation for their injuries.

### **Starting a lawsuit: Summons and Complaint**

In order to start a civil lawsuit, the plaintiff will hire an attorney to file the lawsuit. The lawyer must investigate the claim and determine whether it will be a legitimate claim. The lawyer will write a summons and the complaint which will list all the facts and the law that defendant is alleged to have violated. This is served on the defendant who then has 20 days to answer the complaint. At any time after serving the defendant with the summons and complaint, the case can be filed with the court and a judge will set up a scheduling order giving deadlines within which all the discovery (investigation by each party) will be completed and a trial date.

### **Discovery:**

The plaintiff's lawyer will write up questions called interrogatories asking for specific information that relates to the allegations written about in the complaint and requests for production of documents asking for specific writings that are in the possession of the defendant and any existing pre-recorded statements.

After receiving the answers to all of the above, if satisfied with the answers, the lawyers will then set up depositions for the parties and witnesses. A deposition is a recorded interview under oath. Each lawyer will ask questions of the person attending who is and the testimony is taken down by a court reporter.

### **Mediation:**

Once the discovery is complete and all the facts of the case are known, the judge will require that the parties mediate their case with a mediator. Approximately 85% of cases settle with a mediator.

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## **Trial:**

If the case is not resolved through the mediation process, the case will go to trial and the lawyer must prove her client's case by the "preponderance of the evidence." This standard requires a burden of more than half, or 50% +1. The burden of proof in civil matters is much lower than in criminal matters, where the burden of proof is "beyond a reasonable doubt."

## **MINNESOTA TORT REFORM:**

Minnesota Tort Reform laws are the model for the country and can significantly negatively impact the amount of compensation awarded by a jury to an injured party. The following are different laws passed in the spirit of tort reform.

### **Loser Pays All – Minn. Stat. 549.01**

Provides the right to recover costs as a "prevailing party (winner)." "The prevailing party (plaintiff or defendant) shall be allowed reasonable disbursements paid or incurred."

### **Rule 68 Offer of Judgment – Minnesota Rules of Civil Procedure 68**

Defendants can make a formal written Offer of Judgment or Settlement to the Plaintiff, pursuant to Civil Procedure Rule 68 in order to settle the case. The Plaintiff can refuse the Offer Of Judgment and choose to go to trial. However, if she/he wins at trial but the jury award, after the deductions for comparative fault and the other collateral sources results in an amount less than the Offer of Judgment/Settlement Offer made to the Plaintiff, the Plaintiff will collect nothing and in fact will be forced to pay to the Defendant all the Defendant's costs/expenses for the case.

### **Collateral Source Deductions – Minn. Stat.548.251**

Money paid to cover the medical care and wage loss of an injured person must be deducted from the jury award.

### **Comparative Fault – Minn. Stat. 604.01**

If a jury determines the plaintiff had some fault in a car accident, for instance 15%, that percentage must be deducted from the jury award. If the plaintiff's fault is determined by a jury to be 51% or more, the plaintiff loses all.

### **Health Insurance Subrogation Right – Minn. Stat. 62A.095, Subd. 2**

All health insurance benefits that have been paid for the care of an individual injured by the negligence of another must be fully re-paid unless the individual has not been fully compensated.

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