



Topic for the Month:

**Personal Injury:
The Basics**

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Personal Injury - The Basics: Our firm receives many calls from people who have been injured. Most callers indicate that they have never been involved in a prior accident. Consequently, there is uncertainty as to what needs to be done and what rights an injured person has. The type of accident or the cause of the accident may affect whether or not a person is entitled to compensation. There are also deadlines or statute of limitations which need to be addressed. This issue of *LawClips* will address basic issues related to a personal injury claim.

Types of Personal Injury: In general, if a person is negligent, and the negligent conduct causes an injury, a claim can be made against the person and their insurance company, if any. Negligence is defined as the failure to exercise ordinary care. Here are some examples of the types and causes of accidents:

- **Motor vehicle accidents:** In Wisconsin, an injured person must establish fault or negligence of the person causing an injury. Relevant information in determining fault are traffic regulations and which driver's negligence contributed most to the accident and injuries. As part of this inquiry, the negligence of the injured person is taken into consideration. This is called **contributory negligence**.

- **Commercial accidents:** Injuries which occur at a place of business (i.e. store) are compensable only if caused by an unsafe condition that the owner either knew about or should have known of prior to the accident. An example would be if a person slips and falls on an ice accumulation at the entrance to a business. The injured person has the burden of proving the existence of an unsafe condition which the business should have known about or corrected. The issue of contributory negligence is available, as a defense. For example, you must exercise ordinary care for your own safety. If you fail to exercise ordinary care, that becomes an issue of contributory negligence.

- **Workplace accidents:** Injuries sustained at work are generally covered by the Worker's Compensation Act. As long as the injury occurred during the scope of employment, an injured person is entitled to make a claim for worker's compensation benefits. This is what is known as a "no-fault" system.

- **Home/Fam/Apartment/Recreation**

Injuries: Renters, owners or residents may be found liable for injuries they cause by negligent maintenance, oversight or attacks by pets. There is recreational immunity for property owners who permit others to use their land without charge, for recreational purposes.

Which insurance policies cover personal injury claims:

Most automobile, homeowners and commercial liability policies contain "medical payments" coverage for medical expenses incurred as a result of an injury. This is "no fault" coverage and is available if it is established that the medical treatment relates to the injury. Any claim for pain and suffering, wage loss, loss of earning capacity, etc. is referred to as a "liability claim" against the other party's insurer. In motor vehicle accidents, if the other driver does not have insurance or the coverage is inadequate, there may be claims for uninsured or underinsured motorist coverage, respectively.

What is my claim worth? This is a difficult question to answer and depends largely on the particular facts of each case. There are many factors which go into evaluating a personal injury claim. When it comes time to settle a claim, both sides should have a clear "before and after" picture of the injuries and how they affected the injured person's life. The timing of any settlement is important. A key issue in any personal injury claim is whether or not permanency has been sustained. This question cannot be answered until a person reaches a plateau in healing. A claim should never be settled unless or until final medical opinions have been obtained from treating health care providers. If the injured person is found partially at fault for the accident causing the injury, then the amount of damages will be proportionately reduced.

Other Injury Claim Issues: There are many other issues which arise in personal injury claims. Some of these issues have been addressed in past editions of *LawClips*. Visit our web-site to view past editions, dealing with: Reimbursement Agreements; Your Automobile Insurance Policy; What to Do if You are in a Motor Vehicle Accident; Statute of Limitations; Uninsured and Underinsured Motorist Coverage and Worker's Compensation.

Know Your Rights: Our firm is committed to educating and advising consumers on their rights. Feel free to contact attorneys **Robert J. Janssen, Steven D. Hitzeman or Timothy A. Hawley**, with any questions on personal injury claims.

