

MY LAWYER ISN'T WORKING ON MY INJURY CASE!

**By Jay R. Vaughn, Esq.
Schachter, Hendy and Johnson
909 Wright's Summit Parkway, Suite 210
Ft. Wright, KY 41011
Telephone: (859) 578-4444**

Of those who have had the unfortunate experience of being injured due to someone else's fault, whether it be an automobile collision, slip and fall incident, dog bite, etc., how many of you who hired a lawyer felt that he or she wasn't working on your case? How many of you felt that the lawyer was dragging your case out and working on more important cases? How many of you heard from other people who had a case in the past where "their lawyer" got it resolved quickly and for a lot of money? Well, if you've ever felt this way, you're not alone as the majority of clients feel this way about their personal injury lawyer. However, in 99% of the cases this feeling is misplaced. I'm here to defend my own and hopefully educate each reader as to the ins and outs of a personal injury case. I hope by the end of this article you have a better understanding and appreciation for your lawyer.

When a lawyer gets a new personal injury client, the first step is to investigate and begin building the file (we've skipped past the initial contact by the client and the initial client meeting where the lawyer was hired). What does this entail? We'll use an automobile collision as an example. The lawyer has to get the police report, review the details as recorded by the investigating officer, potentially contact any eyewitnesses asking them what they saw, order any police photos that were taken and order a copy of all 911 calls. From experience, although getting the police report is rather simple, it can take anywhere from 7-30 days to get police photos and 911 tape. Also, it requires several calls and/or letters until the lawyer makes contact with an eyewitness (it may be faster to hire an investigator to contact the eyewitnesses, but now your cases expenses have significantly increased).

While all this is going on, the lawyer needs to make initial contact with your automobile insurance company asking for copies of its file, including any recorded statement you gave (most clients don't remember giving one and often have already damaged their case by saying something they shouldn't), medical bills, medical records, photographs, etc. The lawyer also has to contact with the at-fault driver's automobile insurance company asking for similar items. Simultaneously, the lawyer begins requesting your medical bills and records from all medical providers you've treated with since the collision as well all or most past medical records (often times for many years before the collision) to investigate/verify your past medical history (because no one is born on the date of the collision, meaning everyone has a medical history). Gathering all medical bills and records can take months, sometimes as long as 6 months depending on the medical provider. Also, many times the medical requests are deficient (authorization not filled out to their liking, they want their own form authorization filled out rather than the lawyer's standard authorization, etc.), many times they want pre-payment for the records and you'd be amazed at the number of requests that providers claim were never received (i.e. they got lost in the shuffle).

The above steps I've described can take 4, 5 or 6 months. Meanwhile, you the client, are a lot of times wondering what's going on? Why hasn't my case settled? On rare occasions I've successfully settled a case within 3-4 months of being hired, but in most of my personal injury cases the average "shelf life" is 8-18 months (assuming it's a normal case without any quirky issues). Every lawyer handles cases differently. For instance, some advise their client of every little step taken in the case while others only communicate with them if there's been a big development. Regardless of your lawyer's style of practice, these cases move slowly (or at least slower than client expectations) in most instances through no fault of the lawyer.

Another factor which extends the life of your case is you. Assuming that there's sufficient insurance to compensate you for your injuries, lawyers cannot even begin to negotiate your case or start the settlement process until you've finished your medical treatment (i.e. have been released by your treating doctor). So if you're still treating, in the eyes of your lawyer your case is "in limbo." Even if your lawyer has collected your medical bills and records, once you're released from treatment your lawyer has to send requests for the updated bills and records making sure your file has a complete set of all treatment bills and records.. This can take another few months to accomplish. Sometimes doctors' offices (not the doctor but a member of his/her staff) are less than cooperative.

Once all medical bills and records have been collected, the next step is for your lawyer to review your file in detail, put together some type of settlement package and then discuss the case with you. This can take 1-2 months to complete. For example, my settlement packages often include the police report, statements from witnesses, photographs of the scene, photographs of the vehicles involved, wage loss documentation, medical bills, medical records, past medical records and an analysis of comparable case over the last several years. This is in addition to a paragraph-style discussion of the case, your injuries, your medical treatment, and a discussion as to the value of your case, including a projected jury verdict. Next, the settlement demand package is sent to the at-fault driver's automobile insurance company. Although most lawyers request that the insurance company respond with an offer within 30 days, in reality, due to the number of claims each insurance adjuster carries now, it takes closer to 45-60 days to get an opening offer. Although as the client, this is your only case, an insurance adjuster has anywhere from 100-200 claim files that they're responsible for. This is why it takes so long for an insurance adjuster to complete their evaluation; it's not that they are purposely ignoring you and your lawyer, it's that they have too many files to manage at one time.

When your lawyer gets the opening offer, it's always going to be much lower than the both of you want, so now the negotiating begins. Also during this time you might have to have a serious discussion with your lawyer about the true legal value of the case, what a jury would do with this case, the cost of filing lawsuit, the cost to take your case to trial, etc. – not how much you want or what it will take to get you out of debt or what your friend or relative got 10 years ago. All these things play a role in whether or not your case settles. The settlement process itself can take several months. If they make an offer that you and your lawyer feel is a fair value for your case, then your case usually settles. Normally, your lawyer will get the settlement check within 10-14 days of the day you settle, but the check has to be endorsed by you and deposited in your lawyer's trust account (aka IOLTA account). Once the check clears the bank, which takes several days, the funds are ready for disbursement. However, are there any liens that need to be paid such as health insurance, Medicare, Medicaid, etc.? Are there any outstanding, unpaid medical bills that must be satisfied out of the settlement? Did you receive any personal loans which need to be repaid? All these issues can delay disbursement of your net settlement funds to you (sometimes for weeks or months).

What if the insurance company didn't offer enough money? You and your lawyer don't feel that their offer reflects the fair market value of your case, then what? Well, a lawsuit has to be filed. When a lawsuit is filed another lawyer enters the case – it will be the defense lawyer for the at-fault driver. Although your lawyer is getting paid on a contingency fee basis (i.e. usually 33.33% of any settlement), the defense lawyer is paid by the hour. The more hours that are billed, the more money the defense lawyer makes. So the defense lawyer rarely has an interest in quickly trying to settle your case, they want to start from scratch and litigate your case (send written discovery, take your deposition, have you examined by a doctor of their choosing, etc.). When you file a lawsuit, it can easily add an extra year to the "shelf life" of your case, sometimes up to 2 years! Does this mean your lawyer is "dragging this out?"

Most people have never had to hire an lawyer, but when they did it was usually for a traffic ticket, DUI or another criminal matter. However, criminal cases usually only last a few weeks, maybe a few months, whereas civil cases can take years. So the next time you want to blame your lawyer for taking too long to resolve your injury case, just reflect back on this article and remember the time it takes to complete each necessary step of your case. I know sometimes personal injury lawyers get a bad rap, but most of the time it's not our fault. How many other professionals can you hire (doctors, accountants, etc.) who only get paid if they are successful and only at the end of the case after they have advanced all the expenses to get the case resolved? Hopefully after reading this you have a better understanding for why personal injury cases can take so long.