

Personal Injury (PI)

Personal injury claims arise where someone has been harmed due to the negligence of another. These injuries can arise from a variety of situations, such as slip and falls, auto accidents, animal bites, fights (assault & battery), and defective products. Damages in a personal injury suit are designed to compensate the plaintiff for his or her entire loss and can include compensatory damages (medical and out-of-pocket expenses), pain and suffering, emotional distress, loss of consortium and possibly punitive damages.

Damages for pain and suffering do not have to be determined with certainty, unlike contracts. It is left to the fact-finder (judge or jury) to decide how much the case is worth. Lawyers often look to reported cases to estimate the value of a case but the facts of each case can differ and each jury is different. Many times a PI case will settle out of court but when it does not, the case will proceed to trial. The fact-finder has two determinations to make: (1) liability; and (2) damages. A defendant must first be found liable for causing the injury before damages may be assessed. Liability often depends upon the type of duty the defendant owed to the plaintiff. For example, a business owner falls under the “business invitee” rule which imposes a duty to inspect and warn customers of potential hazards. A homeowner owes a social guest, or “licensee”, a duty to warn of known hazards but no duty to inspect. The least duty of care is owed to a “trespasser” where a landowner is to refrain from intentional harm.

In automobile cases in Pennsylvania, an insured has the option to select full tort or limited tort. Full tort permits the insured to recover pain and suffering, which often times is the largest part of an award. The limited tort option waives this right in most cases. There are exceptions, such as when there has been a serious injury (death, serious impairment of body function, or permanent serious disfigurement, or the other driver accepted Accelerated Rehabilitative Disposition (ARD). (See 75 Pa.C.S. §1705). While the limited tort option results in a slightly lower premium, my office recommends opting for the full tort option.

If you are injured in an auto accident, it is advisable to consult with an attorney. An experienced lawyer should know how to value your case and can advise on whether additional benefits may apply, such as stacking of policies, Underinsured Motorists (UIM) or Uninsured Motorists (UM) as well as the pitfalls to avoid when negotiating a settlement, especially when subrogation is involved. Determine the value of your case before settling and don't let the insurance companies talk you into a quick settlement.

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