

Personal Injury and Property Damage Lawsuits

If you claim you have been injured or that property belonging to you has been lost or damaged as the result of negligence or other wrongdoing, Georgia law provides that you may file a lawsuit and recover money damages, if you can prove your claims against the wrongdoer. If you do sue someone, you are the plaintiff in that lawsuit. The person or company you sue is the defendant. The plaintiff and the defendant are referred to as the "parties" to the case.

Time Limits

There are strictly enforced time limits for filing personal injury and property damage lawsuits. As a general statement, many personal injury cases must be filed within 2 years of the incident and property damage claims must be filed within 4 years of the incident. However, these time limits (statutes of limitation) and other requirements are different for different kinds of lawsuits and sometimes vary depending on what sort of person, corporation or government agency you intend to sue. Soon after the event that causes you injury or property damage, you should consult with an attorney or other knowledgeable source to determine how long you have to file your personal injury or property damage lawsuit and to send any notice letters that may be required. Because it may take some time to get a lawsuit filed, you should make arrangements to have that done well before the time for filing expires.

Settling Your Claim Before Filing Suit

Sometimes, the person or company which caused your harm may wish to discuss settlement with you before a lawsuit is filed. This often happens when the defendant has insurance. If you are the plaintiff/injured party, you should not presume that your involvement in settlement discussions with the other party or his/her insurance company will extend the deadline for filing your lawsuit. The obvious advantage of settling your claim without a lawyer's assistance is that you have no attorney's fees to pay. Settling a claim early also resolves your claim without the time and expense of litigation. Possible disadvantages of settling without an attorney are that you may not be a skilled negotiator and, you may not be aware of certain damages available to you which might increase your recovery.

Choosing Your Lawyer

Once you decide to call a lawyer, the next decision is which one. In order to determine this, the following is a list of suggestions that might help you decide whom to call.

- Ask friends, teachers, employer, co-workers, minister, relatives, neighbors or anyone you trust which lawyer(s) they have used and if they did a good job.
- Many online resources are available for selecting a lawyer in your geographic area and in the area of expertise you need.
- The State Bar of Georgia does not refer individual lawyers but some local bars do offer a referral service. Check the telephone directory in your area to see if there is one.
- Go to your local public library and ask for the *Martindale-Hubbell Law Directory*. It lists most lawyers and their area of practice within your community, the state of Georgia and the United States.

- Ask other lawyers.
- Call your local legal aid or public defender (in criminal cases) office to see if you qualify for representation.

Initial Consultation

Once you have decided which lawyer to call, you should ask the lawyer if he/she charges a fee for the initial consultation and, if so, how much? During that first meeting, the following should be provided and discussed:

- A fair and full explanation of your allegations. You should not exaggerate your claim and should tell the lawyer any facts not favorable to you so that the lawyer can give his/her opinion on whether you have a case worth pursuing based on all of the facts. It is important that you are candid with the lawyer during this initial meeting. Bring with you any papers or other items which pertain to your complaint as well as contact information for any likely witnesses.
- The lawyer should explain his/her experience with matters like yours. You should ask for that information, to include how many years he/she has been practicing law, what percentage of that practice is devoted to matters like yours and how many cases he/she has tried total and how many of those are like yours.
- You should ask if the lawyer has malpractice insurance coverage which might give you some protection if the lawyer made a serious mistake in handling your case. Most Georgia lawyers have this coverage.

Fees and Costs

Fees and costs should be discussed in the first meeting. Often lawyers represent plaintiffs in personal injury and property damage lawsuits on a contingent fee basis. Under that arrangement, the lawyer gets paid only if he/she wins your case and recovers for you some amount of money. In that event, the lawyer receives as his/her fee a certain agreed percentage of the amount recovered. If the case is lost, the lawyer does not receive a fee, although you may be responsible for paying court costs and other costs. Ask the lawyer to explain and estimate those costs. Some examples of costs that you should discuss with the lawyer are filing fees, expert witness fees, court reporter costs, and costs for on-line legal research. The contingent percentage charged by many lawyers is one-third or 33-1/3 percent.

If there is a likelihood of a large recovery, a lawyer may be willing to reduce the percentage somewhat. On the other hand, if the lawyer believes that your recovery may not be large and/or that there is a good chance that your case may be lost, or if your case involves very complex issues, and/or high anticipated expenses; he/she may want to increase the percentage. If a lawyer is not willing to represent you on a contingent fee basis, you should be concerned about the lawyer's opinion of your case and whether it is worth pursuing.

Other Fee Arrangements

Lawyers are often willing to represent you for an hourly fee, but you should be aware that fees charged on an hourly basis can mount quickly in a personal injury or property damage case and must be paid even if your case is lost. In addition to contingent and hourly rate fees, occasionally lawyers are willing to represent you for a "hybrid fee" which combines an hourly rate with a percentage of the recovery or for a "flat fee" where the amount of the attorneys' fees is agreed upon in advance.

If you are a defendant in a personal injury case, typically your insurance company will provide you with a lawyer and pay that lawyer's fees. It is your responsibility to notify your insurance company immediately of any accident or other event which could result in a claim or lawsuit against you. Your failure to notify your insurer promptly could result in the loss of your insurance coverage. You also need to notify your insurer immediately if you are served with a lawsuit. If you do not have insurance, a lawyer you hire to defend you will likely charge on an hourly basis.

As a defendant being represented by a lawyer your insurance company has provided, you must be cooperative and assist your lawyer in every way he or she requires. A failure to cooperate could result in the loss of your insurance coverage. If you become concerned about your insurance company's participation in your case (for example, the insurer's refusal to settle with the plaintiff for an amount you believe to be reasonable), you should consider hiring another lawyer at your expense for the limited purpose of dealing with your insurance company and advising you of your rights regarding your insurer.

What is My Claim Worth?

As a plaintiff, particularly in a personal injury lawsuit, you will find it hard to resist asking the lawyer in your initial conference how much your case is worth. At the beginning of most cases, however, it is extremely difficult for a lawyer to give a client an accurate estimate of what the claim is worth, and many lawyers will not engage in such speculation. At the beginning of the case, the lawyer cannot know what witnesses and arguments the opposing party or parties may have to support their position. In addition, legal issues may develop which your lawyer could not have anticipated when he/she undertook your representation. Add to that the unpredictability of jury verdicts and you should understand why it would be very difficult, at the beginning of the case, to predict the final results.

How Long Will My Case Last?

Again, it is virtually impossible for your lawyer to predict just how long it will take to conclude your case. There are too many variables. While you and your lawyer may do all in your power to push your case to conclusion, the opposition may not cooperate. Usually your case will be assigned to a particular judge, and some judges move their cases along quicker than others. Even if your case is settled (not tried), it is unusual for a case to be settled in less than a year after it was filed, and many cases take three years or more to conclude.

Am I Sure To Win?

There are very few cases that are sure winners, and you might be concerned about the competence of a lawyer who, in advertisements or otherwise, assures a big win quickly with few or no difficulties.

How Much Will This Cost Me?

If you are the plaintiff and are being represented on a contingent fee basis, you will not have to pay attorneys fees if your case is lost, but, win or lose, you may be responsible for costs and expenses which are not attorney's fees. Examples of such costs and expenses are court filing fees, expert witness and court reporter fees, copying costs, etc.

Do I Need a Lawyer?

An individual does not have to have a lawyer represent them in a personal injury or property damage case. You can proceed pro se (for yourself) without a lawyer. However, the Georgia rules of evidence and procedure which apply to these cases are quite complicated. Failure to comply with those rules can be fatal to your case. A person choosing to represent himself will usually be at a considerable disadvantage if there is a lawyer representing the other party. In addition to their law school training, lawyers in Georgia are required to attend continuing legal education courses and have their years of practice to provide needed experience in complying with those rules and procedures and in using them to your advantage (presuming they practice in the area(s) pertinent to your claim). Most lawyers have malpractice insurance coverage, and all are subject to State Bar discipline (to include loss of license) for violation of the rules and standards set for lawyer conduct.

In smaller matters which do not involve much money, most larger (in population) counties have small claims or magistrate courts which may have different procedural rules. In these courts, a party can proceed without a lawyer with less risk.

Communication/Confidentiality

When you retain a lawyer, you should discuss how frequently he/she will keep you advised of developments in your case. You may agree that your lawyer will give you monthly status reports or will report whenever there is a significant development in your case, but you should be aware that there may be periods of weeks or months when nothing significant is happening, through no fault of your lawyer. Of course, you should call your lawyer when you have new information to report, but you should remember that he/she is working on many cases, not just yours. With all that in mind, your lawyer should respond to your reasonable requests for information and keep you advised of the status of your lawsuit. If your lawyer is representing you on an hourly basis, he may charge you for each of these communications. If it should occur that a serious communication problem develops, you can contact the State Bar of Georgia for advice.

It is very important that you be honest and candid with your lawyer throughout the entire litigation process. You need to tell your lawyer all the facts about your case – the good and the

bad—so he or she can effectively represent you. Generally, with a very few exceptions, your discussions with your lawyer are confidential, and cannot be disclosed.

Comfortable Relationships/Reasonable Expectations

If for some reason, you are not comfortable with the first lawyer you consult, you can always meet with another lawyer or lawyers before making your choice. You should be careful, however, about rejecting a lawyer just because he/she does not tell you what you want to hear. A good lawyer will point out any potential difficulties with your case up front so as to be sure your expectations are realistic.

Understanding the Process

You should ask your lawyer to explain the process involved with a personal injury or property damage lawsuit. Among the things you need to understand are what is involved in the discovery phase of the process and the significance of a motion for summary judgment. You will want to discuss the means by which you might settle your case before trial...mediation, arbitration, or other settlement negotiation...and there should be some discussion of the trial and appeal processes.

For more information, the State Bar of Georgia also has public materials regarding “How to Choose a Lawyer” and “Lawyers and Legal Fees.” You can find this information on their website at http://www.gabar.org/communications/consumer_pamphlet_series/

This pamphlet was prepared by the Atlanta Bar Association as a public service. It is not intended to be a comprehensive statement of law. Its purpose is to provide general information, not to advise on any specific legal problem. If you have any questions regarding any matter contained in this pamphlet, you are encouraged to consult an attorney.