

The First 100 Days

A Primer on Tackling a Catastrophic Personal Injury Case

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When the biggest case of your career walks into your office, will you know where to start? Even if you've handled a bustling practice, if you treat this case just the same as all the others, you will likely be setting yourself up for failure...or at the very least, a mistake that could cost you and your client dearly. If you too are not familiar with large personal injury cases, you will need to think about your strategy before you act and many times, you will need to reorganize your practice, devoting more time and resources to the big case to accommodate the need for quick action. The information that will most help you try a successful case will often come to light during the first 100 days after the accident.

An early investigation is the key to success in a large personal injury case. You will have the advantage of actually speaking to witnesses before the other side does. Honest witnesses might simply get tired of speaking to investigators and only speak to the first one, plus they may help you locate other potential plaintiffs or defendants.

During the initial investigation, immediately consider all of the potential plaintiffs in the case and whether they need representation or if they might also be defendants. While it could be in your client's best interest for you to represent everyone, you must analyze potential conflicts and determine whether your client would be better served by plaintiffs having separate lawyers.

As you consider possible defendants, do not forget to think about jurisdiction and how those defendants can get the case into the court you prefer. In most cases, the reasons to be in federal court are few and far between. If you find low-liability defendants that can maintain diversity and keep your case in state court, it would be counterproductive to settle, even if the defendant is anxious to do so.

Identifying all of your possible defendants early will also give you more choices for venue. In most states, choice of venue is the greatest advantage given to plaintiffs' lawyers. In California, the plaintiff can file where he lives, where the accident occurred, or where any of the defendants resides, so the more defendants there are, the greater the opportunities to choose a venue that has few biases against or inconveniences for the plaintiff.

As you investigate, avoid the common pitfall of agreeing to settle too quickly. In the early days of the case, you may not have found all of your defendants yet, but you might be tempted to settle for a defendant's limited insurance policy. At that point, you will have very limited information, no depositions or interrogatories under oath, and no incentive for defendants and their lawyers to provide key information about other defendants. Do not give up a \$5 million case just to get an early \$15,000.

Once you have approximately 80% of the possible information identified, file your case quickly. Ferreting out that last 20% of the evidence could add another year or two to your investigation. Even basic police reports could take many months to be completed, months that your client can't afford to lose. A catastrophically injured client often faces mounting medical debt or ongoing future care needs and needs justice to move as quickly as possible, so don't delay in filing your case. In most cases, 60-100 days should be adequate for you to gather the most important facts.

Keep in mind that while you've been gathering facts, the potential defendants will likely have been assembling details as well. Filing early will save your client from the inconvenience of multiple examinations by multiple defense doctors and will put the opposing parties on the defensive more quickly. Before discovery begins, defendants will be eager to settle to reduce their liability. Pre-litigation is not the time to settle a catastrophic injury case. Wait until the case has been filed and you have access to greater information through discovery. Immediately after filing, send an early set of contention interrogatories to each defendant, forcing the defendants to start sharing their information as early as possible.

A catastrophic injury case is a different animal than a normal personal injury case. Depending upon the value of the average personal injury case in your law practice, a catastrophic injury case can have a value that is anywhere from ten times to one hundred times the value of your average case. Out of fairness to your client, your reputation, and the balance in your life, this difference in magnitude and challenge should be appreciated and planned for from the first day. In the end, the rewards for your client and you could be enormous.