The Civil Action

Part 1 of a 4 part series

The American civil judicial system is slow, and imperfect, but many times a victim's only recourse in attempting to me made whole after suffering an injury. This four part series will discuss the initiation of a civil claim, discovery, the trial and the appeal.

For the purpose of these articles, we will assume the reader has been involved in a common misfortune – a car accident. If the accident is minor, the parties may resolve the issue themselves without even notifying the police (never a good idea). What if, however, the accident is not minor, and, in addition to having your car destroyed, you have been injured?

During your fist meeting, your civil attorney will be on a fact finding mission. He or she will want to know the what, the where, the why and the how. She will ask you details that, prior to this meeting, you would have assumed irrelevant. She may also have you sign an authorization so that she can start requesting your pertinent and related medical records.

After your first meeting, and after doing her own independent investigation, your attorney will draft a complaint. The complaint has to allege that the other driver owed you a duty, that the other driver breached that duty and that as a proximate cause of said breach you sustained an injury.

Although every lawyer has her own style in complaint drafting, the three elements listed above are contained, somewhere, in every single personal injury complaint. If those three elements are not in the complaint, the judge will dismiss it, while usually giving your attorney another chance to draft a proper complaint.

After the complaint is drafted, your attorney will file it at the courthouse where the case is to be heard. The proper courthouse is the courthouse nearest the location of the accident, or the courthouse nearest where the Defendant resides. At the time of filing the lawsuit, your attorney may also file a demand that your case be heard by a jury (as opposed to a bench trial). Your attorney will also make a declaration as to whether you incurred damages in excess of $50,000.00 or less than $50,000.00 (if your case is valued at less than $50,000.00, the court has a system where your case may be resolved more quickly than larger, more complex cases).

Finally, your attorney will bring a copy of the complaint, along with a summons, to the local sheriff for delivery (legally known as "service") on the Defendant. The summons advises the Defendant that he is being sued, and gives other important information, such as which courthouse the lawsuit has been brought and when he has to respond to the lawsuit. Generally, the Defendant will have thirty days to respond to the lawsuit. A response might come in the form of an answer, or a motion to dismiss (in the event that your complaint does not contain all the elements we discussed earlier). Once an answer has been filed, and the parties are at issue, the discovery process begins, which we will discuss in greater detail next week.

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The Civil Action - The Discovery

Part 2 of a 4 part series

You will recall that last week we examined the initiation of a civil lawsuit, stemming from a hypothetical car accident. For today's segment, we will assume that the Defendant has answered the complaint, denying all material allegations (material allegation are, generally, always denied). Now that the parties are at issue, the judge will set deadlines for the parties to complete discovery. Unlike the movies, there are no surprises in civil trials. Any single piece of testimony or evidence that is introduced in a civil trial was previously disclosed in discovery, and if it was not, the judge will likely not allow it, or strike it from the record.

Discovery comes in two varieties: written and oral. Written discovery includes interrogatories and requests to produce documents. Interrogatories are a series of written questions that both you and the Defendant will be required to answer, under oath, relating to the accident. Your attorney will ask you to review and attempt to answer each interrogatory that Defendant has posed. After you have attempted to answer all of the interrogatories, your attorney will schedule a meeting so that your answers can be finalized and signed.

In typical auto accident cases, the interrogatories served on each party are usually standard. That is because the Illinois Supreme Court has developed form interrogatories for several different types of cases, including auto accident, divorce, and medical malpractice. Because every case is unique, however, your attorney, or Defendant's attorney may eliminate, add to, or modify these form interrogatories. If your attorney believes that an interrogatory is improper, she will object to it. If the Defendant's attorney believes that the interrogatory is proper, the Defendant's attorney will ask the judge to determine if the interrogatory is appropriate, and if the judge so rules, you will be compelled to answer.

As noted above, another form of written discovery is the request to produce documents. The parties will be required to produce several categories of documents relating to the accident. Such documents may include police reports, medical records and photographs. While a party is limited in serving only thirty interrogatories on the adverse party, there is no limit in the number of document requests a party may make.

After written discovery has been completed, oral discovery will begin. The most common form of oral discovery is the deposition. A deposition is where the other party's attorney gets to ask you questions, under oath, in the presence of a stenographer, who records the entire exchange. Generally, opposing counsel will ask you to go through benign background information, and then get to the heart of the matter – the accident and resulting damages and injuries. If during your deposition you are asked a question that your attorney finds inappropriate, your attorney will make a formal objection on the record, but you will then be required to answer the question (in rare instances your attorney will direct you not to answer the question). A deposition may last as long as three hours. Prior to your deposition, your attorney will schedule a meeting to review your testimony and instruct you as to the rules of your deposition.

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The Civil Action - The Discovery

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The purpose of discovery is so that the parties can "discover" information and narrow the issues (a third purpose, impeachment, will be reviewed in the next series). In our car accident scenario, your attorney would, of course, want to discover if the other driver was drinking alcoholic beverages prior to the accident, or if the other driver was driving his automobile in the course of his employment (which may mean that the employer, who we hope to be well insured, is also liable for your damages). Further, discovery can define, narrow and even eliminate issues from the case. For example, the Defendant will require you to answer an interrogatory disclosing if you are seeking damages for emotional injuries and, assuming that you are not, the Defendant's attorney has narrowed the issue to property damage and physical injury.

Cases are often won and lost during discovery. It is not unusual for a case to be settled after a Plaintiff has given thoughtful and competent deposition testimony. Your attorney will stress to you the importance of your deposition and make sure you are well prepared.

If the parties are not able to settle the case during or after discovery, there will have to be a trial. We will examine the dynamics of the trial is our next series.

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The Civil Action - The Trial

Part 3 of a 4 part series

Last week we examined the discovery process of a civil lawsuit, stemming from a hypothetical car accident. For today's segment, we will assume that discovery has been completed and that the parties are ready for the trial. In truth, almost all civil cases settle prior to a trial, but in some instances the parties are not able to reach an amicable resolution and a trial must be had.

Assuming that at least one party has requested that the case be heard by a jury, as opposed to a judge, the first step of the trial will be the selection of jurors, also know as voir dire. The selection of jurors is such an important aspect of the trial, a future article will be dedicated solely to jury selection. For the purposes of this article, we will assume the jury has been selected and the parties are ready to begin.

The trial will start with each attorney giving an opening statement. The opening statement allows the attorney to tell the jury what the case is about, and also describe the evidence that the attorney will present throughout the course of the trial. An attorney wants to make sure that if she promises the jury a certain piece of evidence, she delivers on that promise. Making representations in an opening statement that do not come to fruition during the course of the trial can be disastrous for your case.

After opening statements, the Plaintiff (the injured party) presents their case. The presentment of the case generally involves the introduction into evidence of testimony and documents. In our auto accident scenario, the presentment of the case would likely involve testimony by the Plaintiff, the Plaintiff's doctor(s) and any witnesses to the incident. This is known as direct examination. Depending on the circumstances of the accident, your attorney may also call the Defendant (the other drive) to give testimony. Also, your attorney will likely attempt to introduce documentary evidence during this stage of the trial. For example, after your doctor has testified as to the extent of your injuries, your attorney will likely ask the judge that your medical records be introduced into evidence.

It is important that your testimony at the trial be the same as the testimony you gave during your discovery deposition (discussed last week). If your testimony is different, the Defendant's attorney will be allowed to read to the jury the inconsistent statement that you gave during your discovery deposition. This may lead the jury to believe that you are not being honest in your testimony.

After each Plaintiff witness testifies, the Defendant's attorney will be given an opportunity to question the witness. This is known as cross-examination. Effective cross-examination will be used to show weakness and/or inconsistencies in the Plaintiff's case.

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Once the Plaintiff has completed the presentment of her case, the Defendant's attorney will then present the Defendant's case. The Defendant's case will try to do the same thing that Defendant's attorney attempted on cross-examination: show weakness and/or inconsistencies in the Plaintiff's case. Depending on the nature of the case, the Defendant's attorney may try to prove that the Defendant is not responsible for the accident, or merely that Plaintiff's damages are not as serious as Plaintiff has claimed.

When the Plaintiff and the Defendant have both completed the presentment of their cases, each attorney will be given a final attempt to persuade the jury of their client's claim – this is known as closing arguments. Closing arguments are where jury trials are won and lost. A good closing argument can make a weak case seem strong and a poor closing argument can make a strong case seem weak. Hopefully, during your closing argument, your attorney will be able to remind the jury that she has provided them with all of the evidence that she promised in her opening statement. Your attorney will then construct an argument detailing why that evidence is important and why you should be fairly compensated for your injuries. Of course, the Defendant's attorney may argue that his client was not a fault in the accident, and will definitely try to downplay your injuries.

After closing arguments, and after the jury has been instructed as to the law by the judge, they will begin their deliberations and render a verdict. Often, a jury's verdict leaves one of the parties feeling stung, which may lead to an appeal. We will explore appeals next week.

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The Civil Action - The Appeal

Part 4 of a 4 part series

Last week was the trial for our fictitious auto accident. As we discussed, very few cases actually go to trial. In truth, the entire judicial system, in its current form, is only possible because, often during discovery, the parties usually have enough sense to reach an amicable settlement. Of course, some cases actually do go to trial and trial verdicts sometimes leave one of the parties feeling stung.

If your attorney believes that a prejudicial error was made during the course of the trial, she may seek to file an appeal. Prior to filing the notice of appeal, however, she will file a post-judgment motion with the trial court. A post-judgment motion serves several purposes.

First, assuming the case was tried with a jury, a post-judgment motion must be filed to preserve issues for appeal. Any alleged error not brought up during the post-judgment motion cannot be brought up on appeal. Second, a post-trial motion gives the trial judge an opportunity to correct errors made during the trial, perhaps avoiding the need for an appeal altogether.

In my experience, however, post-judgment motions are filed as a matter of course, without much hope that the trial judge will do anything more than deny the motion, upholding the jury's verdict. Assuming your post-judgment motion is denied, the only remaining recourse is the appeal.

Within thirty days of the judge's denial of your post-judgment motion, your attorney must file a notice of appeal. This thirty day deadline is set in stone and, unlike other mandatory deadlines that have no teeth, missing the notice of appeal deadline effectively ends the appeal. Once the notice of appeal is filed, your attorney has seven days to serve the other party with the notice.

After the notice of appeal is filed, the clerk of the court will prepare the record on appeal. The record on appeal will consist of all the pleadings filed by the parties throughout the course of the litigation. The record on appeal will be delivered to the appellate court and the appellate court will set a deadline for your attorney to file the appeal, as well as a deadline for the other party to respond.

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The Civil Action - The Appeal

Part 4 of a 4 part series

In news stories that feature attorneys discussing the outcome of a big case, without fail, one of the attorneys will mention an appeal. We see it on television after the innocent defendant is convicted of murder he did not commit: "Don't worry, we'll appeal." Appeals, however, are not the fix-all that they are made out to be. Generally, a jury's verdict will be affirmed by the appellate court unless it is clear to the court that the jury got it wrong. If the evidence is disputed and a finding for either the Plaintiff or the Defendant could be possible, the appellate court will defer to the decision of the jury. Similarly, decisions by the judge throughout the trial will generally be upheld unless the trial judge abused his discretion or if the claimed error actually prejudiced the right of the appealing party, making the trial unfair.

Finally, although in the emotional moments immediately after a verdict one of the parties may promise an appeal, when reality sets in, hours or days later, the prospect of an appeal seems less glamorous. In 2005, more than four million, two hundred thousand civil cases were filed in Illinois. In that same year, about eight thousand cases were actually appealed (2005 Annual Report of the Illinois Courts). That tells us that despite the fact that litigants love to threaten an appeal, usually it is just that - a threat.

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