The Discovery Process in Personal Injury Cases

You've been injured in an accident. You're hurt. You're aching. You're stressed. You're emotional. You think you should hire a lawyer to handle your claim, but after some initial searching you are overwhelmed with words and phrases you're not familiar with. Terms like insurance adjuster, maximum medical improvement, statue of limitations, litigation, pretrial procedures, mediation, negotiation… the list goes on.

But don't let your momentary confusion stop you from getting the help you need. Attorneys Brian Mincher and Ryan Rogers at Godsey Martin, P.C. are ready to help walk you through the process of a personal injury claim and explain everything until you are comfortable with those complicated words, phrases, and the entire progression of your case.

In this article, we tackle the Discovery Process of a typical personal injury case; what it means, how it's done, and why it's necessary.

What is Discovery?

Discovery is exactly what you think it would be: discovering what information is available on each side of the case.

For the most part, everything is handled without ever stepping into a court room. Your lawyers will work with the responsible party's attorneys to obtain all the info they need to establish the facts to build the strongest possible case. Both sides will trade all relevant facts and documents with one another, so each respective side can begin to prepare their case.

Discovery helps your lawyers know what the opponent's legal claims and defense will be. There is a principle in our legal system that there should be no surprises, or as little as possible, through any lawsuit. States have used this discovery process since the 1940's when the federal court system started requiring this disclosure of information before the trial begins. It was designed to ensure a quicker, fairer, and less expensive trial for all involved.

Three Basic Forms

There are three forms of discovery: written discovery, document production and depositions. Let's take a closer look at each.

***Written Discovery*:** Lawyers for both parties will submit requests for info from each other via four standard methods. Most of the work here will be done by the lawyers, but you will be asked to verify the information they collect.

1) The request for disclosure – Each side will ask for and provide basic information that is requested and they must provide it.
2) Interrogatories – Each side will send the other written questions. Some will be standard questions used for every case and some will be unique to your own. Questions may be broad or specific.
3) The request for production – Each side will ask for and provide relevant documents.
4) The request for admissions – This is a request that each side acknowledge there are certain facts to the case that are true and undeniable. The request asks those involved to either admit or deny certain facts with penalties for lying or not answering. This step will help save time during trial by narrowing down the topics that need to be covered.

***Document Production*:** Parties on both side of the suit have the right to see all documents that might have any bearing to the case whatsoever, such as bills (medical, automotive repairs, etc), employment files, contracts, etc. This could be a small amount of paperwork, perhaps for a vehicle accident, or a large amount of paperwork, for example, in a medical malpractice suit. Some courts are even allowing computer files, including some that will permit emails to be included.

***Depositions*:** "Deposition" is just a fancy way of saying "statement". In a deposition, lawyers will ask the plaintiff, defendant, and relevant witnesses questions and responses will be recorded by a court reporter in what is called a transcript.

The discovery process is a time when your lawyers can probe for information that will be used as evidence against the defendant to show fault. For example, if you were hit and hurt in a car accident, your lawyers will be asking questions to determine if perhaps the other driver was texting, speeding, driving drunk, or anything else that can prove negligence. Bound by the ethics of their practice, lawyers must proceed honestly and attentively when it comes to depositions and make sure they maintain attorney-client confidentiality.

In 2011, Texas adopted some new rules pertaining to discovery that should speed up trials and decrease the frequency of irrational law proceedings in cases where damages are less than $100,000. One change states that the discovery process has 180 days after starting (i.e. the first request for documents, etc) to be completed. A limit of six hours is put on oral depositions, unless both parties agree to more, with a maximum cap at 10 hours. Furthermore, each side of

the claim can only submit 15 discovery requests each for interrogatories, requests for admissions, and requests for production.

There are several reasons why attorneys choose to include depositions in their discovery process. For example, they want to make sure those answering the questions have committed to one story, or their version of events, and will not change it later in a courtroom. This also gives attorneys a good chance to see what to expect from the other side while hearing their story. Another benefit of a deposition is that it serves as a "mock trial." Lawyers can see how a witness will look and act while testifying in front of a jury or a judge.

While Being Deposed

Your lawyers will prep you for your deposition by telling you what to expect, and what they want from you. However, there are a few things you need to remember:

- It's ok to say "I don't know." If you don't know the answer to a question, do not guess. You are here to give facts, not opinions or speculations.
- Don't over-explain. We all want to be heard and understood, but resist the urge to try and make your listeners understand your story. Answer the questions simply and concisely without providing additional information. If your answers need further explanation, the attorneys will ask more questions.

What Can Be Discovered

- Anything a witness saw, heard, or did in relation to the case
- Anything said (by anyone) during a certain time at a certain place;
- The names of any person or business that might have information relating to any part of the case;
- Details on how a business is run; day-to-day activities and overall processes;
- Documents connected to the case;
- A witness's personal, educational and professional backgrounds;
- The inspection of any property or objects pertaining;

Limitations of Discovery

Basically, anything with any the smallest connection to the lawsuit is considered fair game. But to keep lawyers from digging into private or confidential subjects that have no real bearing on the case, there are some limitations to the types of probing they can do.

1) *Private matters.* Because the right to privacy is still a new and developing legal notion, there are no clear-cut guidelines to follow. But basically, a person shouldn't have to reveal anything personal that isn't clearly related to the case, that wouldn't be considered normal conversation with family or friends. For example: health issues, religious beliefs, or anything dealing with sexuality.

2) *Confidential conversations.* Things that are discussed between two people in certain relationships is called "privilege" and cannot be used, even if it could prove important to that case. No one in these specific relationships can be required to divulge information they do not wish to. The relationships are: husband and wife, lawyer and client, doctor and patient, and

priest and penitent (which refers to any member of the clergy of any religion and a person seeking spiritual advice.)

3) *Privacy rights of third parties.* "Third parties" refers to those not involved directly in the lawsuit, such as witnesses or family members. There are limits to how much "digging" is allowed into the personal lives of these people who were perhaps dragged unwillingly into a case.

4) *Keeping discovery from the public*. If a person is required by the court to provide information to the opposing side, the court can deem that info confidential, meaning the other side cannot disclose it to anyone else and it could be kept from the public record in what's called a "protective order."

Things to Consider

During discovery, you should be honest. At some point in the discovery process, everything will come out. Be upfront with your attorneys from the beginning, because they can't do their best job for you if you are lying or withholding information. If you get caught lying, your chances of winning the case dramatically decrease. Also, know that discovery can take quite a bit of time. It can be frustrating and invasive, but please be open, honest and patient. It takes time to build a strong case.

You are Not Alone

Remember, you don't have to handle your personal injury claim alone, and frankly, you shouldn't. Many believe it is the easiest option before them, but in the long run many come to regret going that route. Fighting the insurance companies and other attorneys takes time and years of experience. In order to win a settlement that is fair, you need an attorney to fight on your behalf.

Let attorneys Brian Mincher and Ryan Rogers at Godsey Martin, P.C. navigate you through the often confusing process of a personal injury claim and help you get started on the road to recovery.

Call 1-877-IGOTHIT or visit us online to get the help you deserve.