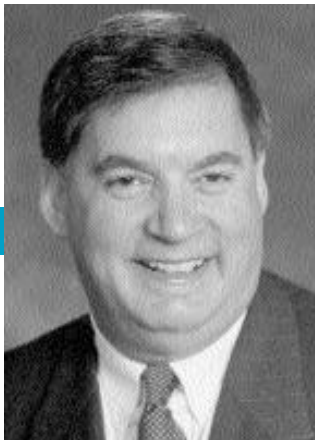


Finding an Attorney and Taking Legal Action



By RICK HALPERT, JD

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This is the third in a three-part series on legal issues relevant to burn survivors. This article is not meant to imply that all burn survivors should take legal action. Instead it is a reference for those who choose to do so.

When someone is severely burned, questions of responsibility arise. Is someone's carelessness responsible for the tragedy? Did a product fail, utility company act negligently or was an individual careless? The survivor or his family should hire a lawyer to investigate the claim as soon after the tragedy as possible. Otherwise, evidence disappears, people's memories fade and the responsible person may try to shift the responsibility. But how does a burn survivor find a competent attorney?

Choosing an Attorney

There are two goals in selecting an attorney. First, is finding an attorney who is skilled as a trial lawyer. If the case must ultimately go to trial, the need is obvious. But if the case is settled (most burn injury cases are) the size of the settlement will depend in large measure on how fearful is the wrongdoer's insurance company of your attorney in court.

The second goal in picking an attorney is to find one who is interested in you as a person. Different clients have different goals. Some want to have prompt settlements. Others want (or need) to recover the most amount of money possible regardless of the time, trauma and risk of trial. Good attorneys adapt to a client's needs. Hire only an attorney who is interested in encouraging you to recover physically, psychologically and emotionally.

It is helpful to have an attorney who is experienced in working with burn survivors. Ideally the attorney should already know about compression garments, reconstructive surgery, the problem

of itching and the psychological trauma that accompanies disfigurement. Do you feel safe, do you trust the attorney and are you willing to share your personal secrets with him or her?

In summary then, to find an attorney, you should find someone with an excellent reputation for both settlements and trial, someone knowledgeable in burn injury and recovery and someone who is willing to listen to and follow your instructions to obtain the goals you wish in litigation. The more difficult question is, "How do you find such an attorney?"

There truly is no "right" answer. The most objective way to determine an attorney's skills can be found in your public library. There is a reference work called Martindale Hubbell published by Lexis Nexis Group and Reed Elsevier Properties Inc. that rates every attorney in the United States according to both ethics and ability. It is the "Bible" that lawyers use when hiring other lawyers to represent their clients. A lawyer rated "A" is considered excellent to preeminent, a lawyer rated "B" is rated good to excellent and a lawyer rated "C" is rated fair to good. A lawyer cannot receive a rating unless Martindale Hubbell also concludes that the lawyer meets the appropriate ethical standards. Martindale accumulates its information from lawyers in the same city as the rated lawyer practices and it is the only truly neutral source of information. A library reference person can help you understand the various ratings and obtain background material on potential choices.

Another reliable place to find a burn attorney is by inquiring of your burn doctor or social worker. These

individuals have likely worked with many attorneys and are able to distinguish those who truly care about burn survivors and are highly competent from those who are not.

Asking friends or relatives is a less reliable manner because they probably have dealt only with one attorney and only know whether they are happy with that attorney or not. The least reliable of all are self-promoting advertisements on television, the Yellow Pages, and other "mass marketing" sources.

The question is often asked if it is proper to talk to more than one attorney before making a selection. It is not only proper, it is wise. If you are fortunate to have selected two or three lawyers who appear to be both competent and who understand burn injuries and recovery, you should make an appointment with each. Be clear that you are simply "interviewing" lawyers in order to make the proper selection. If a lawyer is not willing to meet with you for your evaluation, that lawyer is not interested enough in you as a person to merit your consideration. When interviewing attorneys, you should ask about the size of verdicts they have received in trials, their experience in representing burn survivors, their understanding of what is involved in a burn injury case and their philosophy about the relationship between the client and the lawyer.

The lawyer should be willing to finance the litigation, that is, to advance the money necessary for expert witnesses, investigation, etc. Because these payments can run tens of thousands of dollars, it is important to have a clear understanding that the lawyer will advance these costs.

Bringing a Claim / Starting Litigation

Investigation During this stage, attorneys and/or their investigators will take the statements of witnesses, gather documents, photograph the scene of the injury, if appropriate, and, in general, obtain as much information as possible about how the accident happened, who was a potential witness and who was at fault. In addition, the attorney will gather information about the survivor's medical condition, including complete medical records, reports of doctors and other diagnostic tests.

Making a claim After the lawyer has gathered all of the necessary information, he or she will notify the at-fault party about the claim and make a request for settlement (called a "demand"). After trading information about how the accident happened and how the law applies to the accident, the parties will enter into negotiations to determine if a settlement can be reached. If not, suit is filed.

Filing the suit Filing the suit merely means filing a paper called a complaint with the court. In the complaint, your attorney states what happened in the accident, how it happened and what are your injuries. The other side then has a limited time to file an answer which denies responsibility.

Formal discovery The discovery process has primarily two parts. The first is "depositions." A deposition is a formal, written question and answer statement taken in the lawyer's office, under oath, with a court reporter present. The second form of discovery is written requests for information sometimes called "interrogatories." Interrogatories are questions that are asked under oath that the people who are suing each other must answer in writing.

Alternative dispute resolution The courts have instituted a method to try to force settlement. It is different in every state and even within the same state, there are various methods. One is non-binding arbitration where a neutral person tells both sides what the case should be settled for. Another is facilitative mediation where a neutral party tries to convince each side to settle by moving from private conference to private conference among the various sides of the controversy. Finally, a settlement conference with the judge occurs. Approximately ninety percent of all personal injury cases are settled by the end of mediation.

Trial The trial itself has a number of similarities to what TV drama trials appear to be but they are much longer and very costly. Neither side knows for sure what the outcome will be so both sides are risking "everything." Compromise seems like a much better alternative to most people in litigation and compromises therefore prevent most cases from going to trial.

This short article has presented only a brief outline of what it means to bring a legal claim. The real explanation of each of the stages should come from the burn survivor's own attorney with sufficient detail for the survivor to truly understand and feel like he or she is a part of the process.

Throughout the discussion, the topic of "settlement" has been addressed several times. A settlement can be in the form of cash. It also can be in the form of monthly payments for the rest of the burn survivor's life, with or without special lump-sum payments at times which the survivor anticipates will be needed.

One of the reasons that it is important to hire an attorney who is skilled in working with burn survivors is that such an attorney will be much better equipped not only to obtain an excellent settlement, but to help the burn survivor decide the form the settlement should take, whether by cash, structured settlement (periodic payments) or some combination.

Conclusion

In summary, it is important to make a very careful selection of an attorney who is hired to represent a burn survivor. The lawyer should have outstanding credentials in the community for obtaining large settlements and verdicts, significant experience in helping burn survivors and a willingness to listen and follow the instructions of the client about such major issues as whether and when to settle the case.