



# Legal Newsletter

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## Settlement of Claims for Damages

Persons who have claims for physical injury, property damage or violations of their rights often find themselves involved in a legal matter for the first time. The purpose of this newsletter is to outline the common steps in a lawsuit and explain some of the terminology involved in legal cases.

### *A "Civil Case"*

A civil lawsuit or civil action is a type of legal case that is not a criminal case. A civil case can arise from the same conduct as a criminal case. For example, if a drunk driver causes an accident with another car, he or she might be prosecuted for the criminal charge of drunk driving, and also sued by someone who was injured in the accident. The government, by its prosecutor, brings the criminal charges. The injured person can file a separate civil lawsuit, to sue for damages.

### *Making a Civil Claim*

Usually there is some attempt to have a claim paid without the need to file a lawsuit. In a typical auto accident case, for example, an injured person's lawyer will contact the insurance company for the driver who caused the accident, and determine whether the company is willing to pay an adequate amount to cover the damages. If it is clear which driver caused

the accident, that driver's insurance will usually pay for the vehicle damage voluntarily, and may make an offer to pay for any injuries.

The goal of a court award, or a settlement, is to compensate you for your losses. As a general matter, the losses that are taken into account are lost wages, medical bills, the future of the injury and pain and suffering.

In trying to settle a case, it is necessary to provide information about these losses. Insurance companies will ask for copies of medical bills and medical records, and proof of the amount of any lost wages. Often the insurance company will want to meet with the injured person and take a recorded statement, asking how the injury happened, etc. If an injured person is going to hire a lawyer, it is best to do so before a statement is recorded. In cases of bodily injury, it is often helpful to give the insurance company photographs of the vehicle and the victim, taken shortly after the injury. If the injury has a major impact on a person's ability to do daily activities, a videotape of the victim doing things at home will help explain to the insurance company the seriousness of the injury.

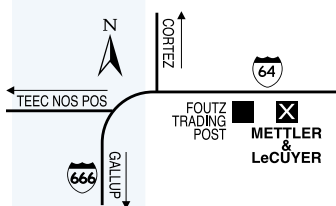
### *Negotiation before Filing Suit*

The point of a settlement is to try to find a payment amount that is a fair estimate of

what the injured person would be awarded if the case went to court and damages were awarded after a trial. The law does not specify the amounts paid for damages, and there is no book that can tell what any claim is worth. Instead, it is necessary to try to estimate the amount that is likely to be awarded after a trial in court. Of course, an award can vary from case to case, depending on the judge and jury that are deciding any case. The goal of a settlement is to try to find an amount that is a fair estimate of the range of possible amounts that a person might win in court after a trial with a reasonable judge or jury.

The settlement process in claims cases involves a combination of exchanging information to convince the other side to change its offer, and the strategy of negotiation. Both sides start with a particular amount and then move somewhat. For example, an insurance company might start with a certain amount, and eventually offer more. Meanwhile, the person making the claim will be making lower offers, getting toward an amount the insurance company might accept.

If the injured person does not reach an agreement with the person at fault (or their insurance company), then the next step is for the injured person to file a lawsuit. Our next newsletter will talk about the stages of a civil lawsuit.



**Mettler & LeCuyer, P.C.**, is a law firm serving the Navajo Reservation area from its office at Shiprock, handling primarily personal injury and accident cases, on-the-job injuries, medical claims, disability and insurance claims, uranium miners and Social Security. The firm has a branch office in Albuquerque. The office in Shiprock is located on Highway 64, just east of Foutz Trading Co., and is open 9:00a.m. - 4:00p.m. Monday through Thursday.