

# NEW MEXICO INJURY ATTORNEY BLOG

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## **Don't File Angry! Personal Injury Litigation is Costly and Often Unnecessary**

Many times, an injured party is angry and frustrated as a result of an accident. They often call wanting immediately to file their personal injury suit against the responsible party. This may in fact be the natural reaction to an injury, particularly where there are significant damages suffered as a result of the negligence fault of another person.

Filing suit right out of the gate may be appropriate in some cases. However, in most personal injury cases, the more appropriate and prudent course of action would dictate against this. Some folks cannot accept this and their impatience dictates immediately legal action. We typically do not work with these clients.

The fact is the approach that says, "file suit and ask questions later", can make the case much more difficult to resolve. This approach is more likely to delay the resolution of the case than to expedite it. Most importantly for rational plaintiffs, litigation is very expensive. The client bears the costs of litigation. So every dollar spent on litigation is a dollar the client does not receive from the recovery.

It is really not too difficult to understand why this would be so. Once a lawsuit is filed, the case is no longer in the hands of an adjuster but in the hands of a insurance defense attorney. Once the file reaches a defense attorney, depending on the firm, a client may expect full blown litigation. This means at a minimum, discovery, depositions and inevitable motions to dismiss and/or motions for summary judgment. In many cases, it means the necessity of expert witnesses on both sides.

Some clients may think the more experts the defense hires, the better since it costs them money. Unfortunately, it costs the client money as well since a deposition of the defense expert requires that the plaintiff pay for the expert witness' fees as well as the costs of court reporters. This is very expensive, and again, it comes out of the client's recovery if there is any.

Taking a generous view of defense tactics, the defense attorney must as a matter of professionalism and competency jump through all these hoops to fully protect the interests of the insurance company client. Others may take a less

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generous view in suggesting that protracted litigation and refusal to reasonably settle a claim is dictated more by the need to generate billable hours by the insurance defense attorney than the facts of the case.

No matter what the cause, litigation is expensive. Often times, it is unnecessary and the injured client's interest are far better served by pre-litigation resolution and settlement of personal injury claims. Though insurance companies and adjusters often get a bad rap, sometimes deservedly so, most adjusters understand the math as well. Litigation is expensive for both sides and the costs of litigation will be considered by all but the most unreasonable and uneducated adjusters.

Litigation is often necessary for many reasons and an experienced personal injury attorney will know when it is time to file suit. Likewise, the attorney will also understand that the time for filing suit is rarely at the inception of the claim.

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