

Brain Injury and the Law:

A Primer for Survivors & Families

by Attorney Paul Slager

Having worked with many brain injury survivors and their families, I understand that pursuing a legal claim for compensation can be stressful — and sometimes too overwhelming to contemplate. This is particularly true when the survivor and his/her family's physical and emotional resources are focused on obtaining and paying for medical treatment and therapies and adjusting to the new reality of life with a brain injury — and when one considers that the final result of any case is always impossible to predict.

Unfortunately, many brain injuries are the result of careless, even reckless, conduct by people other than the survivor, and in some of these cases, a survivor's injuries will require a lifetime of costly care, much of which will not be covered by health insurance or public assistance. Worse still, many survivors are unable to return to the jobs they held before their injuries and are thus unable to earn a living. Under these circumstances, it may be prudent to ask a qualified attorney to review whether the brain injury survivor has legal claims worth pursuing.

The following questions and answers should demystify some of the civil justice system for those wishing to seek compensation from a responsible party following a brain injury.

Q. How do I know if I have a case?

When a person or company causes serious injury to an individual, state and federal laws offer the injured person a wide variety of potential claims — and if the injured person is incapacitated and unable to actively pursue their own case, which is often the case with brain injury survivors, his/her family usually can bring the claim on behalf of the injured person. However, you won't know if you have a case until you seek the advice of a qualified lawyer experienced in representing brain injury survivors.

Lawyers who devote a significant part of their practice to brain injury cases should know how to investigate each potential claim, determine whether any viable claims exist, and make certain that your potential claims are filed in a timely fashion so that you don't give up your right to make the claim. And when the injury is simply a tragic, unavoidable accident, a responsible lawyer should advise you that there is no case to pursue. If advised that you have no case but you believe the injury may have resulted from another's careless conduct, never hesitate to have one or more lawyers review whether you have legal claims.

Q. When should I contact a lawyer?

The short answer is *as soon as possible*.

While seeking legal advice is often, and appropriately, delayed by the acute medical care the survivor receives and the immediate effects on the lives of the survivor and family members, obtaining legal counsel as soon as is humanly possible can be critical to successfully pursuing a case for a couple of reasons.

First, all claims in Connecticut are governed by statutes of limitation, which means that you must file any claims within a time period prescribed by the legislature or the claims will be barred as a matter of law.

The length of time you have to file your claims depends on the nature of the claims and the identity of the potential defendants. If an employee of a city or town is a potential defendant, for example, Connecticut law may require that you provide the city or town with notice of potential claims within six months of the injury (or within an even shorter time period in certain kinds of cases). If a private individual who is not a city or town employee was negligent and caused the injury, then you may have two years to bring any claims. Be sure you give your lawyer enough time to assess who all the responsible defendants may be, advise you about these statutes of limitation, and to prepare timely claims.

Another reason to contact an attorney promptly is that preserving evidence and obtaining witness testimony is often critical to successfully preserving a survivor's claims. Sometimes police will maintain custody of important evidence for only a limited time, then will release or dispose of the evidence. Similarly, as time passes, the likelihood increases that important witnesses will move away or become difficult to locate. Losing key evidence and information from witnesses can make a winnable case unwinnable.

Over the years, I have had the unfortunate experience of having to tell clients with significant cases that it is too late for me to help them — and in some of these cases, a successful law suit could have made the difference between a significant settlement or judgment for the brain injury survivor and no financial recovery at all.

Q. How do I find the right lawyer?

Although there's no golden rule for selecting the right lawyer, I do have a few suggestions:

(1.) Find out whether the lawyer has experience handling brain injury cases.

- Ask directly how many other brain injury cases the lawyer has handled, how those cases were resolved, and whether and how those cases are comparable to yours.
- Engage the lawyer in a discussion about the aspects of

the brain injury and related treatment that are present in your case — then listen carefully to learn whether the lawyer demonstrates solid knowledge about brain injuries.

Why? Since it can be difficult for doctors to diagnose a brain injury and for lawyers to prove the effects of a brain injury at trial, cases involving brain injuries are much more complicated than many other kinds of personal injury cases. Cases involving brain injury nearly always involve sophisticated medical issues about which the lawyer handling your case must be familiar. You also want to be sure the lawyer regularly monitors advances in technologies related to diagnosing and treating brain injury, as well as legal issues related to the admissibility of these technologies. A good brain injury lawyer can even be a good resource for you or your loved one on issues related to treatment and therapy.

In addition, because many brain injuries have severe effects on a person that are not obvious on a superficial level, brain injury cases present unique challenges in the courtroom. Juries may expect a person with serious injuries to look or sound impaired, yet many who are seriously affected by brain trauma do not fit this mold on the witness stand. Only lawyers with experience handling brain injury cases are equipped to handle such challenges.

(2.) Because your interaction with your lawyer will be a long-term relationship involving issues that go far beyond money, and because there is more than one lawyer who is qualified to handle your case, your feelings about how well your personalities fit is important. Make sure you are comfortable with the lawyer you choose and that your lawyer is approachable and supportive. If the a lawyer seems prickly, distracted, disinterested, or unpleasant during your initial meeting, chances are that this will become more, not less, of a problem as you move forward.

(3.) Make sure you clearly understand the fee arrangement offered by the lawyer you chose.

Any potential lawyers you contact should be willing to provide you with written fee agreements and detailed explanations of the terms before you decide whether to retain them. Many lawyers who handle brain injury cases will charge a contingency fee, which means that their fee will be deducted as a percentage from any money recovered in the case. This usually, but not always, means that if a lawyer decides your case has merit, the lawyer will pursue your case from beginning to end without any out-of-pocket costs in the beginning of the case or while the case is proceeding. If this type of fee arrangement works for you, you should confirm how it works and make sure that the things your lawyer explains match the terms of the written agreement you are given. Also, you should take as much time as you need to review such an agreement on your own. You should never feel

pressured to sign it until after you've had plenty of time to review it outside of the presence of the lawyer — and if you do feel such pressure, I strongly recommend you look for another lawyer.

(4.) Consider meeting with more than one qualified lawyer.

Most lawyers who represent brain injury survivors in lawsuits will be willing to meet with you, free of charge, to discuss your potential case. Your discussions at any initial meeting will be confidential, provided you are consulting the lawyer in order to discuss your case and obtain legal advice. Be honest about the background facts surrounding the incident that led to the injury and discuss any concerns you have about the process. Although the lawyer you are meeting with is assessing your potential case, you should view this meeting as your chance to evaluate the lawyer. If you are meeting with more than one lawyer, let the lawyers know this. If you get a bad reaction from an attorney when you disclose you are meeting with more than one, consider it a strike against them. And before meeting, confirm that there is no charge for the initial consultation.

Q. How long does a lawsuit take?

The length of a lawsuit depends on the claims made, who the defendants are, and where the lawsuit is filed. Cases proceed at different speeds in state and federal courts, as well as within the state court system, where docket congestion differs among judicial districts. Also, some cases settle before trial, while others involve a jury verdict and an appeal.

While accurately predicting the length of a case is impossible, I usually tell my clients that the brain injury cases I file in Connecticut's busier court systems (Hartford, New Haven, Waterbury, and Stamford) take an average of three years from filing to resolution. ■

ABOUT THE AUTHOR



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President of the Board of Directors of the Brain Injury Association of Connecticut for the past two years, having previously served as a Vice President.