The Basics of a Traumatic Brain Injury Lawsuit

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Suffering a traumatic brain injury, or TBI, is a devastating and potentially permanent life change. And if the injury was caused by someone's negligence, the victim has the right to seek monetary compensation. But filing and litigating a TBI lawsuit is no simple matter, and the at-fault party will virtually be guaranteed to have aggressive legal counsel defending it. The traumatic brain injury attorneys of Rosen Hagood explain the basics of TBI lawsuits and what to expect if you or a loved one experiences such an injury.

One of the first tasks the victim will need to tackle is retaining experienced legal counsel. Time is of the essence in order to preserve relevant evidence and to document witness observations. In addition, there's a strong possibility that the at-fault party's insurance company will soon contact the victim to get a statement or even attempt to make a settlement. You need and deserve a law firm that is experienced in handling these types of cases.

Identifying all potentially liable parties is the next step. More than one individual or company may share responsibility for causing an injury. Take, as an example, a large truck accident that causes a traumatic brain injury. The driver may have been partially responsible for overloading the truck, thereby making it more difficult to maneuver. But if that error was due to inexperience or poor training, the trucking company that hired the driver may also be liable.

It's important to name all potential lawsuit defendants. Additionally, when corporate entities are involved, it is imperative to identify the correct one as the defendant. Doing so can be complicated when parent companies, affiliates, subsidiaries, and other types of businesses are involved.

Your attorney will investigate not only the parties involved in the injury, but how it occurred. This is one of the most critical steps in the TBI lawsuit, because holding the at-fault party accountable in court requires proving negligence. In South Carolina, there are four elements of negligence that a TBI victim must establish:

- Duty of care. The plaintiff (victim) must show that the defendant owed the victim a duty of care. This is often implied. In the above example of a truck accident, every driver owes every other driver a duty to safely operate their motor vehicles.
- Breach. A breach of the duty of care may be caused by any number of things. Perhaps it was the driver who was texting while driving and therefore, not paying attention. An intentionally reckless act can also be considered a breach.
- Causation. There must be a causal link between the negligent or reckless action and the victim's injuries. Put another way: the TBI victim must show he or she would not have been injured but for the

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acts or omissions of the at-fault party.

- Damages. At this stage, the victim will demonstrate the extent of his or her financial losses. These include economic damages, such as medical bills, as well as non-economic damages such as pain and suffering.

The victim's allegations will be detailed in a formal complaint (the lawsuit), which is then properly served on all parties responsible for the TBI. At some point, either before or after the lawsuit is filed, the insurance company that insures the at-fault party will likely make an offer to settle. This will trigger a series of exchanges between your attorney and the attorney hired by the wrongdoer's insurance company. But remember, the insurance company's only interest is saving money. It will likely take several rounds of negotiations before a fair offer is made, if at all. Once the final offer is received, your lawyer will advise you to either settle the case or take it to trial.

Discovery will also be conducted after the lawsuit is filed. This is the formal process by which the parties exchange relevant information about the lawsuit. Discovery has many purposes, including as a way to gauge relative strengths and weaknesses of the parties' cases. Various discovery methods may be employed, including depositions, subpoenas, requests for documents, and more.

If the case settles, paperwork will be drafted outlining the terms of the settlement. If it doesn't settle, the case will be tried by a jury. But once the case either settles or goes to trial, the victim won't get another chance to litigate. You simply can't afford to go without a knowledgeable attorney.

Rosen Hagood has you covered. We represent TBI victims from start to finish and will demand the damages you deserve. To get started, or to learn more about TBI lawsuits, reach out to our dedicated team today.

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