

Personal Injury & Workers' Compensation

# The Ten Stages of Valuing a Tort Case

## 1. Coverage

Valuing a tort case starts on the first day the case comes into the office of plaintiff or defendant's counsel. When you take in a case you must obtain certain basic information that can determine the value of the case.



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The plaintiff must value the case in terms of the potential insurance coverage available to the defendant(s) including those with deeper pockets. Also important is any insurance coverage, such as supplemental underinsured coverage, available to

the plaintiff to collect from which can increase the value and potential recovery in a case.

## 2. Preliminary Evaluation of Liability and Damages

The extent of the liability of the prime defendants or other parties who may be responsible for the injury will affect the value of the case. This can be important where insurance policies provide coverage to other defendants who have legal responsibility for the activities of another. The preliminary

evaluation is also important so that plaintiff's counsel can decide if they want to undertake representation of the plaintiff based on their view of liability and damages. This stage is also important for counsel for the defendant because the insurance carrier may set a reserve based on a preliminary view of liability and damages. This evaluation should be as accurate as possible to facilitate a later settlement of the case.

## 3. Are Injuries Related?

Stage three involves obtaining and carefully reviewing the applicable medical records outlining the injuries claimed to have occurred as a result of this accident, along with hints or clues regarding pre-existing conditions which may have been aggravated and/or triggered by the accident. For counsel for the plaintiff, this also means a detailed interview of the plaintiff concerning their medical history. Defense counsel must carefully review the medical records, especially items concerning history or pre-existing conditions or medication(s), and search the relevant databases to investigate prior medical treatment, accidents, or injuries.

Uncertainty as to whether the plaintiff has an injury sufficient to meet the serious injury threshold or if it will result in a permanent disability can affect the value that both plaintiffs and defendants place on a case.

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## 4. Scope of Injury, Disability and Prognosis

Stage four is evaluating the scope of the (significant) treatment the plaintiff underwent following the accident. Did plaintiff undergo any invasive treatment such as surgery or is surgery likely in the immediate or foreseeable future? On the other hand, if surgery was suggested or strongly recommended to them, did they refuse such treatment options?

## 5. Impairments to Past, Present, or Future Employment

Stage five is evaluating whether the nature of the injuries and complaints necessitates a disability (partial or full) from their employment, overtime, promotions or other activities? Are there special damages including future medical or other expenses or limitations in the insurance coverage that are available?

## 6. Statement of Claims

Stage six revolves around the pleadings. The value of the case can be limited or expanded depending on what accident-related claims and elements of damages and disability are included in the pleadings. These can include loss of earnings and other damages claimed in response to the demands for bills of particulars. Counsel for plaintiff should be sure to include any aggravations of any pre-existing or related conditions. Also, sufficient claims regarding the negligence of each defendant must be alleged as a basis for establishing liability. Counsel for plaintiff must demand a bill of particulars from each defendant as to any claims of comparative negligence or any other affirmative defenses that could reduce or eliminate the value of a case.