

THE FLORIDA JURY: SEEKING JUSTICE FOR ALL

An article produced and distributed by The Law Office of Keith R. Taylor to provide Florida residents with insight into the jury trial system. This article explains ten phases of the American jury trial, and explores the importance of the American jury both historically, and for litigants today.

We often receive questions from clients, prospective parties, witnesses, and others interested in how a personal injury jury trial is conducted. As a result, we decided to help our readers better understand the jury trial process through this educational article. While not all trials are exactly the same, they are generally very similar. The ten sections of this article describe the basic issues pertaining to the trial system and may help you feel more comfortable should you ever find yourself involved in the trial process. Additionally, we hope that you will gain an appreciation of the fundamental fairness of our jury trial system and why it is often referred to as "the cornerstone of democracy."

Jury Duty

The juror is the most powerful person in the courtroom, as the jury is the foundation of our judicial system. Each juror is charged with the responsibility of sorting through the evidence so those who have suffered a loss may find justice. The obligation to sit as a juror is critical to our country's liberty as the obligation to take up arms and defend it. There are no "small" cases. Every person is entitled to a trial before a jury of their peers.

The development of English law, the basis for our country's civil justice system, was marked with turmoil and strife. One of the biggest issues in the conflict was the King's failure to provide a system of trial by jury. Indeed, when the United States declared independence on July 4, 1776, one of the most prominent reasons was the failure of the King to provide trials by jury. Today, the United States' jury trial system is as important as ever. The system allows every person to have his or her case heard and provides each of us with the right to justice.

Role of Juror

The jury is the cornerstone of democracy. One of the unique aspects of the Constitution of the United States of America is that it grants certain powers to the three branches of government to prevent one branch from becoming too powerful and oppressing the people. It is specifically designed to protect each person's fundamental rights and liberties. But the real brilliance of the Constitution is that it protects the weak from the powerful, the unfortunate from the fortunate, and the poor from the rich.

Perhaps the most important of all our constitutional protections is the assurance of having our grievances heard by a jury of our peers. Jurors are able to preserve our constitutional protections in our courtrooms. Neither the attorney nor the victim of a crime can deliver justice and the judge merely acts as the referee to help guide a trial. Only a jury, solemnly sworn to uphold the laws and constitutions of the State of Florida and the United States of America, without favor or bias, can protect the weak from the strong and the powerless from the powerful. The role of the juror is to listen to all of the evidence and reach a fair and just decision. The juror must decide what is true, fair, and just without regard to status or position.

Jury Selection

The number of people on a jury depends on what kind of case is at issue. Civil cases require six jurors, while criminal trials require between six and twelve, depending on the nature of the crime. In all

cases, the selection of a jury is one of the first things done in courtroom proceedings. The jury is selected after each juror is questioned by the attorneys for both parties to determine whether any individual biases or prejudices exist.

Some jurors find the jury selection process odd or even insulting, however this process is essential to ensuring the impartiality of the jury and the return of a fair verdict. There are many instances in which it is impossible for a juror to be considered unbiased. This depends, however, on the specific facts of the case and the background and personal beliefs of the particular juror. After the jury selection process has been completed, the case then proceeds to trial.

Role of a Judge

The judge is responsible for making sure the court proceedings are orderly, follow the law, and are fair. A judge's duties include controlling any and all facets of the trial, including the introduction of evidence, testimony of witnesses, arguments of counsel, and deciding questions of law. The judge is an impartial figure, akin to a referee. His job is to ensure a fair trial without regard to popularity, public opinion, or the judge's personal opinion of the law.

At the close of the trial, the judge will instruct the jury on the law they must follow and apply in reaching their verdict. These are called "Jury Instructions." The judge gives the jury instructions about the law it must apply to the facts heard during trial. Ultimately, it is the jury's responsibility to determine the facts of the case and to apply the relevant law to those facts.

In reaching its verdict, a jury should never speculate about how a judge might evaluate the testimony of any witness or any other evidence in the case (or that the judge prefers one verdict over another) based upon the judge's actions and/or expressions during trial. Indeed, the worst mistake a judge can make is to indicate to a jury that he or she favors one side over the other. Following the jury's verdict, the judge's role is then to apply principles of law related to costs, fees, and other legal matters.

Evidence of Insurance

In Florida, it is impermissible for a jury to learn that the defendants have insurance to pay for the damages the jury awards to the plaintiff. Although this rule is uncommon in the United States, the law in Florida is based on the belief that a jury's verdict may be influenced by the amount of insurance the defendant has rather than by the facts of the case.

Most juries simply assume that the defendant has insurance since they rationally conclude that the parties would not be able to afford taking a case to trial unless there was insurance to pay for the jury award. In reality, it is extremely rare that a case is taken to a jury trial with no insurance to cover the jury award. The costs make it almost impossible to take a case to trial if a defendant does not have insurance.

If the jury renders its verdict in favor of the plaintiff, the judge will enter the judgment, and the defendant's insurance company will pay the amount of the judgment up to the defendant's insurance policy limits. Typically, the insurance policy limits are quite high. If they were not, it would be too costly and risky for a plaintiff to take a case to a jury trial.

Medical Testimony

Medical testimony can come from many different people, rather than only medical doctors, during a personal injury trial. First, the injured person's testimony can best describe the injury and how it has affected him or her physically and psychologically. Also, "lay medical witnesses," typically, family, fellow employees, and friends who have been in regular contact with the injured person, can describe the physical and mental state they observed before and after the accident. Of course, the testimony of the treating physician can also be expected. In addition, there are doctors with specialized medical knowledge who can testify as to specific issues of diagnosis and treatment.

Many injuries are hard to diagnose with even the most advanced technology. Traumatic brain injuries, for example, are often subtle, but devastating. They are subtle in the sense that they may not manifest themselves in the injured person immediately but they can be permanent and devastating. The defense will almost always find a medical expert that will attempt to minimize the injury and its impact, or simply say it was pre-existing. For example, in many people, there is almost always some pre-existing damage to the spine that an accident has aggravated. It then becomes a question for the jury to determine how much, if any, of the injured person's present condition was pre-existing, how much was aggravated by the accident, and how the injury will impact the person's life in the future.

The basic question the doctors will address, along with the victim and any medical witnesses, is what the injury was and whether the injured person will ever be the same as they were prior to the accident.

Expert Witnesses

Expert witnesses are individuals that typically have more than average experience, training, or education in a specific area and can help the jury better understand certain aspects of the case. There are many different types of experts that may testify in personal injury trials. For example, economists can explain the economic impact of the injury and earning potential over a lifetime, vocational experts can discuss the cost and likely result of efforts to retrain a person who has been injured and unable return to his or her job, and experts in accident reconstruction can build models or make graphic presentations to help the jury better understand an accident.

Engineers are sometimes used to explain, in scientific terms, why elements of accidents may seem to contradict common sense. For example, a bumper-to-bumper accident, even at a slow speed, can produce a more serious injury than a high speed impact with greater property damage. The expert may explain that today's stronger and more rigid bumpers act as "force transmitters" creating an effect similar to bowling balls colliding and bouncing back, causing a more severe injury to a passenger. Other parts of the car are designed to crumple upon impact, and sometimes resulting in a lesser injury in a high speed crash.

At the end of the trial, the jury may have heard contradictory expert testimony, but they must rely on their own common sense and the credibility of each expert in making its decision.

In fact, all jury trials are dependent on the common sense of the jury as they reach a fair verdict based on the testimony of many witnesses, expert or otherwise, which often vary in many ways.

Court Costs and Attorney Fees

The Contingency Fee

In almost every personal injury trial, the unnamed party in the suit is the defendant's insurance company. The defendant almost always has insurance but the State of Florida does not allow it to be disclosed during trial. Considering the fact that some trial attorneys can charge more than \$500 an hour, how can the average person afford to hire a good attorney to fight a big insurance company that has virtually unlimited resources?

One answer may be the "contingency fee," often called "every man's key to the courthouse." The concept of the contingency fee is simple: if the case is won, the attorney is awarded a percentage of the jury's verdict; if the case is lost, the attorney receives nothing. Obviously, taking a case on a contingency fee is a risky decision for the attorney. As such, only cases that attorneys feel have serious merit are taken to trial.

The Costs

The attorney not only puts his or her own time at risk, but they also usually have to personally advance litigation costs, which are often in the tens or hundreds of thousands of dollars. Such costs typically include filing fees, service fees, expert witness fees, travel, depositions, video presentations, demonstrative trial aids, and other expenditures to prepare for trial.

If the case is lost, the attorney recovers no fee, the client recovers nothing for his or her injury, and the attorney loses all the costs advanced on behalf of the client. It is a very risky way to practice law and considerable skill is required in evaluating a case to determine if it is likely to be won. This pricing system allows the lawyer to weed out cases that are too risky and retain only those that have merit and are likely to produce a favorable verdict at trial. Neither the fees nor the costs are awarded directly by the jury in its verdict, but are instead paid out of the verdict amount that the jury awards the plaintiff.

Closing Arguments

The closing argument is last time the jury hears from the lawyers during the trial. After the lawyers finish their closing arguments, the judge will instruct the jury on the relevant law and then the case is completely in the hands of the jury. Therefore, the closing argument, or the "summation," is the last opportunity for a lawyer to convince the jury of his client's position.

The plaintiff's lawyer will usually speak to the jury first, followed by the attorney for the defendant. Sometimes, after the attorney for the defendant gives his closing argument, the plaintiff's lawyer is allowed to give a second closing argument called a "rebuttal argument". This is because the plaintiff has the burden of proof; therefore he or she has the right to open and close this stage of the

trial. Another purpose of the rebuttal argument is to allow the plaintiff's lawyer to correct or clarify anything the defense lawyer said that was factually or legally in error.

Most lawyers recognize that jurors want to return a verdict that is fair and just. Therefore, lawyers will try to use closing argument to align the case with the jury's core values. For example, if the case involves significant social issues such as race or religion, the lawyer will probably address them directly. Even so, the primary emphasis will always be the jurors' role as deciders of facts.

As a result, during their closing argument, a lawyer must ensure jury knows what the facts are and what they mean. Typically, the plaintiff's lawyer will try to simplify the facts to assist the jury, a task which is much more difficult than it sounds as even the most routine case may have several doctors, experts, and complex medical terminology. On the other hand, the defense lawyer will usually will try to complicate the facts and confuse the jury to rule in the defense's favor.

It is a difficult but important task for the plaintiff's lawyer to unite the different elements into a coherent whole, casting the facts in terms of right versus wrong and acceptable conduct versus unacceptable conduct. A closing argument should relate to the jury and be sincere. Too often, lawyers go beyond what was shown in trial, making personal attacks against the other side (both the lawyer and his client), and even try to appeal to prejudices. A jury must see past these desperate attempts to influence them and focus solely on the facts of the case.

In addition to summing up the facts for the jury, during a closing argument a lawyer may quote a witness or refer to exhibits or other evidence which was shown to the jury during trial. Quotations and references to prior evidence may help the jury understand difficult facts.

During the closing argument, money will also be discussed. However, the jury has heard about or seen bills from medical providers, perhaps the plaintiff's income statements, health insurance payments and even automobile medical payments during the course of the trial. However, during the closing argument, the plaintiff's lawyer will put those numbers into context, asking for his or her client to have his or her past and future medical expenses paid. Naturally, it seems fair that when a plaintiff has been injured to have their medical bills paid for. However, there is often great divergence between the plaintiff and defendant when they argue about non-economic damages such as emotional distress. While it would be effective, the plaintiff's lawyer cannot ask a juror to put himself or herself in the plaintiff's shoes. Rather, the plaintiff's lawyer must relay what the plaintiff has undergone since being injured. Perhaps the jury will hear stories about how, for example, the plaintiff cannot lift her grandchild anymore or throw a baseball with his son to show the plaintiff's emotional distress. Naturally, the defense attorney will disagree as to what the injured plaintiff is entitled to. Rather, they may argue that the plaintiff is entitled to little, if any money, or just the cost of medical bills. If the defense is forced to admit that the plaintiff is entitled to non-economic damages (which inevitably mean that the plaintiff is seriously injured) then, of course, he will argue that the amount should be minimal. While in all likelihood insurance is paying the defendant's lawyer and the verdict, the defense attorney may portray his client to gain the jury's sympathy. Invariably, he will downplay the extent of the plaintiff's injuries and suffering.

As you can see, there is a lot of information that both lawyers may put into a closing argument. The lawyers must summarize witness testimony, expert testimony, medical diagnoses and jargon, all the while weaving pertinent facts into the closing argument and relaying what damages the injured plaintiff is entitled to without confusing the jury. Like the role of the jury, this is no small task.

The Verdict

After the judge instructs the jury on the applicable law, the jury returns to the jury room, elects a foreperson to moderate discussions, discusses the evidence, and votes on a verdict regarding the issues in the case. In Florida, the jury's verdict must be unanimous. If all six jurors cannot agree, the judge will declare a mistrial and the case will be tried before another jury.

If the decision is unanimous, however, a jury verdict form is completed. This form may ask whether the defendant was negligent, whether the plaintiff was negligent, whether the plaintiff suffered a permanent injury, whether the plaintiff is entitled to recover for money he or she has spent on past medical bills, prescriptions, mileage, etc. resulting from the accident, and so on.

Because the State of Florida uses the concept of comparative fault, if the jury determines that the plaintiff is partially at fault, they must divide the fault between the plaintiff and the defendant. Although comparative fault is only found in a minority of cases, it is important the jury award the full amount of the Plaintiff's damages even if they find the plaintiff is partially at fault. The judge is later required by law to reduce the jury's verdict for the plaintiff by the percentage at fault the jury finds the plaintiff may have been. For example, if the jury finds that the plaintiff suffered \$100,000 in damages and was 50% at fault in the accident, the judge is required to enter judgment for the plaintiff in the amount of \$50,000. Thus, the plaintiff is doubly injured by a jury making its own reduction in the amount of the plaintiff's damages if the jury thinks the plaintiff was partially at fault in causing the accident.

As the law in Florida does not define "permanent injury," the jury decides if the loss of range of motion, the ability to lift as much, move as well, etc. after the accident is a permanent injury. Sometimes juries simply ask themselves whether the plaintiff going to be as healthy the rest of his or her life after the accident as he or she was prior to the accident.

Again, it is important for the jury to award the Plaintiff the full amount of the loss as the No Fault Law requires the Judge to deduct from the verdict any bills paid by PIP. Also group health insurance, Medicare, Medicaid, and some automobile insurance policies require that the injured person's own insurer gets repaid from the verdict. In cases such as these, the plaintiff is simply a bill collector for their insurance company with regard to insurance subrogation claims.

An injured person who has lost time from work, lost a job, a promotion, or other lost wages or earning capacity because of the negligence of another driver should be awarded the amount of wages lost in the past and wages that will be lost in the future.

If the plaintiff has a permanent injury, the jury considers the amount of money that compensates an injured person for his or her pain, suffering, inconvenience, mental anguish, and loss of

enjoyment of life in the past and in the future. There is no set amount for such damages as there would be for lost wages and medical bills in the past and in the future. Based on the evidence, the jury should agree on an amount of money that is fair and equals the amount of pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life that the injured person has suffered and will suffer in the future.

After answering all the questions on the verdict form, the foreman signs the form and notifies the judge's bailiff that the jury has reached a verdict. The judge will ask the jury to return to the courtroom where the verdict will be read in open court. The jury may be polled, or asked individually, if the verdict is that particular juror's verdict.

To conclude, we hope this has helped you understand the Jury Trial system that you can expect in Florida, and has shown you the true importance of the Jury in Florida trials. While many believe that a Judge is the person charged with finding a just result for litigants in a lawsuit, that responsibility truly falls on the everyday Juror – people just like you. This is the true beauty of the jury system we use in Florida. Every person bringing a legal claim has the right to have their claim decided by their peers. This system ensures that the weak will never suffer at the hands of the powerful, and a few will never control the legal outcome for many. While not every country relies on a system of jury trials, this has been a cornerstone of the American democracy since our nation's birth, and continues to serve a crucially important role in our democracy today.

This article is the distributed by The Law Office of Keith R. Taylor, P.A. for use as an educational tool only. This article should not be recreated or distributed for any other reason without the express permission of the distributor.