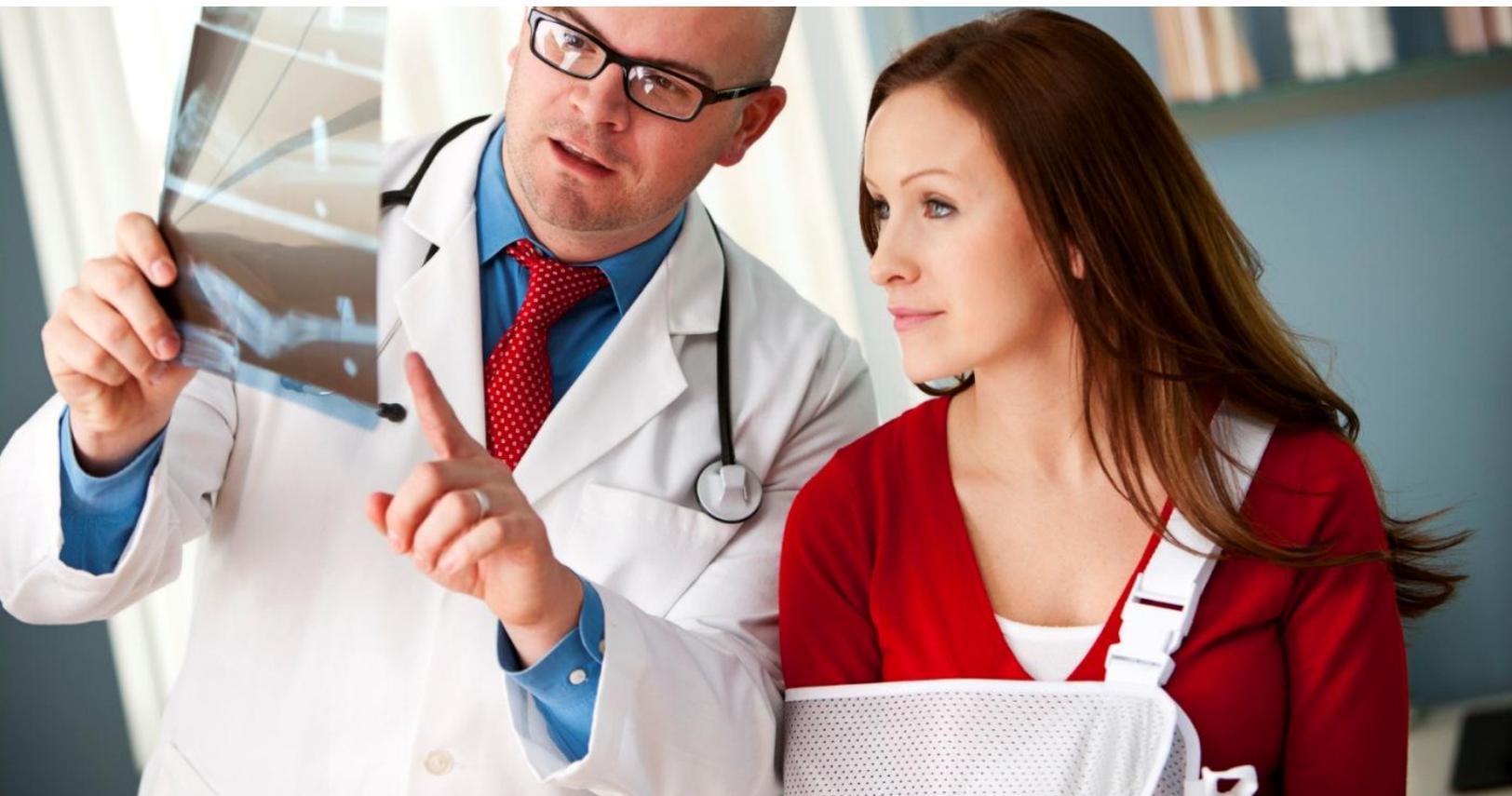


# UNDERSTANDING COMPENSATION IN A SAN DIEGO PERSONAL INJURY LAWSUIT

*If You Have Been Injured in an Accident, It May Be Beneficial to Have a Better Understanding of What Type of Compensation Might Be Available to You and the Factors that are Considered When Determining the Value of a San Diego Personal Injury Accident Case*





A personal injury accident can cause serious, even fatal injuries to the victim. In many cases, the victim suffers both physical and emotional injuries and may face financial hardship if the injuries interfere with the ability to work. Though we use the term “personal injury accident”, the truth is that most of the time these “accidents” are not truly accidents but are caused in whole, or in part, by the wrongful or negligent conduct of another party. When that is the case, a victim may be entitled to compensation for the injuries sustained in the “accident”. Understandably, victims often want to know what type of compensation they are entitled to and how much compensation they will receive. Because each accident occurs under a unique set of facts and circumstances the only way to know

with certainty what your case is worth is to consult with an experienced San Diego personal injury attorney. If you have been injured in an accident, however, it may be beneficial to have a better understanding of what type of compensation might be available to you and the factors that are considered when determining the value of a San Diego personal injury accident case.

## **Am I the Victim of a San Diego Personal Injury Accident?**

“Torts” is the legal name for the area of the law that allows victims to recover for personal injuries and/or property damage. When the term “personal injury accident” is used it refers to an injury accident that is handled by the law of torts. Tort law covers a wide variety of situations in which an injury has occurred, including, but not limited to:

- **Motor vehicle accidents**
- **Wrongful death**
- **Dog bites**
- **Swimming pool accidents**
- **Premises liability injuries**
- **Slip and fall cases**
- **Medical malpractice**
- **Industrial disease**
- **Workplace accidents (if third party liability applies)**

Always check with an attorney if you are injured in any type of accident to ensure that you do not miss out on compensation to which you are legally entitled.

- **Product liability**
- **Nursing home accidents**

A personal injury accident can happen under a virtually endless number of circumstances. Sometimes



it is clear that you have been the victim of a compensable accident; however, victims are often unaware that the “accident” that caused their injuries qualifies as a personal injury accident.

Unfortunately this means that victims are also frequently unaware they are entitled to compensation for their injuries. Always check with an attorney if you are injured in any type of accident to ensure that you do not miss out on compensation to which you are legally entitled.

## **How Do I Know If Another Party Is Legally Responsible for My Injuries?**

When a party’s wrongful or negligent conduct was the cause, or a contributing factor, in the “accident” that caused your injuries the law requires the at-fault party to compensate you for your injuries. From a legal standpoint, a party can be found to be at fault because of intentional or negligent conduct or because the law imposes strict liability. A brief explanation of the three is helpful:



care to guests of the hotel as does a motorist operating a vehicle owe a duty of care to others on the roadway. If the hotel owner failed to clean up a liquid spill in a hallway and a guest slipped and fell, that might be considered a breach of that duty. Likewise, a motorist who was texting and driving and caused a collision would probably be found to have breached the duty of care.

## California's Comparative Negligence System

Sometimes, a victim's conduct was also a contributing factor in the accident. Though there are accidents wherein one party was 100 percent at fault in the accident, it is not uncommon for the victim's actions to have contributed, in some way, to the accident and/or injuries. For example, a texting driver may clearly have been at fault in an accident; however, if the victim was also driving over the speed limit, or was not wearing a seat belt, the victim's conduct may also have contributed to the severity of the injuries sustained. There are two ways in which this issue can be handled by the law – contributory and comparative negligence systems. In the first, contributory negligence, *a victim is not entitled to recover any compensation if the victim contributed **at all** to the accident.* In other words, if your contribution to the accident was as little as one percent, you cannot recover anything for your injuries. Fortunately, only five jurisdictions within the United States use contributory negligence systems. California is not one of them.

Comparative negligence looks at the degree to which each party contributed to the accident and apportions the fault, and the compensation, accordingly. For example, if you were speeding and did not have your seat belt on you might be 20 percent at fault in the accident. If



your damages totaled \$20,000 you would only be entitled to collect \$16,000 because you are responsible for 20 percent of the damages yourself. California uses a true comparative fault system, meaning that a victim, in theory, is entitled

to compensation no matter how much the victim contributed to the accident. In other words, if you were 80 percent at fault in the accident you are still legally eligible for compensation for 20 percent of your injuries.

## **Economic, Non-Economic and Punitive Damages**

As the victim of a San Diego personal injury accident you could be entitled to economic and non-economic damages. Both economic and non-economic damages are intended to compensate the victim for injuries suffered, not punish the defendant for his or her actions. Economic damages are typically easy to identify and relatively simple to calculate. California Civil Code Section 1431.2(b)(1) defines economic damages as:

“objectively verifiable monetary losses including medical expenses, loss of earnings, burial costs, loss of use of property, costs of repair or replacement, costs of obtaining substitute domestic services, loss of employment and loss of business or employment opportunities.”

As a general rule, you will have a receipt, statement, or bill for items that qualify as economic damages. Non-economic damages, on the other hand, are more difficult to calculate because they are more subjective in nature. People often use the term “pain and suffering” when referring to non-economic damages, though a victim may recover for more than just pain and suffering. California Civil Code Section 1431.2(b)(2) defines non-economic damages as:

“subjective, non-monetary losses including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation.”

Determining the likely value of your non-economic damages is not easy. Despite what many people believe, there is no “magic formula” for computing the value of a personal injury accident award or settlement. Various factors may go into determining the non-economic portion of an award, such as:

- Prognosis
- Age and overall health of victim prior to accident

- Number, type and severity of injuries
- Career or professional consequences of the injuries
- Impact of the injuries on family relationships

Both economic and non-economic damages are considered compensatory damages. Unlike compensatory damages, punitive damages are not intended to compensate the victim but are intended to punish the defendant. For this reason, punitive damages are not routinely awarded to a personal injury accident victim. If, however, the victim can show that the defendant has been guilty of oppression, fraud, or malice, punitive damages may be awarded to a victim. Because punitive damages are awarded as a punishment for particularly egregious conduct, the amount of a punitive damages award can be high; however, a victim should not expect a punitive damages award unless an experienced San Diego personal injury attorney has evaluated the case and determined that punitive damages are warranted.

If you have suffered injuries in what you believe may be a personal injury accident it is important to consult with an experienced San Diego personal injury attorney as soon as possible. Although the law allows a victim to recover for a personal injury accident, the law also limits the time within which a victim has to pursue compensation.

## References

Claims Journal, [Understanding Comparative Fault, Contributory Negligence, and Joint and Several Liability](#)

California Codes, [Civil Section 3294-3296](#)

California Codes, [Civil Section 1430-1432](#)

## About Martinez & Schill LLP



Martinez & Schill LLP is a full service civil law firm located in San Diego and serving Southern California.

Our accomplished team of lawyers includes founders Jennifer Martinez and Michelle Schill and Of Counsel attorney, Kent Thaeler. Together, we provide our clients with more than 35 years of legal experience. Through skillful negotiation, mediation, and tenacious litigation,

we are committed to obtaining the best results for our clients.

When you hire Martinez & Schill LLP you are hiring a team of lawyers assigned to your case that are always available to you. We believe it is important to build a personal relationship with our clients so we may act as a better advocate on behalf of you or your company.

The results we have obtained for clients are the reason why clients have continually chosen our firm to represent them in various simple and complex legal matters and referred us to other friends, family and colleagues.

Our firm has provided individuals, business owners and companies representation in matters involving:

- General Personal Injury Litigation
- Products Liability
- Industrial Accidents
- Severe Personal Injury
- Wrongful Death
- Liquor Licensing
- Conditional and Neighborhood Use Permits
- Business Formation

Martinez & Schill LLP is conveniently located in downtown San Diego, California. Our San Diego office is centrally located in the Koll Center downtown at Broadway and Columbia, near both the San Diego Superior Court and Federal courthouses. Please contact our firm at 619-512-5995 for more detailed directions.