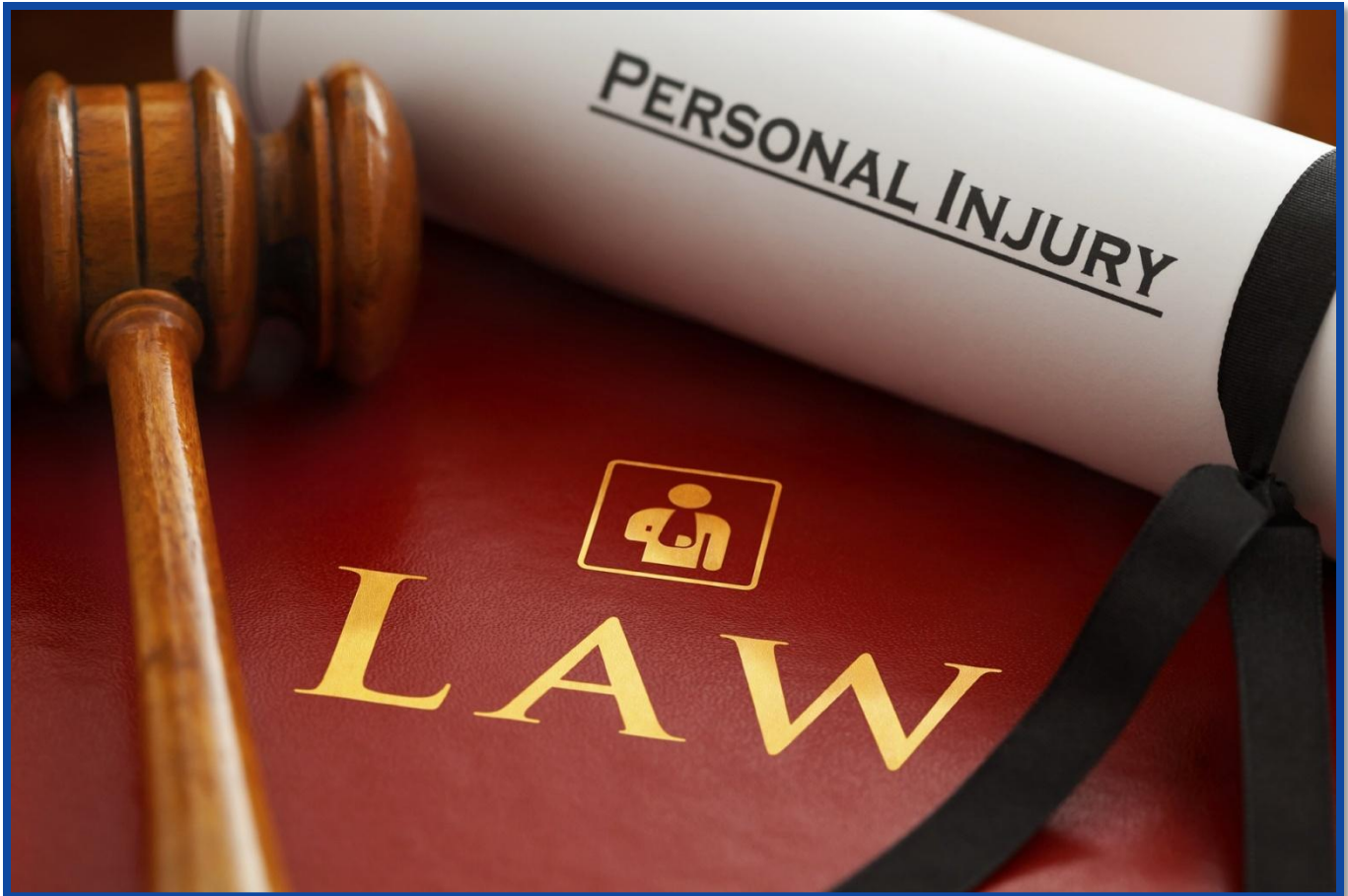


# SETTLING A PERSONAL INJURY CLAIM IN ARKANSAS

*“Although a jury verdict in a civil lawsuit would likely result in a larger recovery, jury verdicts are never guaranteed. Indeed, most personal injury cases settle before trial.”*



Wesley A. Cottrell



If you have been injured as a result of someone else's negligence, there are basically two ways to receive compensation for that injury. You can either settle the case out of court or obtain a judgment from the court. Although a jury verdict in a civil lawsuit would likely result in a larger recovery, jury verdicts are never guaranteed. Indeed, most personal injury cases settle before trial.

### **When does settlement usually occur?**

Generally speaking, settlement will occur when either the insurance carrier or the defendant makes an offer of payment, before liability has been proven. The



offer of settlement can occur before the lawsuit is filed. It can also be made after the lawsuit has been filed, but before the case goes to trial. A settlement can occur virtually at any point before a jury verdict, or before the court enters an order dismissing the

case. In some cases, a settlement can be reached while the jury is deliberating.

### **Companies often want to keep the cases confidential**

Keeping a case out of the public eye can be especially important for larger companies that have a reputation to protect. For example, if a company has produced a defective product that has only injured a few people, the company will likely opt for a quiet out-of-court settlement. That way they can avoid the inevitable publicity of a trial. When a settlement agreement is drafted, the company will insist on terms that include a requirement of confidentiality.

### **What happens once a settlement is reached?**

If you reach a settlement at any point, part of the terms of the settlement will be that you give up your right to pursue all potential claims against that defendant, arising out of the accident or incident. This is accomplished by signing a full release with regard to liability. For instance, in a car accident case, the auto insurance carrier might offer you \$25,000 to settle the case. In order to actually

receive that \$25,000, you must agree to either not sue that defendant for the car accident, or to dismiss any lawsuit that is already pending regarding the car accident.

## Settling with an insurance company



The majority of personal injury cases involve some form of insurance coverage. In many cases, the insurance company will offer a settlement early on, after the claim has been filed. The purpose of insurance is to pay out in situations where a legal

claim could be made. Insurance companies have the money to pay out to resolve claims. In fact, they expect to pay out on many claims. Settling is often preferred when insurance companies are involved because, by settling, they can control the costs, including legal fees, and they don't have to deal with a jury.

## Why most personal injury cases settle

You may be wondering why cases most often settle. Settlement provides defendants a way to control the financial risk they face, and to avoid legal costs

which can be substantial. Settlement also allows defendants to keep the legal issues raised in the lawsuit out of the public eye. For businesses, that can be very important. Settlement can also be a way to avoid the time involved in a protracted trial. Trials can last for months, if not years; even longer if there is an appeal. For a plaintiff who has been injured and likely needs income, an early settlement would be very appealing. No matter how good your case may seem, whenever the case is filed in court there is always a chance that the plaintiff can lose the case and receive no compensation at all.

### **When should you accept a small settlement?**

Of course, the goal do settlement is to negotiate for the best possible amount of compensation. However, there may be times when it makes more sense to accept a settlement that is much less than a potential recovery in court. For example, if your chance of proving the elements of your claim in court seems very uncertain, taking a settlement might be the best strategy. If you injuries or damages are truly insignificant, then a low settlement might actually be appropriate. In some cases, when insurance coverage is involved and the policy limits are low, that may be all that can be recovery. Settlement for policy limits might be your best or only chance of recovery. Even if you were able to win a larger verdict in court, you might not be able to collect.

If you have questions regarding settlement, or any other personal injury issues, call the Cottrell Law Office at (800) 364-8305.

## About the Author



### Wesley A. Cottrell

Wesley A. Cottrell has been successfully practicing law for over 29 years. Born in Springdale, Arkansas and raised in Baxter Springs, Kansas, Wes is licensed to practice law in Arkansas, Kansas, Missouri, and Oklahoma.

Wes earned his B.A. from Pittsburg State University in 1981 and his J.D. from the Washburn University School of Law in Topeka, Kansas in 1985. He was admitted to practice law in Kansas in 1986, in Missouri in 1987, in Arkansas in 1989, and Oklahoma in 1993.

He is licensed to practice law in the United States District Court for the District of Kansas, eastern Arkansas, western Arkansas, and western Missouri. He was Deputy Prosecuting Attorney in Crawford County, Kansas from 1987-1989.

Wes lives in Rogers, Arkansas with his wife, Shelly, and their two daughters, Kennedy and Gabby. He is active in his community, and is regularly asked to teach courses to other attorney on personal injury and workers' compensation litigation.

#### Memberships and Associations:

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Arkansas Bar Association  
The Missouri Bar  
Kansas Bar Association  
Oklahoma Bar Association  
Arkansas Trial Lawyers Association  
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