## ABOUT YOUR LAWSUIT

### Who Will Prepare Your Lawsuit

Your suit will be the primary responsibility of a trial team made up of one or more lawyers, a legal secretary, and the input of the firm's skilled paralegals.

**Andrew S. Muth** has practiced personal injury law in Washtenaw County since 1975 when he was first licensed as a lawyer. An honors graduate of the University of Michigan law school, he specializes in the firm's medical malpractice, products liability and automobile negligence cases. He is a well respected trial lawyer, and has been invited by the Institute of Continuing Legal Education, the Michigan Trial Lawyers Association, the Ohio Academy of Trial Lawyers, The America Board of Trial Advocates, and the Washtenaw County Bar Association to teach other lawyers techniques and strategies that have proven successful over the years.

He is one of seventy-five lawyers in Michigan who have been inducted into membership in the American Board of Trial Advocates and has been honored as one of the "Best Lawyers in America" continuously since 2000; was named a Michigan " Super Lawyer" since 2007, and has been inducted into the International Society of Baristers.

Choosing a limited number of cases allows him to devote his and the firm's resources fully to those cases -- the best way of assuring a fair result for the client.

**Kim Pinter** is Andrew Muth's assistant. She has 22 years of legal

experience. She is thoroughly familiar with court procedures. She will be able to answer many of the questions that you may have as the lawsuit proceeds.

**Hilda J. Ciaramitaro** is the probate specialist and office manager. If your case involves probate questions, you will work closely with Hilda, filling out the necessary papers

Preliminary Investigation

Before we file any lawsuit, we first do a thorough investigation. We do this for several reasons: first to collect as much information and the recollection of as many witnesses of the event as we can as quickly as we can. As time goes on, evidence may be lost or witness' recollections dulled by the passage of time. We also try to conduct our investigation before the insurance company or the defense lawyers do their investigation. The insurance company will often subtly, or sometimes very directly, try to get witnesses to change their testimony to favor the defendant.

We collect the following as part of our preliminary investigation:

1. Police report including all follow-up interview material if available;
2. Photographs of the scene, cars or people;
3. Witness statements from eye witnesses;
4. Hospital records including emergency rooms;
5. Prior doctors records;
6. Employment records documenting time off from work.
7. Official weather report.

We do thorough legal research to find any statutes or ordinances which may be relevant to the case, and any prior cases decided by the appellate

courts of this state. We utilize the law library we have in the building, computer assisted research through the Lexis Network, and if necessary the University of Michigan law library.

We then collect any medical literature which helps us understand the issues, the treatment that you may have had and the prognosis for your full recovery.

At the conclusion of this process, we will determine whether or not a lawsuit should be filed. If so, we will file it, advise you of that fact and begin with the more formal part of the lawsuit.

As we investigate your case and litigate it after a suit is filed, we will try to keep you informed about your case through regular letters. As the case proceeds, more of the "blanks" on these letters will get filled in. If you ever have questions, please call us.

Starting Your Lawsuit

A "**complaint**" the way in which a lawsuit must be started. This legal document names the defendant, specifies what the defendant did wrong, and asks for damages. When the complaint is filed, there is no specific sum of money which is sued for. Since a lawsuit cannot be filed in the Circuit Court unless at least $25,000 is in dispute, all of our lawsuits are filed for "an amount in excess of Twenty-Five Thousand Dollars that the plaintiff is found to be entitled to." We do not name an amount because before a case may come to trial, unfortunate adverse consequences may make the amount originally sued

for too small. Rather than have to ask the judge to amend our complaint asking for more money, we do not specify a figure in the first place.

Important Terms Used In Your Complaint

Your complaint will have various legal terms which we feel you should know about. In numbered paragraphs, it describes who you are, who the defendant is and why the defendant was at fault. Under Michigan's law "**negligence**" is the basis upon which you can sue, whether the claim is for an automobile accident, medical malpractice, or against the maker of a defective product. Negligence means that the defendant has done something which he should not have done, or failed to do something which he should have done if he had used reasonable care. Failure to use reasonable care is called negligence.

If the defendant is a governmental entity or employee, the law requires that we prove an extra degree of negligence known as "**gross negligence**" or "**recklessness**".

In addition to proving that the defendant is negligent, we must prove that his negligence was the "**proximate cause**" of your injuries. This means that negligence must have caused your injury. The defendant's negligence does not have to be the only cause or the last cause, but must be one of the direct causes of the injury.

An interference in the normal marital relationship is known as "**consortium**". Persons who have been injured uniformly report that in some

fashion, their spouses are affected as well. One spouse may be obliged to cut the grass or shovel the snow, or take out the garbage because the other spouse is unable to. Perhaps because of injuries, one spouse is irritable from the pain and medical treatment required. Sexual relations are often curtailed or negatively affected by physical injuries. Therefore, we usually file a "**consortium claim**" in the complaint for spouses.

Damages Requested In Your Complaint

We ask for all damages which you are entitled to under Michigan law, including the following categories of damages:

1. Lost wages and lost future earning capacity;
2. The cost of medical expenses, if allowed;
3. Noneconomic damages, principally pain, suffering and aggravation of pre-existing injuries which are caused by the injury.

With the complaint we will usually ask for a jury trial, and pay a separate fee for that.

Serving The Defendant

After we file your complaint, the Court gives us a stamped copy of the complaint and as many "**summons**" as there are defendants. Each "summons" is a document which notifies the defendant that he/she has been sued and informs the defendant of the court and case number. In some cases we send the summons and complaint to the defendant by certified mail. Sometimes, it is necessary to have our investigator personally locate each defendant and hand "serve" the summons and a copy of the complaint on the defendants by

personally giving it to them. Once they have been "served," by mail or in person, they then have 21 days in which to file an "**answer**" to the complaint. This means they must file with the Court a document in which they either admit or deny each numbered paragraph of the complaint. This is done by the defense attorney hired by the insurance company, or if there is no insurance, by the defendant personally.

Discovery

Once the answer is filed with the Court, the "**discovery**" phase of the lawsuit begins. Each side seeks to learn as much as it can about what the other side knows. This is principally accomplished through several discovery devices.

Depositions

One of the devices is a "**deposition**". A deposition is a time when a witness, for either the plaintiff or defendant, gives testimony under oath. Instead of being done in Court, this is done in our offices before a court reporter. The witness will be sworn to tell the truth just as if he or she were in Court. A court reporter transcribes or takes down every word said by each attorney and by the witness. With some witnesses we also video tape the depositions.

The court reporter then types up the testimony into a book and sends it to the attorneys for later use. We also sometimes videotape depositions which may be used for testimony at trial if the witness is not available. This is a very

important part of the preparation of a case. When your deposition is taken, you will be prepared thoroughly for it beforehand.

Interrogatories

"**Interrogatories**" are written questions directed to the plaintiff or the defendant. Before a deposition is taken, written interrogatories are usually sent out and answered. You can be sure that you will receive a set of interrogatories to answer.

These interrogatories inquire about a great many things which seemingly have nothing to do with the lawsuit. This includes biographical data about you including your former occupations, residences, prior medical history, and any prior lawsuits.

When we receive interrogatories from the defendant for you to answer, we will send them out to you together with a letter explaining how this is to be done. You will then prepare preliminary answers and send them back to us. We will have a conference with you to go over the preliminary answers and finalize them. This will also be an opportunity for us to discuss with you the progress in the case and what we have learned.

Request To Produce Documents

A "**request to produce document**" is another discovery device. Either side may send written questions to the other side asking them to produce for inspection any written documents that they describe. These may include photographs, tax returns, medical records, or in some cases even physical

evidence such as automobiles, clothing or other evidence of the incident or injury.

Record Copy Services' Medical Authorizations

Medical records are usually required and are frequently voluminous. Because of that we sometimes use a service called "**Record Copy Service**" to request the records for us. Record Copy sends out subpoenas and then copies records, providing these copies to us or any other party in your lawsuit. The defendants must be allowed to see your records in order to defend the lawsuit. If we deny them access to your records then we can not use them to document your injuries when the case comes to trial. For this reason you will usually be asked to sign releases for "Record Copy Services."

IME

Independent Medical Exam - An "**IME**" is a doctor's exam that is conducted by an "independent doctor", that is one who is not your treating doctor, but one hired by the Defendant. He or she examines you and then gives a written opinion as to your condition. The cost is paid for by the Defendant. Your attorney along with the Defendant's attorney will receive a copy of their report. If you are required to go to an IME we will provide you with a form to fill out. In fact, we consider an IME as simply an attempt by the defense to buy favorable testimony.

Pre-Trial Conference

After a period of time, which varies from judge to judge, but averages six months to a year from the time the lawsuit is filed, most judges hold a "**pre-trial conference**". At that time, the lawyers for both sides tell the judge what the case is about and will be asked for the first time whether or not settlement has been explored or is possible. In our experience, settlement is rare at the pre-trial level, and must await "**mediation**".

Mediation

"**Mediation**" is a process designed to encourage settlements. A mediation panel is established by a special mediation service at the Court. A typical panel will include one lawyer who is a "plaintiffs'" lawyer, one who is a "defendants'" lawyer, and one who is a so-called neutral. On your behalf, we prepare a written synopsis of the case. We will include pertinent portions of deposition testimony, medical records, photographs and other exhibits. We will then tell the mediators what we think an appropriate award is.

The defense lawyers make a similar presentation. Obviously, the defense lawyers' attempts to persuade the mediators that we do not have a case or, if we do, that your injuries are not serious and very little should be awarded. After each side has made its presentation, the mediators deliberate in private and on the day of the mediation reach a decision and notify us by providing a written mediation evaluation award on the date of the mediation.

Accepting Or Rejecting The Mediation Award

Each side, both plaintiff and defendant, then has 28 days in which to accept or reject the mediation award. If we accept the mediation award, that means we are willing to accept a settlement in the amount the mediators have determined. If both sides accept the mediation award, the case is settled and the defendants send closing papers such as releases and a check to wrap the case up. If either side rejects the mediation, the case then proceeds to trial, which is usually scheduled within approximately 60 days from the mediation date.

There are sanctions which have been designed to encourage settlements. If either side rejects the mediation award, that side must receive a "more favorable result" which means a jury verdict which is 10% more favorable than the mediation award. For instance, if the mediation award is $100,000 and we as plaintiffs reject, we must get a jury verdict of $110,000 or face sanctions. Similarly, the defendants, if they reject mediation, must get a jury verdict of $90,000 or below or face sanctions.

The sanctions are that the party which rejected and did not get a "more favorable ruling" at trial must pay the other side's actual attorney fees from the time of mediation forward. For these reasons, we approach mediation very seriously and try to get the maximum award at that time so that we can accept it.

Settlement Conferences

A "**settlement conference**" is occasionally convened by the Judge, who orders the plaintiff, the defendant and their lawyers to come to court. There the judge tries to achieve settlement of the lawsuit before the case actually goes to trial. This usually takes place after mediation (providing mediation was not accepted) and before the trial.

Preparation For Trial

If your case is not settled at mediation, we will then begin final preparations for trial. This is an aspect of your lawsuit which requires your hands-on participation and input. Our preparations include you since your testimony will be very important. We will meet with you several times before the actual trial date and help you in preparing your testimony and in helping you feel more comfortable with the courtroom setting. We try to thoroughly explain how the trial will proceed, what to expect from the judge, the jury, the witnesses, and the defense attorneys. We approach trial preparation as a team made up of the attorney, his secretary, his paralegal and the client. This is usually a very intense process, almost like putting together a difficult puzzle, as we try to get all the pieces to fall into place so that we can present our best case to the jury. This includes preparing the testimony and subpoenaing to court all those witnesses we will present such as eyewitnesses, expert witnesses, doctors, nurses, accident reconstructionists, police officers, and anyone else whom we feel will add credible and supportive testimony to help prove your case. Often we will also call to the witness stand your friends and

family members who can testify as to how the incident for which you are bringing a lawsuit has affected your daily life.

Our trial preparation not only involves preparing our own witnesses, but also preparing for cross-examination of the defendants' witnesses who will be called to refute any testimony offered on your behalf.

In addition to preparing the testimony of our witnesses, we also put together exhibits such as the enlargements (or "blowups" as we refer to them) that you may have seen at the office, or specialized exhibits prepared by graphic arts companies. These exhibits are used to assist a jury in interpreting and visualizing how an accident or malpractice occurred, to help them understand certain medical terminology and anatomy, or to simply be able to view an exhibit in larger print. Generally with a personal injury trial, we will offer a blowup of the accident site, photographs, and any accident reconstruction diagrams. In the case of a medical malpractice trial, we will blowup a textbook depiction of the part of the anatomy involved in the malpractice as well as any portion of the medical records which we feel are pertinent to proving our claim.

After a jury verdict, either side may make an appeal to the Court of Appeals and, if unsatisfied there, may even ask the Michigan Supreme Court to hear the case, although this is very rare.

Prospects of Settlement, Jury Trial and Appeals

Ninety percent of the lawsuits which we file are settled before the trial. This usually takes between one and two years. We will try to update you periodically on the progress of your case. However, if you ever have questions, please call.

Although as lawyers we cannot and do not try to make the facts, we can and do make the most compelling presentation of those facts that we can.

We look forward to getting to know you as your case proceeds, and working with you to win your case.

**ANDREW S. MUTH**

## MEDICAL MALPRACTICE

Michigan's law on medical malpractice is contained in cases which have been decided by judges for over a hundred years and increasingly by statutes which have been passed by the Michigan legislature. Although this summary is not intended to describe everything which is necessary for a successful malpractice case, it will serve as a good basic outline so you will understand the process which we have to follow.

We have to prove three things in order to succeed in a malpractice case. If any one of the three is missing, no matter how strong the other two are, the case is not viable. Those three things are as follows:

1. Violation of the standard of care. Every physician and hospital has to meet an expected standard of care in taking care of a patient. Sometimes these standards are written down, and adopted by organizations of physicians or hospitals. Examples are the requirements of the Joint Commission on Accreditation of Hospitals, or certain standards adopted by the American College of Obstetricians and Gynecologists (ACOG). More often, however, the standard of care exists as a consensus of thought among good physicians. Therefore, a physician of the same training and specialty as the potential defendant physician must testify and establish what the standard of care is. Under Michigan law, the standard of care is defined as what a "physician of ordinary training and experience would or would not do under the same circumstances". The expert witness not only must establish what the standard of care is, but must testify that the defendant violated the standard of care.

Physicians that we ask to review cases and give us their opinions are of the highest caliber. They are typically on staff of one or more of the nations leading medical

schools and teaching hospitals.

2. Causation. We must prove that as a result of the violation of the standard of care, the patient was caused to be worse off than he or she would have otherwise been. Often, this is as difficult as establishing a violation of the standard of care. For instance, sometimes delays in diagnosis of cancer are extremely important and diminish a patient's chance of cure. Other times, however, the delay in diagnosis does not meaningfully affect the treatment, prognosis or ultimate course of a cancer patient. In order to prove causation, we must rely on experts to make these distinctions.

3. Damages. The litigation of a medical malpractice case is expensive, because the physicians which we employ are well qualified, busy and charge us at rates from $500 to $750 an hour for their time. Therefore, in a typical malpractice case, we spend from $50,000 to $100,000 in expenses to properly prepare a case. Because of that, if the damages to the potential client are not significant, a case is simply not economically viable.

To investigate a case, we first obtain the medical records and review them carefully. They are tabulated, organized and summarized in our office. We collect articles and consult chapters from the medical textbooks in our medical library which describe the injury or disease, the standard of care and the likely consequences of a violation of the standard of care. The attorney assigned to the case then determines whether the case is potentially meritorious. If it is, expert witnesses are selected to review the case and we forward the medical records to them.

If the expert believes that there has been a violation in the standard of care which has caused damages to the patient and is willing to testify, we send a Notice of Claim to