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When does an accident constitute a lawsuit?
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Columnist

Q: A couple of Incidents happened during the last year
that left me wondering if I made the right "legal" deci-
sions in response to each. One involved an incident in
which my 17-year-old daughter was injured when she fell through some faulty steps at a friend's house, and the other was when I found myself suffering from injuries resulting from a minor auto accident.
I did not speak to an attorney following each Incident Did I make a mistake? Do you think I had grounds for a lawsuit? Each of these incidents occurred within the past 18 months.
A: You've certainly had your share of accidents in the family recently. Aside from that, you shouldn't feel too embarrassed about your decisions—a great many people don't think they have an actionable claim at law when something like this happens, and don't consult an attor-ney At any rate, before trying to answer your question as to whether you have an actionable lawsuit in either of the incidents you describe, we need to cover a few basics. First, as to whether you're too late to take action for either of these accidents, the answer is no, you're not Generally speaking, Massachusetts law provides a three-year statute of limitations on commencing (filing) a law-suit for personal injuries. The three-year period applies
' from the date of the accident Therefore, as of the pre-sent, you're not barred from taking action in this matter. Which brings me to my second point Anyone can file a lawsuit; whether you win or not is another story This
. issue will turn on the facts of the case, the evidence and 'the governing law in Massachusetts. With the limited facts you've given me, I'd need to know much more before I could assess your chances of a successful lawsuit in either of the above incidents, and I would be glad to speak with you. However, generally speaking, for a plaintiff to receive either a jury award or pretrial settlement, you must have established a dual combination of damages and liability
•That is, you must first prove that you have suffered or
. incurred some type of compensable damages—econom-ic or non-economic — and you must also prove or estab-lish liability on the part of the defendant. Both must be, present in order for a plaintiff to be awarded damages in' Massachusetts. In other words, you may be able to estab-lish you've suffered some type of damages, but what if you cannot establish that the defendant is liable, or legal-ly responsible, for your injuries? Suppose you're the party that's found to be more at fault?

Then in that case, as a plaintiff suing for personal injuries, you cannot recover. This illustrates the prevail-ing legal rule in Massachusetts, known as the doctrine of comparative negligence: Unless a plaintiff can demon-strate that he/she was not more than 50 percent at fault (even if the plaintiff is found to be only 51 percent at fault), then the plaintiff cannot recover. The issue of lia-bility will turn on the facts and the evidence, as decided by a judge or jury.
Alternatively, suppose that as plaintiff you can demon-strate that it was the defendant's negligence that caused the accident, not yours, but you can't establish any com-pensable damages (you didn't suffer any compensable Injuries). Then in that case, you're not likely to recover anything, and there's really no purpose to the suit. So, you can see, to successfully prevail as a plaintiff for per-sonal injuries, you must establish both damages and lia-bility on the part of the defendant you're suing
There is a third element to a successful lawsuit by a plaintiff, and this is coverage, or recovery. This refers to the financial means to pay the award or settlement, and this most always comes from a policy of liability cover-age held by the defendant—whether homeowner's insur-ance or auto insurance. (Not only would the defendant's

liability insurer defend the case on his behalf, they would also pay any jury verdict or settlement up to the liability policy limits.) In the event a defendant had no liability Insurance coverage available, then as plaintiff you would have to begin proceedings to attach and liquidate what-ever assets you could locate in the defendant's name, in order to pay the judgment or settlement
To sue in the case of an auto accident, you must first

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incur damages in the form of medical expenses to treat injuries which exceed $2,000, or suffer some type of per-manent physical injury such as a broken bone or perma-nent scarring. If you have not suffered these or similarly defined physical Injuries, and if your level of medical expenses does not reach $2,000, then as a plaintiff you cannot file suit. This mechanism'is known as a "tort threshold" and is designed to weed out the smaller cases from the court system. In such "small" cases, the Injured parties' insurance company will pay for lost wages and/or medical expenses up to $8,000. If and when med-

ical bills exceed the $2,000 threshold, then you are enti-tled to file suit and seek damages.
As to how much money or damages you may be award-ed, in theory the answer is that they are unlimited. In practice, damages or settlements, depending on the evl;

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dence and liability, tend to be more than fair and reason-able. Also, a plaintuT is limited, in practice, to collecting only up to the limits on the liability policy the defendant is carrying Amounts awarded or agreed upon in excess of any liability policies would have to be reached through a separate attachment and liquidation process. In the vast majority of cases, this is not necessary ...;.., As to attorney's fees, most all attorneys; including myself, accept such cases on a "contingency fee" basis, which means that the attorney will receive a customary and standard fee or one-third (33.3 percent) of any jury verdict or insurance settlement, plus reasonable expens-

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