



New York Personal Injury

What to expect when you are injured in a New York accident!

An eBook by Stuart DiMartini



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Contents

What to expect when you are injured in a New York Accident	3
A personal injury lawyer should not only be available to assist you after an accident, but should be there for you to discuss your options before an accident ever takes place.	3
Pre-Accident Options	4
Protect yourself.....	4
Review your insurance policies.....	4
What to do in case of an accident.....	4
Follow the advice of medical professionals.....	4
Other things you can do.....	4
Consult with an attorney.....	5
Do I have a case?	5
Fault.....	6
Comparative Fault.....	6
Damages	6
What is my case worth?	6
Should I settle my case?	7
When should I settle?	7
Litigation Phase	8
Initiation	8
Pre-trial Discovery.....	8
Summary Judgment	9
Trial	10
Conclusion.....	10

What to expect when you are injured in a New York Accident

By *Stuart DiMartini*

Most people rarely think about what they would do if they were involved in a serious accident. They are thrown into the process suddenly and without warning. In an instant, everything has changed. They may have been hospitalized and undergone surgical procedures. They may be disabled from work. There are medical expenses and other financial hardships. Representatives from insurance carriers may be contacting them for information. There are time sensitive filing requirements to process claims for benefits. They are confronting a trying and difficult time. They have questions.



“When the accident was caused due to the negligence or carelessness of another person or company, the injured party may seek compensation against the wrongdoer in a civil claim for pain and suffering, medical expenses, lost wages, and other damages.”

It is at this time that the injured person may first turn to a plaintiff’s personal injury lawyer

for advice. An experienced attorney will conduct an immediate investigation into the cause of the accident to determine who may have been responsible for the accident. The lawyer will also assist the injured party to file for and receive all of the benefits he or she may be entitled to receive.

Depending on the type of accident, there may be various avenues available to recoup medical expenses or lost wages. For example, the injured person may be entitled to workers’ compensation, no-fault or short term disability benefits.

A personal injury lawyer should not only be available to assist you after an accident, but should be there for you to discuss your options before an accident ever takes place.

When the accident was caused due to the negligence or carelessness of another person or company, the injured party may seek compensation against the wrongdoer in a civil claim for pain and suffering, medical expenses, lost wages, and other damages.

Unfortunately, there are situations where the benefits available to compensate the accident victim are extremely limited. The owner of a motor vehicle that caused the accident may have had only the minimum liability policy limits or may have even been uninsured altogether. In such cases, it is possible that the accident victim will only receive a fraction of the damages he or she was entitled to obtain.

While no one likes to think the worst will happen, it is always prudent to “hope for the best and prepare for the worst.” A little pre-accident planning can go a long way to protect you and your family in case an accident does occur. A personal injury lawyer should not only be available to assist you after an accident, but should be there for you to discuss your options before an accident ever takes place.

Pre-Accident Options



Protect yourself

Protecting yourself and your family by having adequate insurance before an accident occurs is always a wise move. Of course, it is well understood that finances are often a concern. The more insurance coverage you purchase, obviously, the more expenses you have.

It is easy to suggest that you should purchase the maximum insurance coverage for such things as your car or life insurance. While this may be ideal, it is not always practical or even possible.

Review your insurance policies

Nevertheless, reviewing your insurance policies with your broker or consulting with a lawyer may afford you some relatively inexpensive opportunities to enhance the coverage you already have.

For example with car insurance, most people are usually concerned with their liability limits in case they are sued for an accident. Many do not realize that their automobile policy also affords them protection in case of being injured by a hit and run driver or uninsured driver. This is called uninsured motorist coverage.

In the event you or a family member that you reside with is injured by a hit and run or uninsured driver, you may make a claim for damages for pain and suffering under the provisions of your own policy.

Your motor vehicle insurance policy also contains a provision for underinsurance benefits. In the case where your injuries exceed the liability policy limits of the car that caused your injuries, you may make a claim under the underinsurance provisions of your policy for the difference.

Take these statistics: 11% of all motor vehicle accidents involve a hit and run, approximately 5% of all motor vehicles operating on New York roadways are uninsured, and pedestrians are killed by hit and run drivers 18% of the time.

11% Hit and Run

5% Uninsured

Spending some extra dollars to increase your uninsured and underinsurance motorist coverage may make a tremendous financial difference to you and your family in a time of need.

What to do in case of an accident

Follow the advice of medical professionals

The most important thing for you to do in case of an accident is to follow the advice of the emergency and medical professionals that are there to assist you. The same goes for the advice your doctors may be giving you after the initial emergency.

Other things you can do

There are times after an accident when you may be able to gather some critical evidence right at the scene of the accident, either on your own or by asking a bystander.

In these days, camera and video phones are commonplace. You may be able to take a picture, for example, of the defect that caused you to fall before the condition is altered. This can be especially true in ice and snow cases.

You may also be able to get the names and phone numbers of witnesses. Depending on what they believe to be the severity of the accident, the police do not always interview people at the scene to find out what they saw.

In the case of a motor vehicle accident, be sure to report the accident to the police as soon as possible. Unreported accidents may have adverse consequences on certain types of claims.

Seek Medical Attention

Report the Accident

Gather Information

Consult with a Lawyer

Follow the Advice of your Doctor

Update your Lawyer

If the accident occurred within a premises such as a supermarket or other type of store, be sure the manager was made aware of the accident and filled out an incident report. Many times an injured party will hobble out of a store without telling any employee that there was an accident.

Consult with an attorney

When you are hurt in a work-related accident or accident that was caused by the fault of another person or company, it is critical that you consult with an experienced New York personal injury lawyer as soon as possible.

An early investigation into the cause of the accident can make all the difference in obtaining and preserving key evidence needed to establish your claim.



There are also many time sensitive filing requirements that must be met in order to establish your rights for benefits. In order to be entitled to no-fault benefits, for example, the application must be submitted to the appropriate insurance carrier within 30 days from the date of the accident.

There may also be notice of claim requirements that can be as short as 90 days from the date of the accident. The failure to file a [notice of claim](#) can preclude you from ever obtaining a recovery for your injuries.

A personal injury attorney will know best what you need to do and will know how to protect your rights and assert your claim.

An attorney will also be able to protect you from the insurance companies that will try to defeat your claim for damages and deny your right to benefits.

Unfortunately, these insurance companies are not on your side in your time of need. It is their job to pay you nothing when possible or pennies on the dollar if they can get away with it.

The insurance company for the other side may also try to get a statement from you that is adverse to your interests. You should never speak to a representative from an insurance company until you have first consulted with a personal injury attorney.

Do I have a case?

It is best never to make assumptions about your accident case before you consult with an

experienced personal injury lawyer. Such an attorney will know how to evaluate your claim in terms of its merits and advise you accordingly.

There are many different types of accident cases and each carries with it its own legal requirements that must be established in order to obtain a recovery. Without getting into the particulars of many different cases, it is sufficient to know that every case has two elements: liability and damages. Each must be established in all injury claims.

Fault

Merely because someone is hurt in an accident does not mean that they are entitled to recover damages for their injuries in a civil tort claim. Liability or fault for the accident must first be established.

In order to prove a person or company was at fault for an injury-producing accident, it must be established beyond a preponderance of the evidence that the other party was negligent or careless.

Comparative Fault

It is possible for more than one party to be at fault for an accident. The injured party may also be found partially or even wholly responsible for the accident.

In New York, as long as the other party is found 1% at fault, the injured party is entitled to a recovery for damages. Of course, the amount of damages will be reduced in accordance to the percentage of fault.

For example, if a plaintiff and defendant were each found 50% negligent for the accident, the plaintiff's recovery would be reduced by 50%.

Damages

Once it has been established that another party was at fault for the accident, there are a variety of items of damages the injured person may seek. Some of these items include compensation for past and future pain and suffering, medical expenses, and lost wages.

A spouse is entitled to damages for loss of consortium that he or she would have otherwise received from the injured spouse. A parent is entitled to damages for the loss of services that a child would have otherwise provided.



When the claim involves a wrongful death, the distributees of the decedent may seek damages for the economic loss incurred by them due to the decedent's death, and/or damages for the decedent's conscious pain and suffering.

Many times it is clear at the initial consultation whether or not a case appears viable. Other times, more information will be needed before the attorney can make a reasonable determination. This can be especially true with medical malpractice matters, where medical charts need to be reviewed before a determination can be made as to whether the claim is a legal sound one.

In either case, a personal injury lawyer should conduct a full investigation into the cause of the accident, gather all of the medical records relating to your injuries, and advise you of your rights and options.

What is my case worth?

This is arguably the most common question a personal injury lawyer is asked by his or her clients and prospective clients. It is a reasonable question.

Unfortunately, personal injury law is not a science. There is no set formula. Every case is unique. There are many factors that affect what a case may be worth, and, in the end, a case is

worth what a jury or appellate court determines it is worth.

Everyone has heard of “runaway jury verdicts.” Such a term implies a negative connotation. Yet, the jury is the one that heard all of the evidence and determined what they believed the value of the case should be. Such verdicts that far exceed the perceived value of the case are very rare. When such a verdict does occur, there are appellate reviews available to verify or overturn the jury’s decision.

As a practical matter, the value of a case is determined by evaluating the injuries sustained, the permanency of the injuries, the nature and length of any disability, and the economic losses incurred. The extent of the damages will be balanced against the strength of the liability claim. The stronger the liability, the easier it is to focus on the extent of damages. The weaker the liability, the more the injured party may have to compromise in terms of being compensated for his or her damages.

Even with all of this, one of the most significant factors that determines what a case is worth is the extent of liability insurance available to compensate the accident victim. If there is no insurance or limited insurance, and no other resources available, the accident victim may have a “perfect case” yet not be able to obtain a meaningful recovery.

Should I settle my case?

When the time comes to consider whether you should settle your case, your attorney should advise you what he or she believes is in your best interest at the time. With experience, the lawyer knows what similar cases have settled for and what would be likely if the case went to trial.

Again, it must be remembered, that there is no

set standard and no guarantee what a jury would do. They will not know about any settlement offers and are always in a position of power to award nothing, the same as a settlement offer, less, or more.

In terms of accepting any settlement offer, you are the boss. You have the right to accept or reject a settlement as you see fit. Your attorney may not agree with you, and there may be a conflict of interest if you disregard your attorney’s advice. But it is your claim and you have the right to decide what is best for you.

When should I settle?

There is no right to a settlement. A settlement is an agreement between the parties. It is

known as a compromise. That means that both sides are giving up something to resolve the matter.

Generally, a compromise is arrived at to mitigate the risks either or both parties may face if the case were to proceed to a trial.

It is been estimated that 95% of all viable personal injury claims settle at some point either before trial or before the jury renders a decision.

There is good reason for this.

As the case progresses, both sides get to continually access the strengths and weaknesses of their case. The injured party does not want to receive a jury award less than what may have been offered in settlement. Likewise, the other side does not want a jury to award more than they believe is the fair value of the case. When a number is arrived at that makes sense to both sides, based on their risk-reward evaluations, the case may settle.

There is no set time when to settle a claim. Many cases settle during the claims process before a lawsuit is commenced. Others may not settle until after a jury has been picked.

As a practical matter, the value of a case is determined by evaluating the injuries sustained, the permanency of the injuries, the nature and length of any disability, and the economic losses incurred.

Lawyers have differing theories and approaches as to how to handle claims. Some prefer to start a lawsuit immediately. Others will try first to see if a compromise can be reached before litigating. Either approach may be acceptable, depending upon the particular circumstances of the case.

A settlement, however, is binding and forever. It cannot be undone. If your injuries worsen over time after a settlement has been reached, you cannot go back and ask for more. As such, it is the lawyer's obligation to evaluate the client's medical status before entering into settlement negotiations or accepting a settlement. It may not be appropriate to accept a settlement for far less than the liability policy limits when the client's prognosis is yet undetermined by his or her doctors and he or she may be facing further medical procedures.

If for whatever reason a case cannot be settled, the injured party has the right to file a lawsuit and litigate the matter. In that event, both sides will have the right to proceed to trial.

Litigation Phase

There are a variety of circumstances that make it prudent or even necessary to file a legal action. It may be because the other party does not believe they are at fault for the accident and refuses to settle the claim. It may be because you and your lawyer believe the settlement offer that was made is inadequate. Whatever the reason, you know you are about to go to court.



Initiation

In New York, a civil action is started by filing a summons. A summons is known as "process." The process must be filed within the applicable statute of limitations with the County Clerk. Usually, a verified complaint is filed along with the summons.

The complaint sets for the allegations made against the defendant(s). Once the summons and complaint is filed, the plaintiff has 120 days to serve process on the defendant(s). An extension may be granted by the court for the appropriate reasons. Once

service of process is effectuated or properly made, the defendant(s) normally has 20 days to appear in the action.

The defendant's appearance in the action is usually done by the service of a verified answer upon plaintiff's counsel. When an answer is served, this is called "joinder of issue." Once issue is joined, the questions of fact raised by the respective pleadings (complaint and answer) can be readied to be decided by a judge or jury.

Pre-trial Discovery

After issue is joined, the discovery process can begin. It is during this phase of the litigation that both sides get to inquire of the other by a variety of means to find out information about the claim that is within the others possession.

One common discovery device is called a Bill of Particulars. Generally, the plaintiff will be served with a Demand for a Bill of Particulars, which is simply a demand for answers to written questions about the nature of the claim. It will ask for such basic items as the name and address of the plaintiff to more complex legal questions about the nature and theory of liability. It will also inquire as to nature and extent of the damages sustained. The plaintiff may also serve a Demand for a Bill of Particulars as to

the affirmative defenses asserted by the defendant.

Both sides may also serve a variety of other discovery demands. They may seek, for example, certain documents that may be relevant to the case. In an injury claim, the defense will want HIPAA authorizations to obtain hospital and medical records relating to the plaintiff's care and treatment.

During this part of the discovery phase, it is the plaintiff that normally requests of the court to schedule the first court conference, called a preliminary conference. Subsequent thereto, the court will monitor the progress of the case by scheduling further compliance conferences. The purpose of these conferences is to monitor the progress of the discovery phase and to resolve any issues or disputes that may arise.



After document discovery, both parties will submit to an examination before trial (EBT). This is where the respective attorneys ask oral questions of the opposing party. Both plaintiff and defendant(s) will testify under oath. The EBTs are usually conducted at the office of one or both of the lawyers before a court reporter (stenographer).

Other witnesses may also be required by subpoena to testify at a deposition.

After the EBTs are completed, further document requests may be made to obtain records revealed by the testimony of the parties.

Summary Judgment

Once discovery is complete, the case may be certified trial ready. At the last compliance conference, the court will set a date for the plaintiff to file a Note of Issue. This document certifies that the case is trial ready and the court will then place the case onto the trial calendar.

The defendant has a limited time after the filing of the Note of Issue, at most 120 days after the filing of the Notice of Issue or shorter depending on the Judge, to file a motion for summary judgment. This is a motion to ask the court to dismiss plaintiff's complaint alleging that there are no triable issues of fact. The defendant(s) will seek to establish to the court that they are entitled to a judgment in their favor on an issue of law and that the conceded facts do not change their entitlement.

In opposition, plaintiff will have to show that there are issues of fact that require a denial of the motion. For example, in a motor vehicle case, defendant will submit a doctor's affirmation asserting that plaintiff did not sustain a serious injury as required by the Insurance Law. In opposition, plaintiff will be required to submit a doctor's affirmation showing that plaintiff did sustain a serious injury. If plaintiff raises a question of fact, the motion will be denied, as only juries and not the judges decide issues of fact. If not, plaintiff's complaint will be dismissed.

Assuming the case is not dismissed by summary judgment, it will then move up the trial calendar. During this process, the court may also schedule other conferences, such as a settlement conference or trial ready conference. If the matter is not settled, the court will set a trial date.

Trial

Once the case is called for trial, the first phase is for jury selection. Both sides will conduct a voir dire of the prospective jurors. Basically, this is an opportunity to ask the panel questions about their background and discover any prejudices that may affect them as acting as a fair arbiter of the case. Once the parties select a jury, they will be assigned to a judge for trial.



At trial, both sides will present their case. The respective parties will be expected to testify in court. Other documents may be introduced into evidence and other witnesses and doctors may also testify. It is the plaintiff's burden to establish his or her case by a preponderance of the evidence.

Once all of the evidence is submitted, the jury will be charged by the judge. This is where the judge instructs the jury on the applicable law. The law is within the sole province of the judge. The jury is the decider of facts.

In New York, a civil trial is decided by six jurors.

There are two alternates. After the jury is charged by the judge, they retire to the jury room to decide the case.

There can never be a guarantee what a jury will do when deciding a New York personal injury litigation matter.

Conclusion

The goal of our tort system is to compensate accident victims for the hardships they were caused to suffer due to the fault of another person or entity. It also is designed to act as a deterrent against future similar acts of wrongdoing. No such system is ever perfect, but ours can offer valuable benefits to injured parties in their time of need.

In order for a plaintiff's personal injury lawyer to be successful in your case, he or she requires at least three things: a strong position of liability against the tortfeasor or wrongdoer, damages or injuries – meaning, unfortunately, the more seriously you are injured the more your case is worth – and a means of obtaining financial compensation for you, either through an insurance liability policy or other financial assets of the negligent party.

There can never be a guarantee what a jury will do when deciding a New York personal injury matter.

* This guide is offered as an educational and informational tool. It is not intended, nor should it be construed as legal advice. Always consult with a lawyer before making any assumptions about the law or your particular accident claim.

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