

# NEW YORK AUTO ACCIDENT INJURY GUIDE

*What You Should Do if You  
are Ever in a Motor Vehicle Accident*

ROBERT MARANTO

*WNYInjuryLawyers.com*



ANDREWS, BERNSTEIN  
& MARANTO PLLC  
EXPERIENCED PERSONAL INJURY ATTORNEYS



## AUTO ACCIDENT CASES

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Being involved in an auto accident can be terribly frightening. You may have sustained physical injuries as well as damage to your vehicle. Dealing with the fallout of an accident can be stressful and you may be worried about how this is going to affect your life financially.

There are many negative things that can come out of being involved in an accident that can affect your daily life. Whether your car has been damaged, you need medical treatment, or you are unable to work and are losing substantial money, these all affect your ability to care for yourself and your family. By hiring an experienced attorney, not only will you receive superior legal guidance and avoid costly mistakes, you will be to minimize the negative effects of this terrible experience.

In this auto accident guide, you will learn the dos and don'ts of auto accident cases as well as gain a comprehensive understanding of the legal aspect of auto accidents. The law office of Andrews, Bernstein & Maranto, PLLC provide detailed explanations to some of the most frequently asked questions about auto accidents.

## What You Should Know About Auto Accident Cases:

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### *What Are the First Things I Should Do If I Get in An Auto Accident?*

If you ever find yourself in an auto accident, there are certain things that you must do. The first thing is to stay calm, assess the situation, make sure that neither you nor anybody else near a vehicle requires immediate medical attention. Once you have done this, assess your position in the roadway. Is your vehicle in a safe area, or is traffic speeding past you on both sides? If it is possible, take photos with your smartphone or camera of the site of the accident. If it is safe to do so, you should look to maneuver your vehicle into a safe location until the police arrive. If your car is still drivable, it is your responsibility to get yourself and your passengers to a safe location.

Once you are safe, you should call the police and request a police report. Whenever there is damage more than \$1,000 to any vehicle, or whenever anyone is injured to any extent, a report should be completed. While you are waiting for the police, you should take out any insurance and registration information, and you should retrieve information from all the other drivers who were involved in the accident. Witnesses' accounts are also crucial to collect, and if a passerby stops and asks if you are all right, ask the person if he or she saw the accident. Many times, witnesses will gladly provide their names and phone numbers, giving



their permission to be called in the future if their input is needed.

It is common for the individual who caused the accident to adjust their story after the fact, after speaking to insurance companies, after consulting an attorney, or (in the case of younger drivers) after speaking with his or her parents.

Before any external input can affect the situation, you should gather information to protect yourself.

We recommend that anyone involved in an accident should record everything that the driver behind the accident happens to say. This driver may admit fault or apologize then later deny having said anything of the sort. If the driver apologizes while other people are around, accounts from these witnesses are also helpful. Whenever a driver causes an accident and then makes comments against their interest, this action constitutes party admission.

The other issue that you should address when you make your emergency call is whether anyone involved in the accident requires medical attention.

Response by the police is important, but you must also summon emergency medical personnel. The insurance for the vehicle in which you were traveling will cover any medical treatment that you receive, including a ride in an ambulance and a visit to an ER. If you are injured, there is no need to worry that a hospital will levy a hefty bill against you; accidents such as this are all covered by no-fault insurance.

While you are safely waiting on the roadside, your responsibility is to take

photographs of any skid marks that you find, the locations of the vehicles, and the extent of the damage to both vehicles. If the vehicles are still drivable and neither one is towed away or impounded, there is a real risk that you will never see the other driver's car or truck again. You should take pictures while you are at the scene of the accident as you wait for the police to arrive.

After the police have completed their report of the accident, (once the report is approved following one to two days of processing time) you should ask for a copy of the report. If you find any errors in the report, you must bring them to the attention of the officers who arrived at the scene of the accident. To corroborate your claims, you must then provide the officers with contact information for witnesses. The presence and contributions of objective third parties can make all the difference in the world.

Local insurance companies are familiar with Andrews, Bernstein & Maranto, PLLC's team of lawyers, and they know all too well that we are willing to take all our cases to a jury trial. Unlike other attorneys, we will not accept a quick settlement simply so that we can move on to the next case. We will fight for every ounce of compensation that our clients deserve.

## *Car Accident Injury Mistakes*

Some of the most common mistakes that we see with people who are in auto accidents take place shortly after the accident. Sometimes your insurance company, or even the other insurance company, will call to get your statement. We tell our clients not to give any statements without the attorney present (either in the room or on a conference call) when an insurance company calls them. These companies will try to ask questions that are not helpful to the case and are sometimes misleading. In these instances, if they trick you into saying something, we are stuck with that recorded statement because the client gave it freely.

Other things that some people forget to do is take photos of the accident scene itself. We had one client come in with photos of the cars as they sat after the impact. That alone was critical to proving to the other driver's

insurance company that the story their insured was giving them was completely false. It allowed us to show that their insured was at fault and they needed to pay our property damage as well as (eventually) the pain and suffering bodily injury recovery.

## *Does it Matter When I Receive Medical Care for an Auto Accident?*

If you are injured in a car accident and you don't receive immediate care, that does not prevent you from making a claim for injury if you are hurt in a car crash.

A lot of people think they are going to be okay after an accident. The person might feel sore that night or in morning, but they wait for it to go away as if it were



muscle pain from working out at the gym. The pain experienced after a car accident is much different because it's brought on by a traumatic event. Most people will wait a day or even a week until they realize it's more serious than they thought. If you are experiencing pain following an auto accident, it is suggested that you do not wait for that pain to go away and seek medical attention to rule out serious injury.

## *What Doctor Should I See After a Car Accident?*

Usually in cases involving bone or joint injuries, certain orthopedic doctors will focus either on the spine, upper extremities, or lower extremities. Orthopedics is a highly focused and specialized area; these doctors dedicate their entire career and life to one area of the body.

When you come to us, we will ask you about what areas are injured, and what is bothering you. Then, we advise you on what type of specialist might be best for your injuries. Specialty offices may require a backup referral from your primary care doctor.

## *How Can a Chiropractor Help Me After an Auto Accident?*

Chiropractors can be very important with the healing of spinal injuries. Chiropractors are involved in the manipulation of the spine to remove subluxations which occur when there's trauma to the body.

In a subluxation, spinal bones lose their normal position and motion. Because of an accident or fall, they often pop out of place. When the vertebrae pop out of place it can cause localized pain and it can also cause peripheral types of pain or symptoms. Your body knows it's been injured, and it'll start to tighten up the muscles. You may start having difficulty turning your head, flexing, and extending. Once that happens, the chiropractors need to go in to straighten that out. This removes the pressure off the exiting nerve routes off the spine and aligns everything into place.

## *What are No-Fault Benefits?*

In New York State, everybody who is injured in a car accident is entitled to no-fault benefits. The innocent victim as well as the person who caused the accident. They all get the same initial bundle of benefits through no-fault including medical benefits, wages, mileage reimbursement, etc. People are only entitled to anything beyond that if they qualify as being seriously injured or have a threshold injury in New York State. There are certain, very specific, categories that you must fit into as defined by law. You and your attorney are the best ones to go over what categories you might qualify for after the records are in and the injuries have been determined.

## *The Steps in a No-Fault Claim*

The most important thing to do, as soon as you're involved in an auto accident, is file a no-fault application. It must be received by the insurance company, in writing, within 30 days from the date of the accident or they will not pay your medical bills or lost wages if you were working at the time.

They will also refuse to pay for mileage which you're entitled to for the first year after the accident, as well as prescriptions and many other benefits. It's really a shame when people come to us 35 or 40 days after their accident and tell us they haven't filed their application. At that point, it's really an uphill battle to get those benefits reinstated through the insurance company. That application is a number one priority. As soon as we meet somebody, we say, "We've got to get this application in right away, verify that it was received, and get everything else set up."

Then, we immediately try to locate the ambulance that took you to the hospital. They need to know the claim information because you probably didn't have it in the ambulance. If they don't bill it to the insurance carrier in time and get paid, they will look to you for payment. It's the same with the hospital. You don't want them to bill your private insurance, Medicaid, or anything else. You want the bill submitted to your no-fault claim.

We can set up the claim for your lost wages through your employer. If you're working at the time, you can usually get 80% of your gross wages, up to a maximum of \$2,000 a month, and more if you have additional coverage. It may take time to set that up because you must get a document from your employer to verify the amount and send that document to the insurance company. You will also file a New York State Disability Application with your employer which will also pay some of your wages. All of that takes time, and we set it up as soon as possible.

You also want your mileage reimbursement to get going right away. No-fault will often pay your mileage for the first year after the accident. This amount could be up to a limit of \$25 a day. If you have more coverage, it could be higher and can really help keep you afloat while you're visiting your doctors and recuperating from the accident.

The most significant expense is usually the medical bills the insurance company will pay. You certainly don't want to be obligated to pay those, because they can be very substantial. Insurance companies are not looking to do you any favors, so if you submit your application late without an extremely good reason, they will probably deny your claim.

## *What Is SUM Coverage?*

In every automobile insurance policy in New York State, an insurance company must offer what is called SUM coverage, which is an acronym for Supplementary Uninsured Motorists protection. In most cases, it is what we call unified endorsement and covers people who are uninsured or under-insured. Meaning, if you're involved in a motor vehicle accident and the vehicle that is at fault does not have insurance, you're able to go to your own insurance company to pay the benefits. They essentially step into the shoes of the other insurance company to cover your injuries.

## *Insurance Policy Limits You Should Understand*

There are limits to insurance that cover the person who caused the injury or accident. When you're in a car accident, you have insurance limits that you carry under your own policy to protect you in case that person is either under-insured or uninsured. Just focusing on that one, small issue, we can talk about the importance of keeping adequate coverage on your own policy to cover your family in the time of need.

A lot of insurance agents will explain this to their clients, but many won't. In the days of buying insurance online and getting the cheapest quote, what you don't understand is that there are provisions to the policy. You could pick to choose whether you want rental coverage, how big your deductible is, how much you carry in no-fault limits, and what your uninsured or under-insured limits are to protect yourself.

That's critically important because if you're struck by somebody who leaves the scene, or by someone who has no insurance, or someone who has minimal insurance limits, you can still get a very important and significant recovery if you protect yourself through the purchase of supplemental uninsured/under-insured motorist benefits. People who price these limits out are often surprised at how cheap they are in comparison to any of the other coverages they've already purchased.



## *How Do You Determine Who Was at Fault During a Car Accident?*

Determination really happens in a couple of distinct stages. Insurance companies attribute and determine the level of fault between themselves. If they can't agree, they go through an intercompany arbitration process to determine what portion of each element of the case they will take – such as property damage that occurred at an intersection when two people claim they had the red light, or the green light, or a stop sign. That's one step.

We're not bound by their determination because they don't usually go to the lengths we do when investigating. We take photos, interview witnesses, inspect the points of impact on the vehicles, and review the photos and the repair estimates for each vehicle. When an insurance company does that, it is really a cursory review; a determination made without, what we would consider, a full investigation. Many factors must be taken into consideration when apportioning fault.

The insurance companies do that from their perspective, but we, as your attorneys, attempt to do that for you. We look to the other driver and any others involved in an incident to determine what they should have done. For example, even if no vehicle and traffic law was violated, did they violate a known safety rule? Did they fail to look both ways before pulling out of a parking lot? No vehicle and traffic law says that specifically, but drivers are not allowed to merge into traffic or cross over lanes without first making sure of clear access. To determine whether it's clear, one must look both ways.

We evaluate situations and actions when the insurance company doesn't go much deeper than checking events against traditional vehicle and traffic laws. Many factors can contribute to a determination of who was at fault and if the fault is shared, how much is attributable to each party.

## *What Can be Claimed in an Auto Accident?*

There are several different parts that go into most cases for injury components. The most common is the pain and suffering component. There are also things that come into play that are non-pain and suffering. Those include economic losses, lost wages, co-pays, unpaid medical bills, loss of benefits from work, or loss of retirement accumulation if you're out of work for a while. When we look at the damages portion or the losses involved in a car accident, we try and claim everything that we can to make our claim whole in the end, whether it be economic or non-economic losses.

## *Comparative Negligence*

Comparative negligence looks at the percent of fault that is shared, both by the person that was injured and by the person who did the harm. This could be 1%, or 5%, or 10%, or even more depending on the facts of the accident. Comparative fault, as a principle, is trying to weigh the percent of fault among all the parties who are involved.

## *Should I Take the First Settlement Offer?*

My answer to you would be absolutely not. To maximize recovery, we must have patience; patience on behalf of the lawyer and patience on behalf of the client. We only get one shot at this. If we're jumping at an opportunity to settle the case early on because of a timing requirement as opposed to maximizing the recovery, then the individual will end up walking away with less than they deserve.

To win, it's necessary for us to take those initial offers, counter those offers with a demand that is significant enough and offers the ability to bring that insurance company to a number that is appropriate for the case. It's only after those negotiations (sometimes intense negotiations) that we're able to get to a number that is proper for the injuries sustained in that case.

## *How Do We Prevent Low-Ball Settlements?*

Insurance companies are in the business to make money for their shareholders. I can tell you based on a lot of experience in these types of

cases, they aren't rushing to offer a case's worth. I believe that the way to make sure an insurance company doesn't lowball a case is by letting them know through your conduct and through other cases that you won't settle a case just to get it settled. They must know that the attorney has the desire to go to trial on cases.

If they think that your attorney doesn't have the fortitude to go to trial, they'll take advantage of that. I've seen that with many other attorneys who simply want to settle cases. When they do this, those attorneys can't get the



optimal amount of settlement in the case, because the insurance companies are aware that they will not take it to the level that they need to raise that number up. I'd say the number one thing for an insurance company to know about your attorney is that they are willing to go through a trial, and have a jury bring a verdict.

## *Should We Take My Case to Trial?*

The benefits of proceeding to trial can be innumerable. If an insurance company has undervalued your case, taking the case to trial would be one positive approach to getting the money you deserve. One negative factor to consider in going to trial is that certain costs are associated with that approach.

We will have to prove the extent of your physical injuries through the testimony of medical doctors. Certain trials permit the injured party to submit records. Ultimately, based on our recommendations, you will decide whether a trial is appropriate and whether the risk vs. reward is worthwhile.

## *I Was Injured in an Accident and Don't Know Who Caused It*

When you're involved in a hit and run, somebody either takes off or gives you false information and then immediately disappears. You have built-in protection under your own insurance coverage. You would look to your own insurance and get benefits through the supplemental uninsured motorist coverage required by New York State.

Hopefully, the car that hit you was insured. If so, you don't necessarily need the driver, although it is certainly helpful if we can track them down. If insurance covered the car, we can file a claim against the owner's insurance and look to the owner's policy. We would conduct a search and have an insurance check done.



This will find out whether there was coverage and with what company. We can then pursue the same type of claim, even if the driver takes off afterwards.

## *The Other Driver's Insurance Doesn't Cover Losses*

In New York state right now, the minimum insurance required for a private operator is \$25,000 per person, per accident. That becomes woefully inadequate if there are any injuries, especially if they're serious injuries.

We can negotiate the pain and suffering bodily injury case with your own insurance company under the impression that the injuries were serious enough; if adequate insurance is purchased.

That's why we always recommend taking a look at your insurance policy. Look at the endorsements, not only for the bodily injury coverage and your collision coverage, but also the SUM coverage.

Also, when you look at that insurance policy, you want to make sure that you

want to make sure that you have adequate coverages for your no-fault coverage. You must be adequately compensated through your own carrier to get anything out of an accident where the other driver has minimal or no coverage.

## *Passenger in a Multiple Car Accident*

If you are a passenger and are involved in an automobile accident, there are generally even more options than if you were a driver. Of course, if you're a passenger and it's a multi-car accident, it brings into question whether multiple insurance companies or defendants would be responsible for your injuries. It's very important in New York state to kind of ferret out those issues, in NY there's an exception to our rules in auto accidents. Even if a driver is 1% at fault for an accident, they become 100% responsible for the claim.

In a case where someone was not at fault or even partially at fault, we would put their insurance carrier on notice of the claim and pursue all cars involved in the accident. If you are a passenger and involved in an insurance claim, you can also look to see if you're able to make a supplementary uninsured motorist claim if your policy is in excess of the policies of the at-fault vehicles.

## *Someone Else Crashed My Car; Am I at Fault?*

In New York state, if someone else is driving your car and is involved in a car accident that is their fault, you can be held at fault. Particularly in New York state, we have a statute that is Vehicle and Traffic Law 388, Subsection 1, which says that if you provide your keys or permission to someone to use your vehicle and they're involved in an accident, you are responsible. The key issue in those cases is whether the individual has been given permission. If someone takes your car without permission – it doesn't just necessarily mean that someone stole the vehicle, it means that permission was not granted – then, you may not be held responsible. There are many legal issues that come into play in those types of cases. However, the general rule is that someone driving your vehicle, who is involved in an accident is at fault, and you become vicariously liable for their actions.

## *What Happens if An Out-of-State Driver Without Insurance Hits Me?*

Being injured by an out-of-state driver in a car accident might seem difficult. The good news is that, once they cross into New York State, the insurance department considers certain minimum benefits to be applicable, which means that at least New York State's minimums will be there to protect you. Sometimes, that can be an advantage because other jurisdictions, like Canada for example, have much higher minimum limits. When drivers come into New York State and cause harm, you still have a claim based in New York State. Jurisdiction typically remains in the county where you reside, or where the accident occurred, not in Canada, but you get the benefit of the insurance coverage and policies they carried from home.

With other states, that comparison is easy. If it's a Canadian policy, however, the exchange rate comes into play because they purchased their policy with Canadian dollars and they were insured in that currency. That can affect the outcome in certain cases, but the good news is that you're still protected by New York State's law regarding the minimums required for insurance carriers. We will also look to your own carrier to provide basic no-fault benefits to keep your nose above water and help you survive while you're receiving treatment and getting better.

## *Can I File a Claim if I Was Not Wearing a Seatbelt?*

If you were involved in a car accident that was another driver's fault, but you weren't wearing a seat belt, you can still receive compensation for injuries sustained in that car accident if the seat belt would not have prevented them. For example, if you're struck from the side and you break your arm against the door, you have a valid claim for that injury. However, if by wearing a seat belt you would not have struck your head on the steering wheel, for example, then you are not protected. It's called the "seat belt defense". Although we would claim all the injuries that were caused by the accident, the defendants can assert as a defense that because you weren't wearing a seat belt, those injuries should be either precluded or diminished because of your failure

to wear that device.

## *What Happens if I'm Involved in a Car Accident While at Work?*

In New York State, we have what we call worker's compensation statute. Workers' compensation is primary to no-fault. If you are involved in a motor vehicle accident while working, worker's compensation is required to step into the shoes of the no-fault carrier. However, worker's compensation does not pay the exact same benefits as no-fault, so worker's compensation will pay 2/3 of your lost wages up to a statutory amount. No-fault benefits provide for 80% of lost wages.

Essentially, if you're involved in a motor vehicle accident while you're working, we will go to the worker's compensation carrier and get the benefits that are appropriate. We also look for the no-fault carrier to provide the additional benefits needed to raise you up to the 80% of lost wages which is the statutory maximum allowed under the law.

## *Recoverable Damages After Being Hit by a Truck*

The damages that you can collect from a truck accident are similar to a private vehicle that struck you. However, there are a couple factors that are special to those kinds of accidents.

First, the insurance coverages available are traditionally much more significant because their vehicle is being driven either for a corporation, or for an ongoing business. These trucks are required to carry certain records and log books to confirm both the weight during operation, safety inspections, and state log books regarding how long they've been behind the wheel. Those are all areas that we look to in discovery phase of the case to try and see whether that truck violated a rule.

That's important because the braking system on these vehicles are designed to be able to stop certain weights at certain speeds. If they are overweight or overladen, that could drastically affect the stopping distance, and can also

affect that driver's negligence in the accident.

## *Do I Have a Claim If I Was Injured While Driving a Tractor Trailer?*

In the circumstances of being injured as a driver of a tractor trailer, a couple of things come into play. If you are an employee of a business, then worker's compensation covers you, and it will provide the traditional no-fault benefits.

An independent driver may not have trade worker's compensation if the entity is a sole proprietorship because New York does not require them to. This person would look to the no-fault carrier for the vehicle in which they were injured to provide those benefits.

Once the initial package of benefits is properly available to them, the case is dealt with much like any other. The only difference is the truck drivers are required to do certain additional things, such as: undergo periodic inspections, keep log books, and ensure that their load is properly secured.

We work to make sure our own client isn't found to have been negligent regarding any of those issues. If our own client is the truck driver, we investigate certain special factors, and even if our client was negligent, the other driver involved in the accident may also be at fault.

## *Hit by a Car Walking Across the Street*

Unfortunately, accidents in which pedestrians are struck are the ones that result in the most significant injuries. When someone is struck by a vehicle, it can result in horrific injuries. Those accidents oftentimes involve the most debilitating and long-lasting injuries that we see. The victim's priority is to seek immediate medical treatment and then to file the no-fault application.

As the injured person, you would have essentially two claims. First, your claim for no-fault benefits covers your medical, wages, and other expenses for which the vehicle's insurance would pay. Then you'd also have a claim for bodily injury against the owner of that vehicle, which would compensate you for personal



injuries that could have resulted directly from the collision itself. It's very important to submit that document immediately, especially if you're dealing with a carrier who considers you an adversary right from the get-go. If you don't get that document in within 30 days, they're just not going to pay the bills.

## *Uber Insurance Issues*

Uber as a company has gone beyond what most vehicle owners would do in a vehicle-for-hire situation. In New York state, the minimum allowances for having insurance are \$25,000 per individual involved in an accident and \$50,000 per accident in total. Most cab companies carry those minimum requirements. Similarly, even in commercial types of applications, the insurance contracts, and the amount that the insurance companies provide is low.

What Uber has done is indicated that they're going to provide a layer of insurance above and beyond the insurance of the vehicle. The indications are that every Uber vehicle is insured for \$1.2 million, which is an incredible number beyond what a taxi cab would be insured at. Uber will ensure that everyone involved in the accident will be provided insurance coverage well beyond the limits required by New York State.

## *Winter Weather Car Accident Liability*

During the winter months, car accidents often occur because the weather has played a factor in the accident. You may wonder what involvement the weather plays in a case, and how will it affect a potential claim that you may need to bring for personal injury and pain and suffering? Weather is a factor in many accidents, whether it be wet, slippery roadways, ice, snow, or if the visibility is decreased because of heavy fog.

What the law provides for those types of cases is an obligation for all drivers to act safely and drive appropriately in terms of the conditions that are in existence at that time. What that means is, you are deemed to be obligated to drive according to whatever is presented with the weather.

One of the things that the people are ticketed for in the winter is driving too fast for the conditions. Even though they may not have been speeding according to

street signs, you shouldn't go 45 miles an hour in a 45 mile an hour zone if there's extremely heavy snow.

## *Car Accident Due to Unsalted Roads*

You may have been injured driving on unsalted roads where you lost control of your vehicle, spun out, struck a guard rail, and unfortunately sustained serious injuries. In this type of circumstance, after an investigation of the roadway, we would determine that that driver had been driving too fast for those conditions. We would probably be unable to bring a claim forward. However, you are still fully entitled to the no-fault benefits under the insurance law, which does provide the wage benefit, the medical to cover your medical bills, and mileage reimbursement for a period of time.

## *Car Accident During a Driving Ban*

Inclement weather in the winter can give rise to certain driving bans in certain areas. Often, those bans have exceptions for emergency personnel or nurses trying to get to the hospital. If you were injured during a driving ban, the no-fault benefits are still in place. You still have the availability to get medical visits paid, mileage covered up to a year, and lost wages up to three years.

## *Schedule Your Free Consultation Today!*

The Personal Injury Lawyers at Andrews, Bernstein & Maranto, PLLC fight for the rights of persons who are injured or disabled. We approach each case on an individual basis and personally assist each client with their unique needs. We are involved in every step of the legal process, and ensure that each case receives the time and effort necessary for success.

We are available 24 hours a day, 7 days a week.

Never settle for less, find out what your case is worth!

### *Buffalo Office:*

420 Franklin Street

Buffalo, NY 14202

(716) 803-8352

### *Niagara Falls Office:*

711 Pine Avenue

Niagara Falls, NY 14301

(716) 803-8352



