

NEW YORK PEDESTRIAN ACCIDENT GUIDE

*Helping You Take the First Steps
After a Serious Injury*

ROBERT MARANTO



ANDREWS, BERNSTEIN
& MARANTO PLLC
EXPERIENCED PERSONAL INJURY ATTORNEYS



Motor vehicle accidents are traumatic experiences for drivers or passengers. And if you've been injured in one, we want to say how very sorry we are. Thanks to airbags and safety features by automobile manufacturers, occupants of motor vehicles now have better chances than ever before of avoiding harm and serious bodily injury. Unfortunately, however, the same cannot be said of pedestrians. Given the number of vehicles on the road today, pedestrians are perhaps more vulnerable than ever if struck by a motor vehicle.

Unlike occupants of motor vehicles, pedestrians have no safety features to shield them from death or injury when they are hit. In 2015 alone, nearly 5,500 pedestrians were killed in traffic accidents in the U.S., and that same year, another 129,000 pedestrians were admitted to emergency rooms for non-fatal injuries stemming from such accidents.

When a pedestrian is struck by a motor vehicle, and fortunate enough to survive, injuries from the collision are generally severe, costly, and life-altering. Immediately following such an event, the pedestrian and his family are confronted with a myriad of pressing questions and concerns that demand immediate attention. Who will pay for my medical bills? What if I cannot return to work? What if I never heal? How will I support my family? Should I speak with the driver's insurance company?

These are just a few of the many questions that typically bombard a pedestrian if they are fortunate enough to survive the accident. Given the severity of the consequences, it is essential that the injured pedestrian or his family retain an experienced New York personal injury attorney immediately.

WHAT TO DO AFTER AN ACCIDENT

The two most important things an injured pedestrian should do following a motor vehicle accident are: 1. Seek medical attention as soon as possible; and 2. Refrain from conversations about the details of the accident with the other driver's insurance carrier.



While the majority of victims of a pedestrian motor vehicle accident are immediately transported from the scene of the accident to the emergency room by ambulance, there are some cases where less forceful impacts are involved, and the injured pedestrian may be tempted to turn down an ambulance, under the belief that they are okay or “too tough” to go to the ER. Regardless of whether or not the injured pedestrian believes they are okay, they often times are not; and seeking emergency room treatment immediately after the accident is important for two reasons. First, it allows for the early detection of hidden injuries that may not be visible or felt by the victim who is likely in shock following the event. Second, it documents the injuries and symptoms one experienced after the accident, allowing that person to be referred immediately to the particular specialists they need to see in order to initiate the healing process.

When a person refuses to go to the emergency room at the scene of the accident, it gives the adverse driver's insurance carrier the impression that the victim was not harmed, even though in many cases the victim suffered a severe bodily injury they may not have been aware of due to shock or delayed manifestations of pain. The refusal of emergency treatment at the scene of the accident can create an uphill battle for the injured pedestrian when they later seek to get their injuries rightfully compensated by the adverse driver.

Delaying treatment only gives the adverse driver's insurance carrier an opportunity to attribute the pedestrian's injuries to some cause other than the accident.

An injured pedestrian should never give a statement to the other driver's insurance carrier outside the presence of their attorney. It is common practice for the other insurance carrier to solicit a recorded statement from the injured pedestrian. While the insurance representative may sound sympathetic, it is important to remember that they represent the adverse driver who hit you and their one and only goal is to pay you as little money as possible. They are recording the statement for a reason. It is their goal to get the injured pedestrian talking in the hopes that they make a statement that is unfavorable to their case. In turn, the insurance carrier will later produce that statement and use it to get the injured pedestrian's case dismissed from court.

It is so important that the injured pedestrian or their family retain an experienced New York personal injury attorney as soon as possible after the accident to properly guide them and instruct them how to avoid all of the early traps that unscrupulous insurance carriers spring in their attempts to limit and deny the injured pedestrian's compensation. All it takes is one early misstep by the injured pedestrian in dealing with the insurance carrier and the entire case may be crushed.



NO-FAULT INSURANCE BENEFITS

New York is a "No-Fault" insurance state. Without regard to fault the law provides, that the other driver's mandatory no-fault insurance covers an injured pedestrian's economic damages of up to \$50,000.00. This includes all costs associated

with ambulance, hospital, physical therapy, and physician bills related to the accident, along with the costs of prescription medications and all diagnostics such as x-rays, CTs, and MRIs. Also included in the adverse driver's no-fault insurance are lost earnings of up to \$2,000.00 per month for the injured pedestrian. The other driver's no-fault insurance, however, does not include compensation for non-economic damages such as pain and suffering, permanent disabilities and disfigurement.

New York's "No-Fault" system was originally developed to allow injured parties to receive immediate medical treatment expeditiously without the parties having to squabble over fault. However, as the law developed, insurance carriers put up roadblocks and procedural hurdles that prevent many injured pedestrians from collecting their no-fault benefits. A skilled and experienced New York personal injury attorney will be familiar with all of the carriers tricks and can navigate you through the necessary paperwork to assure you are not prevented from receiving your statutory no-fault benefits.

PERSONAL INJURY LITIGATION

It is important to remember that an injured pedestrian's no-fault benefits are capped at \$50,000.00 and do not include damages for pain and suffering. Given the severe nature of the injuries that pedestrians routinely sustain in a motor vehicle accident, the no-fault insurance benefit can be easily exhausted.

In cases where an injured pedestrian's economic losses exceed the \$50,000 no-fault limit, or in cases where the pedestrian's injuries qualify as "serious injuries" under the law, the injured pedestrian can step outside of New York's no-fault system and pursue litigation to collect additional economic



damages and non-economic damages for pain and suffering, and permanent disabilities and disfigurement as well. Additionally, the law permits families of a deceased pedestrian to pursue Wrongful Death benefits as well. In order to recover these additional damages, the injured pedestrian or their family must prove that the adverse driver was responsible for causing the underlying accident, as well as the pedestrians injuries and losses.

Stepping outside the State's no-fault system can be complicated and is best left up to an experienced personal injury attorney. The other driver's attorneys will use every trick in the book to get your case dismissed, from trying to pin your injuries on pre-existing conditions, to claiming that your injuries are not severe enough to meet the criteria for a "serious injury." Additionally, if the court papers initiating the injured pedestrian's claim are not properly plead, attorneys for adverse driver can succeed in getting the case dismissed from court. An experienced New York injury attorney will know how to combat the insurance company's tricks right from the start, and will ensure that you get fully compensated for all of your injuries and losses.

We are an office of hard working Buffalo injury attorneys who know the law and we are not afraid to fight the insurance companies all the way to trial. We have decades of experience in representing injured pedestrians just like yourself. Our goal is to take the financial stress and uncertainties out of the process so that you can focus on making a complete recovery from your injuries. We fight to make sure our clients and their families are made whole. There's no cost to you whatsoever, as we work on a contingency fee basis and only get paid if we win. Don't allow yourself to get jerked around by the greedy insurance companies. Call us today so that we can get working on your case immediately!

FREQUENTLY ASKED PEDESTRIAN ACCIDENT QUESTIONS

What if I'm 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, obviously totally unprotected, is struck by a vehicle, the result can be horrific injuries. Those accidents oftentimes involve the most debilitating and long-lasting injuries that we see, including fractures and other very severe traumas. Obviously, the victim's first priority is to seek immediate medical treatment. That's first and foremost, and filing the no-fault application is next.

The no-fault claim would typically address the owner of the vehicle that actually caused the injuries. As opposed to accidents in which multiple vehicles are involved – where the no-fault would run through the vehicle you're in – this is a case where the no-fault would run through the vehicle that struck you.

As the injured person, you would have, essentially, two claims. First, your claim for no-fault benefits covers your medical expenses, wages, and certain other things 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 may or may not have resulted directly from the collision itself. It's very important to submit that document immediately, especially in this type of case in which 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.

What are the damages in a pedestrian versus car accident claim?

One of the things that we see when we're accessing damages in a pedestrian versus car accident in New York state really involves the nature and extent of the damages and how bad the injuries are. They really can be much worse, so the value of your case is often based upon fault, shared fault or a balance of that, as well as how bad the injuries are. The damages in a pedestrian versus car accident case can be much more significant in New York state because they are not protected by any structure. They don't have that protection of an airbag or a seat belt. The pedestrian really is defenseless against a car that's always a couple thousand pounds of steel, plastic, and glass.



How do I choose the best attorney for my pedestrian accident claim?

We always recommend they interview the attorney. Ask them: what part of their practice focuses on this area, how many cases have they handled like this before, and what results have they gotten. It doesn't guarantee a future result, but it give you

an idea on what their experience level is, what their approach might be, how they handle it, what kind of a time frame they will give you as far as how they handle things, what they will present regarding your claim, and then how they will try to resolve it for you eventually once your treatment is concluded.

How different is a pedestrian accident case compared to a car accident claim?

I get clients who ask, “How does a car versus pedestrian claim differ from that of a regular auto accident claim in New York state?” There are some basic similarities in that the pedestrian does get no-fault benefits, what they call from the car that struck them initially. Of course, accessed levels of insurance might be available through your own personal policy. How they differ is also important. When it involves a pedestrian, usually we’re dealing with walking rights of way, crosswalks, intersections, and what the driver should or should have seen or what they did see. That would add properly to it. Whenever it’s a pedestrian, it adds a known layer of investigation regarding negligence: the happening of it, what the fields of view were, what the lighting was, and the location of the pedestrian either on the street or walkway at the time. Also, were there any witnesses? This becomes critically important with a pedestrian case because, with a car, you can see the points of impact. You can’t necessarily see the points of impact on the human body.

All of these things can help us establish how an accident happened or at least where it happened. With car versus pedestrian, there often is lacking physical evidence unless a pedestrian does some damage to the actual sheet metal or glass of the car. There are certain things that go into a pedestrian-vehicle accident that must be investigated immediately before that evidence is lost.

Should I talk to the insurance company after a pedestrian accident?

The answer is no. Do not talk to them. Let your attorney handle it. They may ask you a series of questions that might be detrimental to your case due to how they ask them. Even if it wasn’t your fault, they will phrase them in certain ways that might not be beneficial to you. Never speak to them on your own behalf. Have an attorney do it for you because that first interview, how it

goes, the questions that are asked, the answers that are given, could really color how the claim is handled and what kind of a result you get down the road.

What is supplemental uninsured motorist protection?

In a hit-and-run case, the first thing that we do is send out investigators to determine whether or not we can find any information about the vehicle that did the striking, whether by going to local businesses and seeing if there's any video tape of the incident. If that is not the case, the next thing to determine is whether the individual who was struck has their own automobile insurance policy, or if they live with somebody related by blood who owns a car that has insurance on it.



There's a provision under those policies that's called supplemental uninsured motorist protection. The uninsured motorist protection of that policy will then allow you to make your personal injury claim through your own policy, which shifts the burden of trying to find who the fleeing vehicle was or their insurance company to your own insurance company. One very important thing is that we need to do as soon as possible, is that we must determine and must file a MV-104 or a police report because according to the contract, that is required before you can make a claim under that provision.

Should I accept a settlement from the insurance company?

The answer is no. We deal with insurance companies every day, all day; it's all we handle. We're always able to get a better result almost without exception when we're dealing with an insurance company versus a person on their own. We know what their tactics are. We know how they try to minimize a

claim. Depending on how bad the injury are and what the insurance limits are, having an attorney help you can really increase the result and the benefit to you and your family in the end.

Who is the liable party?

As in any case, the driver of the vehicle can be sued, and also the individual who owns the vehicle, as long as that individual provided consent to the driver. In addition to that, although a lawsuit can't be commenced in this case, we can also look to see if the individual who was struck has their own insurance policy available to them. Under the provisions of your own insurance policy, if your injuries are in excess of the amount of coverage that the insurance policy of the other vehicle had, we can pursue what's called an underinsured motorist claim against your own insurance company. Now, on certain occasions that can be instituted as a lawsuit. There's also arbitration provisions inside of your policy that can be utilized in order to make sure that you are fully compensated in the event that you're struck by a vehicle as a pedestrian.

What if you are partially at fault for the accident?

The fact that someone is walking outside of a crosswalk (or where you wouldn't expect one to be) is a factor in determining culpability. In New York State we have provisions called "imperative negligence" as opposed to contributory negligence which is in some other jurisdictions. Under contributory negligence, if you are found at fault then your claim is gone. In New York State we have imperative negligence that allows a jury to make a determination as to how much fault you have compared to the vehicle.

So, if you are walking outside of a cross walk there will be one factor the jury will take into consideration when determining who was at fault in the case.

How do I determine how much my pedestrian accident case is worth?

There are too many factors to give a clear answer right away, but your attorney can analyze each of these. For example, fault, is it clear or is it shared? How bad are the injuries? How extensive was the treatment? Were there any procedures involved? How did you heal up? What's the recovery? What was the recovery time? What's your disability period? Then how about permanency as far as how you've recovered? What are your limitations going forward? What benefits are there? What are the insurance limits? Are there any other negligent parties that can be brought in? There are so many factors that each case has its own answers to all those questions. That's why your attorney should be able to talk to you about each of those factors, and about their experience, how they have been able to do in the past as it relates to what they might be able to do for you in the future.

Is a driver always at fault for the accident?

The driver of a vehicle is not always at fault for a pedestrian accident. The same rules of negligence apply in an auto versus auto accident, or even in a multi-car accident. In a case brought against a motor vehicle accident, a pedestrian has the burden of proof that the automobile driver did something negligent or wrong to cause the accident. The rules do not change because it's an individual, as opposed to a vehicle. There is also an important rule regarding no-fault benefits: in a pedestrian accident with a motor vehicle accident, the no-fault benefits are provided by the striking vehicle as well. Where negligence is concerned, the same rules apply.

How long will it take to settle my pedestrian accident claim?

The answer is every case is different. As a pedestrian, you're not protected by your vehicle like a seat belt or airbag structure, so the injuries are often much worse depending on how it happened, and what they raw mechanics

of the accident was. The treatment that follows can often be very extensive because the pedestrian has no protection from the other vehicle. It can take shorter or longer depending on how much insurance is available, how the accident happened, the injuries, the nature and extent of those damages. There are many factors that your attorney can look at, analyze for you, and give you a specific answer that will relate directly to your case.

WERE YOU OR A LOVED ONE SERIOUSLY INJURED WHILE WALKING OR JOGGING AND HAVE QUESTIONS?

Contact a Buffalo pedestrian accident lawyer at Andrews, Bernstein & Maranto, PLLC today for a free confidential consultation and case evaluation. Let our experience work for you.