



# NEW YORK CAR ACCIDENT GUIDE

*Protecting Your Rights  
After an Automobile Accident*

BRIAN J. ELBAUM



If you have suffered serious personal injuries in a car accident which occurred in New York, we offer our most sincere sympathy. Many people who suffer personal injuries are understandably overwhelmed. You may be wondering, *“What happens now? Who should I speak with and when? If I hire an attorney to represent me,*

*when will my case end? How will I pay my bills if I can’t work? And how much and when, if ever, will I be paid?”*

First, it is very important to hire an attorney as soon as possible. As noted below, the filing deadlines to protect your potential No-Fault benefits and lawsuit award should be dealt with immediately by you and your attorney.

## NO FAULT INSURANCE IN NEW YORK

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In New York, if you are injured in a car accident (also called a motor vehicle or automobile accident), your options to recover damages may be limited by the “No Fault” law.

New York is a “No Fault” car insurance state. This means that if you are injured in a car accident, you must first file a No Fault claim under your own car insurance policy in order to receive money for your medical bills and certain other limited types of economic losses, regardless of who caused the accident.

No Fault deadlines are short and require immediate action. Ask your attorney to help you file all necessary No Fault paperwork on time.

In addition, if your injury qualifies as a “Serious Injury” you may sue the other driver (“defendant”) in court for damages. A “Serious Injury” includes any of the following: significant disfigurement, broken bone, permanent limitation of use of a body organ, significant limitation of use of a body function or system or a substantially full disability which lasts for at least 90 days.

If your injuries qualify as a “Serious Injury,” you and your attorney need to prove that the defendant you are suing owed you a duty of care, that they failed to perform this duty of care either by their action or failure to act while driving their car or vehicle, that this defendant caused the accident and is therefore responsible for your injuries and that your injuries resulted in money or other types of damages.



## GETTING COMPENSATION IF YOU PARTIALLY CAUSED THE ACCIDENT

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It should be noted that, in New York, if you are found to be partially responsible for the car accident, then your awarded damages may be reduced accordingly. This would be defined as your proportion of fault, or “comparative/contributory negligence.”

Overall, the types of damages that may possibly be awarded to you in a car accident case include: medical expenses, lost wages, loss of enjoyment of life, rehabilitation expenses, life planning expenses, and pain and suffering, which is often the largest portion of damages awarded. Unlike some states, New York does not limit the amount of pain and suffering damages that may be awarded to you.

On the other hand, if you should die during either the car accident, or afterwards, your case changes from a car accident personal injury case to a wrongful death case in which your family may be awarded damages. In that situation, No Fault insurance will also pay your estate a separate funeral benefit. Your estate could also possibly recover other special damages due to your death, including damages for financial loss to your immediate family as well as damages for loss of parental guidance, regardless of the age of your surviving children.

Also, your estate may be eligible to recover damages for any fear of immediate impending death that was felt by you immediately before your death.

## BENEFITS OF HIRING A NEW YORK CAR ACCIDENT ATTORNEY

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It is very important to hire an attorney as soon as possible. In New York, most car accident cases must be sued against the defendant or defendants who caused the accident within 3 years from the date of injury. This 3-year period is called the “statute of limitations.” If you fail to sue your case with the court within the 3-year period, your case will be thrown out and you will be unable to obtain either a fair settlement or damage award at trial.

Also, if your car accident case involves a New York government (“municipality”) defendant driver and/or vehicle, you must serve a Notice of Claim upon the municipality within 90 days after the date of your injury. The municipality is then allowed to question you at a “50-h” hearing. Following this hearing, if you wish to sue the municipality for your car accident personal injuries you must do so within 1 year and 90 days of your injury, unless the injured party is a child or incompetent. This is the municipality “statute of limitations.” If you fail to follow these time-lines, you will be unable to obtain either a fair settlement or trial award against the municipality.

Please note that, if you are injured while you are driving in your capacity as a worker or employee, you may need to file a worker’s/workman’s compensation claim to protect your rights. Ask your attorney.

Another reason to hire an attorney right away is that memories, witnesses and evidence of your car accident case will tend to fade away over time. Prompt investigation of the facts by your attorney will help make sure your case’s evidence is protected for your benefit.

# FINDING THE RIGHT ATTORNEY FOR YOUR CASE

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When interviewing possible attorneys to represent you, always ask whether the initial consultation will be free or “complimentary.” Be sure to ask friends, business contacts, and family for referrals to attorneys who have strong trial experience in car accident cases. Do not hire an attorney who is merely a general practitioner or handles cases in several different areas of the law. You need an attorney who specializes in car accident cases.

In addition, while interviewing possible attorneys to represent you, ask them how many trials they have personally handled in car accident cases. The defendant’s insurance company will be much more willing to make reasonable settlement offers to settle your car accident case if they know your attorney is an extremely experienced trial attorney in these types of cases.

When you interview possible attorneys, be sure to ask whether you will be regularly dealing with them directly, or their junior associate, paralegal, or nurse.

Most car accident attorneys will expect to be paid roughly 1/3<sup>rd</sup> of any legal recovery you may receive, whether through settlement or trial award. However, you do not have to pay any money out of pocket to hire the attorney to represent you and it is the attorney who pays all of your case’s expenses and out of pocket costs up front, such as filing fees, office expenses and hiring expert witnesses to prove fault (“liability”), and/or the amount of your damages.

It is important to respond quickly to any question or request for information that your attorney sends to you. The faster you respond, the faster he can move your car accident case along. However, if you feel that your attorney does not return your calls, e-mails or texts quickly, consider changing attorneys.

# IMPORTANCE OF SEEKING MEDICAL ATTENTION

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If you have suffered a serious personal injury, seek Medical attention immediately. Some injuries, pain, and limitations are not immediately noticeable and may take time to develop. You may not even be aware that you have suffered an injury immediately after your car accident. Your attorney will recommend a doctor to you so that all of your injuries may be properly documented and treated.

The longer you wait to seek medical attention, the harder it may be for your attorney to relate your injuries to your car accident and therefore prove your case.



## THE INSURANCE COMPANIES AREN'T YOUR FRIENDS

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If you are contacted by a representative of the defendant's insurance company, do not respond. The insurance company is not on your side. They represent the defendant that you may be suing. After you hire your attorney, ask your attorney to

respond to the insurance company.

If the insurance company makes an early settlement offer to you in order to settle your car accident case, you should understand that the offer will be low and nowhere near the amount you could possibly receive through a later settlement or trial.

Beware – accepting an early settlement offer will prevent you from proceeding with your car accident lawsuit against the defendant that the insurance company represents. Insurance companies usually make much higher settlement offers

once a car accident case approaches its trial date, especially if your attorney is known to have a good deal of car accident trial experience.

Overall, the legal process is slow, but we will push the insurance companies to move faster. We will do everything in our power to make this take as little time as possible.

There are many other types of personal injury cases that may be sued in New York. They include: slip and fall, motorcycle, dog bite, wrongful death, products liability, asbestos, construction, medical malpractice and nursing home neglect, to name only a few.

If you need a strong and dedicated New York car accident attorney, please call us today for a free consultation.



## FREQUENTLY ASKED QUESTIONS | NEW YORK CAR ACCIDENT GUIDE

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### *What Do I Do After an Accident?*

The first step I think is to find an attorney that handles personal injury car accident litigation in New York. That would be the first step. Second step is you want to make sure that you're seeking the medical attention that you need. In New York, you have to prove that your injury is serious enough to justify compensation. If you've suffered an injury and you're experiencing pain in your neck, your back, wherever the case may be, or your knee, or you broke your arm, your leg, you need to seek medical attention. You need to follow your doctor's advice and do exactly what it is that they want you to do to help you get better; that's very important.

## *How do I Pick the Right Attorney for Me?*

First, you want to make sure the attorney practices personal injury law, specifically personal injury litigation. An estate attorney is not going to help you. They may want to take your case, but they're not experienced in the nuances that exist relevant to personal injury litigation.

You want an attorney that you can feel comfortable with; I think that's very important. You want to sit down with that attorney; not with a paralegal; not with the legal assistant. You want to sit down with the attorney, and you want to talk to the attorney, ask the attorney questions. How do you feel after you've had that conference with the attorney? I think that's very important, too.

Finally, it's important to understand that some law firms are mid-size, some are big. Some law firms are set up where you never really talk to the attorney. You talk to a paralegal or a legal assistant. It's very rare that you sit down with an attorney. That's also something to think about when choosing the right attorney to handle your case.

## *What Mistakes Can I Avoid After An Accident?*

I just had a call the other day from a client who was in an accident two months earlier and called me to pursue a claim against the driver that caused the accident, but she never went to see a doctor initially. She said her back and neck were bothering her. They were bothering her from the outset when the accident happened.

I said, "Why didn't you go to the hospital?" I hear various answers. "I had to get home to my children," or sometimes, "I had to get to work, but it was really bothering me." Why didn't you go see a doctor between then and now? Same reasons: I was too busy. I had to go to work. It's a problem. If you've suffered an injury and you're experiencing pain, you need to seek medical attention right away. That's one problem that I often see, and I think it's one of the biggest ones.

The second biggest one is when a client is not honest with the attorney. When a client comes to see me, I'm going to ask questions like, "Were you ever in an accident before? Did you ever suffer an injury to your neck, back, knee, whatever



the injury might be?” If the answer should be yes but is no, it could be problematic down the road. It is extremely important that a client be honest with the attorney, so the attorney can properly represent and guide the client through the process.

## *Should I Talk to the Insurance Companies?*

The answer is, speak with the attorney first and let the attorney set that up. You do not want to talk to the insurance company. Yes, you do need to notify the insurance company of the accident, but as far as statements, you want to sit down with an attorney first.

The attorney will set it up. The attorney will guide you through that process. You don't want to say something that you didn't mean to say or that may be problematic down the road. In fact, when clients come to see me, I tell them, if the insurance company calls you, you let them know that you have counsel. You give them my information and I will do the rest.



## *How Do I Get Reimbursed for Lost Wages?*

Clients in New York often ask me, “How do I pursue my loss wage claim?” “I haven't been able to work for the last three months and I want to get reimbursed”. Through the insurance company of the vehicle that you were in at the time of the accident under the no-fault provision of the policy, you can get coverage. What does it require?

First, you need to get disability notes from your doctor stating that you were unable to work. You'll need to get from your employer what's called a wage verification document where the employer will show both your attendance or lack of attendance and what your earnings were. Through that process, and through your attorney guiding you through the process, you'll get your loss wages for the period that you were unable to work.

## *What Is No Fault Insurance?*

The other day I got a call from a client who was injured in a car accident. It was an intersection collision. He was going through the intersection with the green light and the other vehicle was going through the intersection with the red light. He came to me and I told him that you need to file what's called a no-fault application with your insurance company. He said to me, "Why do I need to do that? I didn't cause the accident." I said to him, "Because your insurance company is going to provide you with what's called no-fault benefits. The reason why it's called no-fault, is because it doesn't matter whose fault it is."

The vehicle that the injured party is in is going to cover for loss wages and medical expenses. It's not a complicated process, but it is a process that you want to have your attorney take care of. They'll submit the application; it's got to be done within 30 days of the accident. They'll guide you through that process. By submitting the application, it will ensure that you're protected relevant to the payment of medical bills and the payment of loss wages; what we call economic loss.

## *What Do I Do About a Serious Injury?*

If you're injured in a car accident seriously, the first thing you need to do is call 911. You want to get the police and an ambulance there as soon as possible if you're suffering from injuries. If you're able to do it, you want to take photographs of the accident scene. You want to take photographs of your motor vehicle. You want to take photographs of the area where the accident occurred.

You want to make sure you give the police an accurate statement of what happened. Very often clients will come to me with a police report and say, "It's not what happened." I'll say, "Well, did you talk to the police officers and give them a clear statement?" The answer is no. You want to make sure you give the police officers a clear statement. At some point early on, you're going to need to call a lawyer. A lawyer will help guide you through the process to make sure that your rights are protected. If you're entitled to recovery from anyone that may have been involved in causing the accident, they'll be able to make sure that you get that recovery.

## *How Long Will This Case Take?*

It's a complicated answer. If the injury is significant, it could take quite a long time. If there are issues regarding liability, if both sides are pointing fingers at each other, that stuff sometimes has to be ironed out in court. That means litigation. Cases that don't require litigation can be settled optimistically within six months to a year. Cases that require litigation can require longer. It's not unusual or unheard of for a case to take three, four, even five years in New York.

## *How Long Do I Have to File?*

In New York when you're involved in a car accident with a private individual or a private entity, you need to file your lawsuit in court within three years of the accident.

There are shorter statutes of limitations relevant to if the City of New York is involved. You need to do it in a year and 90 days. There are other restrictions and other exceptions depending on who the defendant is, who you're going after. It's very important to understand that.

There are also insurance guidelines. You have to have that no-fault application in within 30 days of the accident. My suggestion is you do it as soon as possible; you get that no-fault application in. An attorney can guide you through this process and make sure all of these things are done and done properly.

## *How Much Is My Case Worth?*

Here in the state of New York, if you're involved in a car accident, it's not a simple answer. It depends on the extent of the injury. I have clients that come to me with broken bones. Those accidents are a little easier to evaluate early on, but even those can be more difficult to evaluate. It really comes down to the permanency of your condition.

You also have to look at liability. Liability is assigning fault for the accident. We need to know that it was the other guy's fault; that they caused the accident. It's not always clear-cut.

I've gotten plenty of clients that have come to me and said, "The driver of the other car went through a red light." Then I get a copy of the police report, and wouldn't you know it, the driver of the other car said my client went through the red light. Now, all of a sudden you have an argument as to whose fault it was. That's going to play into the value as well. At the end of the day, there are so many factors that come into play in determining the value of the case.

## CONTACT US FOR A FREE CASE REVIEW

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If you injured in a motor vehicle, don't hesitate to call our New York car accident lawyers. We have extensive knowledge of New York's traffic laws, and we've helped hundreds of victims recover compensation.

Call now for a free, no-obligation case review. We're happy to answer any questions you have about your case. Call now.



### ABOUT THE AUTHOR

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Brian J. Elbaum was only a few years out of law school when he decided to go out on his own in 1996.

Twenty years later, he still holds fast to the same two winning principles:

- » Making sure clients are comfortable throughout the litigation process.
- » Achieving great results by being aggressive and making the responsible party constantly uncomfortable.

### 1996

Brian graduated from Rutgers University in 1991 and earned his law degree from Brooklyn Law School in 1994. While he had a great job at a good firm after

graduating he quickly realized that he could serve clients better on his own, unburdened by the constraints of the law firm model and approach.

Brian felt so strongly in what he was doing that for his first year he was willing to work out of his apartment – a sixth floor walkup on East 37th Street & 3rd Avenue. Getting dressed every day in a full suit and tie to work from the desk in the corner of a modest one-bedroom, Brian took the cases no other attorney wanted. He quickly developed a reputation for making “lemons into lemonade,” helping those personal injury clients who other attorneys couldn’t.

## 2016

The Law Offices of Brian J. Elbaum have come a long way in 20 years. We’ve represented over 800 personal injury clients in Queens, Brooklyn, the Bronx, New York, Staten Island, Long Island, Upstate New York and New Jersey in cases involving construction accidents, auto accidents, slip & falls, medical/dental malpractice, bar and nightclub assaults, product liability, and much, much more.

We’ve stayed small by design, continuing to believe as we did 20 years ago that, more lawyers means more internal politics and reduced focus on the client. At our office, you know that every case will be handled personally by Brian. And we’ve stayed true to our philosophy, demonstrating in case after case that being tough with the adversary and compassionate with our clients is a winning combination.

Brian is licensed to practice law in New York and New Jersey as well as the federal courts. He is active in New York’s legal community as a Certified Member of the New York Trial Lawyers Association, Brooklyn Bar Association, and New York County Bar Association.

## *Our Office*

The story of our office mirrors the story of New York’s past twenty years. We were located in 150 Broadway on 9/11, and moved to 708 3rd Avenue until downtown was ready for business again. As soon as it was, we moved to 111 John Street – until Superstorm Sandy hit and relocated us to our current location.

Today, our office is inside the historic 11 Broadway building, just outside Bowling Green. Built 120 years ago in 1896, the Western Union branch office inside our building became a focus in the investigation into the Titanic disaster in 1912 as Senator Alden Smith sought to determine whether a message from the doomed ship had been transmitted to New York's White Star Line office next door.

Mr. Elbaum has broad experience in the areas of law practiced by the Firm and manages a team dedicated to meeting client needs. Prior to establishing the Firm, Mr. Elbaum worked for several New York law firms representing clients in cases ranging from workers' compensation to commercial litigation. He also served as a judicial intern to a New York Supreme Court Justice, investigated exchange violations as an intern at the New York Stock Exchange, and worked at an entertainment firm representing musicians. His extensive legal and business background has instilled in Mr. Elbaum a solid understanding of how to get things done in a variety of environments.

Mr. Elbaum once held the position of Vice President at an insurance company, for which he provided advisory services. This position has enabled him to gain an insider's view of the insurance industry. He translates that insight into solid advice for his clients on insurance-related matters.

In establishing the Firm, Mr. Elbaum received guidance and inspiration from his father, the late David Elbaum, Esq. David Elbaum served as Of Counsel to the Firm in its early years and provided key insights into several cases.

