



# NEW YORK PERSONAL INJURY GUIDE

*Steps to Take After a  
Serious Accident in New York*

BRIAN J. ELBAUM



If you or a loved one has suffered serious personal injuries in New York State because of the negligence of another, we offer our most sincere sympathy. Many people who suffer personal injuries are understandably overwhelmed.

First, it is very important to hire an attorney as soon as possible. In most New York personal injury cases, you must sue against the defendant 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 within the 3 year period, your case will be thrown out and you will be unable to obtain either a fair settlement, or award at trial.

Also, if your personal injury case involves a New York State government defendant, or “municipality,” you must serve a Notice of Claim upon the municipality within 90 days after the date of your accident. The municipality is then allowed to question you at a “50-h” hearing. Following this hearing, if you wish to sue the municipality for personal injury, you must do so within 1 year and 90 days of your accident, 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 award at trial against the municipality.

Please note that if you are injured at work you may need to file a worker’s/ workman’s compensation claim to protect your rights. Consult with an experienced New York personal injury lawyer to learn more.

## BENEFITS OF HIRING A NEW YORK PERSONAL INJURY LAWYER

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A huge reason to hire an attorney right away is that memories and evidence tend to fade away over time. Prompt investigation of the facts by the attorney helps to ensure the protection of evidence that will be crucial to your case.

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 your particular type of case. Do not hire an attorney who is merely a general practitioner. You need a specialist to get the results you want.

When you interview a potential New York personal injury lawyer, be sure to ask whether you will be regularly dealing with them directly, or their junior associate, paralegal, or nurse.

Most personal injury lawyers 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 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 they can move your case along. However, if you feel that your attorney does not return your calls, e-mails or texts quickly, consider changing attorneys.

## IMPORTANCE OF MEDICAL CARE AFTER AN INJURY

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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 the 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 the accident.

## AVOID TALKING TO INSURANCE COMPANIES

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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 on your behalf.

If the insurance company makes an early settlement offer to you, you should understand that the offer will be low and nowhere near the amount you could possibly receive through settlement or trial.

Beware – accepting an early settlement offer will prevent you from proceeding with your lawsuit against the defendant that the insurance company represents. Insurance companies usually make higher offers once the case approaches its trial date. If you need another surgery or treatment down the road, but you have taken an early settlement offer, you cannot go back in time and get more compensation. It's important to wait until we understand the full extent of your injuries.

## WORKING OUT THE VALUE OF YOUR CASE

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In general, 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, that this defendant caused your injuries, and therefore that your injuries resulted in money damages. Types of money damages that may possibly be awarded to you include: past and future wages, pain and suffering, medical bills, and property damage.

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

Overall, the legal process is extremely slow. Cases routinely take 3-5 years to arrive at trial. If you cannot afford to wait this long for your settlement or trial award, you may wish to discuss with your attorney accepting an earlier, yet lower, settlement offer.

Few people have the necessary money to continue paying all of their bills while their lawsuit works its way through the court system. Unfortunately, attorneys are prohibited from loaning their clients’ money while they wait for their cases to conclude. However, your attorney may be able to suggest other financial options.

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



## FREQUENTLY ASKED QUESTIONS | NEW YORK PERSONAL INJURY GUIDE

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

The first step I think is to find an attorney that handles personal injury 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.

## *What Mistakes Can I Avoid?*

Number one, you didn't advise that you suffered an injury. When the police get to the scene, you must tell the police officer that you suffered an injury. People often leave the scene of an accident before the police arrive. They go home, they go to the doctor or hospital.

Another mistake that's made is the retention of the wrong type of attorney. Very often, attorneys will accept a case, but it's not their area of practice. You want to make sure that you get advice from a personal injury attorney with experience in personal injury cases; 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.

## *Will the Insurance Companies Help Me?*

You may get a phone call from the insurance company asking you questions about what happened, wanting you to make a statement, wanting to discuss your injuries. My advice to them is to seek competent counsel. Sit down with an

attorney; the attorney will advise you as to what you should or shouldn't be doing. You certainly should not be dealing directly with your insurance company, and you should not be dealing directly with the negligent party's insurance carrier.

## *How Do I Determine the Value of My Case?*

It's not an easy answer. It depends on your injury and the extent of your injury; it depends on whether or not your injuries are permanent in nature, and that may take time to evaluate.

Say you broke your arm in the accident, you go through the initial healing process and you go through physical therapy and it's a year later, and you've maximized your physical therapy, and it turns out you have some permanency, meaning that there's some restriction in the use of your arm. That's important and we need to add that to the value of the case.

Another issue that comes up is liability. Whose fault is it? Who are we blaming? Sometimes there's an issue as to whether or not you might have some culpability. There's maybe some finger-pointing. These issues are important and have to be ironed out to come up with the appropriate value. I will tell you that this firm will make sure that you get the most possible compensation that you're entitled to for your injuries.

## *How Long Will the Case Last?*

It depends. There are a lot of complex factors that go into play as to how long a case is going to take.

One of the most important factors is the injury itself. We want to make sure that the client has gone through the process of rehabilitation, of recovery from that injury. We want to get to the point where you know whether or not the injuries are permanent in nature. That's an important factor in determining what the



case is worth and what needs to be done to pursue the highest possible settlement or resolution.

The second issue that comes into play has to do with liability. Whose fault is it? Who caused the accident? If there's some dispute or question as to who the cause of the accident was, those issues need to be ironed out, and sometimes that requires court intervention, meaning a lawsuit and litigation. If that's required, it can take time. It can take three, four, some cases even five or more years. I will tell you that this firm will do whatever we need to do to ensure that you get the highest possible compensation possible. If it requires litigation, we'll do that, and we'll try to get that done for you as quickly as possible.

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

The answer is to do it as early as possible. You want to do it early because you want to make sure the evidence that you need to prosecute the claim is preserved. An example, you want to make sure that witness statements are taken. You want to make sure photographs are taken of the accident scene. The earlier you begin the process, the better off you are.

There are some legal deadlines that you need to be aware of. You have three years to file a lawsuit in New York if we're talking about a private defendant. If we're talking about a municipality, it's an even shorter time frame. An example is in the City of New York, you must file your claim within a year and 90 days, but there are also notice of claim requirements that have to be met within the first 90 days.

It is important that you retain competent counsel to guide you through this process. They'll help and they will make sure that witness statements are taken when necessary, that photographs are taken of the accident scene, and our office can properly guide you through that process.



# CONTACT A DEDICATED NEW YORK PERSONAL INJURY LAWYER

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If you or a loved one are in need of an experienced New York personal injury lawyer, please call our office today to get a free consultation with Brian Elbaum. Let his experience work for you.



## 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.

