

## AUTO ACCIDENTS AND NO-FAULT INSURANCE

Accidents involving motor vehicles are among the most common causes of serious injury and death in the United States each year and encompass the broadest and most frequent personal injury claims. Automobile accidents are a class of tort cases which derive, for the most part, from the basic tort principles of negligence. Negligence is generally defined as the lack of ordinary care and is the failure to use a degree of care that a reasonably prudent person would have used under the same circumstances.

It may arise from doing an act that a reasonably prudent person would not have done under the same circumstances, or from failing to do an act. The most common types of automobile accidents are caused by driver error or driver negligence, distractions to the driver, and failure to properly maintain a car, truck, or bus.

Where nobody is injured or the injuries are not considered serious, the no-fault laws of New York will generally govern any bodily injury claims and restrict recovery. Conversely, the more serious the injury that results from a car accident, the more likely it is that a successful recovery can be obtained.

In New York State, the no-fault law applies to motor vehicle accidents and allows accident victims to get some compensation for medical expenses, time out of work and other incidental expenses, regardless of who was at fault. Every automobile owner in New York State is required to carry no-fault insurance on their vehicle. No-fault insurance is part of the vehicle owner's policy that pays an injured person's medical bills as soon as treatment begins, before any decision regarding who caused the accident. Normally, no-fault covers treatment for about two months. It will cover visits to physicians such as chiropractors, orthopedists, neurologists, the emergency room, and testing, such as MRI and CT scans. It also allows a small amount daily to cover other expenses, such as transportation to and from medical appointments.

If you or a loved one has been injured in an auto accident, contact an attorney who can best advise you as to whether no-fault applies in your case and whether you have a separate personal injury claim.



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This guidebook is for informational purposes.  
Since individual situations and legal issues vary, it is important to  
contact an attorney to discuss your specific legal situation.



**PERSONAL INJURY:  
MY RIGHTS IF I  
HAVE BEEN INJURED**



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## PERSONAL INJURY: AN INTRODUCTION

Personal injury, medical malpractice, and wrongful death actions are designed to compensate victims for intentional and negligent actions done by others. Similarly, individuals injured by products placed into the stream of commerce which are harmful when used as directed also receive the protections of personal injury laws under the term "product liability."

The law seeks to compensate these victims and their families for pain and suffering, lost earnings, loss of consortium and, at times, awards punitive damages in the event of gross negligence.

### COMMON ACCIDENTS AND EVENTS THAT MAY LEAD TO PERSONAL INJURY CLAIMS

Some of the common types of accidents that result in personal injury and wrongful death claims include:

- Motor vehicle, motorcycle, bicycle, and pedestrian accidents and crashes.
- Drunk driving and DUI/DWI crashes.
- Dog bites and attacks by domesticated animals, including bites, wounds, fractures, head injuries, brain injuries, rabies, scarring, and emotional trauma.
- Nursing home negligence and elder abuse, including bedsores, infections, dehydration, malnutrition, medication and prescription errors, mental cruelty, and physical abuse.
- Premises liability accidents, including scaffolding and inadequate security.
- Slip, trip and fall accidents.
- Construction site accidents.
- Product liability, including mislabeling, defective products, and dangerous drugs.
- Medical malpractice, including delay in diagnosis, anesthesia error, improper consent before a medical procedure, surgical error, failure to diagnose a medical condition, improper treatment of an illness or disease and birth injury, including cerebral palsy and brain damage.

## PREMISES LIABILITY/ CONSTRUCTION ACCIDENTS

Injuries suffered on another's property — whether it is at a home, store, office, or commercial building — are often the result of negligent maintenance or even complete disregard for the safety of others. If you or a family member has been injured in a slip-and-fall or other accident away from your home, you may have a premises liability claim.

Similarly, New York labor laws protect workers injured on a construction job site. Third parties, including property owners, general contractors, subcontractors, architects, and manufacturers, may be liable for an injury or death when an accident occurs on the job. The law makes the general contractor and property owner responsible for site safety. Worker negligence is not a defense to liability, and labor laws give the injured worker a separate and distinct cause of action apart from his or her workers' compensation claim.

## MEDICAL MALPRACTICE

Medical malpractice can occur any time a doctor or other medical professional commits an act that deviates from accepted medical standards of practicing medicine. This can take the form of a misdiagnosis, failure to diagnose illness or injury, or surgical, medication and treatment errors, among other mistakes. If you or a loved one has been injured by the carelessness of a doctor, hospital, nurse, or other health care provider, an attorney can help you pursue a case against the negligent party.

## PRODUCT LIABILITY

People who are injured by unsafe products, such as defective home appliances, failed auto safety devices, defective cribs, and/or dangerous drugs, can bring a product liability claim against negligent companies and manufacturers. New York State law requires that manufacturers and sellers of products ensure that their products are not in any way defective or dangerous to users. Companies must provide proper warning if any part of their product is unsafe or if using the product in a certain way could be hazardous to the user's safety or health.

Many of the injuries or deaths that are the result of defective products could have been avoided if manufacturers designed better products, and manufacturers and sellers of those products followed the law and properly warned users of product dangers. Danger from products may arise in a variety of ways, including design defects, manufacturing flaws, inadequate construction, and/or improper warning/instructions. Depending on the facts of your case, the manufacturer and/or the distributor can be held liable.

## WRONGFUL DEATH

A wrongful death occurs when a person is killed due to the negligence or misconduct of another individual, company or entity. A wrongful death suit can be brought by the surviving immediate family members if they suffer emotional injury and financial hardship due to the death of their family member. If you have lost a loved one due to the negligence or misconduct of another, it is of the utmost importance that you contact an attorney immediately to protect the rights of you and your family.

## PERSONAL INJURY DAMAGES

Although the exact amount of the personal injury award will vary between cases, generally, a plaintiff will be eligible for personal injury damages to compensate their economic and non-economic losses. In a successful New York personal injury case, the plaintiff may be able to recover economic damages, including lost wages, medical expenses, repair or replacement of property and loss of earning capacity.

Additionally, non-economic damages may be awarded to compensate the injured victim and his/her family for non-monetary losses, including:

- **Pain and suffering:** Damages for pain and suffering compensate the injured victim for their physical pain. The amount of a pain and suffering award will depend on the nature and severity of the injury, as well as how long the victim is expected to be in pain.
- **Mental anguish:** Damages for emotional distress may also be awarded in a successful New York personal injury lawsuit. Emotional distress is defined as the anxiety, fear, anger, depression or other mental anguish which results from an accident or injury.
- **Loss of consortium:** Spouses of personal injury victims may be able to collect damages for loss of consortium, or the intangible and emotional benefits of marriage. Compensable marital benefits that may be lost due to a personal injury include affection, assistance, sexual relations and comfort.
- **Punitive damages:** In rare instances, punitive damages may also be awarded to the plaintiff if the defendant's actions were especially malicious.

