



# Let the Games Begin

Dealing with the immediate aftermath of a crash

**The clock starts to run on your legal rights and duties** even before the dust and smoke have cleared from the scene of your crash.

There are steps that you must take—things that you are legally required to do and things that strengthen your position on the issues of liability and damages—to protect your rights later in the process. Of course nearly all of these steps have deadlines, and there are serious consequences for missing any of them, very few of which the insurance companies will ever inform you of.

You must immediately report to police all auto accidents that result in personal injury or be in violation of state vehicle and traffic law that could result in either a misdemeanor conviction or, depending on the degree of serious physical injury, a felony.

## 4 | **ADDING INSULT TO INJURY**

You must commence any suit for damages based on the negligent conduct of the other driver within three years of the date of the accident or be forever barred from doing so.

You must report as soon as reasonably possible all accidents to your auto liability insurance carrier or run the risk of having them disclaim coverages and benefits for your failure to timely notify them of the happening of the event; it is part of your contract (policy) with your insurance company.

You must fully complete and promptly return a no-fault claim form to your insurer within 30 days of any accident involving bodily injury or have your personal injury protection/no-fault benefits—including lost income payments—denied.

You must put your insurer on written notice of any potential supplementary underinsured motorist / uninsured motorist (SUM/UM) claim, so that, if the party that hit you either has no insurance or not enough insurance to pay the reasonable value of your claims, you can fall back on your own policy coverages.

You must complete and promptly submit an MV-104 form within 10 days of the date of the accident to the New York State Department of Motor Vehicles; your failure to do so is a misdemeanor punishable by up to one year in prison.

You must correctly communicate to all of your health care providers beginning with the ambulance service the name, address, and telephone number of your no-fault insurance carrier along with the claim number assigned to you so that your doctors, therapists, and imaging centers can get paid. They in turn must then forward their bills for all scheduled charges within 45 days of the date of service. If your doctors are not promptly paid by your insurer, it is unlikely that they will want to continue to

treat you, and you do not want anything to cause an interruption in your medical care that could delay your recovery by even one day. Gaps in treatment, even if explained, are readily pointed out by insurance adjusters as evidence of insignificant injuries. Their attitude is: if the claimant is not taking their injuries seriously, why would we?

You should, of course, summon the police to the scene to complete a formal accident report, even if it is not otherwise required; for example, when property damage is less than \$1,000. You should take photos at the scene and obtain the names and contact information from any witnesses discovered.

You should, if permitted, speak with the investigating officers at the scene to inform them of your version of what occurred.

You should, even if you have suffered what appear to be only minor injuries, immediately seek medical attention by requesting transportation by ambulance to the closest hospital. Insurance adjusters take great pleasure in pointing out whenever a claimant “refused ambulance at scene.” Their opinion is always that you could not possibly be injured if you chose not to get immediate medical care when it was offered.

### **First Contact:**

**Dealing with the insurance company for the party who hit you**

You will be contacted by the insurance carrier for the person who hit you within days, sometimes within hours, of the accident. Typically you will receive a telephone call from a claim adjuster inquiring first about your physical condition and then requesting a recorded statement from you about what happened.

It is never a good idea to speak about the happening of the accident with the other party's insurer, since whatever you say will be used for the sole purpose of contradicting you later in the case. At this early stage of events you are, after all, reeling from the trauma of the collision, in pain, and confused about the real motivation and role of the adjuster. It is always better to simply take down their contact information and tell them either you or your lawyer will be in touch with them in the near future.

In one memorable case, a client was released from the hospital emergency department, in a heavily medicated state, and visited at his home by an adjuster within hours. She was driving a brightly colored SUV with the name and mascot of her insurance company in banner form along the entire length of the vehicle. She told the client that since his car had only minor damage he could not possibly be seriously injured and therefore was not legally entitled to compensation. She went on to say that she could, nevertheless, make a good faith settlement of \$2,500 if he would just sign a release. He did.

Fortunately, I was able to get the release thrown out and went on to settle his case for slightly more than \$100,000.

You should know going into this process that the extent of damage to your car has nothing to do with the severity of your injuries; that insurance company myth has been exploded repeatedly over the years by compelling scientific evidence. What is more, it is not possible to understand the full extent of your injuries so soon after an accident, so it is therefore not possible to accurately assess the compensatory value of your injuries so early on either.

There is no rush to settle. You have three years within which to bring suit and, more importantly, it will take, at a minimum, approximately six months for your body to fully subside from the trauma of a collision so that you and your doctors know what problems you will actually be left to cope with.

### **Friend or Foe:**

#### **Dealing with your insurance company**

Many people stay with the same auto liability insurance carrier for decades, paying premiums year after year without question, and then are shocked at the shabby treatment they receive when they have been involved in an accident.

Loyalty accounts for nothing when it comes time for your insurance company to pay you. They play hardball from the moment you report the accident; business is business despite the advertising you are bombarded with and the birthday cards from your agent.

### ***Notification***

When you make the required prompt notification to your insurance carrier of the accident, you will be given, among other things, a no-fault claim number and be told to expect a fill-in-the-blank form in the mail. These forms must be completed and returned within 30 days of the date of the accident.

I have had clients denied all no-fault benefits by their insurers when their applications were less than a week late. Unless you have personal health insurance to fall back on, your medical care will abruptly end as soon as your no-fault carrier tells your

physicians they are not going to pay your bills. Do not give the insurance company an easy excuse to deny your benefits and put a quick end to your urgently needed medical treatment.

***Getting your health care providers paid,  
and recovering lost wages***

Upon receipt of the completed claim forms, your carrier will then begin paying your health care providers for the treatment rendered for the injuries suffered in the accident, along with paying you 80 percent of your lost wages. Self-employed claimants have additional hurdles to clear before lost wage claims are considered, let alone fully honored. Expect to be asked to produce documentary evidence in the form of tax returns and detailed financial records to prove your actual lost earnings. The insurance company will not pay you based on what you think or estimate you have missed out on since being injured in the accident.

I had a case recently where the insurance company hired forensic accountants to audit my client's records and then used their certified report as the basis for reducing his lost earnings payments by 50 percent. The client was a successful, local building contractor who would have had a highly profitable year except for being rear-ended on the way to one of his job sites. It was the perfect example of adding insult to injury; his insurance company refused to pay him his actual lost wages, and because he could not work due to the injuries suffered in the accident, he nearly lost his business altogether.

### *On-the-job motor vehicle accidents*

The coverage for your medical bills and lost income is part of your policy, and it is primary coverage—to be used before you rely either on your personal health insurance or other resources. The exception to this rule is Workers' Compensation coverage, but only if you are involved in an auto accident while on the job.

Be aware that there are competing requirements and definitions in both the no-fault and Workers' Compensation eligibility regulations that neither of those insurers will explain to you before rendering a decision on your claim. So when in doubt as to which coverage is primary for your accident, file applications for both and let the carriers argue with each other about who is responsible. Either way, at least you will be covered.

### *Your medical bills and lost wages will not be paid indefinitely*

New York's insurance law calls for your insurance carrier to pay your medical bills and lost wages resulting from the accident for either three years following the accident or up to \$50,000, whichever occurs first. However, at about the time it appears that your no-fault benefits have finally begun to flow to where they need to go, your insurance carrier will begin a cleverly designed and brutally efficient system to close your case and stop paying everyone.

### *Beware of the IME*

Your no-fault representative continually monitors your case by examining the bills and records your doctors generate in the course of treating you, and at the first sign that your condition has either improved or plateaued, you will be scheduled to

attend a mandatory Independent Medical Examination (IME) to determine if you require any further care that they are willing to pay for.

There is perhaps no more deceptive or cruel term in the tort law lexicon, since it is such a seemingly innocent acronym, but with potentially devastating consequences. There is nothing independent about it; the medical doctor or chiropractor selected is hired by your insurance company. Their job is to perform a cursory 20-minute office exam and then produce a letter/report that becomes the legal basis for denying payment for some or all of your future medical care from that date forward.

While you have the legal right to contest the carrier's decision to terminate your benefits through either arbitration or a lawsuit, in order to do so, it will be necessary for you to enlist the assistance of your physicians to challenge the IME doctor's opinion, and it has been my experience that most are not interested in going beyond treating you to double-teaming your insurance company on this purely financial issue.

The better plan to follow from the start is to aggressively treat for your injuries so your findings and diagnoses are beyond the critique of the IME physician.