



**THE ULTIMATE GUIDE TO**  
**HANDLING**  
— **NEW YORK CAR** —  
**ACCIDENT**  
**CLAIMS**

STEVEN J. PALERMO, Esq.

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# The Ultimate Guide to Handling New York Car Accident Claims

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By Steven J. Palermo Esq.

Palermo Law P.L.L.C.

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*1st Edition*

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# Introduction

As a New York personal injury lawyer, I receive many calls a day. Unfortunately, a good amount of those calls are from recently injured people. Over the last twenty years, I've gotten used to listening to the panicked voices on the other end. I know that while I cannot ease their pain, I can ease their fears by answering the many important questions that they have.

People that have been injured as a result of an accident often have the same questions. They want to know how their medical bills are going to get paid... how they will support their family if they can't work... who will pay for the damage to their property? Are they entitled to receive compensation for their bodily injuries?

The answers are not always simple. Often, the people that call my office will need to hire a personal injury attorney. But sometimes, the callers just need some guidance.

This book was written for two reasons. First, to educate and provide guidance to those who don't need to retain a lawyer. It is my goal to provide clear answers to the important questions on the minds of those that have been recently injured in an accident. Second, I want to help car accident victims understand when they may be in over their heads and need to hire a personal injury attorney to help them deal with the insurance companies.

For those that do hire an attorney, I hope that this e-book will be informational and act as an insight into the way things work.

This book is not intended as a legal practice guide for other attorneys. It is simply a resource for those individuals that have been in an accident and would like some guidance from an attorney that's been in the trenches. All knowledge contained in this e-book is from my experience over the last twenty years. I've spent the last few decades fighting insurance companies and gained an understanding of the types of issues that car accident victims face following an accident.

Too often I see injured people deserving of compensation for their medical bills, lost wages, property damage and pain, and suffering go uncompensated due to the complicated claims process employed by insurance companies. Make no mistake about it; the claims process is complicated, and it is that way for a reason. If an insurance company can dissuade a claim or force a person to give up trying to get compensated due to all the red tape, it's a victory for them and their bottom line.

My belief is that you have paid an insurance company a lot of your hard-earned money for financial protection for your family and yourself. Therefore, they should honor their agreement and pay the benefits that you're entitled to.

My mission in writing this book is to arm people with the knowledge necessary to navigate the tricky waters of personal injury insurance claims so that they receive all of the benefits that they are entitled to.

# Chapter 1

## *What to do Following a Motor Vehicle Accident*

Nobody plans on having a car accident. So, I can assume that the majority of people reading this book have found themselves in the unfortunate position of just having suffered a car accident and needed help. But, just in case some people are reading this book preemptively, I will break this chapter down into two separate sections. First, I will deal with what to do in the immediate aftermath of an accident. Next, I will discuss what to do in the days and weeks following a motor vehicle accident. So, if you have been in an accident and are reading this book, feel free to skip the first section.

### A. Things to do immediately following a motor vehicle accident

The most important thing to do following a motor vehicle accident is to protect the safety and well-being of the passengers in your vehicle and yourself. Therefore, if possible, move your vehicle to a safe location either on the shoulder of the road or a nearby parking lot. But before doing so, make sure that moving your vehicle will not cause or exacerbate anybody's injuries.

Once you're in a safe location, assess the well-being of your passengers and yourself. Ask specific questions to each person. If someone is hurt, you should call 911 and request an ambulance immediately. I always recommend calling the police to an accident scene, even if everyone is ok. But, let them know that no one is seriously injured.

The police serve an important role in documenting the accident. First, they gather all relevant insurance information. They also document the accident in terms of time, location, and apparent contributing factors. Next, they will gather any witness information. This can be important later on. The information will be compiled in a document called a Police Accident MV-104 form. It usually takes about one week to get this document from the police, but you should be provided with a field report on the scene.

The police will also ask if you have suffered an injury and want medical attention. Many people will opt to decline medical attention, even if they have injuries fearing both the time and expense associated with going to the hospital. I strongly recommend that if you have any pain whatsoever that you accept the offer of medical attention. It will be paid for by insurance and cannot only save your life, but also save any potential personal injury case that you may have.

I've come across many individuals that have declined medical attention on the scene to only find later on in the evening or the next day that their injuries are severe and they need to go to the emergency room. Also, I've represented many clients that had seemingly minor injuries that progressively grew worse until they were forced to seek medical attention days and even weeks after their accident. Often, insurance companies will try and deny that the car accident caused my client's pain because my client denied medical attention at the scene. As an attorney, I want to eliminate as many obstacles as possible when seeking compensation for my client. Therefore, always accept medical attention should you be in pain.

Another good idea at the scene of the accident is to collect information if you can physically do so. Take photographs of the scene and the vehicles involved in the accident.

Also, get witnesses' names. Seldom do the police take photographs at the scene of an accident. Only in case of catastrophic injuries will the police call upon the crime scene investigation unit to document the scene with photographs and measurements.

Further, there is no need to converse with the other driver. It is fine to inquire about their physical wellbeing, but it is best not to discuss the circumstances of the accident. Discussing the accident with the other parties serves no legal purpose and often leads to verbal and/or physical altercations.

Finally, be wary of offers to resolve the matter without the police. This never goes well. There is usually a reason the other party wants to avoid the police, and it's never to benefit you. Either there is an issue with their license or insurance, or they simply know they are at fault and prefer not to have it documented so they can later deny their wrongdoing.

## B. Things to do in the days and weeks following the accident

Following a car accident, you will be faced with several issues. You will likely have one, if not all of the following things to deal with: property damage, lost wages, medical bills and physical pain and suffering.

Many attorneys offer a free consultation, and it is not a bad idea to take advantage of that offer. But before you do that, make sure you are contacting a reputable and knowledgeable attorney. Refer to chapter eight of this book for advice on how to find the right attorney for your case. In lieu of contacting an attorney, I will explain some of the more important steps you should take following your accident.

First, contact your insurance company and report the accident to them. Since New York is a no-fault state, your insurance carrier will be responsible for paying your medical bills and the bills of any passengers in your vehicle. I will explain how no-fault claims work

in more detail in chapter two. But for now, you want to contact your insurance carrier right away. Your claim will be assigned to a representative of the insurance carrier known as a claims adjuster. The carrier will also assign a claim number to help access your claim information. You must save that number for further communication with the carrier and to provide to healthcare providers if you seek medical attention. Your healthcare providers will use that claim number to bill your carrier directly for any accident-related medical treatment.

Second, seek medical attention from a qualified professional. It is not a bad idea to start with your primary care doctor. But, I often suggest to clients that while that doctor is not a bad place to start your treatment, they may not be the only doctor you should see. Often injuries from a car accident require the attention of specialized doctors, such as an orthopedic or neurologist. Your primary care doctor can give you the name of one of these doctors, or you can independently find one of your choosing. Since no-fault insurance is paying for these healthcare visits, you will not need a physician's referral or accrue any co-payments.

Third, contact your employer if you will miss work due to the accident. You will be entitled to receive lost wages through no-fault if you cannot work, as discussed later in chapter two. But, it is important that your employer understand the reason for the absence. New York is an "at will" employment state. That means, while your employer cannot force you to work, they do not have to hold your job for you while you are incapacitated. If your employer should fire you due to your injuries, you will still be entitled to no-fault lost wages for the period of time that your injuries prevent you from being able to work. But once healthy, you must either return to work or if you have been terminated and can't find

employment, you will be eligible for unemployment benefits. To avoid this issue, it's best if your employer holds your job. Therefore, it's advisable to keep them in the loop about your injuries.

Finally, while it is ok to speak to your insurance company, it is prudent not to speak to the other person's carrier. Also, it is best not to provide them with any written statements. This can sometimes be complicated where both parties have insurance policies with the same carrier. In that situation, the carrier must act as if it is two separate insurance companies. They will assign separate claim numbers for each policy. You should and can communicate freely with your no-fault insurance adjuster. But, make sure that you are not speaking to the adjuster for the policy associated with the other party's claim. The best way to do this is to always confirm the claim number with the adjuster on the phone.

# Chapter 2

## *Understanding New York's No-Fault Laws*

New York is one of the twelve states that have enacted no-fault laws. Each state's no-fault laws vary. So, if you are not familiar with New York's version of no-fault, this chapter may be helpful. The purpose of New York's no-fault laws is to ensure that car accident victims receive compensation for accident-related medical bills, lost wages, and other incidentals regardless of fault. The insurance carrier of the vehicle you are occupying will pay those costs regardless of fault. If you are a pedestrian or bicyclist, those expenses will be borne by the insurance carrier of the vehicle that comes into contact with you.

### A. How to receive no-fault benefits

To qualify for no-fault benefits, you must be a motor vehicle operator, passenger, pedestrian or bicyclist. Motorcyclists are not eligible for no-fault coverage. Also, to receive benefits, all qualified parties must complete a no-fault application with the proper insurance carrier within 30 days of the accident. Failure to do so may result in the denial of your no-fault benefits. I always advise people to complete the application and mail it certified return receipt requested, to ensure that the carrier cannot dispute it was filed promptly.

The insurance carrier will mail the application to you once the accident is reported to them. In some instances, you may not immediately know which insurance carrier is responsible for your no-fault benefits. For example, a pedestrian will likely not know the carrier of the vehicle that struck them. In such instances, the insurance information can be obtained from the police accident report.

Also, if the insurance carrier responsible for your no-fault claim is not your own company, and you have no-fault insurance on one of your household vehicles, I would advise completing an application with your own carrier within the 30-day deadline. This will give you an added layer of insurance should the vehicle that is responsible turn out to be uninsured.

### B. What does no-fault insurance cover?

No fault insurance will generally cover all of your accident-related expenses. However, certain limits will apply. First, New York requires at least \$50,000 worth of no-fault coverage. A person may purchase additional no-fault coverage and would be wise to do so considering the cost of medical treatments. Out of that pool of money, you will receive payments for medical expenses, lost wages, household help, and transportation to and from medical appointments.

Generally, all healthcare providers accept no-fault insurance. Further, there are no deductibles or copayments. Also, you don't need referrals. But, since a few providers do not accept no-fault insurance, as a precaution, you should always confirm before receiving treatment. I advise providing the doctor's office with your no-fault claim number at the time that you schedule your appointment. This way, there is no confusion with the healthcare provider about how they are being compensated. There is nothing worse than showing up at a doctor's office only to be turned away because of an insurance issue.

If you were taken to a hospital on the date of your accident, it is likely that you did not have a no-fault claim started before receiving treatment. I recommend that you immediately contact the hospital once you file your claim so that they can bill the proper insurance carrier. If you fail to do this, the hospital will bill you directly. Also, if any bill is not

submitted to the no-fault carrier within a reasonable time, it can be denied. That could mean you could be left on the hook for that bill.

Should your no-fault benefits be exhausted before you complete treatment, you must use your personal healthcare insurance to pay for medical treatments. Unfortunately, this will mean you will incur customary deductibles and may need to obtain referrals as per your private health insurance agreement.

No-fault insurance will also cover up to 80% of your accident-related lost wages up to two thousand dollars a month. To receive this benefit, you must provide a doctor's note from a treating physician attesting to the fact that you cannot work. Your employer must also provide a wage verification form, as well. The carrier has up to 30 days to offer wage payments once the documentation is submitted. You must submit the wage verification form to your employer and follow up with them to make sure it is returned to your insurance carrier. You can obtain the form from your insurance carrier. I always recommend that you continue to follow up with the adjuster to make sure that they have all the documents necessary to start your payments. The adjuster will also request updated doctor notes periodically.

For some people, the no-fault maximum lost wage benefit will not adequately reimburse them for their lost wages. For example, if you earn more than two thousand dollars a month, you will be receiving less than your full paycheck. It is best to keep track of your unreimbursed lost wages. If you are filing a claim against the at-fault driver, it is possible to get reimbursed for those unreimbursed lost wages. I will explain how that works in more detail in Chapter XI.

Finally, no-fault insurance will cover up to twenty-five dollars per day of accident-related expenses for such things as travel and household help. Again, you must submit proof to your no-fault carrier of such expenses prior to reimbursement.

### C. Independent Medical Examinations

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An Independent Medical Exam (IME) is a physical examination with a doctor hired by a no-fault insurance provider. The exam determines whether you still need medical treatment. The term “Independent” is used to describe the exam, but as you can imagine, there is an incentive for the medical doctor to discover that you no longer need treatment since it is the insurance carrier hiring the doctor.

The independent medical doctor only has the power to terminate or reduce treatment in that doctor’s specific area of expertise. For example, an orthopedist cannot terminate or reduce your treatment with your treating neurologist. Further, the insurance carrier must provide you with a claim denial accompanied by the doctor’s written report before your benefits for any particular medical discipline can be terminated.

Further, terminating your medical benefits may also result in the termination of your lost wage payments. For example, if your orthopedic doctor has provided the written proof of your inability to work and an orthopedic IME doctor finds out that you no longer need treatment, your lost wages will stop.

If you disagree with the independent doctor's decision following your exam, there is an appeals process. You can request arbitration with an independent arbitrator. However, the process is complicated, time-consuming, and takes several months to schedule. This may be impractical for someone undergoing active treatment. I generally recommend that once

no-fault benefits are terminated by the carrier that my clients use their private health insurance to pay for medical treatments. The private carrier may want to see the no-fault denial prior to paying for medical bills.

Generally speaking, no-fault insurance can be quite complicated. Most attorneys that handle personal injury cases will also handle all of your no-fault issues. However, be aware that there may be an additional charge for such services.

# Chapter 3

## *Handling Property Damage Claims*

Property damage generally refers to your vehicle and any property in your vehicle, either damaged or completely ruined in the automobile accident. You can make a claim for your property damage one of two ways. You can either file a claim with your insurance carrier if you have purchased collision coverage, or you can pursue reimbursement through the other party's insurance carrier. There are benefits and drawbacks to both options, as I will discuss below.

### **A. Using your collision coverage to pay for your property damage.**

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Filing a claim through your automobile collision coverage has several advantages. First, your own insurance company has a vested interest in making you happy since you are a paying customer. They will be more responsive to your needs and provide better customer service. Since you are entitled to collision coverage as per your insurance contract, fault is not an issue. Therefore, there is no need to complete an investigation of the accident prior to paying for your property damage claim, thus speeding up the process.

The only drawback to filing a claim through your insurance carrier is that there is usually a deductible. A deductible is an agreed upon amount of money you must contribute to the repairs or replacement of your property damage. Most deductibles range between \$500 and \$1,000. The good news is that, after completing your insurance company's accident investigation, you may be entitled to full or partial reimbursement from the other person's insurance carrier. Further, your carrier will fight

to get the money back to you in an inter-insurance company arbitration proceeding against the offending vehicle's insurance company.

Filing a collision claim is a better option than pursuing a claim through the other vehicle's carrier. The only time I recommend a client with collision coverage to pursue a claim through the other carrier's policy is when they do not have the financial resources to pay their deductible.

## **B. Pursuing a claim through the offending vehicle's insurance carrier**

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When pursuing a claim through your own collision coverage is not an option, you can file a claim with the other vehicle's insurance carrier. However, fault will be a key issue in the claim because the carrier will only be responsible for their client's proportionate share of fault in the accident. Therefore, prior to issuing any payments, the insurance carrier will complete a thorough investigation. This will include obtaining a police accident report, witness statements, and an inspection of all damaged property.

The insurance company will likely be biased, and if there are multiple versions of the accident, they will probably accept the version favorable to their client. Further, they will be less responsive to your needs as they have no financial relationship with you. Also, the carrier does not have to make a settlement offer to you. They will only do so if they feel it is in their best interests to settle because they have no chance of winning if the case goes to court.

However, if the carrier refuses payment or offers a payment that is less than you feel is acceptable, you can pursue recovery in court. Unfortunately, this is an arduous process and will likely require the services of an attorney.

Should you agree on a settlement with the carrier, you will likely be asked to sign a release. Be careful when signing a release with an insurance company. Read it carefully and make sure you understand the contents. Never sign a document you do not fully understand. Further, make sure that the release pertains to your property damage only. This is extremely important because signing a general release will bar you from pursuing a bodily injury claim. Even if you do not believe that you are injured, never sign a general release in a property damage settlement. You never know if you are suffering from latent injuries that may reveal themselves later on.

# Chapter 4

## *Medical Bills and Lost Wages*

Two of the biggest concerns a person will likely have to deal with after sustaining an injury in a motor vehicle accident are medical bills and lost wages. Just a routine examination in a hospital emergency room following an accident can cost several thousand dollars. If you need to undergo any additional treatment, the bills can be astronomical. Being unable to work and earn money only compounds the problem. Fortunately, insurance benefits can help.

### A. Medical Bills

As I discussed earlier, New York is a no-fault state. Therefore, you will be qualified immediately for no-fault benefits. Besides, since New York is a no-fault state, your car insurance coverage will be your primary source of insurance coverage. This means that all medical bills must be submitted to the proper no-fault carrier before being paid. Any bills submitted to your private health insurance will be denied if no-fault insurance is available to you.

The only exception to this rule is if you are in a motor vehicle accident while at work. For example, if you are making a delivery for your job and are rear-ended. In a scenario where you are injured during the course of your employment, workers' compensation insurance will become the primary insurance policy and no-fault will be secondary. However, if you are on your way to work or on your way home from work and off the clock, no-fault will still be your primary insurance.

No-fault insurance will cover all of your medical bills up to \$50,000 or if you are terminated from coverage, as per an Independent Medical Exam. Therefore, sometimes, you may need medical

treatment but no longer have no-fault benefits to pay for that treatment. In this situation, you will be left with a few options. First, you can submit your medical bills to your health insurance carrier. The carrier will likely want to see a denial from no-fault before agreeing to pay for medical treatment.

If you are a Medicaid recipient, you can submit your medical bills to that entity once no-fault is denied. There are two issues I see arise with this situation. First, not all doctors accept Medicaid. Therefore, you might need to switch healthcare providers. While this is inconvenient, it is better than the alternative of receiving no treatment. The second issue that arises is that unlike no-fault, Medicaid may be reimbursed for medical payments should you receive a settlement.

Medicare works similar to Medicaid in that it will cover medical expenses once your no-fault benefits are denied. Also, like Medicaid, if a settlement is reached, Medicare will be entitled to reimbursement for its expenditures.

Another option to get medical bills paid is to approach the healthcare provider about accepting a lien on your personal injury settlement. I often can get a healthcare provider to continue treating a client while their case is proceeding and await settlement before receiving payment. Obviously, this will not be an option if you are not pursuing a bodily injury settlement. It is also likely a last resort as it is always better to get an insurance company to pay for the treatment up front because they are only entitled to repayment if you receive a settlement. On the other hand, a doctor's lien will usually stipulate that you are responsible for the bill should there be no settlement.

The last option for getting medical bills paid is through a personal injury lawsuit. If another person causes your injuries, they are responsible for any economic damages associated with that injury, including medical bills not covered by no-fault. There is a caveat to this rule. It must be proven that you have suffered a "serious injury" from the motor vehicle accident before the responsible party

is required to pay for your economic losses. “Serious injury” is defined by law. I will explain what qualifies as a serious injury in Chapter Seven.

## B. Lost wages

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If certain criteria are met, a person is entitled to lost wages through no-fault insurance. First, you must be employed at the time of your accident. If you have been hired by a company and are injured before your start date, you are considered employed and will be entitled to no-fault lost wages.

Second, your employer must provide proof of employment by completing a no-fault wage verification form. This form can be obtained from your no-fault provider. Get it to your employer as soon as possible. Also, follow up with your employer to make sure it was completed and returned. I would also recommend, once it is returned, that you follow up with your no-fault carrier to make sure it is received and being processed.

Finally, you will need to provide medical documentation that you are unable to work from a qualified healthcare provider. I would recommend either seeing your primary care doctor or a specialist, such as an orthopedic, neurologist, or a pain management doctor. The no-fault carrier will usually require updated medical documentation every thirty days to continue paying for your lost wages.

In the first twenty-six weeks following your accident, you will also be entitled to New York State Short Term Disability benefits. Your disability benefits coupled with No-fault will reimburse you 80% of your salary up to two thousand dollars a month. After twenty-six weeks, your New York State Short Term Disability will stop and No-fault insurance will pay the difference, so you are still receiving 80% of your salary. You are entitled to receive no-fault lost wage benefits for up to three years following an accident.

If you are self-employed, receiving no-fault lost wages is slightly more complicated since there will be no one to complete a wage verification form. In these instances, a no-fault provider will ask for tax returns or other documentation to establish your average weekly salary.

If your salary exceeds the two-thousand-dollar no-fault maximum, you should keep track of how much money you are losing because of being unable to work. You may be able to get reimbursed through the negligent party's insurance policy. This is usually difficult to do and may require the help of a personal injury attorney.

Finally, No-fault insurance will pay for your lost wages through the period of your disability or until your no-fault benefits are terminated. Should you be terminated as per an Independent Medical Examination, but still believe that you cannot work, you should continue to have it documented by a healthcare provider. Again, you may be able to obtain those lost wages from the negligent party's insurance carrier.

Should you run into any problems with receiving medical payments or lost wages, it is always a good idea to speak with an attorney. They can often solve the problem and get you reimbursed for your losses.

# Chapter 5

## *Understanding UM/SUM Insurance Claims*

Uninsured Motorist Claims (UM claims) refers to an insurance you purchase as part of your automobile insurance coverage that will compensate you if a person that has no insurance injures you in an accident. Supplemental Underinsured Motorist Claims (SUM claims) refers to an insurance coverage you purchase as part of your automobile insurance coverage that will compensate you if you're injured in a motor vehicle accident by a person that does not have enough liability insurance coverage to adequately compensate you for your injuries.

The UM/SUM insurance you purchase as part of your automobile coverage will step in the place of the negligent party and compensate you for your losses. This insurance will only apply if the other party was negligent. If the accident was your fault, you cannot make a UM/SUM claim. If you are partially at fault for your accident, you can make a claim and receive compensation for the other person's proportionate share of fault regarding the accident.

### A. Pursuing a UM Claim

There may be several instances where UM coverage will be triggered in order to compensate you for injuries suffered in a car accident. Every person must maintain automobile liability insurance on their vehicles for at least \$25,000. However, as we all know, not everyone follows the law, and there are many instances where car accident victims suffer injuries caused by a person operating a vehicle without insurance.

In such a case, you can present a UM Claim to your insurance company for compensation for your injuries. Another instance where UM coverage applies is in a hit-and-run accident. If you are a passenger in someone's car that does not have insurance, you can make a UM claim against your own household vehicle. A UM claim should be made as soon as possible, as certain deadlines will apply.

The insurance company will require proof that the offending driver was uninsured at the time of the accident or fled the scene of the accident prior to accepting the claim. In a hit-and-run situation, proof of contact with another car will be required to pursue a UM claim. Once the proof is provided to the carrier, you can pursue recovery from your own carrier up to the limits of your UM coverage. In New York, everyone must have at least \$25,000 of UM coverage. But most insurance companies offer policies up to \$1,000,000 for an extra cost. However, it must be in place prior to your accident to apply.

You initiate your UM claim by providing written notice to your insurance carrier that you were injured in an accident with an uninsured driver or a driver that fled the scene. The carrier will inform you if they are accepting the claim or require more proof before accepting the claim. Once the carrier has received the adequate proof, they will assign an adjuster to handle the claim. The adjuster will gather information, such as a police accident report, witness statements, medical records, and lost wage records. Once the adjuster has the relevant information, they will evaluate the claim. If the adjuster feels that the other party is at fault or at least partially at fault and that you have sustained a severe injury, they will make an offer to settle. You can either accept the offer or demand more money. If you cannot agree upon an amount of money that is fair, you can request arbitration with the American Arbitration Association.

Litigating a UM claim against your own insurance carrier in an arbitration can be tricky. The process is similar to a trial. Prior to the arbitration, you must submit to discovery, a deposition and medical exam, as well as provide medical records and other documentation to support your case. Once all of that is complete, there will be a hearing before an arbitrator. The hearing will be similar to a mini-trial. There will be opening statements, testimony, presentation of evidence, and closing statements.

I would strongly recommend hiring a qualified personal injury attorney to pursue a UM claim. The insurance companies have made filing for the claim very complicated and full of pitfalls. Further, litigating a case at arbitration takes years of training and experience. It can be done pro se, but is not advisable.

## **B. Pursuing a SUM Claim**

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Pursuing a SUM claim is very similar to pursuing a UM claim with one exception. Since a SUM claim is the one you make when the offending party is underinsured, before pursuing the claim with your carrier, you must first resolve the underlying claim to the full limit of the offending party's insurance. For example, if the person that caused your injury has only a \$25,000 policy limit and your injuries exceed that amount, you must receive the full amount before you qualify to pursue your SUM claim. If you accept anything less than the full amount, you will be barred from pursuing a SUM claim. You also should provide notice to your carrier as soon as possible that you are planning to pursue a SUM claim. Therefore, as soon as you learn that the limits of the offending vehicle are underinsured, you should let your carrier know that you will be pursuing a SUM claim.

Further, you must provide your own carrier notice of your intent to settle your claim against the responsible party prior to accepting the settlement offer and obtain your carrier's written consent to settle the claim. The purpose of this is so the carrier can investigate whether the responsible party

may have additional insurance that may cover the claim. An insurance carrier cannot unreasonably withhold consent to settle. Once notice is provided to them of your intent to settle, they have thirty days to provide consent or come forward with their reasons for withholding their consent. If they do neither, you can settle your claim with the offending party and pursue your SUM claim.

Once again, I must caution that pursuing this type of claim is complicated and full of pitfalls. It is advisable that you consult with a personal injury attorney prior to pursuing a SUM claim.

# Chapter 6

## *Dealing With Insurance Adjusters*

If you've been involved in a motor vehicle accident and filed a claim with an insurance carrier, you have probably already spoken with an insurance adjuster. For those of you unfamiliar, an insurance adjuster is a representative of an insurance carrier assigned to your claim. The adjuster gathers information about your claim to determine if the carrier is responsible for payments pursuant to your policy, and if so, the adjuster calculates the payment and then issues said payment. This process is known as "adjusting a claim." There are several types of adjusters you will likely have to deal with during the pendency of your motor vehicle accident claim.

### A. Property Damage Adjuster

A property damage adjuster adjusts your property damage claim. Property damage refers to your vehicle and any property that was damaged in the vehicle at the time of the accident. The property adjuster can be employed by either your insurance carrier or the offending vehicle's insurance carrier, depending on which carrier you are making a claim against. Once a property damage claim is started, the carrier will assign a claim number along with a property damage adjuster. You should always have your claim number handy when communicating with your adjuster for them to easily access your claim.

Once the property damage adjuster is assigned, you must coordinate the inspection of your vehicle and all damaged property. You should not discard the vehicle or any damaged property prior to having the insurance carrier inspect the property. Also, gather any receipts for items that were

damaged or receipts for any prior vehicle upgrades that may have increased the value of your vehicle, such as new tires. The inspection is usually done by a qualified expert for the insurance carrier. Once an inspection has been completed, the expert will make a list of all damaged items and calculate the price of repairs. This report will be forwarded to your adjuster. You are entitled to the property damage report, and I recommend that you obtain a copy. Discuss the report with your auto body shop prior to accepting payment as they may have a different opinion on the damage to the car. If so, you will need to ask for a re-inspection to address those items.

If the damage is too excessive, the adjuster will deem the vehicle a total loss and offer to pay for the current fair market value of the car. This is often called the “book” value, as it is usually determined from publications, such as Kelley’s Blue Book. The insurance carrier is only responsible for paying for the current fair market value of the car. If you have a car loan and that loan exceeds the value of the car, you will be responsible for the difference. Often, people purchase gap insurance. If you have that type of insurance coverage in your insurance policy, it will cover the difference between the book value of your vehicle and the loan amount.

If there is a disagreement between what the insurance carrier values your vehicle as opposed to you, you do not have to accept the offer. The way this dispute is resolved depends upon which carrier you made a claim with. If the claim was put through your own collision coverage, you can request arbitration. If the claim was put through the offending vehicle’s insurance policy, you can pursue recovery through the court system.

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## B. No-Fault Adjuster

A no-fault adjuster is assigned to handle your no-fault claim issues, such as medical bills, lost wages, and other out of pocket expenses. To recover no-fault medical payments, your healthcare

provider must bill the no-fault carrier. You should make sure your health care providers are made aware that your treatment is because of a motor vehicle accident and are provided with the no-fault claim information. Failing to do so may cause your healthcare provider to miss important deadlines to submit medical bills to your carrier, which could cause them to seek payment from you. Also, don't just assume your carrier will make payments just because you provided your doctors with the proper claim information. If you receive medical bills, contact your adjuster and submit those bills for payment.

No-fault does not preapprove medical treatment. If you seek treatment and that doctor accepts no-fault coverage, and your adjuster denies payment stating that the treatment was not medically necessary, your healthcare provider is not allowed to pursue payment from you directly except in very limited situations. It is incumbent on the doctor to resolve that issue with the carrier and not you. Therefore, should you receive collection letters from your doctor's office for medical bills from your car accident, refer them directly to your carrier to seek payment. Should your doctor refuse and continue pursuing you for payment, hire an attorney to protect your interests.

If your treatment lasts for several months, your no-fault adjuster may request you attend an independent medical exam (IME) to determine if treatment is still necessary. There are generally three outcomes of an IME. First, your treatment may continue as normal. Second, your treatment may be terminated. Third, your treatment may be reduced. If treatment is terminated, you can use your private health insurance to pay for future treatments.

Your no-fault adjuster will also issue no-fault lost wages up to 80% of your salary about \$2,000 a month provided that you can supply a lost wage verification form from your employer, and a medical note stating you cannot work from a qualified healthcare provider. Once your adjuster

receives these documents, the carrier has 30 days to issue payment. Again, this is something that you must continually follow up on with your doctor, employer, and adjuster to make sure the paperwork is being completed and processed. Don't assume because you've done your part that everyone else will do the same. I've seen many employers and doctor's offices fail to return the forms and many carriers loose paperwork. Further, your adjuster will require updated medical notes every thirty days.

Finally, try to develop a good relationship with your adjuster. The better your relationship, the more likely your payments will be processed quickly.

### C. Bodily Injury Adjuster

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Your bodily injury adjuster may be the most important adjuster you will deal with. This adjuster is employed by the offending vehicle's insurance carrier to adjust your bodily injury claim. Not all motor vehicle accidents will have a bodily injury claim. But if you do, this will be the person that evaluates the claim and decides how much money to offer to settle the case. I advise people that if you have suffered bodily injuries, it is usually best to hire a personal injury attorney to handle the claim. There are rare instances where you may be better off handling this claim on your own, which will be discussed in Chapter 7.

The bodily injury adjuster will gather the police accident report, witness statements, medical records, lost wages, and out of pocket expenses. Once the adjuster has compiled all that information, they will evaluate the case. I always advise asking the adjuster not to evaluate a case until all treatment is complete. Once a case has been evaluated, an adjuster will decide whether the carrier wants to settle. If so, the adjuster will make an offer to settle. If not, the adjuster will decline to make a settlement offer.

If the adjuster makes a settlement offer, you have a few options. First, you can accept the offer. Second, you can negotiate for more money. Finally, you can skip negotiations and pursue your claim in court by starting a lawsuit. Obviously, I would suggest to never accept an adjuster's first settlement offer. It's been my experience in the vast majority of cases I have handled that an adjuster always leaves room to negotiate a claim. There are limits to their ability to offer money to settle a case. The adjuster is usually given a range of money in which to try and settle a case by a supervisor. Once that limit is reached, the adjuster will offer no more money.

If an offer was conveyed to you that you feel is insultingly low, it may be best not to even negotiate and just proceed to court. Negotiating an unfair offer never results in reaching an amicable resolution and just delays the inevitable need to go to court.

As a practicing personal injury attorney, I've been consulted by prospective clients at all stages of the claim process. Often, when a person receives a low offer, they will come to me seeking help. It's rarely too late to consult with an attorney except in cases where a person has executed a release. Then it's likely too late.

I'm never surprised at the difference between what an adjuster will offer to settle a case with an inexperienced layperson as opposed to an attorney. I was once consulted by a client that was offered \$15,000. After several months of litigation, we were able to obtain 20 times that amount of money. Consulting with an attorney is never a bad idea. Even if you decide to pursue that matter on your own, at least you will receive some valuable pointers.

Finally, no matter what type of adjuster you are dealing with, remember that an insurance carrier employs the person. No matter how nice they are, ultimately it is their job to minimize the

money that you receive for your claim. So, always be wary and do your research before executing any releases.

# Chapter 7

## *When to Consult a Personal Injury Lawyer*

Not all motor vehicle accidents will require hiring a personal injury attorney to handle the case. Generally, a personal injury attorney can help with automobile accident claims. However, in certain instances, spending the money on an attorney will not be necessary. First, there are two different fee arrangements you can make with an attorney to handle your claim.

First, you can hire an attorney on an hourly rate. Second, an attorney may be willing to work on a contingency fee. When an attorney works on an hourly rate, they will usually require a retainer. Once paid, the attorney will bill you based upon an hourly rate and subtract the bills from the prepaid retainer. Once the retainer is exhausted, the attorney will require you to replenish the retainer.

When an attorney works on a contingency basis, the attorney will not charge a fee upfront. Upon resolution of your claim, your attorney will be compensated by receiving a percentage of your recovery. Thirty-three and 1/3 percent is the standard contingency fee. However, there are a few instances where that amount may be different.

Where you have not suffered a severe injury, an attorney will not likely accept the case on a contingency fee. In those situations, you will either have to pay the attorney an hourly fee or handle the case by yourself. If you find that dealing with the insurance companies is too difficult or time-consuming, you might hire an attorney to complete the necessary claims

paperwork to ensure you receive the benefits you are entitled to. Also, if you feel that the insurance company is not treating you fairly or just so disorganized that you are getting nowhere with your claim, you may want to get an attorney involved.

If you have suffered an injury, you may want to hire an attorney, and depending on the seriousness of the injury, the attorney may work on a contingency basis. If your injuries are serious, such as fractures, brain injuries, disfiguring injuries or other types of serious injuries, it is always advisable to consult with and hire a personal injury lawyer.

A lawyer working on a contingency basis will almost always result in you recovering more money than if you do it alone. Attorneys have the experience and resources to evaluate and pursue a personal injury claim for you. You may not even understand the full extent of your injuries and the financial implications of such injuries and may be underestimating what would be fair compensation.

Ultimately, hiring a personal injury attorney is a personal decision you will face should you be involved in an accident. I would just remind you that an insurance company has one goal in dealing with your claim: to save money. Therefore, they will use every means at their disposal to limit the benefits they pay you. An attorney knows all the issues that will come up during your claim and is familiar with the tricks that insurance companies use to save money on your claim. Further, most attorneys offer free consultations to discuss your claim. So, you have nothing to lose by consulting with an attorney except about an hour of your time.

# Chapter 8

## *What to Look for in a Personal Injury Attorney*

Hiring a personal injury attorney may be the most important decision you will make regarding your motor vehicle accident case. People choose an attorney for many reasons: the attorney is close to their home; they have used the attorney before for a real estate purchase; divorce or some other legal matters; they are friends with the attorney or they have a friend in common.

If you have suffered a serious personal injury, the attorney you hire may make the difference between hundreds of thousands of dollars, if not millions of dollars. Most attorneys want to handle personal injury cases because the right case can be very lucrative. But, without the proper background and experience, the attorney may find out that they are quickly in over their head. They may either try and bluff their way through or bring in an attorney qualified to handle the matter to assist. The problem here is that if your case gets off to the wrong start, it may be difficult or even impossible to right the ship. Much of the groundwork for a personal injury case is laid in the first few months. So, you should find the best attorney for your particular case right from the get-go.

The good news is that in today's information age, it is easier than ever to do your research and find the right attorney for you. I would first recommend that you assess your own personal needs to see what is important to you. Some people want to find the most

aggressive attorney for their case. Others are looking for an attorney with a great bedside manner. While others just want someone they trust.

You should be looking for all these things in a personal injury attorney. I believe that you should seek an attorney that will get you the most compensation, in as little amount of time as possible and with as little stress as possible. But, no matter what your goals are, there is a sure-fire method to find the right attorney for you. It just requires some work. But, believe me, in the end, the effort you put into your search will pay off.

First, ask family members, friends, and acquaintances if they have a recommendation for an attorney that focuses on personal injury. Compile a list. Once you have a list, do your own research. The best place to start is with Google.

Search for car accident attorneys in your jurisdiction. This is important. You do not want to hire an attorney from outside the area where you live. So, if your case is in Suffolk County, find an attorney in Suffolk County. If your case is in Westchester County, look for an attorney in Westchester County. Although it's not impossible for an attorney from outside your area to handle a personal injury case effectively, a local attorney will usually have developed a reputation and relationship with judges, court personnel, and local defense attorneys in the area. This may prove beneficial when push comes to shove in settlement negotiations, court proceedings, and/or trials.

I will never forget a recent trial I did with an outside attorney in front of a particularly difficult judge. He had excessive court rules, including the way his name was written on all submissions. If you failed to put his full middle name on a submission, he rejected the papers. If you failed to address him without standing, he would dress you down in front of the jury. Knowing this, I was able to not only avoid any confrontation with the judge, but was

also treated with great respect. Each slight misstep that my adversary made led to some very hostile exchanges from the judge. The hostility that developed between the two men was picked up by the jury. Although the jury may not have known exactly why it seemed as though the judge was unhappy with my adversary, it worked in my favor. I believe many of the jurors thought the judge was favorable to my case. That wasn't necessarily true, but worked to my advantage in receiving a sizable verdict.

Once you've compiled a list of potential attorneys, visit their websites and see how they describe their approach to personal injury and their on-site reviews and case results page. While most attorneys cherry-pick on-site reviews, you can often get a feel for what types of attributes they have. For example, are the reviews discussing how friendly the attorney was? Do they discuss his verdicts? Or, do they focus on how quickly the case was resolved?

Also, attorneys must comply with strict guidelines regarding posting case results. I doubt any attorney would put up a false result. So, see if the attorney has obtained the types of results that are impressive. Does the attorney have any jury verdicts or is every result a settlement? That may be a clue to the attorney's aggressiveness.

Also, read the attorney's profile and see where they were educated. Does the attorney have any awards? Is the attorney active in community service and pro bono work?

Once you've read the website thoroughly, go off-site to read reviews from prior clients. A good attorney should have many off-site reviews. Those reviews are likely to be the most accurate because they're not cherry-picked by the attorney. Google reviews are very thorough in screening reviewers and is a good place to start. There are also many sites that review attorney performance that can be enlightening, such as Avvo, Justia, and Lawyers.com. But

be careful on these sites because attorneys can pay for sponsored spots that may make their profile look more appealing than a more qualified attorney that does not pay for a sponsored profile.

Once you've narrowed your list of attorneys, it's a good idea to meet a few of the ones you like the most. Nothing is better than actually meeting the attorney face to face. The first thing I would caution is to make sure you are actually meeting the attorney you read about. A lot of firms will shuffle potential clients off on Junior Partners and Associates.

When meeting the attorney, ask them to explain your case and ask for their take on it, their strategy, and feelings about success and their plan for handling it. Remember, attorneys usually work on a contingency basis. So not every attorney will be willing to take every case.

I personally will only get involved in cases where the prospective client has suffered significant injuries. My practice focuses on maintaining a manageable caseload and, this way, I can provide personal attention to each case. There was a time in my career where I was handling over two hundred cases at a time. I found this to be stressful and felt I was losing the ability to get to personally know each client. I've since opted to limit my practice to less than 100 cases at any one time. Now, I know each client personally and enjoy representing them!

Finding an attorney is like any other significant purchase you make. In the end, you must rely on your gut a little. But, if you've done your due diligence, you will likely find the right attorney for your case.

# Chapter 9

## *Understanding New York's Threshold Law*

To reduce the amount of needless litigation arising from motor vehicle accidents, New York State enacted a law that requires that you sustain a serious injury before you qualify to bring a lawsuit for your damages not covered by no-fault. The law has become known as the threshold law. It can be found in the Insurance Law of the State of New York under Section 5102(d). It lists eight types of injuries that qualify under the law as serious, thus granting the right upon the injured person to seek compensation above what is provided for by no-fault insurance. Therefore, you can seek pain, suffering, and economic losses not provided for through no-fault benefits if you have sustained one of the eight enumerated injuries.

While some of the eight categories of injuries are straightforward, others are more confusing to understand and many people, even attorneys, are left wondering whether a person has suffered a serious injury. The eight categories set forth in 5102(d) of the insurance are as follows:

### **Eight Categories of Serious Injuries**

- 1 Death
- 2 Dismemberment
- 3 Disfigurement
- 4 Fracture
- 5 Loss of Pregnancy
- 6 Permanent loss of use of a body organ, member, function or system

7 Permanent consequential limitation of the use of a body function or system

8 A medically determined injury impairment of a non-permanent nature that prevents a person from performing a substantially all of their normal activities for any 90-day period within the first 180 days following an accident

Numbers one through five are very straightforward and are rarely challenged. Numbers six through eight are much more confusing and often require litigation to resolve. Numbers six and seven usually deal with soft tissue back and neck injuries.

While there are thousands and thousands of court cases dealing with the issue for our purposes, I would suggest looking at two factors to determine if an injury may meet the threshold under categories six and seven. First, courts look for a positive finding in a diagnostic test, such as an MRI or Cat Scan. A positive finding is usually a herniated disc or bulging disc.

Next, courts look for some type of permanent or long-lasting issue as a result of the positive finding, such as loss of range of motion or nerve damage. Once those two factors are established, a court will usually consider the threshold breached.

While the threshold law can be complicated, if an insurance company is denying your claim because they do not feel your injury breaches the threshold, you have recourse. You can bring your case to Court and litigate the issue.

# Chapter 10

## *How a Motor Vehicle Bodily Injury Claim is Handled*

If you are involved in a motor vehicle accident in New York, you will likely deal with multiple insurance carriers. The motor vehicle insurance of the car you are occupying will be the carrier you will file a no-fault claim against. The vehicle or vehicles responsible for the accident will be the carrier(s) that you file a bodily injury claim against. If you are a passenger and the vehicle you are in is responsible for the accident, you will file both a no-fault and bodily injury claim against the same carrier. In that situation, the carrier will act as two separate and independent companies in dealing with your claim and is strictly prohibited from sharing information with each other without your consent.

Your no-fault claim and bodily injury claim can be filed simultaneously. Each has various steps to be accomplished to obtain the maximum benefits you are entitled to. Filing a no-fault claim was discussed in Chapters 2 and 4, so I will concentrate on filing a bodily injury claim in this chapter.

It is important to differentiate between filing a bodily injury claim and filing a lawsuit. A bodily injury claim is an informal demand for payment from an insurance company for injuries suffered in a motor vehicle accident. A lawsuit is a formal accusation made in court, which, if not settled, will ultimately result in a trial, and if successful, a judgment wherein the responsible party would be ordered to pay damages to you.

It is common for attorneys to assert a bodily injury claim, and if they cannot settle out of court, they will file a lawsuit. While filing a bodily injury claim can be done without a lawyer, it is never a bad idea to consult with a lawyer first before going it alone. On the other hand, I would always recommend that you hire a qualified personal injury attorney if you intend to file a lawsuit. There are just too many pitfalls you may encounter pursuing a lawsuit without an attorney.

The first step in filing a bodily injury claim is contacting the responsible party's insurance carrier and alerting them to the fact that you are making a claim for injuries you sustained in the motor vehicle accident. You do not have to complete any forms to make a claim. However, if you hope to resolve your claim without a lawsuit, you most likely provide a theory of your case for the insurance carrier adjuster with medical documentation of your injury. This can be done without providing a personal statement as discussed below.

The adjuster assigned to your case will be looking for certain information prior to deciding whether they are interested in settling your claim. Since you are only entitled to receive compensation if you can establish fault and that you suffered a serious injury, the carrier will be seeking documentation to establish both.

Regarding fault, the carrier will want a copy of the police accident report with any witness statements that you may have and property damage photos. They may also request a written or verbal statement from you. While I have no problem providing a police accident report, photos of property damage, and witness statements, I never consent to having my client provide a statement and would advise the same if you are representing yourself. The adjuster should be able to gather all relevant facts from the police accident report, witness statements, and discussions with their client. If this is not satisfactory to the adjuster, you

may wish to consider hiring an attorney, as you're likely in for a bumpy ride in your negotiations.

Next, the adjuster will seek to obtain injury information. They will likely ask for medical records from any hospitals, doctors, physical therapists, and diagnostic tests. It is also a good idea to share any injury photos that will help in illustrating your injuries. It's in your best interests to demonstrate as many injuries as possible in as favorable a light as possible. So make sure that your photos are clear.

The adjuster will accept medical records you submit to begin the evaluation process. But they will usually request authorizations from you to also obtain the same records directly from the various healthcare providers. This is to ensure that you have not removed or doctored any pertinent information.

The adjuster may also seek to gather medical information on prior injuries. This is typical, especially if the records received mention prior injuries to the same parts of your body claimed to be injured in this accident.

Also, the adjuster will want to obtain your social security number. This may not be something that you are comfortable with, but will be necessary if you want to settle your case. A carrier has access to a database of information on any insurance claims you have made in the past. Without your social security number, they cannot search for any past claims and will assume there is something that you are hiding. It's the nature of an insurance carrier to be very suspicious of everything that you say and will seek as many forms of independent verification as possible.

Also, provide the carrier with any out of pocket expenses not covered by no-fault. For example, if your wages were not completely covered by no-fault, you should submit proof of

how much you were under-compensated. You may also have expenses for co-payments and deductibles if you treated past being terminated by no-fault. Also, you may have purchased braces or medical equipment. It's best to provide all of your out of pocket expenses to make sure you get everything that you are entitled to. But, don't be greedy. I recommend never trying to slip additional expenses not related to your injuries into the claim. This will create an environment of mistrust and lead to a contentious negotiation.

Lastly, ask the carrier not to evaluate your bodily injury claim prior to completing your treatment. You are being compensated for your pain and suffering. Negotiating prior to your full recovery will probably lead to an offer that is less than what it would be if the adjuster had all of your medical records through the conclusion of your case.

Once everything is received by the adjuster and reviewed, the adjuster may want to discuss settlement. My opinion is that it's always best to allow the adjuster to make the first offer. Studies have shown that you will receive more money if you allow the adjuster to begin the negotiation. While unlikely, you may be surprised by their offer, and it may even be higher than you expected to get.

If the adjuster is unwilling to make an offer prior to you making a demand, be wary. Remember, you are the novice and they are the seasoned pro. Again, an adjuster refusing to give an offer may indicate that you should consult with an attorney.

If the adjuster conveys an offer, consider how close it is to what you ultimately considered fair. If it's relatively close, always negotiate to get the most money possible. Make a counter demand and see what the adjuster does next. It never hurts to ask for more money. Adjusters rarely make their best offer first and will usually save room to get the deal done. Keep negotiating until the adjuster says that they have made their "final offer." This may take

several weeks and many offers and counter-demands. However, once you pushed as far as you can, you must decide to either settle or hire an attorney to file a lawsuit.

If you have agreed upon a settlement amount, the adjuster will want you to sign a release prior to receiving any money. This is a legal document that outlines the terms of the agreement. Read it carefully to ensure that it contains the right amounts and that you understand any other ramifications. Once signed and returned, you will be barred from asserting a claim for any additional money for injuries known or unknown. So, make sure you're comfortable with your agreement.

If you made a settlement offer that is way too low from your opinion of what would be fair, continued negotiating is usually a waste of time. I would consider meeting with an experienced attorney to discuss your case and see if you are being realistic or you are being lowballed. If you determine that you are being lowballed, you may want to hire an attorney. If you are being unrealistic, you may want to adjust your sights.

If you receive an offer that is higher than you expected, be careful. You might be missing something. Don't just jump at the offer. Review the case with an attorney to see if you may be entitled to more money. Once you have arrived at what is a fair amount, you can decide on a counter offer.

Finally, if you decide to pursue a claim on your own, make sure you are familiar with all relevant statutes of limitations dates. If your claim's statute of limitations date expires prior to settlement of your case, the carrier will not pay the claim. Also, if you are getting close and the case has not been resolved, an attorney may be reluctant to get involved due to time constraints. So, ensure that if you plan on consulting an attorney that you do it well within the statute of limitations date.

# Chapter 11

## *The Steps to a Personal Injury Lawsuit*

Many people wonder why a lawsuit takes so long to resolve. There are various reasons for this, including court congestion and overworked and understaffed law firms. But, one of the biggest reasons is perhaps the immense amount of work that goes into completing the necessary steps to conclude a case.

Prior to starting a lawsuit, there should be a thorough investigation of the facts. This will include gathering all information from the investigating police agency, such as a police accident report and witness statements. If the accident was severe, the police might have inspected all vehicles involved, taken photographs, and mapped the scene. The map may contain valuable information, such as skid marks and debris from the vehicle. This investigative information should always be obtained prior to starting a lawsuit.

Next, a thoroughly prepared attorney may want to hire their own accident investigator to review the police work, visit the scene to obtain measurements and conduct witness interviews.

The investigation of the case should also include gathering all relevant medical records from all treating providers and any past records that may relate to the same parts of the body injured in this case. This information may need to be discussed with a physician hired by the plaintiff.

Once the investigation is complete, it is time to draft the Summons and Complaint. These are the documents that initiate the lawsuit once filed and served upon the defendants. The Summons and Complaint is a broad list of allegations detailing the reasons you believe the other party is responsible for your injuries and should have to pay for your damages.

Once this document is served upon the defendant, they must forward it to their insurance carrier, who will hire a law firm to represent the insured. Some insurance carriers will assign in-house counsel to represent their insured. Others will hire outside firms. Either way, the defendant has 30 days to serve an Answer to the Complaint. An Answer is a formal response to every allegation in the Complaint. The Answer will either deny, admit, or deny having enough information to answer an allegation.

Once an Answer is interposed, the parties will begin discovery in the case. Discovery in the case is usually overseen by the Court. Therefore, one party will need to request judicial intervention. That is a fancy phrase for requesting a conference with a judge. At that conference, the judge will set up a formal discovery schedule. He will also set up a return date known as a Compliance Conference, at which time it will be expected that discovery is complete.

Discovery entails exchanging all accident reports, witness names, expert witness names with their reports, insurance information, medical reports, depositions and physical exams of the plaintiff. Once complete, the judge will sign a certification order, stating all discovery is complete. They will then shift the case to the trial assignment part.

From the filing of the Summons and Complaint until completing discovery, it can usually take anywhere from one to two years. Once a case is transferred to the trial assignment court, it will await its turn for an available judge to hear the case. This process

can take up to six months to a year due to the vast amounts of cases in the system. Once a trial date is assigned, the case will proceed to trial. A trial can take anywhere from a few days to a few weeks, depending on the complexity of the case.

A trial entails opening statements, presentation of evidence, closing statements, instructions to the jury, deliberation, and a verdict. A case can be settled at any time during the process from the time the lawsuit is filed up to the time the jury returns a verdict.

Often, people get frustrated with the court system because of the length of time it takes to resolve a case. While the process is long and complicated, it is the best way I know of to resolve disputes peacefully.

# Chapter 12

## *Alternative Dispute Resolution*

Alternate Dispute Resolution refers to a growing trend in litigation whereby adversaries opt to have their disputes resolved by an independent party as opposed to the court system. It is especially relevant in personal injury law due to the lengthy court process and cost of litigation. Three main forms of Alternative Dispute Resolution are commonly used in personal injury litigation, including motor vehicle accident cases. They are Mediation, Non-binding Arbitration, and Binding Arbitration. Each has its benefits and drawbacks.

Mediation is the process in which the parties to a claim or lawsuit meet with a specially trained mediator whose job is to review the case, discuss the issues, and work towards bringing the parties to a mutually agreed upon resolution. This can usually lead to good results, and I recommend it often.

The process is simple. Generally, the parties meet with the mediator in an office or conference room. First, the plaintiff, through his attorney, will present his version of the case stressing its stronger points. Next, the defendant will present their alternative version stressing their stronger points. After this, the mediator will speak to each party separately trying to find out how much the party is seeking to recover or willing to pay. Once the mediator gets an understanding of the case and each party's belief in the value of the case, they will work to bring the parties to a meeting point. Depending on the mediator's view, he

will usually have an amount he feels is fair and will work to settle the case within those parameters.

The mediation process can be grueling and stressful. I attended a mediation one time that lasted over eight hours. The case wasn't even settled at the mediation. However, it was settled several weeks later. The mediation helped to get the parties within a certain range. But, it just needed a little time to pass for each side to realize that a deal could be made if each party bent a little.

I resolve about fifty percent of the cases I mediate either at the mediation or shortly after. The benefits of mediation are as follows:

1. Mediation is not binding. So there's no risk in attending it.
2. Mediated cases settle much earlier than cases that go to trial.
3. They are very cost-effective.
4. They are less stressful than a trial.
5. You have a guaranteed result.

The drawbacks to mediation are few, but none-the-less worth mentioning:

1. Mediation can get costly.

Benefits of Mediation	Drawbacks of Mediation
Not binding. No risk in attending	Can be costly
Settle earlier than going to trial	A compromise is likely
Cost-Effective	
Less stressful	
Guaranteed Result	

2. You must usually compromise a little bit. A carrier will want a little discount for settling the case much sooner than it has to. Remember, a trial will take longer.

Non-binding arbitration is, in my opinion, the least desirable form of Alternative Dispute Resolution. It works similarly to a trial, but is less formal. In this format, both parties agree on an arbitrator that acts as a judge and jury. A case is presented similar to a trial, but is done in a conference room with less formal rules. This makes it cost-effective. You will not need to hire doctors and experts to testify as their reports are admissible at the hearing unlike in a trial where the experts have to testify at a cost of thousands of dollars a day.

The hearing is conducted much the same as a trial, but in an expedited fashion. There are opening statements, presentation of witnesses, and evidence and closing statements. The arbitrator decides the case by rendering a decision. It is final only if both parties agree to abide by the decision. If either party balks at the decision, it is discarded. That is why I avoid this type of Alternative Dispute Resolution.

The benefit of this process, however, is that it can lead to a settlement because the arbitrator's ruling, while not binding, is indicative of how the case may go at trial.

Binding Arbitration is similar to Non-Binding Arbitration with the exception that the parties agree to abide by the arbitrator's decision as final. While this may be risky, it is often a great way to resolve a case quickly and cost-effectively. Usually, I will entertain this option on lower valued cases, where the cost of trying will outweigh the benefit of any recovery at trial.

On the other hand, I would never suggest this type of resolution for a larger case. I am not comfortable with giving an arbitrator total control over a case when millions of dollars are at stake.

In general, Alternative Dispute Resolution has become increasingly popular as a cost-effective and faster way to resolve disputes. I would always recommend, at least, exploring it as a possible means of resolving your case.

## Chapter 13

### *What is My Case Worth?*

One of the most common questions I hear from prospective clients is, “What is my case worth?” Unfortunately, there is no simple answer to this question. The most important thing to understand is that as an accident victim, you are being compensated for many factors, some of which are unknown or uncertain at the beginning of a case.

The first consideration in formulating the value of a case is liability. Simply put, liability means fault. Whose fault was the accident? In New York, we recognize the theory of comparative negligence. That means, to receive compensation for an accident, you do not have to establish 100% fault on the opposing party. You can establish any percentage of fault less the 100% and collect for the other party’s proportionate share of fault. For example, if another party is 50% at fault, you can collect 50% of the total value of your damages.

The second consideration in determining how much money your case is worth is actually assessing your total damages. Your damages are your economic loss combined with

your pain and suffering. Economic loss refers to out of pocket expenses incurred because of your accident. Medical bills, lost wages, medicines, household help, transportation costs are all examples of economic losses.

Pain and suffering refer to everything that you go through physically, mentally, and emotionally following your accident. Many people suffer from debilitating pain. That pain manifests itself in many ways, including feelings of depression, anxiety, and hopelessness. The more that you are adversely affected by your accident, the greater your pain and suffering, thus the more money you are entitled to for that pain and suffering.

Further, you are entitled to recover for not only past damages, but also future damages. To calculate your future economic loss, it may be necessary to engage professionals such as vocational experts and economists. Once retained, these experts can develop a clear picture of your future economic losses.

Your economic damages are more objective as opposed to your pain and suffering, which tend to be much more subjective. However, once you have calculated both, you simply add them together, arriving at a total amount of damages. Once you have a total amount of damages, you multiply it by the opposing party's total percentage of fault. For example, if your total damages are \$1,000,000 and the defendant is 50% at fault, you are entitled to \$500,000.

Keep in mind that to collect the money you are entitled to, the defendant either must have adequate insurance or have the resources to pay for your damages. If the person is uninsured or underinsured and has no assets, you will not be able to collect the money you are owed. Unfortunately, this scenario arises from time to time. That is why it's always

important to maintain adequate UM/SUM insurance as previously discussed. I always recommend that you match your UM/SUM limits to your own car insurance liability limits.

# Conclusion

It is my hope that the information in this book will help individuals obtain the compensation that they are entitled to from stingy insurance companies. New York motor vehicle claims can be complicated. While I have tried to answer many of the common issues that people face following an accident, it is almost certain that some people will be faced with a question that this book does not provide an answer. But rest assured, there is always an answer. If, after reading this book, you still have unanswered questions, feel free to contact me. You can reach me at [Steven@Palermolawyers.com](mailto:Steven@Palermolawyers.com). I am always happy to answer questions that you may have.