A Tune-up on Automobile Claims in New York

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Hurwitz Fine P.C. has extensive experience providing fast and effective responses to claims of transportation negligence. Our team of specifically trained attorneys are available 24/7 to respond rapidly with an immediate panel of investigative experts to manage serious accident cases across New York State. Contact our 24-Hour Emergency Response Team via our 24-Hour Line at 716-849-8948 or e-mail us at HF_Help@hurwitzfine.com

Litigating automobile lawsuits venued within New York is typically governed by standard common-law concepts of negligence. However, there are various statutes and legal concepts specific to New York that one must consider when handling such claims. While applying the law is fact specific and sometimes complicated, the short primer below highlights several of the key issues to keep in mind when analyzing motor vehicle claims that are venued in New York State.

I. Insurance Coverage

As is the case with most civil lawsuits, the amount of available insurance coverage is of utmost importance when assessing a claim. In New York State, the minimum amount of bodily injury coverage that an individual can purchase is $25,000 per person/$50,000 per accident. N.Y. Ins. Law § 3420(f)(1).

In addition to insuring against lawsuits filed against them, individuals can purchase "supplemental underinsured motorist" coverage ("SUM") through their own carrier. This insurance provides individuals with an avenue to recover monies in excess of the insurance limits of the tortfeasor who injured them. For instance, if someone is injured by a tortfeasor who only has the minimum $25,000 in coverage, if the injured person has $250,000 in SUM coverage, depending on the severity of their injuries, they could recover up to an additional $225,000 ($250,000 less the $25,000 received) from their own insurer either through a streamlined arbitration process or a separate lawsuit. *See* N.Y. Ins. Law § 3420(f)(2).

a. Increased Coverage for Ridesharing Services

One relatively new area of insurance coverage involves accidents involving a vehicle being used while engaged in ridesharing (i.e. Uber, Lyft). Given the unique nature of the arrangement between the drivers and the companies, there was initially confusion as to the application of insurance policies to these drivers. As the drivers are using their vehicles for commercial purposes in these situations, and their personal auto policy generally contains an exclusion if the vehicle is used to transport persons or property for hire, these driver's insurers almost always disclaim coverage. In response, the New York Vehicle & Traffic Law provides for specific insurance requirements for ridesharing companies operating within New York.

The New York VTL calls ridesharing companies "transportation network companies" (TNCs). TNCs are required to provide different, and significantly higher, minimum coverages compared to personal auto policies. The amount of coverage required of TNCs depends on what "stage" of ridesharing that a particular driver is engaged in at the time of the incident. The following are the minimum bodily injury coverage amounts that New York requires of TNCs during the following stages pursuant to Section 1693 of the Vehicle and Traffic Law:

- When the driver is logged into the system, but not actively engaged in a prearranged trip - $75,000 per person/$150,000 per accident; and
- When the driver is engaged in a prearranged trip - $1,250,000 per accident.

By contrast, medallioned taxicabs are only required to carry the NYS minimum limits of $25,000/$50,000.

II. Statute of Limitations

In New York State, the standard statute of limitations for an individual to bring a claim for either personal injuries or property damage is three (3) years from the date of loss. *See* CPLR § 214, et. seq.

There are various exceptions to that general rule, the two most common of which are:

- Minor – the statute of limitations does not begin to run until the minor's 18th birthday. In other words, in a standard motor vehicle case, a person injured while they were a minor has until their 21st birthday to file a lawsuit. *See* CPLR § 208.
- Claims against municipal corporations – the statute of limitations for personal injury claims against municipal corporations, and also their agents/employees, (i.e. public employees, entities such as police officers, towns or school districts) is two-prong. First, the aggrieved party must serve a "Notice of Claim" upon the relevant entity within ninety (90) days of the loss. That individual then has one year plus ninety days from the date of loss to file a formal lawsuit. *See* e.g. CPLR §217-A.
    - Note that certain Public Authorities, distinguished from municipal corporations, may have different statutes of limitations. It is imperative that each litigant consult with the relevant public authority's law and/or local regulations when handling any claim involving public entities.

III. Negligence

Liability for damages caused by a motor vehicle accident, is predicated on the negligence of the defendant at the time of the incident. Additionally, that negligence must be a substantial factor in causing said incident. In general, someone is negligent if their conduct falls below the accepted standard of care for a reasonable person in such a situation. This is a fact-specific determination that is generally a question of fact for a jury, although in some situations (such as rear-end accidents), the Court can find negligence as a matter of law.

a. Comparative Fault

New York is considered a "pure comparative negligence" state. This means that a plaintiff is not barred from recovering damages if they are also found to have been negligent at the time of loss. Instead, CPLR §1411 provides that any award in favor of a plaintiff shall be reduced in proportion to which the plaintiff's own culpable conduct contributed to the happening of the event. In other words, a plaintiff's negligence is not considered when determining whether or not they are entitled to be awarded damages – instead, it is only considered when determining the amount of damages that they are entitled to.

b. Joint and Several Liability

The baseline rule in New York, pursuant to Article 16 of the CPLR, involving situations in which two or more defendants are found liable to a plaintiff for the happening of an accident is that each defendant is liable to the plaintiff for the full amount of damages except that, if one defendant's share of fault is less than 50%, they are only responsible for the proportionate share of the plaintiff's non-economic damages (i.e. pain and suffering). All parties remain jointly and severally liable for all economic damages (i.e. medical expenses and lost wages), regardless of their respective percentages of negligence.

However, CPLR §1602 specifically excludes owners and operators of automobiles from this protection. As a result, owners and operators of automobiles remain jointly and severally liable to injured plaintiffs, for all of their damages, regardless of their amount/percentage of negligence. The practical result of this is that plaintiff attorneys have significant leverage in negotiating settlements in situations where one defendant may only be slightly at fault for the happening of an event, especially in situations where the lesser-at-fault defendant has larger policy limits.

It should be noted that, in the context of automobile litigation, this exception applies only to claims arising out of the negligent use or operation of a motor vehicle. Defendants in lawsuits involving automobiles who are not owners or operators of involved vehicles, such as automobile manufacturers sued in product liability cases or municipalities sued for claims of negligent road design or maintenance, have the benefit of CPLR Article 16.

IV. Vicarious Liability

New York Law imposes liability for an accident not just on the driver of a vehicle involved in an accident, but also on the owner of that vehicle if certain conditions are met. New York Vehicle and Traffic Law §388 states that "every owner of a vehicle used or operated in this state shall be liable for [damages] resulting from negligence in the use or operations of such vehicle…by any person using or operating the same with the permission, express of implied, of such owner." Put another way, owners of vehicles are liable for any accidents caused by any individual using said vehicle with their permission.

This provision results in the situation where an owner of a vehicle is routinely included as a defendant in a civil action even if the owner played absolutely no role in the happening of the subject accident at all.

a. Insurance Coverage

Before speaking on the concept of permissive use in the context of imposing vicarious tort liability on a vehicle owner, it is important to highlight how insurance coverage operates in situations in which a person who is not a named insured on a policy gets into an accident. New York Insurance Law mandates that all automobile insurance policies sold within the State contain provisions insuring the named insured against liability for any damages caused by any person operating the subject vehicle with the insured's permission. N.Y. Ins. Law §3420(e). Thus, the Insurance Law is crafted in a way specifically to provide vehicle owners with insurance coverage for "permissive use" situation. Such permissive users are generally known as "omnibus insureds," meaning that they are covered by virtue of the permission to use the vehicle.

When analyzing whether or not an operator is covered as an omnibus insured in an automobile policy, the answer to this question is dependent on the wording of the actual policy itself. There are two means by which most auto policies address this issue: an exclusion of coverage for individuals driving without a reasonable belief of permission to do so, or an affirmative grant of coverage to driver who received permission. While the two concepts sound similar, they are different and whenever faced with a situation in which an individual who is not named on a policy is involved in an accident, the first step in any analysis must be to look at the relevant policy itself.

In the first context, the insurance policy will begin with a blanket grant of coverage to anyone operating the vehicle, subject to various exclusions. One of those exclusions will state that no coverage is afforded to someone operating the vehicle without reasonable belief that he/she had permission to operate the vehicle. Thus, it is a subjective standard in this context based upon the mindset and belief of the driver at the time of the crash.

In the affirmative context, the policy will state something along the lines of defining a "covered person" as one who was operating the vehicle "with the owner's permission" or "with the permission of the insured or a relative of the insured." When such a policy is implicated, the analysis follows the Vehicle and Traffic law concept of a permissive user described in the below section.That analysis is based upon a review of the owner's conduct in allowing, or not allowing the individual to use the vehicle.

In short, the answer to the question of whether or not a non-insured is afforded insurance coverage for an accident will depend upon applying the facts of a case to the specific insurance policy in effect at the time. Detailed review of the policy or policies involved is imperative.

b. Permissive Use

Vehicle and Traffic Law §388 imposes vicarious tort liability on the owner of vehicle for any actions by a driver operating that vehicle with their permission. In other words, a vehicle owner will be held responsible for any damages caused by the negligence of someone whom the owner allows to drive their vehicle.

The analysis in this situation is on whether or not the owner actually gave consent, either express or implied, to the operator. New York Courts have long established that it is presumed that every driver is operating their respective vehicle with the permission of its owner. *See e.g. Staropoli v. Agrelopo, LLC*, 136 A.D.3d 791 (2d Dept. 2014); *Baker v. Lisconish*, 156 A.D.3d 1324 (4th Dept. 2017). In order to overcome that presumption, the owner must present clear evidence that the owner did not give the driver permission to operate the vehicle.Notably, simple testimony from both the owner and driver that there was no permission, without more, is not enough to automatically resolve the issue, although such evidence will *typically* be sufficient. Instead, Courts will analyze a variety of circumstantial evidence to determine whether or not the driver truly did lack permission at the relevant times. *See e.g. Murdza v. Zimmerman*, 99 N.Y.2d 375 (2003).

The New York Court's position on this topic is likely guided by a desire to find coverage in as many cases as possible for the protection of the public who would be and preserve their ability to be compensated. As such, absent strong evidence to contradict the presumption of permissive use, such as evidence that the vehicle was stolen or that the owner very clearly told the driver they did not have permission to use the vehicle, Courts tend lean towards keeping vehicle owners in cases when deciding motions on this topic.

c. Rented & Leased Vehicle Exemption

One significant exception to the imposition of vicarious liability on owners of vehicles concerns rented and leased vehicles. In 2005, the Transportation Equity Act was signed into law by then-President George W. Bush. As a part of that Federal Law, a portion of the U.S. Code was amended to absolve from vicarious liability the owner(s) of vehicles that are rented or leased. This amendment, 49 U.S.C. §30105, known as the "Graves Amendment" after U.S. Representative Sam Graves, preempts New York Vehicle and Traffic Law §388 and precludes lawsuits against rental car companies and leasing entities that are based on theories of vicarious liability. It should be noted, however, that liability can be imposed against such entities if the theory of liability for a motor vehicle accident is something other than their status as the registered owner. One such example is an allegation that an accident was caused by negligent maintenance or repair(s) performed by the lessor.

V. No-Fault & "Serious Injury"

New York is considered a "No-Fault" State for the purposes of medical treatment and limited protection against loss of income due to injury. In New York, No-Fault refers to a series of laws that apply to how automobile insurance operates within the State. These laws are set forth in Article 51 of New York State's Insurance Law. The requirements of the No-Fault laws in New York apply to most motor vehicle accidents that occur in New York, including those involving pedestrians. The one major exception to that is the No-Fault coverage does not apply to operators or passengers of motorcycles, although motorcycle owners are required to carry a version of this type of coverage in order to provide protection to pedestrians injured on account of the motorcycle's use or operation.

The term "No-Fault" refers to the basic concept at the root of Article 51 that an individual's own automobile insurance policy will pay for certain items related to any injuries sustained in an accident regardless of who was at fault for the underlying accident. These benefits are referred to in one's policy as "PIP" (personal injury protection) or "First Party Benefits," and they are based on the calculation of "Basic Economic Loss" resulting from an accident, with payment of PIP/First Party Benefits being subject to certain adjustments and set-offs.

a. Basic Economic Loss

Article 51 defines "Basic Economic Loss" as losses are incurred up to $50,000 per person for: (i) the cost of necessary medical expenses incurred as a result of one's injuries; (ii) lost wages suffered as a result of one's injuries, up to $2,000 per month for not more than three years from the date of loss; and (iii) "all other reasonable and necessary expenses" incurred as a result of one's injuries, up to $25 per day for not more than one-year from the date of loss. As each of these losses are incurred, the $50,000 limit is reduced.

b. First-Party Benefits

Regardless of how an accident happened, with limited exceptions, the insuring vehicle involved is responsible for reimbursing the injured party for losses that fit into the above definition through payments known in the No-Fault Statute as "First Party Benefits." This term is synonymous with PIP. PIP benefits do not reimburse completely for BEL in all instances.

In wage claims, the BEL calculation is reduced by 20% to account for tax savings. This, if an individual has a $1000 wage loss computed as BEL, only $800 would be payable under no-fault. That figure is further reduced by amounts paid or payable through federal and state disability programs and workers' compensation.

For medical bills, BEL is calculated and paid at the rates established by the Workers' Compensation Board. (Insurance Law §5108).Thus, except where an individual is injured in the course of employment, PIP benefits will equal BEL. In a situation where the individual is injured in the course of his/her employment, the no-fault carrier's obligation to pay PIP is reduced the amounts paid or payable by workers' compensation. This effectively relieves the no-fault carrier from its obligation to pay for medical expenses, however, as the expenses are incurred they are considered BEL and deducted from the no-fault limit.

To receive, or continue to receive, these benefits, an injured person may have to occasionally be examined by a doctor on behalf of the insurer to verify the need for continued medical expenses and wage continuation.

In summary, the basic idea is that an injured person's own automobile insurance is required to cover up to $50,000 in economic costs associated with an injury resulting from a motor vehicle accident, subject to the reduction outlined above. As is the case with most insurance policies, individuals can purchase additional coverage for basic economic loss (known as "APIP") if they wish, however, those amounts above $50,000 are not considered "basic economic loss," an important distinction when analyzing what amounts a plaintiff can seek to recover in a personal injury lawsuit.

c. Damages in a Lawsuit

The basic concept of the No-Fault Law, i.e., the concept that a vehicle's insurer will pay economic damages up to a certain point regardless of fault, involved a compromise between insurers and the State.In exchange for guaranteeing those baseline protections for injured individuals, the State put into place limits on that injured person's ability to recover damages from the at-fault driver (and their insurer).

Section 5104 of New York Insurance Law provides that, in an action arising out of the negligent operation of a motor vehicle, there shall be no right to recovery for economic loss that does not exceed "Basic Economic Loss" or for non-economic loss except in the case of a "serious injury."

i. Economic Loss – In Excess of Basic Economic Loss

A plaintiff in a lawsuit arising out of a standard motor vehicle collision can only recover economic damages (i.e., specific damages such as medical expense or lost wages) if the amount sought is in excess of Basic Economic Loss. Thus, they cannot seek economic damages unless those economic damages exceed $50,000.00 in aggregate of any combination of (i) medical expenses, (ii) lost wages, up to $2,000 per month for three years and (iii) reasonable and necessary daily expenses up to $25 per day for one year. Whether or not the plaintiff actually received PIP payments for any of those amounts is irrelevant in the analysis or whether or not their economic loss exceeds Basic Economic Loss.

What some attorneys and their clients fail to understand, is that any economic damages that do not fall into any of those three subcategories are recoverable regardless of amount. Further, these damages are recoverable even if the plaintiff did not suffer a "serious injury" (see below). For instance, if a person misses only one month of work, but their salary is $5,000.00 per month, they can bring a lawsuit specifically for the $3,000.00 that is in excess of the $2,000.00 qualifier for Basic Economic Loss.

ii. Non-Economic Damages – The Serious Injury Threshold

In order for an individual who is an occupant of an automobile, or a pedestrian (a "covered person") to recover non-economic damages against another "covered person," the injured plaintiff has to prove through medical evidence that their injuries constitute a "serious injury" under the law. Section 5102(d) of the Insurance Law defines "serious injury" as an injury that results in:

i. Death;
ii. Dismemberment;
iii. Significant disfigurement
iv. Fracture;
v. Loss of fetus;
vi. Permanent loss of use of a body organ, member, function or system;
vii. Permanent consequential limitation of use of a body organ or member;
viii. Significant limitation of use of a body function or system; or
ix. A medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment (commonly known as the "90/180" category).

So long as one of the injured party's injuries qualify under any of the categories listed above, they are permitted to pursue a claim for non-economic damages for all of the injuries sustained. In other words, a plaintiff who breaks his toe, can recover pain and suffering damages for his minor back injury that otherwise would not qualify as a "serious injury," because the toe would qualify as a "fracture" and thus the case would cross the "threshold" established by the No-Fault Law.

While some of the categories are self-explanatory (i.e. death and fracture), the last four listed are frustratingly vague and heavily litigated. For the purposes of this primer on New York Law, it is important to just note that New York Law requires injured plaintiffs to have been injured to a certain degree before allowing them to recover non-economic damages. If you would like a more thorough explanation on the intricacies of each of the "serious injury" categories, please contact us and a simple webinar or lecture can be arranged at your convenience.

d. Causation

Aside from the plaintiff having to prove that they suffered a qualifying "serious injury" under the law, it naturally follows that they must also have proof that said injury was actually caused by the subject motor vehicle accident. In most cases, that causal link is relatively obvious – the person had no injuries prior to the accident and then consistently treats afterwards. However, there are often situations that are less clear.

To address these less than clear situations, one must look to the seminal New York Court of Appeals case *Pommells v. Perez*, 4 N.Y.3d 566 (2005). In *Pommells*, the Court held that, even if there is objective medical proof of an injury, "when additional contributory factors interrupt the chain of causation between the accident and claimed injury—such as a gap in treatment, an intervening medical problem or a preexisting condition—summary dismissal of the complaint may be appropriate." *Id*. at 572. When there is such a gap-in-treatment, the plaintiff must offer a "reasonable explanation" for the gap.

Some examples of what courts have held is a reasonable explanation include if continued treatment would be only palliative in nature or if there is documented proof that the plaintiff's insurance was denying payment for treatments. To the contrary, some examples of what was considered not a reasonable explanation, and thus warranted a dismissal, include "hoping that an injury would heal on its own," an incorrect belief that insurance would not cover future treatments and, of course, simply choosing to stop treating. The analysis of what is, and is not, a reasonable explanatory is very fact-specific and will depend on the specific circumstances of each case.

VI. Miscellaneous

a. Intra-Spousal Claims

There is no intra-spousal or intra-family immunity in New York State. Thus, anyone can bring a lawsuit against any other at-fault party involved in a motor vehicle accident. However, the availability of insurance coverage for such a claim is not always present, as New York does not require coverage for intra-spousal claims. Such coverage can be purchased as an optional rider on one's own automobile insurance policy. See N.Y. Ins. Law § 3420(g).

b. Punitive Damages

While injured parties typically only seek compensatory damages to reimburse them for damages, there are certain circumstances where an injured party may seek to recover punitive (or "exemplary") damages from a tortfeasor. The purpose of these damages is not to compensate the plaintiff. Rather their purpose is to punish the tortfeasor for conduct deemed wanton, reckless or malicious. As a matter of public policy in New York, these damages cannot be covered by insurance, but the threat of a possible award of punitive damages can, and often is, used by plaintiff attorneys to leverage settlement of amounts covered by the relevant policy.

c. Settlement of Claims of Minors Under 18 Years of Age

In any situation involving a personal injury claim of a minor, the final settlement or judgment must be formally approved by the Court. This process involves presenting the Court with the facts of the accident and proposed dollar amounts, typically arranged in a structured settlement of some sort.The Court then analyzes the same and determines if the result is in the best interests of the injured minor.

d. Collateral Sources

Any award that a plaintiff receives through a judgment at trial is subject to a variety of offsets based benefits that the plaintiff has already received. Those benefits are referred to as "collateral sources" and are addressed directly in CPLR §4545. The rule is that any amount of damages that a plaintiff receives through trial related to the costs of medical costs, lost earnings or other items of specific economic damages, must be reduced by the amount to which the plaintiff has already received benefits related to those items, provided that the entity that provided those payments has no recourse against the plaintiff to compel repayment – such as Workers' Compensation liens. For instance, while a plaintiff may have incurred $20,000 in medical bills for their injuries, their PIP (i.e. No-Fault) payments likely covered the entirety of those expenses. As such, if they are awarded the cost of medical care at trial, the judgement must be reduced by the amount they received already. The purpose of this is to prevent a plaintiff from recovering twice for the same expense – such as getting their bills paid by PIP or private health insurance, and then also reaping the benefit of receiving the costs of those bills as well.

VII. Conclusion

The above is meant to highlight some of the key concepts that affect how automobile claims are handled according to New York law. While the list is not exhaustive, it is aimed at providing an overview to some of the most important and/or unique issues that litigants and claims professionals have to consider when faced with personal injury actions arising out of automobile accidents within New York. Upon request, a more detailed overview or webinar can be prepared to address any of the topics discussed above or any other aspect of New York automobile litigation.

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