



NEW YORK
PERSONAL
INJURY
GUIDE

*Steps to Take After a
Serious Accident in WNY*

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EXPERIENCED PERSONAL INJURY ATTORNEYS



Accidents happen and sometimes we're able to brush off and walk away unscathed. Other times, we are left seriously injured and facing a mounting pile of medical bills. In these instances, we worry about our health, our financial security, and our ability to provide for our family. It is not uncommon for these worries to be over-

whelming. We can support you through this difficult journey and help you get the compensation you are entitled to.

We cover personal injury cases including:

- » Car accidents
- » Motorcycle accidents
- » Bus accidents
- » Truck accidents
- » Slip and fall injuries
- » Dog bites
- » Construction accidents
- » Nursing home negligence
- » Boat accidents
- » Mesothelioma
- » Product liability

If you are looking for a dependable Buffalo personal injury lawyer, please call our office today to get a free consultation with one of our highly experienced attorneys. We are going to dedicate our resources, time, and energy protecting your rights and fighting for your justice.

WHAT YOU NEED TO KNOW

In most New York personal injury cases, there is what is known as a statute of limitations. These are time limits that guide you through when you need to have your claim settled or you bring your case. For cases such as car accidents, slip and falls on private properties, dog bites, etc. you will have three years. If it is a medical malpractice case, slip and fall on municipality property, or the government caused your accident such as a pothole causing your bike accident, the time limits gets shorter. Medical malpractice requires a two year and six month deadline, and some government injuries require a notice within 90 days. That is something you need to discuss with an attorney right away to make sure you don't miss the deadline. If you miss it, your case is thrown out by the liable party's insurance company. Additionally, you should not wait until the deadline to get this case to an attorney. They might not be able to help you if you make it to them a week before the statute of limitations runs out. It takes time for us to do our job and prepare your case. Make sure you call our office as soon as possible so you don't risk losing your compensation. This is not the time to procrastinate.

Compensation is important. You were hurt due to negligent behavior and you deserve to claim your damages. In New York, you lucky get to benefit from No Fault insurance. That is money to pay for your lost wages, medical bills, and expenses. In cases where your No Fault insurance doesn't cover the extent of your injuries, you can pursue more from the negligent party's insurance company. We will ensure that we are taking all possible avenues to get you the compensation that you deserve. You should not have to worry about how you and your family are going to make ends meet because you've been bed-ridden and used up your sick days. We do not tolerate the insurance companies dodging you or bullying you out of getting compensation. We fight for your rights.

CASE-RUINING ERRORS TO AVOID

There are two things that could really make it hard for us to protect you, and these are mistakes you can easily avoid. The first one has to do with the

insurance companies. As mentioned, they are going to try to dodge and bully you. They have tactics to incriminate you. They will call you, you can bet on that, and ask you to answer questions. You should absolutely not give them any answers. Those are going to be loaded questions that will make you seem like the guilty party. If they talk to you without a lawyer present, you run the risk of ruining your case. You don't want to get pinned for this accident. If you do, you can either lose the case, or lose out on rightful compensation.



In New York, if you are found at fault for the accident, your award gets reduced. For example, if you are awarded \$100,000 but you were found to be 30% at fault, your award is reduced to \$70,000. We do not want that, and we know you don't either. When the insurance company calls looking for a statement, tell them that you are going to be acquiring legal representation and won't answer questions without your attorney present. It will save you so much heartache.

The only way we can determine how much your compensation will be is by what your injuries are, how bad they are, and how long they will affect you. The biggest mistakes a client can make is not seeing a medical professional. We want you to get better. That's the top priority. Your health should be the first reason why you seek medical attention. Second, if you do not seek medical attention, you run the risk of getting your case thrown out. If you cannot prove that there are injuries, the insurance company may not even consider giving you compensation. Seeing the doctor or going to the ER will be a way to record your injuries, and start getting treatment for them. We can better understand how much your case is worth once we understand your medical needs. Do not worry about the cost, as we will be able to seek compensation for all accident-related injury treatment.

FREQUENTLY ASKED PERSONAL INJURY QUESTIONS

What Should I Avoid After An Accident?

When people are involved in an accident, they should avoid doing certain things. First of all, we recommend that you not give any statement or talk to the insurance companies because they ask a certain series of questions in a specific way that may not be in your best interest. In fact, some insurance companies will come to your door with a checkbook and offer you a check for \$500 or \$1,000 if you'll sign a piece of paper releasing all of your claims. Unfortunately, many clients don't know what's happening in that situation because everything is coming at them so quickly.

Obviously, our recommendation is that you first contact an attorney who focuses in that area. You should avoid trying to handle things yourself because, when you come to our firm, there's no cost for anything we do to help you unless we're successful in obtaining pain and suffering compensation – essentially money – for what you're going through, and that happens only at the end of your treatment, at the end of your case. There's no downside or cost to having somebody like us help you from the get-go, and that help will prevent whatever mistakes you might make on your own.

How much does it cost to hire a personal injury attorney?

Because personal injury lawyers work on a contingent fee basis, which means that they're paid out of the proceeds awarded at the conclusion of successful cases, there should be no fee to hire a personal injury lawyer. There are, however, disbursements, which costs incurred by the attorney in the prosecution of a case, and some attorneys ask a client for a sum of money up front to cover those disbursements. They then pay expenses from that amount. In my current practice of well over 20 years, with partners who have practiced even longer, we



have never engaged in that process. Rather, we pay for all disbursements up front, and you pay us only if we're successful.

How do I select the best attorney for my case?

When people are selecting an attorney to help them with an injury case, there are certain things that you should do. During the attorney-client interview you focus on the client interview. You should really focus on the attorney interview.

When somebody brings you stack of papers to sign, before you sign them you should ask them questions. Asking you questions is easy, where was the accident, what hurt you, what you would have done about it, where do you work? Anybody can do that but if you look them back in the eye and say, 'When was the last time you picked a jury? What was your last verdict? What was your biggest verdict?'

Let's talk about your results for people who have been in my situation. Before you hire an attorney, before you sign a retainer, before you do anything the attorney-client interview should be an interview of that attorney.

Do I need a minimum amount of medical bills to file a claim?

The answer really is no. It goes more to the quality, not the quantity of those bills. Oftentimes because of the cost of medical services, the insurance adjusters can get some idea of the extent of your treatment and injuries based upon the amount of the bills. For example, some physical therapy visits can be \$50, but an MRI is \$850. An adjuster will look at the total spent sometimes on your medical billing to determine if the treatment was extensive. There is no amount that is a minimum that you must get to prove your claim.

What are the steps to file a lawsuit?

In order to file a lawsuit in New York State, certain things must be done before you can file that paperwork with the county clerk's office. For example, you might be required to file what's called a Notice of Claim with a local municipality within 90 days of the accident. If you don't do that, you may lose your right to

file a lawsuit later. The statute of limitations on these cases can vary greatly, and there's a one-year statute of limitations that affects filing claims against certain entities. On the other hand, a three-year statute of limitations applies in most cases, when you're alleging negligence against another person.

The key to success is to make sure you preserve your right to file that lawsuit by filing the appropriate documents before the deadline. We can certainly help you with that, and we will gladly talk with you about what you need to do to ensure timely filing of all your paperwork. If we have to do an early deposition – and sometimes a municipality will require that – we'll do that with you, making sure to keep everything in line so that you can file your lawsuit if the insurance company – or the municipality – doesn't settle your case within the time frame set forth by the statute of limitations.



What are the steps in a personal injury claim?

Every personal injury case has certain unique elements, so I don't know that there is one single answer to that question except to say that, if an injury case comes into our firm, and we don't know the nature and extent of the injuries, we will carefully monitor the client's progress to determine the extent, nature, and cause of their pain. In other

words, a person may have had an X-Ray, but not an MRI and, while we know they're having pain, we're not exactly sure of the source of that pain. Then, once we make a clear determination, it becomes incumbent on us to evaluate the different paths available to us and make a decision that best serves the client.

We may pursue a non-litigated path, meaning that we will engage in conversations with insurance companies in an attempt to come to a reasonable settlement. In many cases, however, we can't do that, and those cases will be put into suit in order to maximize the amount we are able to get for our clients. Those cases become litigated matters and we go through the litigation process which includes depositions, court appearances, et cetera.

I am glad to say that we are able to settle most of our cases before trial. Some are settled well before trial, and some before we even have to put the case into litigation. The outcome of each case depends on a number of factors, including the nature and extent of the injuries, the available coverage, and the extent of liability. We work with you to make the best possible decision. As our client, you're a very important part of this puzzle and have a very real voice in the decision about the paths we follow.

Should I take the first settlement offer?

My answer to that question invariably is absolutely not. In order to maximize recovery, the first thing I tell my clients is that we have to have patience; patience on behalf of the lawyer and patience on behalf of the client. We only get one shot at this and if we're jumping at an opportunity to settle the case early on because we're interested in a timing requirement as opposed to maximizing the recovery then the individual will end up walking away with less than they deserve.

In order to win – and when I say when I mean providing my client with a number that is either at or above where we believe the case is worth – it's necessary for us to take those initial offers, counter those offers with a demand that is significant enough that it offers us the ability to bring that insurance company to a number that is appropriate for the case. It's only after those negotiations – sometimes intense negotiations – that we're able to get to a number that is proper for the injuries sustained in that case.

Another Attorney Dropped My Case, Can You Help Me?

There are a number of reasons why law firms may drop clients. Quite often, the law firm may drop a case when the case becomes difficult and requires a tremendous amount of work. I can assure you that we do not drop cases because of reasons like these. We carefully examine the cases that come into our firm to determine whether the previous attorney had a legitimate reason to drop the case. Sometimes we review cases that merely do not have negligent components or in which our potential clients' injuries are not sufficient. In those cases, we would agree with the attorney who dropped the case. In my

experience, however, there are a multitude of law firms that will drop cases because the cases become difficult, and not for any legitimate reason.

When a case is put into litigation, attorneys must work hard to get money on those cases, especially when an insurance company denies the fact that it wants to pay on those cases. In those cases, we will look at the medical records and see if we can, based on our knowledge of the medicals, argue that the person's injuries fall within the category of serious injury, as defined by our statutes. Another law firm's choice to drop a case does not mean that the case is worthwhile; rather, it sometimes shows that the case required more work than the other law firm was willing to put into it.

How long do I have to file my injury claim?

New York State governs the length of time allowed to file personal injury lawsuits through its Statute of Limitation Laws. Depending on the type of case, the time allowed for filing can extend out for three years or more – or be as short as one year. I would suggest that you contact an attorney as soon as possible, no matter what type of case you have or what your injury may be. Sometimes, particularly if yours is a case against a municipality, the need to file certain documents within a 90-day time frame is even more important than the statute of limitations. If you've been injured, the best possible advice is to immediately contact us. We can advise you about anything that needs to be done, and ensure its timely completion.

Can I recover for emotional damages?

In any personal injury case, a plaintiff is entitled to recover for all injuries that they sustained as a result of the accident. Included in those injuries are emotional injuries. Emotional injuries can come about in a number of ways. Initially we look to see if there has been any treatment for emotional injuries by an MSW, a psychologist, or a psychiatrist. However, even in the absence of that type of treatment, there is a component part of damages called loss of enjoyment of life. A loss of enjoyment of life includes the emotional part of an injury that comes about from an inability to be able to do things that you otherwise used to do before the accident happened.

What are the roles of expert witnesses?

Sometimes clients ask about the roles of an expert witness in their case. What do they cost? Where are they from? Will they have one in their file? Every case is different. For example, an economist is helpful if you have a large lost wage or lost benefit component. An orthopedic surgeon as an expert witness would be important if you had a surgery or an orthopedic injury.

For people that were working at the time of the accident and are rendered disabled, an expert in vocational rehabilitation expert or a life care planner are often important to prove what your abilities or inabilities to return to work are, and also, what your life care expenses might be going forward, regarding medications, future therapies, treatments, x-rays every year, things like that.

How long will my case last?

Every single case has a life of its own. Some clients are injured and have a great recovery and within three, four, five, or six months they can say they are back to pre-accident status. Then we can work on getting them a resolution or result for their pain and suffering. Other people are less fortunate. Others have had more serious injuries that require many surgeries and recoveries and then also how well they do from a surgery and a recovery comes into play. Sometimes additional procedures or treatment is required to correct anything that goes wrong during that recovery process. There are cases that take years and years to complete, but those cases typically have other factors to them where the unfortunate victim had to undergo significant treatment, surgeries, and recovery because of that.

CONTACT OUR BUFFALO PERSONAL INJURY LAWYERS

If you are looking for experienced legal representation, please call our lawyers today. We are dedicated, full-time personal injury lawyers. Please call our Buffalo personal injury lawyers at Andrews, Bernstein, Maranto & Nicotra today for a free consultation to get the legal representation that you deserve.

ABOUT THE AUTHORS



Robert Maranto

Robert Maranto is a graduate of St. Joseph's Collegiate Institute, received his Juris Doctorate from Duquesne University in Pittsburgh, Pennsylvania, after completing his undergraduate studies at Canisius College. While studying at Duquesne, Robert was the Associate Editor of Law Review and in the top 20% of his graduating class.

Upon graduating from Duquesne, Robert Maranto began as an associate with Saperston & Day, P.C., working for or on behalf of the major insurance carriers in their Insurance Defense and Insurance Coverage Departments.

In 1995, Robert joined Andrews, Sanchez, Amigone, Mattrey & Marshall and was named its youngest partner. Shortly thereafter, Robert became a named partner in the law firm of Andrews, Bernstein & Maranto, LLP, along with Benjamin J. Andrews and Alan L. Bernstein, one of the founding partners of Cellino and Barnes.

Robert focuses his practice on all areas of personal injury and has achieved multi-million dollar settlements and jury verdicts throughout his career, and was recently added to the top lawyers in New York.



Richard Nicotra

A graduate of University of Toledo College of Law, class of 1995, Attorney Richard A. Nicotra concentrates his practice on all areas of personal injury, focusing on motor vehicle accidents, dog bite incidents and slip and fall incidents. He is admitted in all New York State Courts, including the Western New York Bankruptcy Court and Federal Court.

Attorney Nicotra has won million-dollar verdicts and settlements and is the current President of the New York State Trial Lawyers – Western Region Affiliate. Mr. Nicotra is also an active member of the Erie County Bar Association and a member of the Order of Barristers.

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