

David P. Grey – Ret.
Robert E. Grey
Brian P. O’Keefe
Kevin M. Plante
Daniel A. Dutton
Alissa P. Gardos
Sherman B. Kerner
Christa M. Collins



Reply to:
360 Main Street
Farmingdale, New York 11735
(516) 249-1342
www.GreyandGrey.com

Ronald L. Epstein
Peter Tufo
Steven D. Rhoads
Sasha Shafeek
Sanjai Doobay
Evelyn F. Gross
Andra Fraiberg-Vetro

MOTOR VEHICLE INSURANCE BASICS: COMPLICATED LAYERS OF COVERAGE

Sooner or later, most drivers are involved in a motor vehicle accident. Some accidents happen during the workday, and others occur in our day-to-day lives. If you or a family member are injured in a car accident, it’s important to understand the different benefits that exist. The interaction between disability benefits, workers’ compensation, No-Fault, Social Security disability, personal injury recoveries, and uninsured/underinsured motorist benefits can be very complex.

Off-The-Job Motor Vehicle Accidents

1. Disability Benefits

Almost all private-sector workers are covered by the New York State Disability Benefits Law. Although public-sector employers are not required to provide disability benefits coverage, some do voluntarily.

Disability benefits covers periods of disability longer than one week that are not work-related. The benefit amount is fifty percent of wages up to a maximum of \$170 per week, and benefits can be paid for up to twenty-six weeks of disability in a fifty-two week period.

If you are involved in a motor vehicle accident and apply for No-Fault benefits, the No-Fault insurer will probably require you to apply for disability benefits because its responsibility to pay for lost wages is reduced (offset) by any payment by disability benefits.

NASSAU

360 Main Street
Farmingdale, NY 11735
(516) 249-1342

**By Appointment Only*

SUFFOLK*

646 Main Street
Port Jefferson, NY 11777
(631) 249-1342

QUEENS

118-35 Queens Boulevard
Suite 1505
Forest Hills, NY 11375
(718) 268-5300

MANHATTAN

115 Broadway
Suite 403
New York, NY 10006
(212) 964-1342

BRONX*

305 East 149th Street
Second Floor
Bronx, NY 10451
(718) 268-5300

WESTCHESTER*

203 East Post Road
Suite E
White Plains, NY 10601
(914) 984-2292

2. No Fault Benefits

When a person is injured in a motor vehicle accident off the job, their primary source of payment for lost wages and medical expenses is No-Fault benefits, which are payable under the Insurance Law. The primary source of No-Fault coverage is from the insurance company that covered the vehicle the injured person occupied, but depending on circumstances other insurers may provide coverage.

No-Fault pays 80% of lost wages up to a maximum of \$2,000 per month for up to three years, and also pays medical bills. However, there is a unitary cap of \$50,000 – once that cap is reached no further No-Fault benefits are due. What this means is that a person who is seriously injured can use up the entire \$50,000 during the initial hospitalization and receive no payment for wage loss at all.

Most insurance policies provide the option to purchase supplemental No-Fault benefits and/or other coverages to provide additional payment for wage loss and medical treatment if the No-Fault limits are exhausted.

3. Personal Injury Lawsuits

In addition to No-Fault benefits, a person injured in a motor vehicle accident can sue the owner and operator of another vehicle that was wholly or partially at fault for the accident. However, to succeed in a lawsuit, you have to prove that you suffered a “serious injury” as defined by the No-Fault Law. The most common categories of serious injury are:

- (1) missing work for 90 of the first 180 days after the accident;
- (2) fracture; and
- (3) significant limitation of a body organ, member, function or system.

The amount of the recovery in a personal injury case depends on two things: liability and damages.

Liability is a question of fault. If the other vehicle was not at fault for the accident, then there is no recovery regardless of how serious the injury is. On the other hand, if the other vehicle was wholly responsible for the accident, then 100% of the damages can be awarded. In many cases, both vehicles have some responsibility. In that situation, the injured person’s award is reduced by their share of the fault. For example, if the other vehicle is 80% at fault and you are 20% at fault, then any award of damages is reduced by 20%.

Damages is a question of the value of the case. It depends on many factors including the nature of the injury, economic loss (lost wages, benefits, and medical expenses) and non-

economic loss (pain and suffering). However, you cannot recover anything that was paid by No-Fault insurance, and No-Fault generally does not have a lien for its payments against a personal injury recovery (there are a few exceptions).

Most personal injury cases do not go to trial, and instead are settled with the insurance company for the other vehicle. However, an insurance company will not pay more than its policy limit, regardless of the extent of liability and damages. If the insurer issued a policy with a \$50,000 limit, then it will only pay that amount regardless of whether the injury is worth \$100,000 or \$1 million. Of course, in some instances there may be additional coverage available such as an umbrella policy.

3. Uninsured/Underinsured Motorist Coverage.

New York insurers are required to offer uninsured/underinsured motorist coverage (known as UM/SUM coverage) up to the limit of the purchased bodily injury coverage. What this means is that if you buy a policy with limits of \$100,000/\$300,000 (which is the limit of what your insurance company will pay someone who sues you), you can purchase UM/SUM coverage in the same amount.

If you are involved in a motor vehicle accident with an uninsured motor vehicle, you can recover from your own insurance company up to the limits of the UM coverage you purchased.

If you are involved in a motor vehicle accident with an “underinsured” motor vehicle, you can recover under the SUM provision of your insurance policy, after deducting the payment made by the other vehicle. Here’s an example: Considering both liability and damages, your injury is worth \$200,000. The other vehicle has a policy limit of \$50,000. However, you purchased SUM coverage of \$100,000. In this case, you would recover \$50,000 from the insurance company for the other vehicle, plus \$50,000 from your own insurer under the SUM coverage provision.

Like No-Fault coverage, the primary source of UM/SUM coverage is the vehicle you were occupying at the time of the accident.

On-The-Job Motor Vehicle Accidents

1. Workers’ Compensation.

When someone is injured on the job, the primary source of payment for lost wages and medical treatment is workers’ compensation, regardless of the type of accident and whether the employer pays wages. In those circumstances, the workers’ compensation award is reimbursed to the employer instead of being paid to the injured party (to avoid a double payment).

When workers' compensation pays benefits due to an on-the-job motor vehicle accident, it does so "in lieu of" (instead of) No-Fault. However, a No-Fault application should still be filed because while workers' compensation pays up to two-thirds of lost wages, No-Fault pays up to 80%. As a result, in some situations No-Fault will make payments over and above workers' compensation to account for the 13% difference.

Where workers' compensation pays in lieu of No-Fault, then it also does not have a lien against a personal injury recovery to the extent its payments are equal to what No-Fault would have paid. However, unlike No-Fault, workers' compensation does not have a three-year cap on payment for lost wages, and there is no limit on the total payment that can be made. Workers' compensation also provides benefits for permanent injury to limbs, facial scars, vision loss and hearing loss. In short, workers' compensation coverage is much broader and provides much greater protection than No-Fault.

As in the case of off-the-job motor vehicle accidents, an injured person who has a serious injury is entitled to plead, prove and recover in a personal injury case any lost wages or medical expenses in excess of the No-Fault limits. However, where workers' compensation makes payments that would not have been made under the No-Fault law, it does have a lien against a personal injury lawsuit for those excess payments.

2. Personal Injury Lawsuits.

A person who is injured on the job while working for an employer who is covered by workers' compensation cannot sue the employer for negligence. [However, some large municipalities, including the City of New York, have elected not to cover certain job titles (uniformed police, fire, sanitation, and teachers) for workers' compensation, and in that limited situation the injured person can sue the employer for negligence.]

However, a person who is injured on the job due to the negligence of someone other than the employer or a co-worker can sue the "third party."

3. Workers' Compensation Liens.

When a person who is injured on the job files a claim for workers' compensation and also brings a "third-party action," the law gives the employer or insurance carrier three rights. First, the third-party action cannot be settled without its written consent. Second, the employer or insurer has a lien against the lawsuit for its payments (except those that are in lieu of No-Fault). And third, the employer or insurer has a credit against a future claim for workers' compensation arising from the same accident to the extent of the injured person's net recovery from the lawsuit.

Along with these rights, the employer or insurance company also has the obligation to pay its fair share of the injured person's litigation expenses, since it was the injured person's work that created the recovery that is now going to the benefit of the employer or the insurer. What this usually means is that the lien and credit are reduced by the insurer's fair share of the litigation cost.

4. Uninsured/Underinsured Motorist Coverage.

A person who is injured in a motor vehicle accident while working is entitled to recover under the UM/SUM portion of the insurance policy covering the vehicle they occupied at the time of the accident. In addition, benefits paid under the workers' compensation law are not a lien against an uninsured or underinsured motorist recovery, and workers' compensation has no credit for an injured person's recovery of uninsured or underinsured motorist benefits.

Robert E. Grey
Grey & Grey, LLP
July 12, 2018