

7 MISTAKES THAT CAN RUIN YOUR PERSONAL INJURY CLAIM

A GUIDE TO MASSACHUSETTS PERSONAL INJURY CLAIMS



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INTRODUCTION

The purpose of this book is to provide you with information that will help you understand the personal injury claim process and some of the pitfalls that may prevent you from obtaining the compensation you are entitled to.

You will find information about personal injury damages, evaluation, proving a claim, what an attorney does, and how a case is litigated.

In addition, there is information about specific types of personal injury claims including car accidents, slip and fall and dog bite claims (we do handle additional types of personal injury claims).

WHAT IS A PERSONAL INJURY CLAIM

A personal injury claim arises when someone is injured, the injury is caused by someone else's carelessness, and the injured person pursues a claim to be compensated for his damages.

The injured person is called a "claimant" or "plaintiff", and the person who caused the accident is called the "insured" or "defendant." There are usually three people and/or entities involved in a personal injury claim including the plaintiff, the defendant, and the defendant's insurance company. If the defendant is insured, the plaintiff or his attorney will usually handle the claim with the insurance company and have little, if any, contact with the defendant unless a lawsuit is filed.

There are many types of personal injury claims including: Car Accidents, Trip and Fall Accidents, Medical Malpractice, Defective Products, Wrongful Death, Construction Accidents, Dog Bites, Motorcycle Accidents, Pedestrian Accidents, Premise Liability, and Truck Accidents.

All personal injury claims are processed in a similar manner, although some cases require much more time and energy than others. In each claim, you must establish who was at fault, the full extent of your damages, the identity of the defendant's insurance company, and the amount of insurance coverage.

WHAT DO I HAVE TO PROVE

Proving My Claim

In order to obtain compensation for any harms or losses you suffer in a personal injury claim, you must prove four things:

1. **Duty:** That the person who injured you (the defendant) owed you a duty to exercise reasonable care. An example of a defendant who owes a duty to exercise reasonable care is a motorist. The motorist must exercise reasonable care while operating their vehicle to avoid accidents. Another example is a landowner who must exercise reasonable care to those lawfully on their premises.
2. **Breach of Duty (Negligence):** That the defendant breached their duty of care or, in other words, failed to exercise that degree of care which a reasonable person would exercise under the circumstances. This is known as “negligence.” The mere happening of an accident is not proof of negligence.

Two examples of negligence are: a motorist who runs through a red light and a property owner who fails to install handrails on a stairway (a building code violation).

3. **Proximate Cause:** That the defendant’s negligence was a substantial cause of your loss or harm. Further, the harm or loss you suffered must have been reasonably foreseeable to a person in the defendant’s position at the time of the accident. An example of Proximate Cause is a motorist who runs through a red light and hits and injures a pedestrian.
4. **Damages:** That you suffered a harm or loss as a result of the defendant’s negligence.

Standard of Proof

Each of the four elements must be proved by a preponderance of the evidence. This means that you must show that the evidence in support of each element is more likely true than not.

Other Important Things To Know

1. **Comparative Negligence:**

Comparative Negligence applies when the defendant raises the issue of your negligence; and the defendant proves by a preponderance of evidence that you were negligent and your negligence contributed to the cause of your injuries.

If the defendant meets his burden, the jury will determine what percentage you were negligent and what percentage the defendant was negligent. If your negligence was equal to or less than the defendant's negligence, then, under Massachusetts personal injury law, you will prevail on the issue of liability. However, your damages will be reduced by the percentage of your negligence.

The following is an example of how comparative negligence applies in a personal injury claim. A jury finds that the defendant was responsible for your injuries, awards you \$20,000.00, and finds that you were 40% comparatively negligent. Your award would be reduced by 40%, leaving you with an award of \$12,000.00.

2. Statute of Limitations:

Personal injury law allows three years from the date of the accident to file a lawsuit. If you fail to do so, you will be forever barred from obtaining compensation for your personal injury claim.

3. Statutory Notices:

Some claims require that you notify the defendant of your claim within a specified time period (usually by certified or registered mail). If you don't, you may be precluded from pursuing your claim.

PERSONAL INJURY DAMAGES

If you prove the four elements of your personal injury claim, you are entitled to receive fair and just compensation for your harms and losses including any past, present and future damages. The purpose of awarding damages in a personal injury case is to restore you to the position you would have been in had the wrong not occurred. The two major categories of damages in personal injury claims are General Damages and Special Damages.

The types of damages for which you can receive compensation include:

General Damages

Physical injuries: Any physical injuries you sustain.

Physical pain and suffering: Physical pain resulting from the injuries you sustained.

Mental and emotional pain and suffering: Anguish, humiliation, embarrassment, nervous shock, anxiety, fear and depression.

Disabilities (the consequence of your physical damage): Injuries which affect your ability to work, stand, sit, lift, bend, hold, lie down and sleep.

Loss of enjoyment of life/Impact of injury: On your ability to perform tasks of life such as household chores, work, recreation, hobbies, personal care, social activities, driving, family relations, yard work, and financial activities.

Loss of bodily function/Impairments: This occurs when the movement of your injured body part is decreased or diminished as a result of your injury including a permanent loss of bodily function.

Deformity and disfigurement: Scarring and deformity and any resulting distress and embarrassment.

Loss of consortium: Loss of the care, support, and love provided from one family member to another. It arises when a family member's ability to provide society, affection and support has been impaired because of the injuries they suffered.

Aggravation of a pre-existing injury or condition: A pre-existing or dormant condition that was aggravated as a result of the injuries you suffered.

Special Damages

Medical Bills: The reasonable cost of medical treatment which is necessary and reasonable.

Lost Wages: Your loss of earning capacity.

Wrongful Death

The person responsible for death is liable in a single, indivisible amount to the personal representative of the decedent for the benefit of persons who are to share in the recovery.

The statute under which this action is brought provides as follows: ¹

A person who by his negligence causes the death of a person shall be liable in damages in the amount of:

1. The fair monetary value of the decedent to the persons entitled to receive the damages recovered, as provided in section one, including but not limited to: compensation for the loss of the reasonably expected net income; services; protection; care; assistance; society; companionship; comfort; guidance; counsel; and advice of the decedent to the persons entitled to the damages recovered;
2. The reasonable funeral and burial expense of the decedent;
3. Punitive damages in an amount of not less than five thousand dollars in such case as the decedent's death was caused by the malicious, willful, wanton or reckless conduct of the defendant or by the gross negligence of the defendant.

In addition:

The defendant is responsible for any damages related to conscious pain and suffering and medical expenses.

¹ M.G.L. c. 229, S. 2

Evidence of Damages

Evidence of your damages includes your statement(s)/testimony, witness statement(s)/testimony, medical records, reports and bills, and records, statement(s) and testimony concerning lost earning capacity.

Some types of damages require the opinion of an expert witness such as whether damages are causally related to an accident, future damages, whether any injuries are permanent and the extent of the disability, diagnosis and prognosis, the necessity of future medical treatment, the cost of future medical treatment, and the amount of any future loss of earning capacity.

WHAT WILL AN EXPERIENCED PERSONAL INJURY ATTORNEY DO FOR ME

Why You Need A Lawyer

An experienced personal injury lawyer is necessary if you wish to obtain fair and just compensation for your personal injury claim. Personal injury lawyers are knowledgeable and experienced in the law, processing claims, evaluating and settling claims, and, if necessary, litigating and trying personal injury claims.

Initial Contact

Free initial consultations: Most Massachusetts personal injury lawyers offer free initial consultations to their prospective clients.

No Fee Unless Successful: In personal injury claims, personal injury lawyers are required to sign contingent fee agreements with their client that provide, in part, that the attorney's fee is contingent upon compensation to be paid for the recovery of damages, and the client is not to be liable to pay compensation to the lawyer other than from amounts collected for him/her by the personal injury lawyer.

Most attorneys charge a contingent fee of 33 1/3 percent of all money received unless it is a medical malpractice claim. Massachusetts law requires that contingent fees in medical malpractice cases be determined by the following sliding scale:

- a. Forty percent of the first one hundred and fifty thousand dollars recovered;
- b. Thirty-three and one-third percent of the next one hundred and fifty thousand dollars recovered;
- c. Thirty percent of the next two hundred thousand dollars recovered;
- d. Twenty-five percent of any amount by which the recovery exceeds five hundred thousand dollars.

Expenses: In addition to the legal fees, the client is responsible for payment of all out-of-pocket expenses. Examples of out of pocket expenses include filing fees, costs for medical records, costs of deposition transcripts, expert witness fees, travel and investigation expenses, court costs, and other incidental expenses.

Information: There is certain information you should bring to your meeting with the personal injury lawyer, including:

- The names and addresses of witnesses.
- Photographs of the accident scene and of any property damage.
- Information about the person or company who caused the accident including their name, address and telephone number.
- A sketch of the accident scene.
- Any accident reports you may have.
- The name of any providers including doctors, hospitals and therapists.
- A detailed account of what happened and the injuries you suffered.

Processing Your Personal Injury Claim

An experienced personal injury lawyer provides professional and comprehensive legal services including:

Insurance Companies: Experienced personal injury lawyers correspond with, talk to, and ultimately negotiate with adjusters from insurance companies providing coverage for your personal injury claim.

Investigation: Your claim will be investigated in order to obtain evidence on the issue of liability. The investigation may include obtaining witness statements, photos of the scene of the accident and any property damage, police reports, certified weather reports, fire department records, maps, instruction manuals, and various other reports and records.

Legal Research: Your attorney will be knowledgeable about personal injury law, and he will research any legal issues which may arise while he is processing your personal injury claim.

Medical Records: Your attorney will obtain and review your medical records.

Medical Bills: He will obtain your medical bills and help you with any issues you may have with getting your medical bills paid.

Medical Research: If necessary, an experienced personal injury lawyer will research your medical condition in order to have a better understanding of your injury and to help them explain your condition to an insurance adjuster, judge or jury.

Lost Wages: Your attorney will obtain any loss wage information and, if it is a motor vehicle claim, help you obtain compensation for loss wages to which you are entitled while you are waiting for the outcome of your claim.

Experts: Sometimes experts are needed to prove liability and/or damages. If necessary, your attorney will retain the services of qualified experts.

Evaluation and Settlement: Once you have reached an end medical result (which means that you have fully recovered, or your doctor determines that your condition will not improve with further treatment and you are permanently disabled), your personal injury lawyer will evaluate your claim and attempt to settle your case with the defendant's insurance company.

Lawsuit: If a fair and just settlement cannot be achieved, your attorney will file a lawsuit against the defendant, aggressively prosecute your lawsuit and, if necessary, go to Trial.

Cooperation: You should cooperate and communicate with your attorney to help insure that he/she is fully informed about your claim and to insure that you receive the compensation you are entitled to.

Informed: Experienced personal injury lawyers keep their clients informed of any important developments concerning their claim.

EVALUATING AND NEGOTIATING A PERSONAL INJURY CLAIM

When to Evaluate

Your personal injury claim is evaluated when one of the following occurs:

1. You have fully recovered from your injury;
2. You have reached an end medical result but have not fully recovered. This is determined by your doctor.
3. Your claim is clearly worth more than the available insurance coverage. This can happen before you fully recover or reach an end medical result.

Prior to evaluating your claim, an experienced personal injury attorney will obtain and review all of the necessary evidence required to prove liability, and all of your medical records and bills, and any lost wage information. He will research any liability or damage issues and he will speak to you about your damages.

Once he has obtained and reviewed the information, spoken to you, and researched any liability or damages issues, he will be ready to evaluate your claim.

Evaluation

During his evaluation, he will consider the following:

Liability: The facts as to how you were injured and who was responsible.

General Damages: He will evaluate your general damages including the type of injury, the severity of the injury, how long you suffered, whether it is permanent, how much it interfered with your life, the treatment you underwent, and the results of any tests (x-rays, MRI's, CT Scans). In addition, your attorney may consider similar cases he has had, review other verdicts and settlements of similar cases, and speak to other experienced personal injury attorneys.

Special Damages: The amount of your special damages.

Demand Package

Once your attorney has evaluated your claim, he will prepare a demand package. This includes a demand letter and copies of documents regarding liability, your general damages, and your special damages. The demand letter will include a discussion on liability (why the defendant is at fault),

damages (summary of treatment, list of special damages, and impact the injury had on your life), the amount of the demand and a deadline to respond.

Negotiations

Unless the insurance adjuster denies liability, he will make an offer after he reviews the demand package. Typically, the insurer's initial offer is on the low side and the insurer fully expects to increase its offer.

Once an offer is made, your attorney should prepare a breakdown of the offer which shows the amount of the offer, the amount deducted (attorney fees, costs, and any outstanding medical bills and liens) and the net to you. Your attorney should then discuss the offer with you and advise you on an appropriate response. Once you decide on an amount, your attorney will inform the adjuster. This process can go back and forth several times until a point is reached when the case is settled or you inform your attorney that you will not accept the insurer's final offer.

Litigation

The next step is a lawsuit. More negotiations may occur after a lawsuit is filed. However, if the insurer does not make an offer acceptable to you after the lawsuit is filed, the case will go to trial. Remember, this is your case and YOU DECIDE whether to accept a final offer, file a lawsuit, or go to trial.

No Special Formula

There is no special formula for calculating general damages. If your case goes to trial and the jury finds in your favor, the jury will decide the amount of compensation you will receive. Among the factors the jury will consider are your general and special damages, the credibility of the witnesses, and their own common sense. However, they will not be given a formula to use to calculate your damages.

Other Factors

Other factors that can impact the value of a case include the credibility of witnesses; the credibility, occupation, family, age, and likeability of the plaintiff and defendant; the experience and competence of attorneys representing the plaintiff and defendant; and the judge and jury if the case goes to trial. The makeup of the jury can have a dramatic effect on a verdict for damages.

Seven Things You Can Do That Will Help You Obtain The Compensation You Deserve

1. Be truthful.
2. Fully inform your doctor about your current injuries and complaints and any past injuries and complaints.
3. Attend your medical appointments.
4. Make every reasonable effort to recover.
5. Make every reasonable effort to return to work and resume your pre-accident activities.
6. Keep your attorney informed about all facts concerning your claim including liability, your current injuries and complaints, and prior claims, injuries and accidents.
7. Focus on your recovery, not your claim.

WHAT HAPPENS IF MY ATTORNEY FILES A LAWSUIT

Many personal injury claims are settled prior to filing a personal injury lawsuit. However, if an insurance company denies your claim or makes an unreasonable offer, you should consider pursuing a lawsuit. The following is a summary of the different steps involved in a lawsuit.

Court: Most lawsuits are filed in District Court or Superior Court. If there is a reasonable likelihood that your recovery will exceed \$25,000.00, you will file your lawsuit in Superior Court. Otherwise, your personal injury lawsuit will be filed in a District Court. (Where you file your personal injury lawsuit will have NO impact upon what your case may ultimately settle for or what a judge or jury will award you if you go to trial.)

Complaint: Your personal injury attorney will prepare a Complaint, file it with the Court (this is called “filing a lawsuit”), and serve it on the defendant. A Complaint contains your name and address, the defendant’s name and address, and a concise summary of the facts and legal allegations. (If you are suing someone, you are called a “plaintiff”, the person being sued is called a “defendant”, and the plaintiff and defendant are sometimes referred to as a “party”.)

Answer: The defendant has 20 days after the Complaint is served on him to answer the Complaint.

Tracking Order: When a personal injury lawsuit is filed in Superior Court, a Tracking Order is sent to your personal injury attorney. The Tracking Order contains a schedule as to when certain actions must occur such as filing the answer, the completion of discovery, the filing and hearing of certain Motions, and a tentative Pre-Trial Conference date.

Discovery: The attorneys for the plaintiff and defendant may engage in different types of discovery including:

- **Written Discovery:** Each side may send the other written discovery requests which must be answered within a specified time period. Written discovery includes interrogatories (questions which must be answered), requests for documents (documents which must be produced), and admissions (factual allegations which are admitted or denied). Your personal injury attorney may object to discovery requests which seek information that the other side is not entitled to.
- **Depositions:** A deposition involves an attorney questioning a party or a witness, under oath and before a stenographer, at the attorney’s office. Your personal injury attorney will prepare you for the deposition, attend the deposition with you, and receive a copy of the deposition transcript. Keeper of Record depositions are used to obtain records from individuals or corporation that have relevant information concerning your claim such as medical records, prior medical records, and wage information.

- **Medical Examination:** In a personal injury lawsuit, the defendant's attorney may file a Motion with the Court to have you examined by a Doctor. The Doctor will review your medical records, examine you, and prepare a report which will contain his findings and opinions as to your physical condition. Your attorney will receive a copy of the report.

Motions: During the personal injury lawsuit, various motions may be filed which may or may not affect the outcome of your case. Generally, motions do not affect the outcome of a personal injury claim. However, if you do not have sufficient facts in support of your claim, your claim may be dismissed prior to trial.

Pre-Trial Conference: In a personal injury lawsuit, the attorneys for the plaintiff and defendant are required to attend a Pre-Trial Conference. During the Pre-Trial Conference, the attorneys discuss the personal injury claim with the judge, resolve any outstanding discovery issues, discuss the status of any settlement negotiations and obtain a Trial date.

Personal Injury Trial

A personal injury trial progresses in the following manner:

Proving Your Personal Injury Claim: As discussed previously, you must prove by a preponderance of the evidence four elements in order to obtain an award for compensation.

Trial Motions: The attorneys will file Trial Motions with the Court before the Trial. The judge will hear the attorneys on the Motions and make a ruling.

Jury: A jury is selected. In a Superior Court trial, usually 14 people are chosen by the parties including 2 alternates.

Opening Statement: The plaintiff's attorney and the defendant's attorney make an opening statement. An opening statement is a summary of the evidence you expect to present to the jury during the trial.

Evidence: The plaintiff's attorney puts in your case by way of witness testimony and documents (medical records and bills, photos, etc.) and then the defendant's attorney puts in the defendant's case. Each attorney may cross-examine the other party's witnesses.

Closing: The defendant's attorney and then plaintiff's attorney make their closing arguments during which they go over the evidence presented to the jury and attempt to persuade the jury of the merits of their claims.

Jury Instructions: Each attorney will file Jury Instructions (instructions on the law) with the Court.

Law: The judge instructs the jury on the law.

Jury Deliberates: The jury considers the evidence and, hopefully, returns a verdict in your favor.

Verdict: Obtaining a favorable verdict from a jury in a personal injury lawsuit does not happen by accident. There are a number of factors which will affect the outcome of a Trial. However, unquestionably, the most important factors are CREDIBILITY/HONESTY and PREPARATION.

SEVEN MISTAKES THAT CAN RUIN YOUR PERSONAL INJURY CLAIM

1. Failure to Report Prior Injuries to Your Doctor

The value of your personal injury claim is largely dependent on the medical records and reports of your doctor. When making an assessment or opinion about your medical condition, your doctor considers what he learned from his examination of you, the results of any tests, and the medical history you gave him.

Insurance companies have large databases from which they can obtain information about prior claims and, once a lawsuit is filed, a defense attorney can obtain your past medical records through discovery. If you give your doctor false information or hide past injuries from him, his assessment and opinions will be subject to attack from the insurer and defense counsel. This, in turn, will ruin the value of your personal injury claim. This is especially true if your doctor first learns of your prior injury while he is testifying at a deposition or trial.

2. Hiding the Truth About Your Activities

The simple truth is if you lie about the impact of your injury on your ability to perform activities, the value of your case will drop like a lead balloon.

Insurance companies conduct investigations to determine the full extent of a plaintiff's injuries. One of the tactics they use is to videotape the plaintiff performing activities that he claims he is unable to do.

Nothing is more damaging than having a plaintiff testify how his injury prevents him from performing an activity and to then have the defense attorney introduce a videotape showing the plaintiff performing the very activity he said he was unable to perform.

3. Attorney Referral to a Doctor

You should not have your attorney refer you to medical provider such as a doctor, chiropractor, or physical therapist. This can bring in to question your motive for seeking treatment and it can undermine the credibility of you, your doctor, and your attorney. It is especially true if the insurance company learns that your attorney has a history of referring his clients to the same medical provider.

The insurer and defense counsel will be able to easily imply that your treatment was at least motivated, in part, by money.

4. Keeping Information From Your Attorney

Keeping information from your attorney can have a devastating impact on your claim.

An experienced personal injury attorney must know about all important information concerning your claim so that he can properly prepare and evaluate your claim. Your attorney cannot be effective if you keep information from him.

Insurers will find out about your prior claims or accidents. So keeping information from your attorney may keep him in the dark, but not the insurer.

In addition, hiding this information from your attorney will damage both your credibility and the value of your claim.

5. Failing to Follow Your Doctor's Orders

The failure to undergo medical treatment or to have large gaps in your treatment can undermine the value of your personal injury claim.

Most people think that if you are injured and you are in pain that you will seek medical treatment. If you don't insurers, defense attorneys, and jurors will question the extent of your injury and this may significantly reduce the amount of any compensation you receive.

In addition, the law requires that you mitigate your damages. This means that if medical treatment will cure or improve your illness or injury, you must undergo the treatment. Otherwise, you cannot recover any damages you suffer which are solely related to your failure to undergo such treatment.

Some exceptions which may evidence a legitimate reason for not undergoing treatment include: when you are a caretaker for a family member with a serious illness; when you suffer from an unrelated serious illness; and if it is evident that you were deriving no benefit from the treatment.

6. Giving a Statement to the Insurer

Giving a recorded statement to the defendant's insurer can harm your personal injury claim for several reasons.

One thing above all else that you must understand about insurance companies is that they are in business to make money. It is the job of the insurance adjuster to make sure that happens. So, no matter how friendly an adjuster may seem to you, remember the adjuster is on the lookout for information that he can use to impeach your credibility and pay you less money for your claim.

When the adjuster takes your statement, he will be prepared, he will have reviewed any police reports, witness statements and photos, he will have a plan, and he will be experienced in taking recorded statements.

In addition, the adjuster will probably attempt to take your statement within a few days of the accident and before you hire an attorney.

On the other hand, it is not likely you will be prepared when the adjuster takes your statement. You may be in severe pain, on pain medication, you probably will not have reviewed any documents, reports or photos, and you will not have carefully considered the circumstances of the accident.

Once your statement is taken, the insurer will have a permanent record that it will use to compare to any of your subsequent statements, other witness statements, and, if there are any inconsistencies, to impeach your credibility. Some of your subsequent statements may include statements to your doctor, police reports, interrogatories, and deposition and trial testimony.

At the very least, you should speak to an experienced personal injury attorney before giving such a statement.

One exception to giving statements to insurance companies occurs when you pursue a personal injury claim following a car accident. You are required to cooperate with your OWN insurance company.

7. False Tax Returns

False or misleading tax returns can wreck your personal injury claim. Not only will such information ruin any claim you make for lost wages, but it will also undermine your claim for damages.

Honesty/Integrity

Above all else, the best way to obtain the compensation you deserve is with HONESTY and INTEGRITY.

CAR ACCIDENT CLAIM

If you were injured in a car accident, you may wish to pursue a car accident claim. Here you will find some useful information about car accident claims.

Car Insurance

Every person who registers a car in Massachusetts must have four kinds of insurance including Bodily Injury (BI), Uninsured Motor Vehicle Coverage (UM), Personal Injury Protection (PIP or No Fault), and Property Damage (PD). This is called compulsory insurance.

There are also seven kinds of optional insurance available such as Optional Bodily Injury (OBI), Med pay, Collision, Limited Collision, Theft and Fire, Rental coverage, Towing, and Underinsurance (UIM).

Types of Car Accident Claims

There are a number of different types of car accident claims you may pursue following a car accident. Here we will discuss BI, UM, UIM and PIP claims.

BI: You may pursue a bodily injury claim against the insurance company of the car that caused your injury.

UM: UM coverage is available for people who are injured in a car accident caused by the driver of an uninsured car. A UM claim may arise when the car causing the accident is either stolen, a hit and run, or does not have any insurance. You may pursue a UM claim against the insurance policy of the car you were riding in or your own car insurance if you were a pedestrian.

UIM: Sometimes the car causing the accident does not have sufficient bodily injury coverage to cover your damages. If the car in which you were traveling and/or your own car has UIM coverage in excess of the available bodily injury coverage, you may pursue a UIM claim.

If you are pursuing a UM claim or UIM claim, you have a duty to cooperate with the insurance company.

Proving a Car Accident Claim

In order to pursue a BI claim, UM claim, or UIM claim in Massachusetts, your personal injury attorney must prove the following by a preponderance of the evidence (or in other words, after all the evidence is weighed the matter is more probably true than not):

Duty: An operator of a motor vehicle owes a duty to exercise reasonable care, keep a proper lookout, and make reasonable observations as to traffic and other conditions, and exercise ordinary care at all times to avoid a collision.

Negligence: That the operator of an automobile failed to exercise reasonable care under the circumstances. Oftentimes, negligence is evidenced by violation of a traffic law, rule or regulation (otherwise known as rules of the road), such as:

1. Failure to obey a traffic control signal. ²
2. Failing to stop at a sign or signal at an intersection. ³
3. Not yielding to oncoming vehicles when making a left turn. ⁴
4. Tailgating or following too closely. ⁵
5. Speeding. ⁶
6. Marked lane violation. ⁷

Damages: That you suffered injury or harm AND you meet one of the following statutory requirements ⁸:

- Reasonable and necessary expenses incurred in treating such injury exceed \$2,000.00; or
- Causes death; or
- Consists in whole or in part of the loss of a body member; or
- Consists in whole or in part of permanent and serious disfigurement; or
- Results in loss of sight or hearing; or
- Consists of a fracture.

Proximate Cause: That the defendant's negligence was a cause of your injury or harm.

² 730 C.M.R. 7.09 (2)

³ M.G.L. c. 89, S. 9

⁴ M.G.L. c. 90, S. 14

⁵ 720 C.M.R. 9.06 (7)

⁶ M.G.L. c. 90, S. 17

⁷ 720 C. M. R. 9.06 (1)

⁸ M.G.L. c. 231, S. 6D

Statute of Limitations

There are time limitations within which you may pursue car accident claims such as:

- **BI Claim:** If you are pursuing a bodily injury claim, you must settle your claim or file a lawsuit within three years of the date of the accident.
- **UM/UIM Claims:** In uninsured and underinsurance claims, you have six years within which to file a claim

PIP Claims

Unlike other personal injury claims, if you were in a car accident, you may pursue a claim for lost wages, medical bills and replacement services regardless of who caused the car accident, and before you resolve your BI claim. This is otherwise known as PIP or “no fault insurance.”⁹

Types of Massachusetts Personal Injury Protection Claims

PIP provides compensation for up to \$8,000.00 for people injured in a motor vehicle accident for three types of out-of-pocket expenses:

Medical Bills: PIP covers reasonable and necessary medical expenses incurred within two years of the car accident.

Lost Wages: PIP covers 75 percent of lost wages caused by injuries you sustain in the automobile accident. However, if you are eligible for a disability plan at work, you will receive only 75 percent of the difference, if any, between the disability plan and the amount you would otherwise be entitled to under PIP.

Replacement services: PIP pays for reasonable expenses to pay non-family members to perform services that the injured person would otherwise have performed for the benefit of himself and/or family members of his household.

Health Insurance and PIP Claims

If you are injured in an automobile accident and you have health insurance, PIP will pay up to \$2,000.00 towards your medical bills. Any remaining medical bills must be submitted to your health insurer, in a timely fashion (if not, some health insurance companies may deny payment of your bill). However, PIP may be available to pay medical bills not covered under your health insurance including co-payments.

You must also coordinate payment of your medical treatment between the health care provider (doctor) and health insurer.

⁹ M.G.L. c. 90, S. 34M

Health insurance only impacts the payment of medical bills in Massachusetts personal injury protection claims. Massachusetts personal injury protection remains available for the payment of lost wages and replacement services until the \$8,000.00 in PIP coverage is exhausted.

Duty to Cooperate

You must cooperate with the PIP insurer in order to obtain PIP benefits.

PIP Application: You must fill out, sign and submit a PIP application to the insurance company. The insurance company will send the PIP form to you. Many experience personal injury attorneys will handle your PIP claim for you at no addition cost if you retain them to represent you in your BI claim.

Medical Examination: The PIP insurer has the right to have you examined by a doctor selected by the insurer.

Medical records, bills and lost wage information: You must submit evidence of your losses to the PIP insurer and authorize the insurer to obtain such information that is pertinent to the claim.

Statement: The PIP insurer has the right to obtain your statement under oath. This is called an examination under oath (“EUO”). If the statement is not taken under oath, you are not obligated to give a statement.

Failure to cooperate with the insurance company may result in denial of your claim.

Motorcycles, Pedestrians, Limits and PIP

Here is addition information you should know about Massachusetts PIP claims:

- PIP does not cover people injured while riding a motorcycle.
- PIP covers pedestrians who are injured in a car accident.

Claims for PIP benefits must be submitted to the PIP insurer within two years of the date of the accident.

Bicycle Accidents

The risk of sustaining a serious injury is far greater than other motor vehicle accidents if you are involved in a bicycle accident. In addition to the general rules of the road, Massachusetts has safety rules applicable to motorists designed to help prevent bicycle accidents.

Safety rules for motorists include:

A motorist must slow down when passing a bicycle traveling in the same direction in the travel lane and may not return to the right until after the vehicle has safely passed the bicycle. If the bicyclist may not be passed safely, the motorist must wait. When passing a bicycle, a motorist may not turn right unless at a safe distance from the bicyclist and if the motorist can make the turn at a reasonable and proper speed.

When turning left, a motorist must yield the right of way to a vehicle approaching from the opposite direction, including a bicycle.

A motorist must watch for bicyclists riding to the right of motor vehicle traffic and check for approaching bicyclists before opening a car door. By statute, it is not a defense for a motorist causing an accident with a bicycle that the bicycle was to the right of traffic.

Safety rules for bicyclists:

Bicyclists have the right to use all public ways in Massachusetts except limited access or express state highways where signs specifically prohibit bicycles.

When riding on public ways, bicyclists must observe the same basic traffic laws and regulations that apply to motor vehicle operators, such as riding in the same direction as vehicles and obeying traffic lights and right-of-way laws.

A bicyclist must use hand signals to stop or turn, but the signal does not have to be continuous or made at all if both hands are needed for the bike's safe operation. A bicyclist must keep one hand on the handlebars at all times and cannot carry objects that would interfere with the bike's safe operation.

A bicyclist can ride on sidewalks outside of business districts for safety unless banned locally, and if on the sidewalk, a bicyclist must yield to pedestrians and give an audible signal before overtaking and passing (no sirens or whistles).

A bicyclist can keep to the right when passing a motor vehicle moving in the travel lane.

A bicyclist under 16 years old must wear a bicycle helmet approved by the U.S. Consumer Product Safety Commission at all times while on the road.

Pedestrian Accidents

If you or a family member are injured in a pedestrian accident, the injuries are likely to be far more serious than other types of motor vehicle accidents. Massachusetts has a number of safety rules in effect to help prevent pedestrian accidents.

In addition to general safety rules which apply to motorists such as keeping a proper lookout and making reasonable observations as to traffic and other conditions, here are some of the safety rules intended to prevent pedestrian accidents.

Safety rules for motorists:

Yield to a pedestrian in a roadway.

Slow down when approaching a pedestrian.

Slow down or stop for a pedestrian crossing the roadway within a marked crosswalk.

Do not pass any other vehicle which has slowed or stopped to permit a pedestrian to cross a marked crosswalk.

Give warning by sounding a horn when necessary.

Look for places where pedestrians may be in the road but are not visible.

Safety rules for pedestrians:

Look both ways when crossing the street.

Obey traffic signals.

Do not cross a roadway when a vehicle is so close that it is impossible for the driver to yield the right of way.

Use a crosswalk if one is close by.

Truck Accident Claims

Due to their size, challenge to operate, and materials they transport, commercial trucks can pose a significant safety risk to the general public. As a result, commercial vehicles which meet certain criteria are heavily regulated to help reduce the number of truck accidents and the risk they pose to the public.

Commercial Vehicles

The U.S. Department of Transportation (USDOT) regulates commercial vehicles defined in the Federal Motor Carrier Safety Administration (FMCSA) as any self-propelled or towed vehicle used on public highways to transport passengers or property in commerce. The types of commercial vehicles governed by the FMCSA include:

1. **Weight:** When a vehicle has a gross weight over 10,000 pounds. This figure is stamped on the vehicle identification number.
2. **Passengers:** When the vehicle is designed to transport more than 15 passengers including the driver.
3. **Hazardous material:** When the vehicle is used to transport hazardous material.

Federal Regulations

In addition to obeying the rules of the road applicable to anyone who operates a motor vehicle, commercial drivers must comply with a number federal regulations. Some of the federal regulations include:

1. Driver **qualifications** such as proper commercial driver's license (CDL);
2. In order to **obtain a CDL**, a driver must pass a knowledge and skills test. The knowledge test covers various federal regulations and safety issues. The skills test includes tests for pre-trip vehicle inspections, basic vehicle control, and an on-road test.
3. Driver qualification **file** including medical examiner's certificate, annual reviews, his application for employments, and any citations for motor vehicle violations.
4. The driver's **hours of service** are limited.
5. The driver must keep a **logbook** documenting, among other things, the hours they drive each day. Some drivers are exempt from this rule, however, records must be kept which evidence that they do not exceed limitations concerning the hours or days driven.
6. **Records of accidents** must be maintained.

7. Driver must conduct **Pre-Trip and Post-Trip inspections** of the vehicle, its parts and accessories to make sure that the vehicle is safe to drive. Some of the parts and accessories that must be inspected include emergency equipment, brakes, lights, tires, cargo securement devices, horn and mirrors. Any vehicle that has safety deficiencies must be taken off the road until the deficiencies are repaired.
8. The vehicle must be **inspected annually**.
9. Drivers must undergo a medical exam and obtain a **medical certificate** that they are fit to drive. This must be in the driver's possession when they are driving.
10. Drivers are not allowed to use **handheld telephones** while driving the vehicle.
11. Drivers are subject to **alcohol and drug testing**.

All states are connected to one computerized system which allows them access to information about CDL drivers.

Government

As a general rule, governmental entities are exempt from federal regulations, however, they are subject to a few regulations including driver qualifications and alcohol and drug testing.

Evidence of Negligence

The violation of a safety regulation is evidence of negligence on the part of the violator as to all consequences that the regulations were designed to prevent.

Causes of Truck Accidents

Some of the common causes of truck accidents are speeding, aggressive driving, driver fatigue, poorly trained drivers, following too closely, improperly balanced loads, equipment failure, slippery surfaces, tight turns, unsecured loads, impaired drivers (drug or alcohol), failure to inspect and inadequate safety devices.

Some Causes of Car Accidents And Preventive Measures

It is important to understand some of the causes of car accidents in order to avoid the harmful consequences of an automobile accident.

Car accidents occur at an alarming rate and are a leading cause of injury in the United States.

In order to control the increasing accident rate, many states have passed tough laws with respect to various causes of car accidents such as drunk driving. Also, motor vehicle manufacturers have installed several safety features in their vehicles to lessen the impact of accidents and save lives.

However, because the number of drivers continues to increase, these safety measures have not sufficiently stemmed the tide of car accidents. The National Highway Traffic Safety Administration reports that a car accident occurs every 10 seconds in the United States.

Causes of Car Accidents

Here are some of the most common causes of car accidents:

- Driver impairment including consumption of drugs or alcohol, tiredness, and illness.
- Traffic violations such as running a red light or stop sign, taking a left hand turn into traffic, and speeding.
- The age of the driver often leads to car accidents due to the inexperience of youthful drivers and physical impairments of elderly drivers.
- Mechanical defects are one of the major causes of car accidents. Some examples of mechanical defects include defective tires, brakes, and transmissions.
- Poor road conditions such as potholes, snow and ice, and foreign substances.

Preventive Measures

Some of the preventive measures you can take to avoid the potentially harmful consequences of a car accident include:

- Helping family members and friends to avoid driving while impaired.
- Have your car inspected by your car mechanic on a regular basis and pay attention to any recall notices regarding your car.
- Abide by the rules of the road.
- Drive defensively.

- Help your elderly friends and family to understand their driving limitations and to convince them to drive within their limitations.

Teenage Car Accident Causes and Prevention

As we all know too well, teenage car accidents are a common occurrence. Here is some information on the reasons for car accidents involving teenagers and some measure we can take to reduce car accidents.

Reasons for Teenage Car Accidents

There are several reasons for car accidents, such as:

- The inexperience of teenage drivers leads to poor decisions in response to unexpected traffic or road conditions.
- The immaturity of some teenage drivers results in careless and reckless driving.
- The failure of teenage drivers to adhere to safety precautions such as wearing seatbelts.
- Drowsiness caused by late hours and/or the consumption of alcohol or drugs.
- Teenagers often drive smaller and poorly maintained cars.

Recommendations to Prevent Car Accidents

The following recommendations could prevent teenage car accidents:

- Driving after consuming alcohol must be prohibited.
- Wearing a helmet must be compulsory for both the driver and the passenger on all two-wheelers.
- Stringent checks must be done on the weekends.
- Teenagers must wear seatbelts.
- Their car should be properly maintained.
- Restrictions (in addition to those imposed by state law) should be in place concerning the hours, road, and people teenagers drive.

Ten Things To Do If You Are In A Car Accident

Have you been injured in a car accident? A motor vehicle accident can be a painful, stressful, and confusing experience. You may be contact by insurance companies and investigators, you will have to fill out forms, and you may wonder who will pay your medical bills and lost wages.

Here is some useful information and the benefit of having an experienced personal injury attorney represent you.

1. **Do Not Leave the Accident Scene.** If you are involved in a car accident, you must stay at the accident scene until you exchange information with the other driver or you may be criminally prosecuted.
2. **Avoid Additional Collisions.** Take steps to avoid additional collisions such as moving your car to the side of the road, invoking flasher lights, lighting flares, and raising the hood of your car.
3. **Exchange Information.** Exchange information with the operator of the other motor vehicle(s) including the name, address, date of birth, and driver's license number of the operator and owner of the car (if difference from the operator), registration number, and name of the insurance company. (Always keep a pen and a small pad of paper in your car.)
4. **Inform the Police.** Contacting the police is very important, because the police will prepare a detailed motor vehicle accident report. This report will contain important facts regarding your claim that will come in handy when you seek legal advice.
5. **Never Discuss Liability.** Never discuss liability (who was at fault) before you seek legal advice from a personal injury attorney. When you are speaking with other drivers, passengers, paramedics or police, just provide a truthful account of the incident – do not discuss who was responsible for the accident.
6. **Get Appropriate Information.** If possible, you should attempt to obtain the following information: names and addresses of witnesses; note the damage to the motor vehicles; note any skid marks and the approximate distance; draw a diagram of the scene, noting the names of streets, intersections, traffic signals or signs, and location of the motor vehicles; and, if you happen to have a camera with you, take photos of the scene and motor vehicles.
7. **File Accident Reports.** Obtain and fill out an "Operator's Report of Motor Vehicle Accident." This form may be obtained from the police department or from the Registry of Motor Vehicles or on the Registry's website (www.massdot.state.ma.us/rmv). Send the original to the Registrar of Motor Vehicles and one copy to the police department in whose jurisdiction the accident occurred. Keep a copy for your files. Before you send it out, the report should be reviewed by your attorney.

8. **Inform Your Insurance Company.** Report the accident immediately to your insurance company or agent in writing without any detailed description of the accident. (Keep a copy of the letter for your file.) The attorney's job will be to fill in the blanks for the insurance company later.
9. **Medical Treatment.** If you are injured, seek appropriate medical treatment and follow your doctor's orders regarding any treatment (i.e. physical therapy), tests (i.e. x-ray and MRI) and prescriptions.
10. **Get Legal Advice as Soon as Possible.** Contact an attorney. A Massachusetts motor vehicle accident attorney is experienced in dealing with the various issues that arise following a car accident such as contacting insurance companies, processing motor vehicle accident claims and PIP claims (compensation for medical bills and lost wages), evaluating and settling claim, and, if necessary, litigating car accident claims.

It is important that you contact an experienced personal injury attorney as soon as possible after your accident to help preserve evidence, identify and interview witnesses, and to begin building a case.

A Car Accident Attorneys Guide Of What To Do If Your Car Was Damaged In A Car Accident

You should take the following steps if your car was damaged in a car accident:

1. If someone was injured or there was property damage over \$1,000.00, you must notify the local or state police AND the Registry of Motor Vehicles within five days of the accident. The accident form can be found at the Mass DOT website.
2. Notify your insurance company or agent promptly of the accident. In addition, you must file a proof of loss with your insurance company within 91 days of the accident.
3. You must allow the insurance company to have your car appraised and you should obtain a copy of the appraisal.
4. Select a repair shop and arrange to have your car repaired. If you learn that the costs to repair your car exceeds the appraisal, notify the insurance company immediately.

When your car is damaged in a collision because of someone else's negligence, you can pursue a claim for property damage against that person's insurance company.

You are entitled to the fair market value of the damaged property including any applicable sales tax and the costs resulting from the loss of use of the damaged property. This includes, storage, towing and rental costs.

If you have comprehensive insurance, you can pursue a claim against your own insurance company. It doesn't matter who was at fault. The insurance company will pay the cost to repair the auto up to the actual cash value (ACV) of the car. The insurer will subtract the deductible. However, you can be reimbursed for the deductible if the other driver caused the accident. Any secured lenders will be paid first.

If the repairs exceed the ACV, the insurance company may purchase it for ACV minus the salvage value. You can negotiate with your insurer to purchase your car for the salvage value. However, your insurer will suspend coverage until the car passes a Motor Vehicle Inspection Test.

The insurance company is only obligated to pay for any storage or rental costs for a reasonable time. So, call the insurance company as soon as possible and find out how much and for how long the insurance company will pay these costs. ¹⁰

If you cannot agree with the insurance company on how much it should pay, you may file a Small Claims Action against the insurance company (defendant). The initial amount claimed in a Small Claims Action must not exceed \$7,000.00. However, there is no limit for motor vehicle property damage cases caused by a motor vehicle.

¹⁰ Mass Auto Policy, 8th Edition

A Small Claims Action involves the following steps:

1. Collect all of the relevant information/evidence such as police reports, motor vehicle accident reports, photos of your car, appraisal(s), and repair bills.
2. Contact the Small Claims Clerk in your district.
3. Fill out a Small Claims Complaint. The Clerk will help you with this.
4. File the Small Claims Complaint with the Court together with the filing fee (these range from \$40.00 - \$150.00 depending on the size of your claim). The Court will fill in the date and time of trial and give you a copy.
5. You should get a trial date within one to four months from the date you file the complaint.
6. The Clerk will serve the defendant.
7. Prepare for the trial. Organize, review and make copies of your information/evidence. Make an outline (preferably in chronological order) of your evidence. You have the burden of proof. In a civil trial, this means you must prove that your evidence is more likely true than not.
8. Call the Court a week before the trial to make sure the defendant was served and the case is still on. If the defendant filed an answer, obtain a copy.
9. Attend the Trial/Hearing. Bring your information/evidence together with copies and, if possible, any helpful witnesses such as the person who repaired your car.
10. The parties are usually given an opportunity to mediate with a mediator before the Trial to see if they can settle their case. If the mediation is not successful, you will have a hearing before a clerk.
11. At the hearing, you and the defendant will tell your side of the story and you should submit any relevant documents to the Clerk, including documents which support the amount of damages you are seeking. These proceedings are very informal, there is no jury, and are usually held in front of a clerk rather than a judge.
12. After everyone has testified and any relevant documents have been submitted to the Court, the Clerk will decide who wins and the amount of the award, if any. If you win, the clerk will include the filing fee. ¹¹

¹¹ M.G.L. Chapter 218, Sections 21-25, Small Claims Actions

SLIP AND FALL CLAIMS

Proving Your Claim

If you are thinking about pursuing a slip and fall claim, you will need to prove:

Owner: You must prove who owned or controlled the property at the time of the slip and fall.

Duty: A landowner or person in control of property must act as a reasonable person in maintaining his property in a reasonably safe condition in view of all the circumstances such as:

- The likelihood of injury to others;
- The potential seriousness of the injury;
- The burden or cost of avoiding the risk; and
- The proper allocation of the risks involved.

Defect: You must prove that there was a defect on the premises and that the defect was the proximate cause of your fall.

Negligence: Proving that there was a defect on the premises is not enough. A landowner is not an insurer. In order to prove your slip and fall claim, you must also show that the landowner knew or should have known of the defect, had a chance to remedy the defect and failed to do so.

Damages: You must evidence that you suffered injury or harm and that the owner's negligence was a proximate cause of your injury or harm.

Warning

The landowner has a duty to warn of dangers not likely to be known by a lawful visitor and of which the landowner knew or should have known. However, the landowner may not be obligated to warn lawful visitors of an open and obvious danger.

Trespassers

Generally, there is no duty owed to trespassers except to refrain from wanton and willful misconduct. However the standard of reasonable care does not apply to foreseeable child trespassers.

TYPES OF SLIP AND FALL CLAIMS

Foreign Substances

Many slip and fall injuries are caused by slip and falls on foreign substances. A few examples include grapes and liquid on grocery store floors. Three ways to prove liability are:

- Evidence that the owner caused the defect or knew of it.
- Evidence that the owner was in a place where he should have seen the defect.
- The condition of the defect evidences that it was there for such a period of time that the owner should have seen it.

In each case, you must prove that the owner had time to remedy the defect and failed to do so.

Massachusetts Mode of Operation Rule

Chances are you've been to the grocery and seen grapes, lettuce leaves, green beans, etc. on the floor of the produce aisle. These stray fruits and vegetables are the result of customers who serve themselves from the open displays and represent a hazard to shoppers. Recognizing trends in premises liability and the nature of self-service establishments, Massachusetts adopted the "mode of operation" rule.¹² The rule is extremely important for people injured in slip and fall accidents at a self-service store. Self-service stores are supermarkets, cafeterias and other businesses where the consumer selects the merchandise or food from displays as opposed to an employee getting the product for the customer.

The "mode of operation" approach allows a customer injured as a result of a condition that foreseeably developed from the way a store is operated to recover compensation without establishing that the store had actual or constructive notice of the dangerous condition. For example, if a restaurant has a self-service salad bar, it is foreseeable that customers may drop food on the floor. If this is occurring and the restaurant does not take reasonable measures to prevent or remedy the resulting dangerous condition then the restaurant is liable for the injuries suffered by a customer that falls due to food on the floor. The rule replaces the prior standard that required proof that an operator of a self-service establishment had actual or constructive notice of the item that caused the person to fall. This standard required the injured person to establish that the item had been present long enough that the operator should have discovered and remedied the condition, a fact that was

¹² Sheehan v. Roche Brothers Supermarkets, Inc., 448 Mass. 780 (2007)

extremely difficult to prove. The “mode of operation” rule allows many more injured customers to rightfully recover compensation in slip and fall accidents and should make shopping a bit safer.

The New Law of Snow and Ice

The highest court in Massachusetts made a drastic change in the law with regard to liability resulting from the hazards created by snow and ice.¹³ Prior to the change the law stated that if someone slipped and fell on a natural accumulation of snow or ice then there was no liability on the part of the person who owned or controlled the land. The law imposed responsibility only where the snow and ice that created the hazard was an unnatural accumulation caused by an artificial source, such as a downspout, gutter or roof, or where a natural accumulation became unnatural as a result of human disturbance, such as foot traffic. The reason for the distinction was that an owner could control artificial and manmade sources, but was not responsible for snow fall and ice that formed naturally due to weather conditions and the harsh New England winter.

In Papadopoulos the court brought the law regarding snow and ice into line with other premises liability cases that imposed liability where the person responsible for the property knew or should have known that a hazard existed and failed to take measures to make the property reasonably safe for lawful visitors or occupiers. In deciding to do away with the distinction between natural and unnatural accumulations of snow and ice, the court reasoned that the law did not grant similar exemptions to other naturally occurring phenomenon, such as fallen tree limbs, and allowed persons to evade responsibility where they were aware of a hazardous condition on their property caused by naturally occurring snow and ice and failed to remedy the condition. The court also noted that the law of negligence would now be more consistent and treat all hazards the same such that land owners would be on notice of what is expected of them and the

law more justly applied to those injured. In Papadopoulos the court also stated that the change the law applied retroactively so that those injured by falls on snow and ice within the three years before the decision would also have the benefit of the change in the law.

As a result of this case, property owners should be more vigilant this winter in keeping access to their property clear of snow and ice from whatever source. Also, those injured as a result of unsafe conditions resulting from snow and ice will find the road to compensation has at least one less obstacle.

Municipalities

A municipality can be liable for slip and fall injuries on their property and it's duty to lawful visitors is the same as that of an individual.

¹³ Papadopoulos v. Target Corporation, 457 Mass. 368 (2010)

However, if a slip and fall occurs on a public way (i.e. street or walkway), the maximum amount that you can recover against the municipality is \$5,000.00. ¹⁴

Violation of Safety Rules and Regulations

Slip and falls often occur as a result of a violation of safety rules and regulations contained in statutes, codes or ordinances.

The violation of a safety regulation is evidence of negligence on the part of the violator as to all consequences that the regulation was designed to prevent. An example of safety regulations is the Building Code. The intent of the Building Code is to insure public safety, health and welfare.

Notice

In certain types of slip and fall cases including slip and fall injuries on snow and ice and claims against municipalities, you must notify the landowner or person in control of the property within thirty days of the incident. ¹⁵

¹⁴ M.G.L. c. 84, s. 15

¹⁵ M.G.L. c. 84, s. 18-21

A Checklist For Slip and Fall Claims

1. Who owned or controlled the property where the fall occurred
2. The cause of the fall
3. Witness names and addresses
4. Any accident reports and videotapes
5. Photos of the accident scene and, if possible, the defect that caused your fall
6. Whether the defect violated any laws, codes, regulations or standards
7. Whether the owner or employees caused, knew of or should have known of the defect
8. Whether the owner had enough time to remedy the defect

DOG BITE CLAIM

Strict Liability

In order to receive compensation for a personal injury claim in a dog bite case, you must prove:

1. The identity of the owner or keeper of the dog;
2. That the dog did damage to your body or property; and
3. That, at the time such damage was sustained, you were not committing a trespass or other tort, or were teasing or tormenting or abusing the dog.

If a claim is brought in behalf of a child who was under 7 years of age at the time the damage was done, it is presumed that the child was not committing a trespass or other tort, or teasing, tormenting or abusing the dog. The burden of showing that the child engaged in such conduct is on the owner or keeper of the dog. ¹⁶

You DO NOT have to prove that the owner or keeper was negligent.

Treble Damages

If a town, city or district court has issued an order that the dog be restrained prior to the dog bite, the owner or keeper of the dog shall be liable to the person injured in treble the amount of damages sustained by him. ¹⁷

Insurance

If the owner or keeper of the dog is a homeowner, the owner or keeper will have homeowner's insurance and the damages you sustain may be covered under the insurance policy. However, some insurance companies have exclusions in their policies for damages caused by dogs.

If the owner or keeper has no insurance or has an exclusion for dog bites, you can still pursue a claim against the owner or keeper. However, any compensation for your damages would be paid from such person's personal assets.

Landlords/Property Owners

If the owner or keeper of the dog lives in an apartment, you may pursue a claim against the landlord for negligence (strict liability does not apply).

¹⁶ M.G.L. Ch. 140, S. 155

¹⁷ M.G.L. Ch. 140, S. 159

You must prove that:

1. You were lawfully on the premises at the time you were attacked;
2. You were attacked or bitten by a dog while on the premises;
3. The owner or keeper of the dog stayed/lived at the premises;
4. The landlord knew or should have known that the dog had dangerous propensities and what actions would have been reasonable in light of their duty as landlords to protect tenants from reasonably foreseeable risks of harm¹⁸;
5. You suffered damages;
6. Your damages were caused by the dog attack/bite.

Other Laws Regarding Dogs

1. The owner or keeper must register the dog (including the name and address of the owner) with the city or town.
2. Every license issued to the owner of a dog shall have symptoms of rabies printed on it. ¹⁹
3. The owner or keeper of the dog which is 6 months or older shall cause the dog to be vaccinated against rabies by a licensed veterinarian and the veterinarian shall issue a certificate of the vaccination to the owner. ²⁰

Things to Teach Your Children

Here are some safety tips to help teach your children how they should act around dogs:

DO NOT:

1. disturb a dog that is eating;
2. disturb a dog that is sleeping;
3. disturb a dog that is caring for its puppies;
4. run from a dog; and
5. pet a dog without letting it sniff you first.

¹⁸ *Nutt v. Florio*, 75 Mass. App. Ct. 482(2009)

¹⁹ M.G.L. Ch. 140, S. 145

²⁰ M.G.L. Ch. 140, S. 145A

Seven Things To Do If You Are Attacked By A Dog

1. If the injury is serious, call emergency medical professionals (911).
2. Seek treatment for your injuries.
3. Get tests to determine if you need a rabies shot.
4. Get the name and address of the dog's owner or keeper.
5. Get photographs of your injuries and the place of attack.
6. Get the name(s) and address(es) of any witness(es).
7. Check Town or City Hall for information about the dog.

CLIENT RIGHTS

When you hire Bob Allison, you deserve and are entitled to these rights:

1. You will be treated with respect, dignity and honesty.
2. Your phone calls will be returned promptly.
3. Your questions will be answered.
4. You will be kept informed about your case and the services we provide.
5. Your case will be thoroughly investigated, researched and evaluated.
6. You will receive copies of all correspondence and important papers.
7. You will have your legal rights and options explained to you in plain English.
8. You will receive experienced and competent representation.
9. You pay no fee or expenses unless we are successful in obtaining compensation for you.
10. You will make the ultimate decisions concerning your case such as how much to settle for, whether to file a lawsuit, and whether to go to trial.

We are committed to providing the highest standard in legal representation and service to our clients.

CASE RESULTS

Carbon Monoxide Poisoning

Our clients, a mother and daughter, suffered from carbon monoxide poisoning causing long term memory problems when a defective ventilation system connected to a boiler leaked carbon monoxide into their new home. A lawsuit was filed, the parties engaged in comprehensive discovery including over 40 depositions, and shortly before trial, the case was settled for \$1,450,000.00.

Elderly Woman Injured by Pushcart

Our client, an elderly woman, was shopping in a supermarket when she was struck from behind by a pushcart. She sustained a severe laceration to her leg which required a skin graft. Initially, both defendants denied liability. A lawsuit was filed, discovery included several depositions, and upon the completion of discovery, the case settled for \$102,000.00.

Employee of Grocery Store Injures Customer

Our client, a 62 year old man, was shopping in a grocery store when an employee of the store slipped on a pool of water and fell onto the customer, injuring his shoulder. He underwent shoulder surgery. A lawsuit was filed and after discovery was completed, the case was settled during mediation for \$225,000.00.

Slip and Fall on Snow and Ice

Our client, a middle aged man, was walking home from a restaurant/bar where he watched the Superbowl when he slipped and fell on a walkway covered with snow and ice. He sustained a fracture of his left ankle. A lawsuit was filed and after discovery was completed, the case was settled during mediation for \$65,000.00.

Motorcycle Accident

Our client was riding his motorcycle when a tow truck suddenly cut him off causing him to drop his motorcycle and slam against the pavement. He suffered from a severe shoulder injury, constant pain, limited use of his right arm, and he was unable to work. He had to undergo major reconstructive shoulder surgery during which the surgeon fused his shoulder blade to his ribs. Our client made a satisfactory recovery and was able to return to work. A lawsuit was filed and a week before the pre-trial conference, the case settled for \$475,000.00.

Head-On Collision

Our client was driving her car when another vehicle drove into her lane, causing a head-on collision. As a result, she sustained a badly fractured ankle and underwent ankle surgery and physical therapy. A lawsuit was filed and the case settled for \$112,000.00.

Assault by Co-Worker

A male co-worker of our client, a female, without warning or provocation, twisted her arm behind her back with such force that he tore a tendon in her left shoulder. Our client underwent successful shoulder surgery and made an excellent recovery. A lawsuit was filed, discovery was completed, and the case settled at mediation one month prior to trial in the amount of \$105,000.00.

Slip and Fall

Our client slipped and fell down a newly constructed stairway injuring her ankle, heel and shoulders. A lawsuit was filed and the case was settled during mediation for \$300,000.00.

Car Accident

Our client was driving a work vehicle when he was rear-ended. He injured his neck and back. A lawsuit was filed and he was awarded \$165,000.00.

TESTIMONIALS

*I want to thank Attorney Allison for everything he did for me and my family. I could not have asked for anyone better! Attorney Allison was very dependable and honest about my case over the last few years. Honestly, I would refer him to anyone that needed a good lawyer! His services are wonderful and his secretary Diane is a joy to talk to. I want to wish her the best of luck from me and Jessica. I want to thank Attorney Allison again for everything and also wish him the best of luck in the future. It was a pleasure to have him work for me. - **David Cummings, Peabody***

Attorney F. Robert Allison was recommended to me by a friend attorney who does commercial real estate.

Attorney Allison regularly was in touch with me about my case. He was respectful and concerned. He always gave me whatever time I needed to discuss my case.

*I recommend Attorney Allison because he did get me a just settlement, he was always available to talk about my case, and he showed concern for the suffering I endured because of my accident. - **Karen Hawthorne, Medford, MA***

*Attorney F. Robert Allison is a truly honest lawyer with integrity. He works hard for his clients and is always available to answer any questions. - **Michael Shea, Danvers***

*I have been doing business with Mr. Allison for many years. He's handling all of my legal services for my family and my business. He is sufficient in all of his work, response to all his clients, follow up in all his works. His clients is his Number 1 priority, he takes the time to talk and explain to his clients and he valued his clients opinions. A few years ago, Mr. Allison did help me with my personal injury case. I'm very satisfied with the outcome of the case and I would recommend to all of you out there to give Mr. Allison a chance to represent you in your next personal injury case. I know you will be glad you did because you making the right decision. - **Hong T. Nguyen, Lynn***

*Attorney Robert Allison is an honest lawyer who works hard for his clients to get the compensation they deserve. - **Debra Shea, Danvers***

*On numerous occasions I have called on Bob Allison for assistance. Bob has always responded to my requests in a very timely fashion. I feel extremely fortunate to be represented by an attorney with Bob's devotion and commitment to his clients. - **Edward Charest, Peabody***

*I am thankful to Attorney Allison for his excellent service and representing my case. Attorney Allison kept me well informed at all times concerning all matters as well as worked to the best of his ability to see that I got what I was entitled to. - **Michael LeBlanc, Danvers***

*My recent experience with Bob A. was a pleasant one. He was very helpful and guided me how the legal system goes as in my situation. He handled my situation with the utmost professionalism. Precise and prompt. - **Patty Tuneburg, Danvers***

*Mr. Allison was very responsive and professional. He kept me well informed on the progress of my claim, and he handled my claim efficiently and in due time. I would recommend him to anyone needing an attorney. - **Elaine Greer, Marblehead***

*Atty. Robert Allison, in my experience how he handle my case in the past and present in my automobile accident, there is no words to express, he is the Top Gun in his profession. As we say, family first, for him client first, he has all the traits and quality you are looking for a lawyer that will represent your case. Communication, Responsiveness, Quality of service, Value of money. I recommend his office to all my friends, co-worker, or anybody I meet in the street that they been in accident or any legal help. If you are with Atty. Robert Allison you are in good hands...like good food in a restaurant you keep on coming back and you recommend it... and by the way his secretary Diane is awesome, like Robert she is always on top of everything. I highly recommend him to anybody. - **Fernando Sims, Peabody***

Thank you so much for your help. You solved a case that I thought was done with. You did an excellent job and reached all of my expectations. If anyone I know ever needs a lawyer, I will not hesitate to give them your number. Thank you for all you've done. You did a great job and you are the best.

*Thanks again. - **Wanda Salamone, Billerica***

*Attorney Allison was professional and efficient. I felt confident to have him representing me. He led me through the entire process and always answered my numerous questions. Choosing the right lawyer is a tedious chore. Rest assured Attorney Allison is the right choice. - **Lenity S., Salem***

*I feel Robert Allison is a very dedicated and concerned attorney and always puts me and my case first in my eyes. - **Cedric A., Salem***

*Bob and his staff handled promptly and professionally all of the legal matters involved with my car accident injuries keeping me informed of all of my options and listening to my concerns. Was very comforting during this difficult time. Bob was recommended by an acquaintance and I would not hesitate in recommending Bob to handle any new personal injury client. - **Kathy S., Danvers***

I am very appreciative of the way Attorney Robert Allison handled my case. He took the time to explain the process to me thoroughly and provided me with updates all along. Attorney Allison always returned my calls promptly, settled my case quickly, and answered all my questions. In addition, his staff was always friendly and kind. I would not hesitate to recommend his services to a friend or family member. - Maria R., Salem

FREQUENTLY ASKED QUESTIONS

Do I need an attorney?

An experienced personal injury attorney knows what information to obtain, how to evaluate your claim, how to negotiate with insurance adjusters, and, if necessary, how to litigate and try your case.

Do you offer free consultations?

Yes, we offer free consultations for our personal injury clients.

What will you do?

We meet with you, fully investigate your case, obtain all medical records and bills, retain experts and investigators (if needed), evaluate your case, and make a demand on the insurer. If necessary, we will file a lawsuit, conduct discovery, go to court and try your case to a verdict. While we represent you, we will keep you fully informed about your case.

What should I do if I am in a car accident?

If you are in a car accident, you should take steps to avoid additional collisions, exchange information with the other driver, do not leave the accident scene, inform the police and your insurance company, and file an accident report. If you are injured, seek appropriate medical treatment and follow your doctor's orders.

Will I receive compensation for my lost wages?

You will receive compensation for your lost wages if you receive a settlement or award for compensation from the responsible party. However, if you were in a car accident, your lost wages may be paid before you receive an award or settlement for your claim.

Who will pay my medical bills?

Your medical bills will be paid out of any settlement or award for compensation you receive. This compensation is usually paid by the responsible party's insurer. However, if you were in a car accident, your medical bills may be paid before you receive an award or settlement for your claim.

What is my case worth?

There is no special formula for determining the value of your case and each case is different. The value of your case is determined by several factors including whether you can prove someone was responsible, the severity of your injury, how long you suffered pain or discomfort, how much it interfered with your life, whether your injury is permanent and the amount of your medical bills and any lost wages. The value can also be affected by the background and credibility of the parties and witnesses, the attorneys, and, if the case goes to trial, the jury.

What can I do to effect the value of my case?

Keep your medical appointments, always tell the truth, focus on your recovery rather than your claim, and keep your attorney informed.

How much do you charge?

You are charged a contingent fee on personal injury claims. This means that you are not charged a fee unless you receive compensation from your case.

How long will it take before my case is over?

How long your case takes is dependent on several factors including how serious your injury is, how long it takes to recover from your injury, whether a lawsuit is filed and, if so, whether the case is tried. Some cases are resolved within six months while cases involving serious injuries and lawsuits can take over two to three years.

What if someone calls me about my case?

You should tell them you have an attorney and to direct any questions they have to your attorney. However, you have a duty to cooperate if you have a claim against your own insurance company (this usually applies in car accident cases).

CASES WE DO NOT ACCEPT

We work diligently to obtain the compensation you deserve for your personal injury claim. This includes investigation, research, evaluation and communication with you, insurers, providers, and, if litigation ensues, attorneys, judges and juries. Therefore, we are selective in the cases we choose to accept.

Some of the cases we generally do not accept include:

1. If you have a significant prior medical history which involves the same body part you injured in this accident.
2. If you were cited for causing the accident.
3. If it is not likely you will not incur at least \$2,000.00 in medical bills.
4. If you already have a lawyer.
5. If you have a lengthy criminal record.
6. If the statute of limitations is about to run.
7. If you fail to follow your doctor's orders or otherwise fail to undergo treatment for your injury.

DISCLAIMER

The information contained in this book is not, nor is it intended to be, legal advice. Massachusetts law requires that a written contingent fee agreement be signed by both the lawyer and client before an attorney and client relationship is established.

FREE BOOK ON BUYING CAR INSURANCE IN MASSACHUSETTS

We have also written a book on Buying Car Insurance in Massachusetts.

This book contains information about Massachusetts car insurance policies, insurance coverages, the risk of insufficient insurance, and how to reduce the risk.

If you wish to receive this Book, you can photocopy this form, fill it out and fax it to us at (978) 740-1882 or mail it to F. Robert Allison, Attorney-at-Law, 159 Derby Street, Salem, MA 01970.

Please send your free book, Buying Car Insurance in Massachusetts, to me.

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

FREE NEWSLETTER FROM BOB ALLISON

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ABOUT BOB ALLISON

Bob Allison began his legal career as an Assistant District Attorney in Essex County. He then worked as an associate in private practice for approximately four years and, in 1992, he opened his own practice in Salem, Massachusetts.

He has been representing clients with personal injury claims against insurance companies since 1988.

If you visit his website at www.frobertallison.com, you will find a lot of useful information about personal injury claims. Our goal is to provide accident victims with useful information before they hire an attorney or speak to an insurance company.

