

The Newsletter

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Hit and run accidents All is not lost

by Scott Grossman

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A hit and run car accident can be a very traumatic event, especially when the injured party is a pedestrian or bicyclist. New York State Department of Motor Vehicles statistics reveal that in 2001 there were 17,784 accidents in which a pedestrian was struck by a car and 6,868 accidents involving a vehicle and a cyclist. Many people believe that the ability to be compensated for injuries sustained in a hit and run accident disappear along with the vehicle. Fortunately, that is not the case.

In the event that you are struck by a hit and run vehicle, all effort should be made to take note of the license plate, color, make, and model of the car. However, it can be understandably difficult after the shock of the incident to obtain such information. So, what can you do if a vehicle leaves the scene and you have no clue as to its identification?

At the accident scene: Call the police if possible. If you are unable to place the call then wait for assistance. It is important that you do not leave the scene or move anything. Wait for police and emergency services to arrive so that they can investigate and render medical assistance. Make sure that you or the police obtain the names, addresses, and phone numbers of all witnesses. Be as detailed as possible when the police ask you what occurred. Your words will be an important part of the report prepared by the investigating officers.

The aftermath: Two common questions asked after a hit and run incident are: 1) "Who will pay for my medical bills, lost wages, and other expenses related to my treatment and recovery?" 2) "I was seriously injured and believe I have a valid claim for pain and suffering, how do I make a claim against a driver I

cannot identify?" The answers: 1) You will be eligible to receive no-fault benefits for your reasonable and necessary expenses; and 2) New York State Insurance Law provides for compensation for pain and suffering even though you cannot identify the responsible person. The source of no-fault benefits and coverage for your personal injury claim will depend upon your individual situation.

No-fault: Briefly, no-fault benefits are mandatory in New York State and are available for most persons injured as the result of a car accident. No-fault covers payments for your hospital bills, medical bills, lost wages, and other incidental expenses related to your treatment and recovery. You may receive no-fault benefits from 1 of 3 sources: 1) If you own an automobile and it is insured, you can look to your own policy; 2) If you do not have car insurance, you can look to a policy held by your spouse or a relative, if they live with you; and 3) If you do not fall within the first 2 categories, you may seek no-fault benefits from



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fall within the first 2 categories, you may seek no-fault benefits from Motor Vehicle Accident Indemnification Corporation (“MVAIC”). MVAIC was created by New York State to render assistance to persons harmed by irresponsible motorists, including hit and run drivers.

Pain and suffering: If you suffer a serious injury due to a hit and run accident you may be entitled to compensation for your pain and suffering. You can seek uninsured motorist coverage (also mandatory in New York State) from your insurance company. Or, if uninsured motorist coverage is not available to you, MVAIC provides such coverage if you qualify. Either way, your claim will be treated like any other personal injury matter (you will have to prove the claim as if you had brought it against the offending driver). So, while a hit and run vehicle might disappear, your rights as an injured pedestrian or bicyclist do not have to.

This article is meant as an overview of your basic rights in the event you ever find yourself the victim of a hit and run incident. There are strict time limitations and procedural necessities for filing claims and commencing actions. In order to ensure that you receive all of the benefits to which you are entitled, you should contact an attorney as soon as possible following an automobile accident. ■

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Mr. Grossman is an experienced negligence attorney who has served as counsel for plaintiffs and defendants in a wide variety of personal injury actions. Additionally, his expertise in the field of insurance law includes knowledge of New York State no-fault laws and regulations and he has successfully brought numerous cases involving no-fault disputes to a successful conclusion.

... And in New Jersey

by Craig Post



Craig A. Post is a partner in the Personal Injury Department with an active caseload in both New York and New Jersey.

Like New York, New Jersey requires its motor vehicle owners to carry No-Fault insurance coverage which will pay reasonable and necessary medical expenses, lost wages, and other related expenses that result from an automobile accident regardless of who is at fault (hence the name “No-Fault”). Furthermore, both States, by virtue of their respective No-Fault provisions, place limitations upon an injured party’s ability to bring a claim for injuries sustained in an automobile accident. This limitation is generally called the “No-Fault threshold”. In its simplest terms, the No-Fault threshold provides that an individual who sustains an injury in an automobile accident must prove that the injury or its consequences is “serious” (within the meaning of

the statute) before that individual can qualify to recover for pain and suffering. This, however, is where the similarities between the two States end. In New York, all injured claimants are subject to the same threshold requirements. There is a wide variety of conditions and injuries listed in the New York statute that, if present, will permit an injured party to proceed with a claim for pain and suffering. (See, New York State Insurance Law, Section 5102(d)). New Jersey auto owners, however, have options available to them with regard to the No-Fault threshold that are not available to their counterparts in New York. The difference is significant.

Unlike New York, the New Jersey car owner has the ability to “purchase” the No-Fault threshold they desire. New Jersey Statute §39:6A-8 permits a vehicle owner to obtain a policy with either the traditional, basic threshold (similar to New York), or a “No Limitation On Lawsuit” threshold. The no limitation option allows the insured to pursue a claim for pain and suffering unrestricted by the type or nature of injury they sustain in an accident. It also provides better overall coverage, including greater flexibility with No-Fault and property damage benefits, underinsured/uninsured motorist coverage and higher bodily injury limits (just in case you are sued). Created as part of the New Jersey Automobile Insurance Cost Reduction Act, the options were designed to reduce the cost of automobile insurance. The trade off, however, is that the basic threshold policy significantly reduces your benefits and exposes you to greater liability if sued. The basic policy in New Jersey also leaves the insured with little or no recourse in the event he/she sustains injury through the negligence of another. Good coverage may not be cheap, but cheap policies are simply not good.

As a New Jersey car owner, you do have an option and, with it, the ability to protect yourself and your family. Take time to look at your policy and, if necessary, review it with your agent or broker to determine whether you are getting the protection that you need. If you have been involved in an accident or simply have questions regarding insurance thresholds, be sure to contact Barr & Haas ^{LLP}. ■

NAME THE NEWSLETTER CONTEST!

Thank you for taking the time to read this newsletter. We hope it’s been informative.

Barr & Haas LLP needs your help. We would like you to help us re-name our newsletter. Please submit your proposed name no later than May 31st, 2005. The person who submits the name selected will win an **American Express® Gift Cheque worth \$250.00**. Please see the Official Contest Rules included with this newsletter to place your entry. The winning entry will appear as the title of our next edition.

Good luck!

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Life After Bankruptcy

by Stacy Walker

Filing for bankruptcy provides you with a fresh start financially. It allows you to discharge much of your debt and to get back on your feet. Declaring bankruptcy, however, can be a double-edged sword: generally problems with too much credit led you to file for bankruptcy but now you have to have credit to rebuild your financial future.

Just how do you start over? It is not as difficult as you may think. Just have a positive attitude and develop a plan of action.

Have the Right Attitude

Many experts insist that a positive attitude and persistence are crucial to a fresh start post-bankruptcy.

Filing for bankruptcy was probably a difficult decision for you to make. You probably felt shame and embarrassment about filing. To recover from such psychological stress, it is best to have a positive outlook.

Bankruptcy may remain on your credit report for ten years, which is not “forever.” You can turn your future around by taking steps now to establish good credit.

First Step, Check Your Credit Report

After you filed for bankruptcy, you may have tried to rebuild your credit by applying for credit. Perhaps the credit applications you filled out were quickly shot down. Your biggest problem may not be your bankruptcy, but inaccuracies in your credit report.

When you filed for bankruptcy, all bankruptcy debts must have been listed accurately. If there are inaccuracies in your credit report, potential lenders may believe you still have unpaid debt. Part of the rebuilding process is to first get your credit history free of errors.

Once you receive your discharge in bankruptcy, your credit report must show all bankruptcy debts with the amount owed as “0.” If it is not so reported, you should dispute the debt.

Second Step, Continue To Make Payments On Time

Lenders look at the way you paid your past bills to see how you will pay your future bills. After your bankruptcy discharge, you will want to demonstrate lessons learned from your bankruptcy filing. You should make all your payments on time.

The bankruptcy discharge should improve your ability to make timely payments as you will no longer owe the debt that you did before you filed.

Third Step, Consider Getting A Secured Credit Card

A secured credit card is a good step to rebuilding credit. With secured credit cards, you put money in an account and the credit card company will give you a credit limit of that same amount. When the bill comes in, you pay it on time, as you would a normal card. You get the deposit back only when you close the account or switch to an unsecured version. Because collateral is required, many creditors offer secured cards to people who filed for bankruptcy.

Secured credit cards are as valid as any unsecured credit card. These cards usually have annual fees and limited benefits but they do establish a positive credit history. If you pay off the cards every month, you won’t have to pay the high interest rates and you will rebuild a positive credit report.

Fourth Step, Notation on Credit Report

If there was a compelling reason for your bankruptcy, list it on your credit report. Creditors realize that responsible adults can find themselves in financial trouble with a sudden loss of employment, medical bills, or even divorce. In these situations, bankruptcy provides financial relief.

However, bankruptcy can affect one’s life in ways least expected. Section 525 of the Bankruptcy Code protects you from illegal firing based solely on your bankruptcy filing; however, many potential employers look at credit reports before hiring. A bankruptcy filing could also send your insurance rates up. Credit is one of the factors that many insurance companies use in pricing their policies.

To better explain your situation, you should place a notation of 100 words or less on your credit report. It won’t affect your credit history, but it could rationalize it.

Certainly, filing for bankruptcy negatively affected your credit history. However, it does not doom you to perpetual financial failure. It does challenge you to strengthen your financial situation by using credit carefully. The stronger and cleaner your present financial condition is, the better candidate you are for future credit. Have a positive outlook and work to focus your attention on how you have handled money since the bankruptcy. ■

Stacey Walker, a graduate of Duke University School of Law, is an associate in the bankruptcy and commercial litigation group. Ms. Walker’s practice focuses on debtors’ and creditors’ rights, corporate reorganizations, and restructurings and has represented individuals, closely held businesses, and larger corporations on a variety of bankruptcy and insolvency issues.

Ms. Walker is admitted to practice in New York and before all bankruptcy courts in the State. She is also a member of the American Bar Association, American Bankruptcy Institute, and the New York State Bar Association.



Stacey Walker has recently joined the Commercial Litigation Department and is concentrating in the area of Debtors’ and Creditors’ Rights.

Keep Yourself in Charge of Your Future

by Mindy Zlotogura

When clients come to see a lawyer to discuss estate planning, in most instances, they have a plan of distribution in mind. They know who their relatives or intended beneficiaries are and, they have definite ideas as to who should or should not receive a portion of their estates. For the most part, they have given substantial amounts of time considering the alternatives and, have struggled with difficult decisions that need to be made. Most of these decisions affect others; how they will be cared for or in some instances controlled, after the death of the client. Most clients spend less time considering their own well-being and planning for their own disability. Planning for your own disability, through Advanced Directives, however, allows you to retain control over your own health care and financial needs.

On the other hand, the failure to have properly prepared and executed Advanced Directives can force your family or caretakers to apply to the Court for permission to act as your Guardian before they can pay your bills, speak to your doctors or make health care arrangements for you. The process of having a Guardian appointed is expensive, time consuming and, in non-traditional families may result in a stranger making decisions for you. The good news is that the preparation of Advanced Directives is a relatively simple process and may require the execution of just two or three straight forward and easily understandable documents. The documents fall into two categories; Powers of Attorney and Health Care Proxies and Living Wills.

Power of Attorney: A Power of Attorney is a legal document authorizing someone to act on another's behalf. The person giving the power is known as the "Principal". The person receiving the power to act is known as the "Agent". The Principal vests the Agent with authority to make decisions regarding the Principal's property and finances and resulting legal impact in the place of the Principal. A Power of Attorney can be broad so as to allow the Agent to make decisions regarding all of the Principals property and finances and is effective until revoked or until the death of the Principal. The Power of Attorney can also be very specific and limited in duration. For instance, where the Principal can not be present to sign documents for a specific legal transaction such as the purchase or sale of a house, a Power of Attorney can be executed just for that purpose. Executing a Power of Attorney does not take away the Principal's control over their own property and finances until such time as the Principal is incompetent or unable to make decisions. However, a Durable Power of Attorney is recommended when planning for an otherwise unexpected disability or incapacity. Powers of Attorney terminate upon the death of the Principal.

Health Care Proxy: A Health Care Proxy is frequently thought of as



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a Power of Attorney for health care decisions as it gives the "Agent" the ability to make health care decisions for you in the event you are unable to make those decisions. Unless specifically limited by the Health Care Proxy, the Agent can make all health care decisions from routine medical treatment to the termination of life-sustaining care. Specific provisions should be made in the Health Care Proxy directing the Agent as to whether or not food and water may be withheld or withdrawn. The Agent's ability to make decisions begins at that point in time when you are no longer able to make the decisions for yourself.

As with a Power of Attorney, the choice of who to appoint is a critical decision. Before appointing an Agent it is important that the Agent understand your wishes and that he or she is willing to carry them out. As life and death decisions may have to be made, the Agent should be emotionally prepared to live with the results of those decisions.

Living Will: Living Will is an instructional document. It provides guidance to medical professionals on how you wish to have your treatment handled in the event you are unable to verbalize those wishes. A Living Will must specify in advance (and in clear and convincing language) what procedures you do or do not want to have performed. The Living Will must set forth the triggering event when the document will take effect (i.e.-coma) and also set forth what procedures or treatments should or should not take place (i.e.-no cardiac resuscitation).

It is difficult to see into the future and to craft a Living Will that will take into consideration all of the possible factual and medical situations. For this reason, the use of a Health Care Proxy with all of its flexibilities together with a Living Will which provides guidance to the health care Agent is preferable.

Some confusion exists between a Living Will and a "Do Not Resuscitate"(DNR) Order. A DNR is limited to ordering the medical professional not to perform Cardiopulmonary Resuscitation (CPR). A DNR is usually executed in a hospital or nursing home and it prevents the staff from performing CPR if the patient's breathing or heartbeat stops. While there is overlap between the two, the DNR is the more restrictive and only applies in limited circumstances involving CPR.

The use of Advanced Directives is a simple and direct way of exercising the right to control your future. With the availability of these devices, there is little excuse for leaving critical medical and financial decisions in the hands of family members ill-prepared to do so or, even worse, in the hands of a complete stranger. ■

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