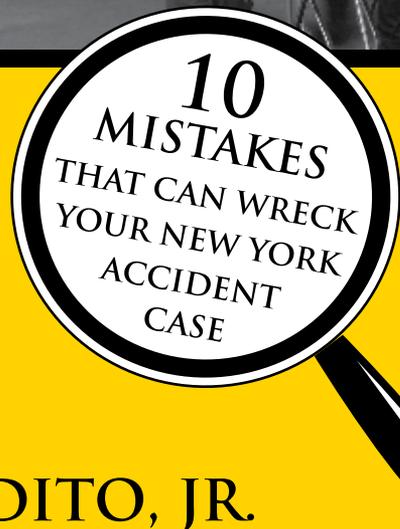




DECKER, DECKER, DITO & INTERNICOLA<sup>LLP</sup>  
ATTORNEYS AT LAW



# The NEW YORK ACCIDENT BOOK



BY

FRANK J. DITO, JR.





The  
**NEW YORK  
ACCIDENT  
BOOK**



BY

**FRANK J. DITO, JR.**



DECKER, DECKER, DITO & INTERNICOLA<sup>LLP</sup>  
ATTORNEYS AT LAW

**Frank J. Dito, Jr.**  
**Decker, Decker, Dito & Internicola, LLP**  
**1610 Richmond Road**  
**Staten Island, New York 10304**  
**800.310.5520**  
**fdito@ddilaw.com**  
**www.dddilaw.com**  
**www.statenislandinjurylawblog.com**

Copyright © 2011 by Frank J. Dito, Jr.

All rights reserved. No part of this book may be used or reproduced in any manner whatsoever without written permission of the author.

Printed in the United States of America.

ISBN: 978-0-615-44681-3

Print & Design by CLR Printing, Plus  
718.667.7800  
clrprint@verizon.net  
1600 Richmond Road  
Staten Island, NY 10304

The  
**NEW YORK  
ACCIDENT  
BOOK**



BY

**FRANK J. DITO, JR.**



---

DECKER, DECKER, DITO & INTERNICOLA<sup>LLP</sup>

---

A T T O R N E Y S   A T   L A W

**Frank J. Dito, Jr.  
Decker, Decker, Dito & Internicola, LLP  
1610 Richmond Road  
Staten Island, New York 10304  
800.310.5520  
fdito@ddilaw.com  
www.dddilaw.com  
www.statenislandinjurylawblog.com**

## **10 MISTAKES THAT CAN WRECK YOUR NEW YORK ACCIDENT CASE**

**IMPORTANT – IF YOU CHOOSE TO READ  
ONLY A FEW PAGES OF THIS BOOK,  
PLEASE READ THESE 10 QUICK HITS  
AS THEY MAY JUST SAVE YOUR  
ACCIDENT CASE**

### **I didn't go to a doctor immediately after the accident!**

*The most important thing you can do if you are hurt after an accident is to seek medical care immediately and to follow your doctor's orders.*

### **I took the insurance adjuster's settlement offer a few days after the accident.**

*Don't settle your claim before you complete your medical treatment and realize the full extent of your injuries. A few thousand dollars may sound like a good deal until you realize it doesn't come close to compensating you for your injuries.*

### **The insurance adjuster doesn't know anything about me or my case.**

*Insurance adjusters handle personal injury claims every day and know their potential value. They don't want to ensure a fair settlement, only a settlement that saves the insurance company as much money as possible.*

**Don't speak with the adjuster.**

*Contrary to what many people believe, you do not have to speak with the adjuster. Don't make any statements to the adjuster until after you speak with a lawyer.*

**Don't just sign forms that the insurance company gives you.**

*You may not know what you are signing. They could be forms that allow the insurance company to look at ALL of your private medical records. Even worse, it may be a document that surrenders your right to start a lawsuit.*

**Not documenting everything, especially at the scene of the accident.**

*Start a file for all of the paperwork that you receive. Your file should contain things like the police report and your letters and forms you received from the insurance company.*

**Not being completely honest.**

*Nothing will ruin your accident case faster than being caught in a lie. Always be honest with your doctors and attorney. Your lawyer needs to know everything about your case to properly represent you, including any previous injuries or accidents.*

**Don't exaggerate your injuries.**

*Exaggerating your injuries will destroy your case, especially if the insurance company's investigator films you participating in an activity you said that you can't do.*

**Don't exaggerate your injuries.**

*Exaggerating the extent of your injuries could come back to haunt you if the insurance company films you participating in an activity you say that you shouldn't be able to do.*

**I am hurt but I don't need to go to a doctor.**

*The emergency room is all that the insurance company will look at. The insurance company will look at the extent of your medical treatment before making a settlement. Also, your doctor will be able to tell you if you have a serious injury.*

**Not hiring the right lawyer.**

*Insurance adjusters are professionals who deal with accident cases every day. You need to hire a professional who will fight for your legal rights.*

## **THIS BOOK DOES NOT OFFER LEGAL ADVICE.**

*I'm happy that you've taken time to read my book. But ordering or reading my book does not create an attorney-client relationship. Not until I accept your case and you sign a retainer with my firm will an attorney-client relationship be formed.*

*I'm also not providing you a legal opinion in this book because I can't. Every case is different based on the facts of each case and how the law applies to it.*

*If you would like to discuss your case, or to retain my firm, please contact me at 718.979.4300 or 800.310.5520. I'll be happy to speak with you over the telephone or to schedule a free consultation in my office.*

## **WHY DID I WRITE THIS BOOK?**

Thankfully, dealing with an accident is a new and unfamiliar experience for most people. This book is intended to serve as a reference tool to help level the playing field between accident victims and insurance companies.

When you try to settle your case with the insurance company without an attorney, the information that you may provide them can delay your claim and cause them to deny any payment. The often inevitable and complicated litigation that results from their unfair

treatment of you requires a lawyer who knows how to speak with the insurance adjuster and understands how insurance companies operate.

You're at a natural disadvantage when you deal with insurance adjusters who handle accident cases every day for a living. This is what they do. It's their job - It's how they pay their bills and trust me, they really are good at it.

It's the same thing if you have a fire in your home; you call 911 for the fire department to put out the fire, not a lawyer. Firefighters are trained professionals who know the risks and dangers and can safely put out the fire and save your property. They know what to look out for in a fire and they know how to protect you.

The same concept applies to dealing with insurance companies. It has nothing to do with how smart or successful you are in other areas of your life, or even if you have dealt with other types of lawyers in your job or profession. Insurance adjusters have the clear advantage because they settle all types of accident claims for a living. They know how much your case is worth because they settle claims similar to yours every day. And they are willing to delay paying you for as long as they possibly can.

In order to compete with an insurance adjuster, you need to be armed with very basic information. I wrote this book to help you level the playing field between you

and the insurance companies by providing you with some insight as to what the insurance companies know and how they work when it comes to accident cases.

If you have any questions about an accident in which you, a family member or a friend have been injured, please feel free to give me a call at 718.979.4300 or 800.310.5520. You can also visit our Web site at [www.dddilaw.com](http://www.dddilaw.com).

Unfortunately, accidents happen every day, regardless how safely you drive or how attentive you are. You're driving down the road heading to work or to the store, and stop at a red light. All of the sudden, another driver crashes into the back of your car without warning. Or when you are walking home from the bus stop after work and you fall over a broken or raised concrete sidewalk. A crash or a fall can start an unfortunate chain of events ranging from minor inconveniences to a complete disruption of your physical and financial health.

Accidents can cause devastating physical injuries that lead to months or a lifetime of pain along with medical and psychological treatment. They also can create tremendous financial hardships for you and your family, even if you are unable to work for just a short period of time. Unfortunately, not everyone has enough or even the right type of insurance to help them get through tough financial times.

You may think that you don't need to worry about insurance because an accident won't happen to you. Hopefully, you or a family member won't ever be involved in one. However, statistics show car accidents are a common occurrence on New York's roads. In 2007, there were 323,106 car crashes in New York State, according to the New York State Department of Motor Vehicles. During that time, 194,255 people were injured and 1,317 people were killed on New York streets and highways. In 2007, there were 79,510 car accidents in New York City alone and 273 persons were killed in those accidents.

To crunch the numbers even further, 535 people were injured every single day in traffic accidents in New York State in 2007, according to the Department of Motor Vehicles. These injuries range from bruising to fractures to the death of a driver, passenger or pedestrian.

Those who haven't been involved in a serious car accident before or have dealt with an insurance company expect that their medical care and bills will be paid for without any problems. They also expect that the insurance company will fairly compensate them for the pain and suffering that they've endured due to their injuries from the accident. But for many seriously injured accident victims, their nightmare is just beginning when they begin to deal with the insurance company.

The physical pain from your injuries caused by the accident becomes almost secondary to the unfair

treatment the victim receives from the insurance companies. Many insurance companies treat you like you have done something wrong when you make a claim. They send you to be examined by doctors that are paid by them and cut you off from the medical care you need based upon this doctor's opinion resulting from a 3-minute examination of you. The insurance companies have only one objective - settling for as little money as possible without paying fair compensation for the injured, all the while taking as long as possible to pay you.

## **WE CAN HELP YOU**

*The author of this book, **Frank J. Dito, Jr.**, has been in private practice as a trial lawyer for 13 years in the New York City area. During his career, he has handled thousands of personal injury cases ranging from whiplash injuries in car accidents to wrongful death claims.*

## **WHAT IS A PERSONAL INJURY CASE?**

Even though there are hundreds of lawyer advertisements claiming to be "personal injury" lawyers, a lot of people aren't sure exactly what a personal injury case is. A personal injury case is any legal claim in which someone has been injured through the negligence of another person, a company or both. Negligence is just another word for carelessness, for acting less carefully than our society expects in particular circumstance.

Some examples of negligence are the driver that went through a red light or a stop sign, the homeowner that failed to fix their broken sidewalk or the construction company that left a hole in the street without any warning signs or barriers around it.

Accidents at construction sites, car accidents, slip and falls on someone else's property, injuries from defective or poorly designed products and even dog bites, all may be a personal injury case, as long as the negligence of another caused an injury to you. A negligence case is very different from a criminal case. No one is going to go to jail when you sue someone for negligence in causing an accident. A criminal case is pursued by the local district attorney and, although charges may result from the car accident, such as drunk driving, your attorney is not involved in pursuing the criminal case.

Regardless of what happens with any possible criminal case, your negligence case will continue to be pursued in a different court. Sometimes, a conviction in the criminal case may help you in proving your negligence case. Since the standard of proof is much higher in a criminal case, a conviction for a crime such as vehicular manslaughter would prove that the other driver was negligent, and a trial would be held on economic damages only, without having to prove liability.



Sometimes, a personal injury case may be what is known as a “wrongful death” case. A “wrongful death” case is a personal injury case brought when someone’s negligence causes the death of another. A wrongful death action must be brought by the estate of the person who died, as a deceased person needs someone to “speak” for them. A family member or other person interested in the estate needs to apply to the Surrogates Court for the authority to bring the wrongful death lawsuit.

The person appointed may be the Executor listed in the deceased person’s will or an Administrator, if the person who died did not leave a will. The Surrogates Court is the court in New York that deals with wills and estate and who has the power to appoint a representative for the estate through a process called probate or administration.

A wrongful death lawsuit seeks to recover money for the conscious pain and suffering of the person who died, as well as the loss of income for those people that depended on the deceased person for financial support, such as a spouse or their children. Conscious pain and suffering is the time that the deceased person was alert and awake, able to feel pain from their injuries, before their death.

There are different time frames involved in pursuing a wrongful death case as opposed to a negligence action. In New York, the estate would have two (2) years from the date of death to start a lawsuit,

shortening the time that may normally be available to start a lawsuit if the injured person survived.

When a doctor's negligence causes injury or death, it is called a medical malpractice case. Errors in prescribing medication, complications from surgery and even patients falling in the hospital when getting out of bed after surgery are medical malpractice cases. Many lawyers specialize in bringing medical malpractice claims as they require great knowledge about the medical facts of the case. Medical malpractice cases can be very expensive to bring to trial as they require the use of many expert witnesses, such as doctors, to prove that malpractice was committed. These expert witnesses can charge tens of thousands of dollars to review medical records and testify at a trial. Since the physician who is being sued has to consent to certain settlements, many of these cases are actually tried before a jury, requiring that the case be prepared as if it were going to trial.

Many times, an expert witness must be retained weeks in advance, exhibits must be prepared and medical records subpoenaed to the court. The cost of this preparation can be considerable and the attorney that is handling the matter must be very knowledgeable and experienced in trying a medical malpractice case.

## **DOES NEW YORK’S “NO FAULT” CAR INSURANCE LAW MEAN I CAN’T SUE EVEN IF ANOTHER DRIVER’S NEGLIGENCE CAUSES ME SERIOUS INJURIES?**

New York’s No-Fault law is the biggest hurdle facing car accident cases which result in minor injuries. In certain cases, an injured person cannot sue for the pain and suffering resulting from the accident as they do not have a “serious injury” according to the No-Fault law, which we will discuss later.

The No-Fault law provides an injured person with medical coverage, reimbursement for lost pay from work and money for certain other necessary expenses as a result of a car accident. Each and every car insurance policy issued in New York State has this No-Fault protection built in. And just like the title says, the benefits are available regardless of who was at fault for the accident. If you are crossing the street and hit by a car, you will still be eligible for No-Fault benefits, even if you don’t own a car.

The No-Fault law was enacted in response to complaints that the courts in New York were too backed up with car accident lawsuits. The legislature felt that the reason why so many lawsuits were started was because accident victims did not always have access to medical treatment as they may not have had medical insurance. Their injuries also left them unable to work for some time, so the accident left them with many bills and no

money to pay for them. Since the insurance company that represented the person that was responsible for the accident would usually take too long to reimburse them for their medical bills and lost wages, the injured person would have no choice but to quickly start a lawsuit. The No-Fault law was the solution to that problem, providing quick reimbursement of medical bills and even providing money to replace some of your lost earnings.

Unfortunately, in this world, we know that nothing comes for free. Since the legislature gave you the benefit of medical coverage, you had to give up something in return. In this case, you had to give up your right to sue for physical injuries you sustain in a car accident unless you have a “serious injury” as defined by the No-Fault law. You may hear the insurance adjuster use the term “threshold” when he speaks with you about a serious injury.

Just like in a doorway, before you can come into the courthouse to bring a lawsuit for a car accident, you need to cross over the threshold. If you don’t have a serious injury, you can’t come into the courthouse. According to the law, you can’t bring a lawsuit for bruising, the inconvenience of being involved in an accident, back pain with no underlying symptoms or even a cut that heals without a scar.

The adjuster may tell you that you don’t cross the threshold and therefore, the insurance company will not pay any money to settle your claim.

The adjuster will usually write to you officially denying your claim pursuant to Insurance Law § 5102(d) and offering no money in settlement. However, just because you received a denial does not necessarily mean that you will be unable to bring a lawsuit.

The No-Fault law allows a person injured in a car accident to sue for pain and suffering if the injuries have resulted in one or more of the following: (1) loss of all or a portion of a body part; (2) a fracture; (3) significant scarring or disfigurement; (4) a significant limitation of a body function; or (5) if the car accident caused a person's death, then the estate of the person who died can bring suit under the New York wrongful death statute, which allows recovery for the conscious pain and suffering of the deceased.

The bottom line to remember is that the No-Fault statute does not have a major impact on car accident cases involving death or a serious injury. If you have a soft tissue injury, such as a bulging disc in your neck or back, the most common injury to occur after a car accident, your case will be most affected by the law. Despite the pain and suffering that the bulging disc may cause you, you will have a difficult time proving that you suffered a serious injury. Remember, if you speak with a lawyer regarding your accident and that lawyer tells you that you don't have a serious injury, he or she is just speaking about the law and is making no judgment about your injuries or pain and suffering.

Many people that have a bulging disc suffer extreme pain, headaches and even problems standing or sitting down for long periods of time.

One area in which No-Fault won't apply is if you are hurt while riding a motorcycle. Motorcyclists don't receive the benefits of medical care or lost wages but their ability to start a lawsuit for their injuries is not prevented by the No-Fault law. Since driving a motorcycle is more dangerous than driving a car, you should make sure that you have medical coverage for an accident as No-Fault will not provide benefits. If you don't have private medical insurance, you will need to pay for your own medical treatment and use up your sick and vacation time from your job. You may eventually recover what money you have spent in medical bills if you settle your lawsuit but that may not happen until 2 to 3 years after the accident.

Often, a pedestrian is the victim of a hit and run accident, where the identity of the driver is never known. The pedestrian may not own a car and therefore will not be able to apply for no-fault benefits through their own insurance or through the driver. In response to such situations where an uninsured person is injured in a car accident, New York has created the Motor Vehicle Accident Indemnification Corporation, more commonly known as MVAIC. When a situation like the above occurs, an injured person may apply to MVAIC for full no-fault benefits, as well as financial compensation.

The MVAIC application process is very complex, with certain time frames for reporting the accident to the police as well as submitting the correct forms to MVAIC. If the process is not followed correctly, your claims may be denied and you will be denied any opportunity to recover money for your injuries, medical bills and lost time from work.

Once you file a No-Fault claim, whether it is with your insurance carrier, the driver's insurance carrier or MVAIC, you are required to cooperate with "reasonable" requests made by the insurance carrier. These requests include submitting to an Examination under Oath, or EUO, and Independent Medical Examinations, or IMEs, as the carrier may deem reasonably necessary, from time to time.

An Examination Under Oath is usually ordered by the No-Fault insurance carrier when the circumstances of the car accident are in doubt or there was no police report filed. The EUO is similar to a deposition, where an attorney for the insurance company asks you questions about the accident and your medical treatment. As the title suggests, you will be sworn in before a court reporter, who will then take down all the questions and answers during the examination. The purpose of a EUO is to make sure that the accident happened the way that you said it did Insurance companies say that a EUO helps to prevent fraud; in my opinion, all it does is make the claimant feel like they have done something wrong by asking for information that the claimant would not know.

For example, many medical providers hire billing companies outside their offices. Although you may have seen your doctor in New York, their medical billing may come from New Jersey. It is this New Jersey address that is submitted to the insurance company for payment. When you are being asked questions such as “did you ever see your doctor at this address?” and the attorney provides the New Jersey billing address, many people feel that they have done something wrong. However, this is information that you wouldn’t know as the insurance company received the bills directly.

Also, the out-of-state billing is perfectly legal and normal, and I believe the questions are asked to make you nervous about seeking further treatment.

After the EUO, you may again be subject to an insurance company request, notably the Independent Medical Examination, or IME. Unfortunately, the IME is anything but “independent.” From time to time, the insurance carrier schedules medical examinations with doctors or medical professionals of their choosing. If you are receiving chiropractic care, the insurance company will normally send you to a chiropractor IME. If you are being treated by a neurologist, the insurance company will normally send you to a neurologist. The same will hold true if you are seeing an orthopedist. These doctors will examine you and determine if you are in need of any further medical care or are able to return to work.

Although you are eligible for no-fault benefits as you were insured and sent your application in timely, even though you are possibly still in pain, your insurance carrier will want to stop your treatment as soon as possible. Although the policy allows up to \$50,000 to be paid towards medical benefits, the insurance company has no intention of ever paying that amount.

The IME will take place at a doctor's office, usually not the doctor's regular office, and involves a very short physical examination. The doctor will submit a report of his examination to the insurance carrier, who will then advise you of the results of that examination. The doctor's examination may allow you to continue treatment, continue treatment at a reduced rate or deny treatment all together. If treatment is continued, you will most likely be scheduled for another IME at some point in the future. If you are denied further treatment, you may no longer treat under no-fault. As your no-fault insurance is primary, meaning that you must use it if you have been involved in an accident.

Even if you have private medical insurance, your doctor must bill your no-fault insurance. However, once the no-fault insurance carrier denies further treatment, you will then be able to continue treatment under your private insurance.

When you make an appointment with a medical provider, it is a good idea to provide them with both the no-fault information and your private medical insurance

information. This will ensure that you are able to receive continued, uninterrupted treatment and that you will not be responsible for any medical bills.

If you were not involved in a car accident or are without private medical coverage, you may still receive medical treatment. Many doctors who are familiar with accident cases will agree to treat you on a lien. When you treat on a lien, you promise to pay the doctor back from the money you recover from your case. The doctor will be repaid from your share of the recovery but you will still be responsible for the full lien amount, even if you don't recover anything.

This arrangement allows you to receive treatment that you urgently need, without having to pay for each visit out of pocket. Although this arrangement might not make sense for all types of cases, it may be an accident victims only chance to get better after an accident.

## **TEN MISTAKES STEPS TO AVOID TO MAXIMIZE YOUR RECOVERY**

I've compiled the ten mistakes that I have seen accident victims make time after time. These mistakes can be fatal to the final outcome of your accident case. As I mentioned earlier, I wrote this book to level the playing field between accident victims and insurance companies. I believe that if you are aware of these mistakes, you will obtain a much better recovery in your accident case, whether you are represented by an attorney or not.

## **1. Seek treatment immediately.**

The best thing you can do for both your physical and financial health is to get the proper medical treatment for your injuries. This isn't a time to tough it out and hope that you'll miraculously heal. Returning to health should be your top priority. You need to go to your physician or to the emergency room to make sure that you get the treatment you'll need to recover from the injuries you suffered in the accident.

Once you go to the doctor, follow his or her orders so you can make the best recovery possible. If your doctor tells you to go to a physical therapist, go. If you visit a chiropractor, complete the recommended treatment plan. Many people don't realize the commitment necessary to visit a doctor 3 to 4 times per week while you are healing but you may need to do so if that is what the doctor ordered.

I always advise my clients that their accident case will eventually end one day, hopefully successfully. Regardless of how much money I recover for them, the money is not a magic wand that will erase their physical injuries. If they do not receive the medical care recommended by their doctors, their injuries may never fully heal. Sometimes, a few extra weeks of treatment may mean the difference between fully healing and a lifetime of pain. This makes sense not only for your physical health, but for your financial health as well. An insurance adjuster is going to base any settlement offer to you on the medical care you've received because it

provides a way to measure the extent of your injuries and the resulting pain they create. Getting treatment demonstrates to the insurance company that you're not faking your injuries and that you're taking the process seriously. Compensation for the pain and suffering you've endured as a result of your accident will be based to some degree on the amount of your medical bills and the length of your medical treatment.

Once you've started treatment, see it through to the end. Don't stop the second you start to feel better if your doctor has recommended that you complete a certain amount of rehabilitation. If you stop early, you may not be fully healed. Resuming treatment months after you've stopped sends a message to the insurance company that you may not have been hurt in the first place or that you're trying to take advantage of the process. These "gaps" in your treatment must be explained and will only make sense to the adjuster if you stopped treatment for things like loss of medical coverage.

## **2. Don't rush to settle your claim quickly.**

If you're reading this book because you were recently involved in a car accident caused by another driver, you may already have received a call from an insurance adjuster trying to settle your claim. Typically, an adjuster will wave a few thousand dollars under your nose to settle the claim quickly. It sounds good until you realize you're hurt more seriously than you anticipated or your medical bills end up using all the money you settled for because no-fault stopped paying for treatment.

If you're tempted to settle your case below its value just because you need money for your medical bills, don't. If you hire an attorney, the attorney usually will be able to work out an arrangement with your health care provider for your provider to be paid out of the proceeds of your settlement. The doctor or chiropractor will continue to treat you without requiring payment after receiving what's called a lien from your lawyer. This allows you to continue getting the treatment that you need, while ensuring the doctor is paid at the end of your case.

Settling your case quickly doesn't allow you to be fully compensated for your medical bills, pain and suffering, and lost wages. It only benefits the insurance company because it won't have to pay out the full value of your case.

### **3. Don't underestimate the insurance adjusters who contact you.**

This tip goes back to what we discussed in the introduction. Insurance adjusters handle claims for a living. They're judged by their bosses by how they settle claims and how much money they save for the company. This doesn't make them bad people; they're just doing their jobs and looking out for the best interests of their employers. It's up to you and your lawyer to look out for your interests.

It's no shock that insurance companies are some of the largest and most powerful companies in the world.

They have powerful lobbies throughout the country and, along with other business interests, have done their best to get legislation passed that makes it hard for accident victims to be fairly compensated. They've gotten rich by collecting as much money as possible from all of us while trying to avoid making fair settlements with people suffering from accidents they didn't cause.

So when an adjuster representing the person who caused the accident gives you a call, keep in mind where their loyalties lie. They'll likely be extremely pleasant, but they have one goal: to settle your claim as cheaply as possible. They do this for a living, all day and every day. Because this is probably the first time you've been an accident victim, you are at an obvious disadvantage. Be smart when you're dealing with them, or better yet, hire a lawyer who deals with insurance companies on a daily basis. After all, the insurance companies have professionals working for them, so you should too.

#### **4. Don't provide a statement to the adjuster.**

If an insurance adjuster contacts you, don't make any statements about the accident, your physical condition, and whether you're being treated by a doctor. The adjuster may be recording your conversation and certainly will be taking notes. You can settle any claims dealing with the damage to your vehicle, but any statements you make about your injuries could come back to haunt you. Simply thank the adjuster for calling, tell her that you don't want to make any statements, and that you don't want her to call you back. Tell the

adjuster you'll initiate a conversation when you're ready. You don't have to be rude, but you need to be firm. The adjuster can't make you talk but will try to take a recorded statement from you as soon as possible.

It's a foreign concept to most people, but you have to view your injury case with the idea that it could go to trial. Most cases don't, but you don't want to hinder your negotiating strength by making a statement to an adjuster that can be misconstrued or twisted. The concern about making a statement is that you may not know the extent of your injuries right after an accident. It's not uncommon for people to feel worse in the weeks or months following the accident than they do in the immediate aftermath. After months of lingering pain, accident victims may first be sent for an MRI, where a torn ligament or other severe injury is diagnosed. If you have surgery and settled your case before you found out you had a tear, the money you recovered will be substantially less than if you waited.

One way to avoid awkward conversations with an adjuster or making statements that could hurt your case is to contact a lawyer to represent you. Your lawyer will stop the adjuster from having any further contact with you and will communicate with them on your behalf.

## **5. Don't sign any medical authorization forms at the request of an insurance company.**

Insurance companies often try to get accident victims to sign and return authorization forms that

allow them to obtain your medical records. The forms usually are drafted so the insurer gains access to all of your medical information, not just information relating to your accident. It allows an insurance company to go on a fishing expedition for any other medical problems that they might try to say is causing the pain you're experiencing, not the accident. If your injuries are serious, you should consult an attorney to deal with these issues.

Your attorney will ask you to sign medical authorization forms that will be used to obtain the information that's related to your accident. Only the information relevant to your accident or injury will be sent to the insurance company so your claim can be properly evaluated. This protects you from having personal information winding up in the wrong hands.

## **6. Start a file to document everything connected to your case.**

Make sure you keep every bill, police report, and document connected to your claim. The insurance company has a right to see evidence of medical bills for which you're seeking reimbursement. Keeping track of your bills also ensures that you won't settle your claim without making sure you've been compensated for all of your expenditures. This is true even if you have health insurance because you may have to repay your provider for any bills they've paid on your behalf if there's a settlement.

When my office is retained by a new client, we provide them with a large zippered folder for them to keep all of their paperwork in.

In addition to documenting your treatment, keep track of any pay checks you've lost because you've been unable to work.

Don't just assume you'll automatically get reimbursed for your lost wages because you can't work. You'll have to get a note from your doctor if you miss work because of your injuries and you'll have to get documentation from your employer about how much money you lost because you weren't able to work.

## **7. Honesty is the best policy.**

Be honest when it comes to dealing with your injury claim. Be honest with the insurance adjuster, be honest with your doctor, and be honest with your lawyer. Nothing will kill your claim faster than being caught in a lie. Your credibility will be crucial in resolving your case, particularly if you have to go to trial.

If you're not in pain, don't get unnecessary medical treatment to drive up your bills. That doesn't mean you shouldn't follow your doctor's orders, but don't exaggerate the extent of your injuries. The truth eventually will come out, and when it does your case might become worthless. If your case goes to trial, your credibility with the jury carries tremendous value.

If jurors feel you're not being honest, they won't give you the fair compensation you deserve.

Insurance companies know when you are receiving medical care just for the sake of treatment. Despite what you may have heard, staying out of work and receiving unnecessary medical care won't lead to a bigger settlement. You also have to be straight with your lawyer, who won't handle your case if he thinks you're lying. The attorney needs to know what's really happening with your case in order to represent you fairly and aggressively. You can put your attorney in no worse a situation, especially if he is negotiating to settle your case.

### **8. Don't hide information from your lawyer.**

This tip goes hand-in-hand with our advice about being honest. Being honest with your lawyer and telling him everything is so important that we cover it twice. You'll be making a big mistake if you hide information that is embarrassing or that you think will hurt your claim. You may get away with it, but usually the truth comes out. And if it comes out at the wrong time in a deposition or at trial, your case may be damaged beyond repair. Your lawyer can only help you if he has the complete picture. If there's something awkward to be dealt with, he'll handle it. But don't put your lawyer in a bad situation by hiding something.

## **9. Don't exaggerate the impact of your injury.**

You're entering a world you likely didn't know existed. As we've said earlier in this book, insurance companies prosper by paying accident victims as little as possible. In an effort to do that, they'll resort to what you may regard as underhanded behavior. They may hire a private investigator to spy on you, they may have someone engage you in conversation about your injuries, or they may videotape you as you go about your day.

We know of one case where an insurance company investigator videotaped a supposedly injured accident victim bounding up the stairs to his home. The insurance company produced the videotape right before a scheduled settlement conference. Although the victim was hurt, the videotape caused him to lose hundreds of thousands of dollars. People like that give insurance companies reason to be skeptical. The problem is they seem to be skeptical of everyone, even people with legitimate claims.

So, if you exaggerate the extent of your injuries by doing something like hobbling around on crutches when you can walk just fine, and then you're filmed running a marathon, don't be surprised when your case tanks. Don't play games when it comes to dealing with your injury case.

## **10. Hire an attorney who devotes his practice to personal injury cases.**

Earlier, I wrote about insurance adjusters who negotiate settlements every day. They're good at it

because it's their profession. That's why you'll need a lawyer to handle your case. Your lawyer not only will deal with the insurance adjuster, but he'll navigate you through the complex world of personal injury litigation.

Armed with knowledge of the law and the ploys of adjusters, a lawyer can help you obtain a fair settlement for your case. Numerous studies have shown that you're far more likely to end up with more money at the end of a case if you hire a lawyer rather than trying to settle the case on your own. By virtue of handling injury cases every day, lawyers develop a sense of how much a case is worth.

Furthermore, you're not likely to have experience with the types of arguments you're going to hear from insurance adjusters. Hiring a lawyer lessens the amount of hassles you'll face and you'll almost certainly net more money, even after attorney fees and expenses are subtracted.

## **PERSONAL INJURY CASE STANDARDS**

Not everyone who has been injured can win a personal injury case. The person who causes the injury has to be deemed negligent, or at fault, under the law. Someone is at fault when it is his responsibility to act or behave in a certain way, but fails to and causes some type of injury. There's a lot of complexity built into that seemingly simple concept, but that's the rough idea of what it means to be negligent.

A routine traffic accident is a good example to show negligence. Driver's have a responsibility to drive in a way that doesn't hurt others and to not break the laws. When a driver speeds, ignores a red light, or rear-ends another driver, then that driver is negligent.

Making a negligence claim doesn't mean that you're accusing the other driver of being a bad person, and it doesn't mean you're being greedy. It's simply a claim that the other person's conduct has caused you some type of physical or financial harm for which you deserve to be compensated. No one is going to go to jail as a result of your civil lawsuit. The civil system offers a way for you to be made whole for the physical and financial damages you've suffered as the result of another's wrongful conduct.

The insurance industry, along with state and national insurance organizations, such as the state by state "insurance institutes", have done a great job of casting doubt on legitimately injured people and the lawyers who represent them. While there certainly are unethical lawyers and people who fake claims, the vast majority of claimants and attorneys seek only fair compensation for the injury suffered. You shouldn't feel guilty for pursuing a legitimate claim for injuries caused by someone else. Remember, the purpose of insurance is to make you whole again, so you shouldn't have any out of pocket expenses from your accident.

By pursuing your claim, you will ensure that you will be compensated for your lost time, medical bills and your pain and suffering.

When you seek a settlement from an insurance company, you're just trying to be made whole for the medical bills you've incurred and the pain and suffering you've endured. You have nothing to be ashamed of when you look out for your best interests. I have had many potential clients call me years after an accident and asked if they could start a lawsuit. They have been in continual pain since the accident and some have even been told that they need surgery. Since they didn't file a claim within the time limits allowed by the law, I am unable to help them. The potential client is left with all the medical bills and the pain that they have suffered and will continue to suffer because they somehow felt ashamed to start a lawsuit. If you are reading this book because you were involved in an accident, please make sure that you consult with an experienced personal injury attorney who can advise you as to the steps you need to take to protect yourself after an accident.

## **YOUR LAWYER DOESN'T GET PAID UNLESS YOU DO**

People are understandably nervous about hiring a lawyer. Fear that it will cost too much money stops some people from consulting an attorney, especially when expenses may be quickly adding up as a result of a recent accident. Attorneys needed to come up with

a solution to ensure that injured people could receive legal representation for their claim against the insurance company. After all, insurance companies have almost unlimited resources and many lawyers working on their behalf.

Accident victims, however, don't pay their lawyer anything unless a settlement is reached or they win at trial. Most attorneys who represent accident victims take what's called a contingent fee, which means that the lawyer's fee depends on his success in resolving the case. If you win your case or get a settlement, your lawyer takes a fee. If you lose at trial or the insurance company won't settle, you don't get anything, but you typically won't owe the lawyer a fee. In negligence cases, the lawyer takes one-third of the gross award or settlement, after reimbursement for the lawyer's expenses. The arrangement works well for both parties.

The lawyer takes a risk that he'll never get paid if the case is a loser, so he will make sure that you have a good case before he agrees to be retained. The client gets to pursue his claim without having to come up with thousands of dollars in legal fees and expenses, especially if the case needs to be tried. Without this arrangement, some people would never be able to bring a claim because they couldn't afford it.

Trying accident cases can be expensive. When you start a lawsuit, you enter into a process called discovery, which requires your attorney to incur numerous expenses.

Court reporters have to be hired to take depositions that have to be transcribed. Copies of all your medical records have to be ordered, reviewed and paid for. In New York State, medical providers have the right to charge \$.75 per page for copying your records. Expert witnesses, such as doctors have to be consulted, exhibits have to be compiled, and court costs have to be paid. The attorney usually will cover those expenses because most people couldn't come up with that much money.

If the case settles or the client wins at trial, the lawyer is reimbursed for the expenses he incurred in handling the case. Again, this arrangement benefits the client and allows them to retain top-quality legal help at no cost to them. Lawyers routinely handle cases where the expenses alone were in the neighborhood of \$100,000. If the lawyer hadn't paid for those expenses, the client never would have been able to pursue his claim, even though he had an excellent case.

When you meet with a lawyer for the first time, you will have to sign an agreement, called a retainer, which spells out how the attorney will be compensated and how the expenses will be paid. Make sure that the contingency fee arrangement, typically 33 1/3 percent of the net settlement or award, is clearly spelled out in the retainer. If you don't feel comfortable with the retainer, don't sign it.

You're in control of the situation. If you have questions about the retainer, make sure the lawyer answers them before you sign the retainer. Once you sign the retainer, you can walk away after the case starts, but the lawyer will be entitled to get paid for the time and expenses he's incurred out of whatever settlement another lawyer obtains for you.

When the case is resolved, the check will be made payable to your name as well as to my firm. The check will be endorsed by you and deposited into my escrow account until it clears. Escrow means that the money is kept separate and apart from my firms operating account and is not "ours" to keep. Once the check clears, we will write you a check that represents the award or settlement, minus the attorney's fee and expenses. You should receive a breakdown of all expenses before you sign the settlement papers. Afterward, you will receive a closing statement which shows how your settlement was divided.

In some situations, the attorney could be entitled under the retainer to more money than the client ultimately receives after expenses and medical bills are paid off, but that shouldn't happen. The attorneys in our office often reduce their fees so the client always ends up with more money than the attorneys.

## **ATTORNEYS KNOW HOW TO NAVIGATE THE LEGAL PROCESS**

In all but the most straightforward of car accidents, these cases can become very complicated even for attorneys who handle these types of matters every day. Dealing with insurance adjusters, doctors, chiropractors, and the attorneys representing the insurance company can make resolving a personal injury claim a long and frustrating journey. You shouldn't go on this journey alone. Hiring a lawyer to help you obtain fair compensation makes sense unless you've been involved in a very minor accident.

If you hire a lawyer, he has a few options when trying to resolve your case. Some lawyers file a lawsuit immediately, which has the benefit of putting you quickly onto a trial track. The other path the attorney might take is negotiating with the insurance adjuster to resolve the case without having to file a lawsuit. Most attorneys prefer the second approach, waiting sometimes for up to three (3) years to try and settle your case.

Although in most cases you may file a lawsuit up to three (3) years after the accident, our law firm will have either settled your case or it will be put in suit with one (1) year after the accident.

Throughout that time, you will be treating with your doctor's, undergoing numerous x-rays, MRIs and CT-scans and other tests and may have even been

operated on. During this time, we will be continually asking you for updates on your medical treatment. Each time your treat with a new doctor or undergo a new test, your attorney will need to send you an authorization that will allow him to obtain your medical records from those doctors, hospitals or testing facilities. Once we receive these records, they will be copied and sent to the insurance adjuster in an attempt to settle your case.

Lawsuits are time consuming, expensive, and unpredictable. The benefit of settling a claim with the adjuster is that the client gets compensated sooner and has a certain outcome. We only file suits quickly if the adjuster makes an unfair offer that we know is not going to get any better or if they are blaming the accident on our client or another party. For a routine traffic accident case, the injured person has three (3) years after the accident to file a lawsuit. The statute of limitations for a minor's traffic accident case is three (3) years after the minor turns 18.

These are quite long times to file suit and there is really no reason to wait that long. It is usually very clear early on in your case as to what the adjuster is claiming happened and the extent of your injuries. Even knowing that a certain insurance company insures the defendant will sometimes be enough to tell if the company will settle or the case must be tried.

## **WHAT ACTUALLY HAPPENS AFTER I RETAIN YOUR FIRM?**

My initial contact with you will come through the Case Sign Up at our initial meeting. At that time, I will sit down and speak with you to learn the facts and circumstances of your case. I will ask some very basic questions that will allow me to discover where the accident occurred and who may be responsible. I will need to find out if emergency services came to the scene, what hospital they may have taken you to and about the treatment that you received in the hospital and what tests that they may have performed.

I will also ask you about your family, your education and the type of work that you do. My firm will need to know this information as it will help us to determine if yours will be a strong case to take to trial. I will also want to know the activities and hobbies you enjoyed before you had your accident. This will allow me to understand how this accident has impacted your life. Understanding how your injuries have changed your life will continue as your treatment continues and your case progresses. This information will be relayed to the insurance adjuster along with copies of your medical records, which shows the harm that the accident has caused.

At the initial meeting, you will be most likely just starting your medical treatment. You may be undergoing some sort of diagnostic testing such as an x-ray, MRI or

CT-scan. These tests will help determine your specific injuries so that I can communicate them to the adjuster. Once your doctor's have determined your injuries, I will be able to convey them to the insurance adjusters so that they will have enough information to determine how much money they feel your injury is worth. Some attorneys make the mistake of immediately sending out any medical records that they may have, providing an incomplete picture of your injuries to an adjuster. Your case may then be marked as a "threshold" case, meaning that you have not sustained a serious injury and the insurance company will offer little or no money for your injuries. Once marked as a threshold case, it is very difficult to have that changed before a trial.

Based upon our interview, I will determine if your case needs an investigator to take photographs or to interview witnesses. I will immediately assign my investigator to obtain that information quickly so that the witnesses' memory will be fresh and the accident scene will look the same as when you had your accident. Even though I have pictures and witness interviews, I will always go and visit the scene of the accident so that I have a good understanding of what actually occurred.

It is extremely important to get photographs early as the accident scene may change quickly. If we wait too long, a four-way stop sign may be installed at an intersection, lines may be painted in the street or other construction may occur.

We also look to have witness statements taken early so that their memory is sharp and their recollection of the accident is still fresh.

Once the initial investigation is completed and your medical records are sent to the adjuster, I will attempt to negotiate a settlement with the insurance company. Some cases will settle without having to file a lawsuit. However, filing a law suit is usually necessary before the insurance adjuster will take your claim seriously. As I spoke about earlier, sometimes we can determine just from the particular insurance company if your case will settle without starting a lawsuit.

## **WHAT IS A LAWSUIT?**

Many clients ask when they have to “go to court” and ask when we file a lawsuit. As explained in previous chapters, that depends on numerous factors. However, many people don’t understand what a lawsuit really is. If I need to file a lawsuit on your behalf, a Summons and Complaint will be filed in the local county courthouse. The Summons is a document that requires that the defendant answers the allegations made in the Complaint. You will be known as the plaintiff, which means that you are the person bringing the lawsuit. The defendant will be the person or company that was negligent in causing your injuries.

The Complaint describes, in legal terms, where, when and how the accident happened and why the defendant is responsible for the accident and your injuries. The complaint will contain a description of the accident so that the defendants will understand how and when the accident happened. In certain paragraphs, the complaint may even mention specific laws that the defendant violated. Once filed in the courthouse, and the appropriate fee paid, the Summons and Complaint has to be served upon the defendant. This means that a process server delivers a copy directly to the defendant. After receipt, the defendant has a specific time, usually within thirty (30) days, to respond to the allegations, with an Answer that admits or denies what happened.

It is at this time in the lawsuit that the insurance company assigns a law firm to handle the case. Although I may still have contact with the insurance adjuster during the rest of the case process, my contact with the attorneys for the defendant will be much more frequent.

Along with the Answer, the defendant's attorneys will serve various demands for "Discovery", asking for further information about you, how the accident happened and your injuries. This may include such items as your marriage license, birth certificates, health insurance information, tax information even estimates for the damage to your car if you were in an accident.

In discovery, the defendant's attorneys will also ask us to prepare a Bill of Particulars, which asks to provide very specific information about your injuries and the accident. Along with the Bill of Particulars, which will be sent to you for your review and approval, the attorneys will ask us to provide a Response to their Combined Discovery Demands. Included in the response will be photos of the accident scene, damage to your car, your medical records and authorizations allowing the defendant's attorneys to obtain your medical records directly from the medical provider. As will become clear throughout your claim, lawyers and insurance companies don't trust each other. They want to see your medical records directly from the doctor, not from me.

The information that you provide and that I acquire through my investigation will be used to respond to the defendant's discovery demands. Those responses will be sent to the defendant's attorneys along with my demands for some information from them. I will ask that they confirm the amount of their insurance coverage, if they know of any witnesses and if they have any other information relevant to the case.

Once those documents are exchanged, we file an additional document with the court called a Request for Judicial Intervention or RJJ. When we file the RJJ, we ask that a judge be assigned to the case and a preliminary conference be held. At the preliminary conference, the attorney for the defendant, or defendants, and I will meet in the judge's courtroom to set specific dates to

conduct the remaining discovery. The court will establish a deadline for the case to be finished and they will continue to call us back into court to make sure the case is progressing according to the preliminary conference order. We may be called back into court on numerous occasions for compliance conferences, where the court makes sure that we will timely complete discovery.

The next step in your case, after the initial discovery is exchanged, is for you to be deposed by the defendant's attorney. The time, date and location of the deposition will be set forth in the preliminary conference order. You will receive a letter from my office advising you of the deposition date and providing some helpful information that you should read to help you better understand what to expect at the deposition.

In a deposition, the attorney for the defendant will ask you questions similar to the information already provided for in the bill of particulars. The deposition will be held at one of the attorney's offices or at the court-reporters offices, which is the most common location. The court reporters office is usually felt to be a "neutral" location and usually closer to the courthouse, which makes it easier for the attorneys to get to.

We will speak with you a couple days before the scheduled deposition to discuss your testimony and to confirm that you will be able to appear on that date. Unfortunately, the defendant's attorneys usually are unable to confirm their availability for your deposition

until the afternoon before. Sometimes, your deposition may be adjourned due to a scheduling conflict, a delay in receiving your medical records or simply that an attorney or witness may be ill.

You should not be concerned if the deposition is adjourned as it happens frequently. We will reschedule and let you know of the new date.

If we confirm your deposition, we will be accompany you at your deposition and meet with you about ½ hour before the scheduled start to go over any questions that you may have. Along with your attorney, a court reporter will be in the room to take down all the questions and answers given at the deposition.

At the deposition, after you are sworn in, the attorney for the defendant will introduce themselves and begin to ask you some general questions about your personal life, about the accident, the injuries you sustained and the medical care that you have had because of your injuries. The attorney will also want to know how the accident has affected your life, by asking questions about what you are no longer able to do because of your injuries and the pain that you injuries have caused. The deposition is very important; it provides information about your accident to the insurance adjuster but it is also a dress rehearsal for a possible trial. The defendant's attorney and the insurance company will evaluate the deposition to determine if you will make a favorable witness at a trial. If you make a good witness, it helps

to settle your case as the insurance company may be reluctant to have your case tried by a jury that may like you as a plaintiff. The insurance company would be afraid that a jury would award you much more money than they believe your case is worth.

After your deposition, I will also have the opportunity to depose the defendant, to ask him or her questions about their role in your accident. Sometimes, the information that the defendant provides allows the judge in the case to decide who was responsible for your accident without having to try the liability part of your case. In certain cases, such as when another car hits you from behind, we can usually move for summary judgment based upon the testimony of the witnesses. Summary judgment asks that court, on the paperwork submitted, determine that the other driver was responsible for the accident without any testimony from live witnesses or before a jury.

Soon after your deposition, you will receive a letter from my office notifying you that the defendant's attorneys have scheduled an Independent Medical Examination, or IME. Similar to no-fault, you will be examined by a doctor paid for by the insurance company. Their doctor will provide a written report of the examination, which will he or she will base their testimony on if the case proceeds to trial. Since the doctor is paid for by the insurance company, you can be rest assured that the report will not be so favorable to you. This is another tactic used by the insurance

companies to try and settle your case for far less than your injuries are worth. They feel that your treating doctor will likely exaggerate your injuries and ask their doctor to write a report that does the opposite, hoping that a judge or jury will believe their doctor or award you a recovery somewhere in the middle.

During this time, your own treating doctor will re-examine you and write a report, called a narrative, which will recount your injuries and how they have affected your life. This narrative report will be sent to the defendant's attorney and the insurance company. If the case has to be tried, your doctor will be called to testify regarding your treatment and your prognosis for the future, such as a possible surgery or other medical care.

Once discovery has been completed, the case is ready to be tried and placed on a trial calendar. Depending on the county where your law suit was started, your case could be tried within 8 months to 2 years, as some courts are much more backlogged than others.

Even with our approach, you shouldn't expect a quick settlement. As we stated earlier, we think it's best for the client to follow a doctor's treatment plan – even if it takes more than a year – rather than settling the case prematurely. Receiving necessary medical treatment benefits the client's future health and ultimately, their case.



The settlement in your case or jury verdict will be based to some degree on the cost and length of your medical treatment. Sometimes going to trial becomes the only option. When you're looking for a lawyer, make sure you hire someone who is willing to try cases if necessary.

It can take a long time to get to trial, but it may offer you the best chance of getting fair compensation for your injuries. If you have to go to trial, be prepared for a long wait because judges have to juggle numerous civil cases and there are only so many jurors. It's not unusual for a trial date to be set anywhere from two years to four years after the complaint is filed.

## CONCLUSION

I hope this book serves as a helpful reference tool for understanding personal injury cases. Though the process can be long and complicated, an attorney can guide you through this journey. When picking an attorney for your case, select someone who handles only personal injury cases. Personal injury lawyers deal with the legal issues specific to this field of law on a daily basis and know how to deal with the insurance company.

If you think I can help you with your case, please call me at 718.979.4300 or 800.310.5520. My assistant will gather some information about your case and connect you with me. Calls that come into our office after hours are forwarded to a lawyer as soon as possible. To learn more about our firm, visit our web site at [www.dddilaw.com](http://www.dddilaw.com) or my blog at [statenisladinjurylawblog.com](http://statenisladinjurylawblog.com).

We'll schedule a free consultation with you and give you my professional opinion about whether or not we can help you. You can also order Frank J. Dito, Jr.'s *A Lawyer's Guide to Purchasing Car Insurance*. We have offices throughout New York City where we can meet with you to discuss your accident case.

Frank J. Dito, Jr. has written a *Lawyers Guide to Car Insurance*. It's FREE to order. Just call 800.310.5520 or visit my blog at [www.statenislandinjurylawblog.com](http://www.statenislandinjurylawblog.com) or the firm's website at [www.dddilaw.com](http://www.dddilaw.com).





# ABOUT THE AUTHOR



Frank J. Dito, Jr. is a partner in the Staten Island, New York law firm of Decker, Decker, Dito & Internicola, LLP where he practices Personal injury Law. For over 11 years, Frank has been helping people who have been injured in car, truck and motorcycle accidents. He has extensive experience negotiating with insurance companies and trying car accident injury and death cases.

Frank also helps people who have been injured in slip and falls, by dangerous products, and because of medical malpractice. He also practices in the field of workers' compensation, helping injured workers recover financial and medical benefits for their work related injuries.

Frank Dito is a member of the New York State Trial Lawyers Institute and the Association of Trial Lawyers of America, an organization devoted to protecting individual rights and preserving the civil jury system in America. He is also a member of the Multi-Million Dollar Advocates Forum, an exclusive group of trial attorneys that have achieved a verdict, award or settlement in the amount of Two Million Dollars or more.

Mr. Dito is licensed to practice law and regularly handles cases throughout New York State, practicing extensively in Staten Island and Brooklyn. He is married and the father of two young children, Francis and Giuliana. He makes his home in Staten Island, New York.



CLR PRINTING, PLUS  
clrprint@verizon.net  
718.667.7800