

NEW YORK'S NO-FAULT LAW

No one wakes up in the morning and says to themselves or their loved ones, "Honey, I think I'll plan on getting into that car accident we talked about today on the way home from the supermarket." Motor vehicle accidents are referred to as accidents because they are not talked about, planned, or foreseen. Anyone involved in an accident will confirm that nothing good comes from an accident and they often result in tragic life changes. For decades, many motor vehicle accident claims were required to be litigated to determine questions of who was at fault in the accident respective to issues involving insurance coverage for medical expenses, lost wages, and other economic expenses. Insurance premiums were skyrocketing as litigation costs escalated. In 1973, in an effort to reform this system in dire need of change, the New York State Legislature enacted the No-Fault Law found in New York State Insurance Law §5102(d).

The No-Fault Law provides mandatory insurance coverage for any person involved in a motor vehicle accident. Any accident victim will be covered for "basic economic loss" up to \$50,000. Basic economic loss includes medical expenses, loss of earnings, and any other reasonable and necessary expenses arising out of the accident. These benefits are often referred to as no-fault payments or Personal Injury Protection ("PIP") benefits. An insured has the option to purchase Additional Personal Injury Protection ("APIP") benefits through their policy for a premium, however, the No-Fault Law at a minimum requires each policy holder to provide up to \$50,000 in PIP for basic economic loss.

In order to be eligible to receive these no-fault benefits, strict time frames that are in place must be adhered to with very negative consequences if not. Initially, Title 11 of the New York Code of Rules and Regulations specifically states at §65 that in the event of an accident, written notice of the accident, injured persons, along with information on the date, time, and

location of the accident must be given to the insurance company as soon as reasonably practicable, but in no event more than thirty (30) days after the date of the accident. If written notice is timely submitted and received providing no-fault benefits for medical expenses, the injured person, or the person's medical provider, representative, or assignee, must submit proof of claim of the medical expense, including a full particulars of the nature of the injuries and treatment received, as soon as reasonably practicable, but in no event later than forty five (45) days after the date that services are rendered.

As a result, due to the No-Fault Law providing PIP and reimbursement of expenses up to \$50,000 with regard to anyone's fault in an accident, an injured individual may only file a lawsuit against the responsible party who caused the accident and injuries, when that injured individual sustains what is called a "serious injury". Specifically, Insurance Law §5102 defines serious injury as an injury resulting in:

- (i) Death;
- (ii) Dismemberment;
- (iii) Significant disfigurement;
- (iv) Fracture;
- (v) Loss of fetus;
- (vi) Permanent and total loss of use of a body organ, member, function or system;
- (vii) Permanent and consequential limitation of use of a body organ or member;
- (viii) Significant limitation of use of a body function or system;
- (ix) A medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety (90) days during the one hundred eighty (180) days immediately following the occurrence of the injury or impairment.

Often times, being able to successfully marshal which of these elements is satisfied within the facts of a specific case is a determinative factor in establishing a serious injury under the No-Fault Law. Our breadth of experience in personal injury litigation will assist you in making this determination under the definition of serious injury. In addition to the other time frames stated

with regard to PIP benefits, a seriously injured individual must file a claim for negligence and the resulting personal injuries sustained within three (3) years of the date of the accident or the right to sue is forever lost. In addition, if your matter involves a potential claim against any governmental unit, such as a municipality or otherwise, legal notice may have to be served on the governmental unit within ninety (90) days after the accident, and a lawsuit may have to be commenced as soon as one (1) year after the accident. These time frames are also critical to the success of any case.

If you are seriously injured in a motor vehicle accident, please contact Michael A. Sciortino, Esq. immediately at (585) 232-3730 extension 105 or msciortino@cdog.com.

Any delay may have serious consequences on your right to receive no-fault benefits, Personal Injury Protection, and your right to file a lawsuit against the responsible party who caused your serious injuries. At ChamberlainDøAmanda, we pride ourselves on doing what's right for you and assisting with personal injury protection.