



#### OFFICE LOCATION

Ankin Law Office  
162 W Grand Ave  
Chicago, IL 60654

Tel: 312-346-8780  
Fax: 312-346-8781

JANUARY 21, 2010

## E-Newsletter

### PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

## Motor Vehicle Accidents

Motor Vehicle Accidents that result in bodily injury are a very common occurrence in today's society. Before the advent and increase of automobile insurance laws, which often contain a provision that makes anyone operating a motor vehicle with the owner's permission an additional insured, special tort laws were developed to deal with liability for automobile accidents. These laws are, for the most part, rarely used in present disputes or litigation due to the pervasive nature of modern automobile liability insurance. However, the special laws do still arise on occasion in motor vehicle accident cases.

One theory that is used, on occasion, to provide the plaintiff with the broadest possible recovery is that of joint enterprise. In essence, joint enterprise holds that the individuals engaged in a joint enterprise are liable to the plaintiff for the negligence of all the other parties engaged in the joint enterprise. This allows the plaintiff to proceed against more than one individual in order to obtain damages for injuries.

The concept of vicarious liability has also been used to broaden the recovery in motor vehicle accident situations. An owner who permits another to use his vehicle may be vicariously liable for the acts of the driver if the driver was acting as the agent of the owner within the scope of his employment at the time of the accident. Florida defines motor vehicles as dangerous instrumentalities, thereby making the owner vicariously liable when another operates it. Other states have specific statutes making owners generally liable for injuries caused by accidents involving their cars, as long as the car was operated with their permission. In addition, some states allow the plaintiff to use a rebuttable presumption that a driver of a vehicle is the agent of the owner if the owner is a passenger in the car at the time of the accident.



#### OFFICE LOCATION

Ankin Law Office  
162 W Grand Ave  
Chicago, IL 60654

Tel: 312-346-8780  
Fax: 312-346-8781

## PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

Approximately half the states have adopted a family-purpose doctrine in which the owner of an automobile is vicariously liable for its negligent operation by members of the family who are expressly or impliedly authorized to use the vehicle. Many states have additional laws that may help or hinder a plaintiff in establishing liability of an individual in an automobile case and the theories mentioned here are not meant to be exhaustive of the possibilities.

Today, many states operate on a system of no-fault insurance for automobile accidents. At their hearts, these systems are set up to provide some type of compensation to injured individuals (or dependents of deceased individuals) regardless of fault. Most of these systems are funded by private first-party insurance. In other words, once injured, a party is generally compensated by his own insurance company, rather than the insurance company of the other driver or a third party who was actually responsible for the accident.

Benefits that are available under no-fault plans usually include medical and hospital expenses, such as physical rehabilitation, reimbursement for funeral expenses, and lost wages. Most no-fault benefit plans contain a maximum, or a cap, on the amount of damages that may be received. Many plans also require that every driver obtain a certain minimum level of coverage in order to be allowed to operate a motor vehicle. Under some of these plans, purchasers have the option of obtaining additional insurance, such as coverage for non-economic losses like pain and suffering. Some plans also require, in an attempt to prevent double recoveries, that individuals who receive benefits from other plans, such as disability insurance or workers' compensation, credit the no-fault carrier for the amount that was received from these alternative sources.

In keeping with the desire to limit double recoveries, no-fault benefit plans generally contain some sort of provision limiting the right of an individual receiving benefits under the plan to also seek a traditional tort recovery. Most plans expressly abolish this right, thereby making the no-fault system the sole method of available recovery to the extent that the loss does not exceed a minimum threshold. In other words, a tort recovery is prohibited unless the individual's medical bills exceed a certain amount. In some cases, particular types of injuries such as death, dismemberment and permanent disfigurement are exempted from the prohibition.



#### OFFICE LOCATION

Ankin Law Office  
162 W Grand Ave  
Chicago, IL 60654

Tel: 312-346-8780  
Fax: 312-346-8781

## PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

Other states have no-fault plans that do not contain any prohibition on tort recoveries. However, these same plans generally require that an individual who has received a tort recovery reimburse the no-fault carrier for any benefits that it has paid, thereby also preventing a double recovery.

### Quiz: What Can I Recover When I've Been in a Car Accident?

If you have been injured in a car accident, chances are that you want to recover for your injuries. You may also want to submit a claim to your insurance company for the damage to your car. You may want to sue another driver, or perhaps the manufacturer of your automobile if you believe a problem with the car caused your accident. But what sorts of damages might you be able to recover? The following quiz may provide you with an idea of what you can expect to receive from insurance, or in a court judgment. Remember, of course, that what you will actually be able to recover will depend upon the facts of your specific accident and the limitations of the applicable insurance policy.

**Q:** Kelly was in a car accident that resulted in damage to the front fender of her car. The other driver was totally at fault. Six months earlier, Kelly had backed her car into a utility pole by mistake and damaged the rear fender. Can she hold the other party, or their insurance company, liable for the rear fender damage caused by the earlier accident?

**A:** No. Kelly cannot recover for damages to her car that occurred in another incident. She is limited to recovering from the other driver for the damages that actually occurred in the car accident involving that driver. If she lies and tries to recover for the rear fender damage, by claiming that it happened at the same time the front fender damage occurred, she could face serious trouble. Of course, she can try to submit a separate claim for the damage to the rear fender to her own insurance company if she has collision coverage.

**Q:** John's leg was accidentally amputated when the car he was driving slid off an icy road. Can he recover for his medical expenses from his insurance company even though no other car was involved in the accident?

**A:** Most likely. The majority of automobile insurance policies provide coverage for one-car accidents. In addition, many automobile insurance policies cover medical care and treatment expenses that are related to the automobile accident under a "medical expense, no-fault personal injury" or other similar provision.



#### OFFICE LOCATION

Ankin Law Office  
162 W Grand Ave  
Chicago, IL 60654

Tel: 312-346-8780  
Fax: 312-346-8781

## PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

Q: Chris was involved in a car accident. The driver of the other car, who was totally at fault, did not have any automobile insurance. Is Chris out of luck?

A: Probably not. Most states have provisions that require individuals to carry uninsured motorist coverage. That means that if they are involved in an accident with a driver of an uninsured vehicle, they can obtain payment for their injuries under the uninsured motorist provisions of their own policy. In some cases, they may need to prove that the other party was negligent in causing their injuries in order to prevail under an uninsured motorist provision. The amount of uninsured motorist benefits that Chris can receive is controlled by the pre-set limits of his policy.

Q: Julie is driving on a highway when she has a flat tire. Her husband, Luke, is standing on the shoulder of the road trying to get the spare tire out of the trunk when he is hit by a passing car. He is seriously injured. Can he recover benefits under an automobile policy even if he wasn't actually driving a car at the time?

A: Perhaps. In many situations, an individual will be found to be "using" or "occupying" a motor vehicle in a situation such as Luke's. Whether he is entitled to benefits will depend upon the specific language of the automobile policy and will also depend upon how the law in the state where he is claiming benefits defines the term "occupying" a motor vehicle.

Q: Sandy is injured when the brakes in her new car fail to work properly. She wants to sue the manufacturer of the car. What sort of arguments can she make, and what sort of damages can she recover?

A: The answer to this question will depend on the law of the state in which Sandy will be suing. In many cases, car manufacturers face lawsuits claiming that they negligently designed a vehicle or that they negligently failed to warn of the hazards associated with particular aspects of a vehicle. In other situations, it may be argued that a car manufacturer is "strictly liable," or is liable due to the design of the brakes. The damages that may be recoverable in a negligence or strict liability cause of action will vary from state to state, but may include "compensatory" damages for Sandy's medical injuries and lost time from work, if any. In rare cases, Sandy may be able to also recover "punitive" damages, which are damages designed to punish the car manufacturer for its negligence.



#### OFFICE LOCATION

Ankin Law Office  
162 W Grand Ave  
Chicago, IL 60654

Tel: 312-346-8780  
Fax: 312-346-8781

## PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

**Q:** Tom keeps a number of tapes and CDs in his car because he likes to listen to music while he is traveling. One day, he is involved in a car accident on an interstate and all of his tapes and CDs fly out of his open sunroof and are shattered. Can he recover the value of his tapes and CDs?

**A:** Usually not. Most standard automobile insurance policies would not cover the loss of Tom's CDs and tapes. However, it is possible that Tom has purchased additional, special insurance under his automobile policy that would cover his loss. In addition, Tom may be able to claim the loss under his homeowner's insurance policy, if he has one.

**Q:** While waiting for a traffic light to change to green, Henry is rear-ended by the car behind him. Henry was not at fault in causing the accident. The other person's car, at the time of impact, was going about two miles per hour, and no damage was done to Henry's car. Henry, however, claims that he sustained a serious neck injury that will require surgery as a result of the accident. Can he recover for his medical expenses?

**A:** Generally, a party injured in a car accident can recover medical expenses under either the other party's insurance policy or under their own policy if the other driver was uninsured or underinsured. However, the medical expenses must be shown to have been related to the car accident. While it may seem suspect that such a low-impact collision could cause Henry to need neck surgery, it is medically possible that Henry's present condition was in fact caused by the accident. If it is successfully shown that the injury was caused by the accident, Henry may be able to recover those medical and surgical expenses.

#### Disclaimer

This publication and the information included in it are not intended to serve as a substitute for consultation with an attorney. Specific legal issues, concerns and conditions always require the advice of appropriate legal professionals.