

# **A CLIENT GUIDE**

## **TO PERSONAL INJURY CASES**

**Motor Vehicle Crashes**

**Construction Accidents**

**Dog Bites**

**Slip and Fall Injuries**

**Product Liability  
(Defective Product) Accidents**

**Traumatic Brain Injuries**

**Finkelstein & Partners**<sup>LLP</sup>  
**THE INJURY ATTORNEYS**<sup>TM</sup>

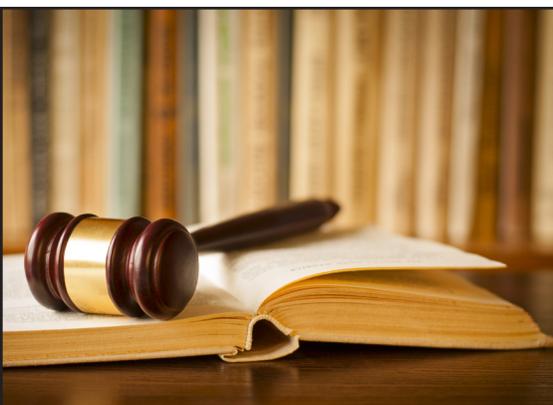


<b>ABOUT FINKELSTEIN &amp; PARTNERS, LLP</b>	<b>2</b>
<b>WHAT YOU SHOULD EXPECT</b>	<b>3</b>
<b>YOUR LEGAL TEAM</b>	<b>3</b>
<b>HOW MUCH MONEY IS YOUR CASE WORTH?</b>	<b>4</b>
<b>LIABILITY AND RELATED INJURIES</b>	<b>4</b>
<b>CAR/TRUCK CRASHES AND PEDESTRIAN/BICYCLE KNOCKDOWN CASES</b>	<b>5</b>
<b>CONSTRUCTION ACCIDENTS</b>	<b>12</b>
<b>DOG BITE CASES</b>	<b>13</b>
<b>SLIP (OR TRIP) AND FALL DOWN CASES</b>	<b>14</b>
<b>PRODUCTS LIABILITY CASES</b>	<b>15</b>
<b>STEPS AND TERMS OF A LAWSUIT</b>	<b>15</b>
<b>HOW LONG WILL YOUR CASE TAKE?</b>	<b>17</b>
<b>ACCESS TO YOUR CASE</b>	<b>17</b>
<b>RETAINER AGREEMENT</b>	<b>18</b>
<b>MEDICARE, MEDICAID AND MEDICAL LIENS</b>	<b>18</b>
<b>DISBURSEMENTS AND EXPENSES</b>	<b>18</b>
<b>SOCIAL MEDIA</b>	<b>19</b>
<b>FUNDING</b>	<b>19</b>
<b>YOUR RIGHTS AS A CLIENT</b>	<b>19</b>

**Finkelstein & Partners**<sup>LLP</sup>  
**THE INJURY ATTORNEYS**<sup>TM</sup>

Thank you for selecting Finkelstein & Partners, LLP to help you during this difficult time. Rest assured you will never be alone. Your legal team will be with you every step of the way to answer your questions and keep you updated.

The information provided in this book is intended to make the legal process as clear and easy as possible for you to understand so that you are fully prepared to deal with all aspects of your personal injury case.



## About Finkelstein & Partners, LLP

Finkelstein & Partners, LLP represents plaintiffs (the party filing the lawsuit) in all types of Personal Injury claims – from motor vehicle crashes, to workplace accidents, slip and fall injuries and more. The firm was founded in 1959 by Howard S. Finkelstein. For over 50 years we have been dedicated to providing unsurpassed client service and legal representation. We have a dedicated staff of attorneys, paralegals and other legal support staff, each with a solid understanding of the law and what it takes to win your case.

In the past decade, we have obtained over a thousand verdicts or settlements ranging from \$500,000 to \$34,000,000. While we have established our reputation as the law firm to retain when seeking top-dollar verdicts or settlements from insurance companies, your satisfaction is most important to us.

Your case information will remain confidential and will only be shared with persons approved by you. We promise to keep all communications with you clear and concise. We will provide straightforward case evaluations so that you fully understand your case, as well as the opportunities and any risks.

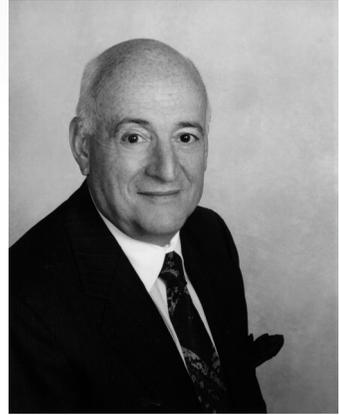
To further serve you, our staff includes many multi-lingual attorneys with fluency in Spanish, Russian, French, Mandarin, Hindi, Urdu, and Punjabi.



Firm Founder Howard S. Finkelstein with his son, Managing Partner Andrew G. Finkelstein.

## What You Should Expect:

- **Free** answers to all your questions.
- **Free** home or hospital visits.
- **Free**, 100% secure, online access to your case file through our website.
- Finkelstein & Partners will only charge a legal fee if we are successful in recovering money for your claims (more information on the Retainer Agreement is on page 18).



Howard S. Finkelstein, Firm Founder

## Your Legal Team:

As a Finkelstein & Partners client you will have your own dedicated legal team. Led by an experienced attorney, your team will have the expertise necessary to meet the unique needs of your case. We have dedicated truck crash and traumatic brain injury groups to ensure that these complex case types are handled by teams experienced in these areas.

Your team will work closely with you. Your Case Manager works side-by-side with your Attorney, and will serve as your primary contact. A legal professional who is dedicated to helping you through the process, your Case Manager is available to you whenever you have questions or need assistance. In the back of the folder you were given is a blank contact card. Use this card to record your Case Manager's phone number and email address, and to keep track of other important information as it becomes available.

## I. How Much Is Your Case Worth?

Before we can accurately assess the value of your case, we must obtain the following information:

- Investigation results of the accident-producing event
- Name and practices of the opposing insurance company
- Total amount of available insurance
- Full extent of your harms and losses, including your physical injuries, lost wages and medical expenses supported by experts

We will advise you of any offer made by the insurance company, whether it is too low and should be rejected, or fair and should be accepted. We believe an offer is fair when it is likely you will receive less money by continuing with your case than if you accept the offer presented. Acceptance of the offer is your exclusive decision to make. However, if you decline an offer that, in our professional opinion, is fair, reasonable and should be accepted, we may ask you to pay future disbursements (monies we spend on your behalf in order to further your case) in advance.

## II. Liability (Fault) and Related Injuries

In order to most successfully represent you, Finkelstein & Partners must consider two important factors: liability and related injuries.

**1. Liability = Fault:** As a starting point, it is necessary to determine that you were injured as a result of someone else exposing you to unnecessary risks of harm. If the person or company that caused your accident knowingly exposed you to unnecessary risk of harm through their action or inaction, they may be “liable” (responsible) for the harms and losses you suffered. In order to recover money for our harms and losses, we must prove someone else was at fault for the injury-producing event.

**2. Related Injuries:** When someone is responsible for causing an injury-producing event, they, and their insurance company, are responsible only for the harms and losses that directly flow from the event. Insurance companies are responsible only for paying for your harms and losses up to the policy limits that the responsible party had in place on the day of the accident.

**a. Documented Injuries:** In order to support your case, it is important to fully and accurately document your injury so we can provide sufficient evidence of your harms and losses to the insurance company.

**I. Doctors Records:** It is important that your medical doctors know the full extent of the injury you sustained and if it has changed your life in any way. Be sure to tell your health care provider this and any other concerns you may have during each of your visits.

**II. Scarring:** If your injury created any scars, be sure to take periodic photos of the scarring to document the extent of the damage. Photos should be provided to your Case Manager.

**b. Prior Injuries:** If you have a prior injury or condition that is similar to the injury you sustained in this accident, you **MUST** advise your legal team as the insurance company is responsible for the amount of enhanced injury caused by the injury-producing event. If you fail to advise us of a prior injury or condition, we will not be able to properly represent and counsel you, and the value of your case may be affected. If it is later determined that you had a prior injury or condition that you failed to tell us about, it may become necessary for us to discontinue representation of your case.

**c. Subsequent Injuries:** If you sustain another injury that is similar to the injury you sustained in this accident, you **MUST** advise us. If you fail to advise us of a subsequent injury, we will not be able to properly represent and counsel you, and the value of your case may be affected. If it is later determined that you sustained a subsequent injury that you failed to tell us about, it may become necessary for us to discontinue representation of your case.

### **III. Car/Truck Crashes and Pedestrian/Bicycle Knockdown Cases**

In order for us to succeed with your case, we must begin by proving that the driver in at least one of the vehicles in the accident failed to follow the rules of the road and by doing so was a cause of the crash and your injuries. It is possible that there may be more than one cause of the crash.

Your actions will be considered in determining fault. Even if you were partly responsible for the crash, you may still recover for your harms and losses. However, you may only recover to the degree that the other party is at fault. For example, if it is determined that the other driver was 80% at fault and you are 20% at fault, you can recover 80% of the value of your related harms and losses.

Once we establish fault, we can only seek money for your harms and losses if the related injuries from the crash **qualify** for a money award. Everyone injured in a car crash is **not** automatically eligible for money for the injuries suffered. This is discussed in detail in the next section.

If you have qualifying injuries caused by the accident, then the insurance company is responsible for paying for your harms and losses, up to the insurance policy limits that were in place on the day of the accident. In order to support your claims, it is necessary for you to accurately document your injury so your legal team may provide sufficient evidence of your harms and losses to the insurance company. Often the best evidence is the doctor's records'. It is important that your medical doctors know the full extent of the effects the injury has caused and if it has changed your life in any way. Be sure to tell your health care provider this and any other concerns you may have during each of your visits.

#### **1. Qualifying Injuries in Car/Truck Crashes and Pedestrian/Bicycle Knockdown Cases**

By law, only those people who have suffered a "serious injury" in a car crash are eligible to receive money for pain and suffering. Finkelstein & Partners can only start a lawsuit for you if you have a **qualifying serious** injury\*\*\*. A serious injury is defined as either:

- Death
- Dismemberment (loss of a body part)
- Significant disfigurement (significant scar)

- Fracture (broken bone)
- Loss of fetus
- Permanent loss of use of a body organ, member, function, or system
- Permanent consequential limitation of use of a body organ or member
- Significant limitation of use of body function or system
- 90/180: Any medically determined injury or impairment which causes you to be unable to do your normal daily activities for any 90 out of the first 180 days following the accident.

The law requires qualifying injuries be proven by positive objective tests (MRI, CT Scan, x-ray, or some other medically recognized test). In addition, a medical doctor, who is willing to testify in court on your behalf, must relate the results of such tests to the injury you sustained in the accident. Finkelstein & Partners cannot legally start a lawsuit on your behalf if your injury is not supported by a positive objective test, or if a medical doctor does not state within 18 months from your motor vehicle collision that the positive objective test results is from the accident.

\*\*\*THIS DOES NOT APPLY TO DRIVERS OR PASSENGERS OF MOTORCYCLES, MOPEDS AND ATVS.

**2. Who is eligible for No-Fault Benefits in Car/Truck Crashes and Pedestrian/Bicycle Knockdown Cases?** All persons injured as a result of the use or operation of a motor vehicle (even pedestrians and bicyclists hit by a car) are entitled to receive No-Fault benefits for collision-related losses, regardless of fault. **Motorcycles, mopeds, and ATVs are excluded and are not entitled to these benefits.** No-Fault benefits include medical bills, lost earnings, travel expenses, household care, prescriptions, and death benefits.

**3. Who pays No-Fault Benefits?** The insurance company insuring the car you were in provides the No-Fault benefits up to the full extent of the No-Fault coverage on the car (or in the case of a pedestrian or bicycle knockdown, the vehicle that struck you). In New York, at least \$50,000 in No-Fault benefits is available for each injured person in the car crash. If the owner of the car purchased additional Personal Injury Protection (“PIP”) above the \$50,000 minimum, then the No-Fault insurance company is responsible for paying up to the full value of the additional policy limits.

#### **4. What do No-Fault Benefits Include?**

**a. Medical Bills:** 100% of all bills for injuries you sustained in the accident will be covered up to the No-fault policy limits. The New York State Insurance Department has a fee schedule setting forth the maximum a health care provider may charge in a no-fault case. You are not responsible to pay anything over the no-fault fee schedule for any individual medical treatment.

**b. Lost Wages:** You will be compensated for 80% of gross wages up to \$2,000 per month, for the first three years after the accident. A doctor must state you are unable to work due to accident-related injuries. If your earnings are higher than \$2,000 per month, your legal team will seek to obtain the lost monies from the negligent party’s insurance company. However, if you (or the owner of the vehicle) purchased additional Optional Basic Economic Loss coverage (OBEL) above the \$2,000 minimum, then the No-Fault insurance company is responsible for paying the additional lost wages up to the value of that policy.

**c. Travel Expenses:** Those expenses incurred for trips to and from doctors, hospitals, testing, and physical therapy will be covered. The reimbursement rate for travel expenses is controlled by the IRS mileage rate and is subject to change.

**d. Household Care:** If your doctor states that you require at home care, those expenses will be covered.

**e. Prescriptions:** 100% of the costs of all accident-related prescriptions are provided for under the no-fault fee schedule.

**f. Death Benefit:** If death resulted from the car accident, the No-Fault insurance company is responsible for paying a \$2,000 death benefit.

**5. How to Apply for No-Fault Benefits:** Applying for No-Fault benefits is easy. Your legal team will help you through the process. First, a No-Fault application must be filed with the No-Fault insurance company to start your No-Fault claim. Your legal team will file this initial application for you. Ten days after your claim has been established, we will mail you the forms that must be used when submitting claims for these benefits. **While many other law firms charge for filing No-Fault applications, Finkelstein & Partners does not receive a fee for any assistance we provide related to your application and submission of paperwork for No-Fault benefits.**

**6. No-Fault Benefit and Workers' Compensation:** Who actually pays for your medical, wage, and other kinds of claims depends upon whether or not you were working, or in the course of your employment, at the time of your accident. If you were in the course of your employment at the time of the accident, Workers' Compensation will pay all No-fault benefits. If you were NOT in the course of your employment at the time of your accident, your No-Fault insurance carrier provides your primary insurance coverage.

**a. Medical Bills:** Your health care providers will submit their bills directly to your No-Fault insurance carrier if you were not working at the time of the crash or they will submit their bills directly to the workers' compensation carrier if you were working at the time of your crash. Your health care providers will need to be provided with the name, address, and claim number of the No-Fault carrier or the workers' compensation claim number so they can properly submit their bills.

**b. Lost Wages:** Who pays your lost wage benefits depends upon your work status when the crash occurred – employed but not working at the time of the crash, employed and working at the time of the crash, self-employed, unemployed receiving unemployment benefits, disabled and receiving disability benefits:

**I. Employed, but Not Working at the Time of the Crash:** If you were not in the course of your employment when the crash occurred, but were employed, the No-Fault insurance company will pay a portion of your lost wages.

a. Your employer must fill out an Employer's Wage Verification Report.

b. You must mail a doctor's note stating you are unable to work, along with the Employer's Wage Verification Report, to the No-Fault insurance company so they can honor your lost wage claim.

c. Lost wages will only be paid for three years following the date of accident.

**II. Employed and Working at the Time of the Crash:** If you were in the course of your employment at the time of your accident, you must apply for workers'

compensation benefits through your employer.

a. The workers' compensation carrier is responsible for paying a portion of your earnings and the No-Fault insurance carrier is responsible for paying the balance, up to 80% of your wages not to exceed \$2,000 per month. For example, if workers' compensation is paying 66 2/3% of your wages, your No-Fault carrier will pay 13 1/3% of your wages, for a total of 80% with a maximum of \$2,000 per month.

b. Workers' compensation law is complex and we strongly recommend that you ask your case manager to have a representative from our sister firm, Fine, Olin and Anderman, LLP, contact you, so they can assist you in obtaining all your workers' compensation benefits.

**III. Self Employed Individuals:** If you are self employed, you will need to complete a Verification of Self Employment form. The Verification of Self Employment, with copies of your previous two year's income tax records, must be submitted by you to your No-Fault insurance carrier in order to receive lost wages. If you hire someone to perform the activities you performed, the No-Fault carrier will pay 100% of your substitute's salary (even if it's greater than your salary), up to \$2,000 per month, for up to three years.

**IV. Unemployment Benefits:** You will receive 100% of your weekly unemployment rate from the No-Fault carrier to cover unemployment that occurred during your disability.

a. You cannot collect both unemployment and No-Fault benefits at the same time. The disability from the accident suspends your unemployment benefits for the time you are disabled.

b. If you are disabled as a result of an injury from your accident, but you continue to collect unemployment benefits, you are, in effect, telling the No-Fault insurance carrier that you are able to work when your doctor says you are not. Therefore, once your unemployment benefit runs out, you will not be able to collect No-Fault wages because No-Fault wages are based upon an injury that prevents you from working.

c. If, at the time of your accident, you were collecting unemployment benefits and your doctor tells you that you are unable to work, you must advise the Unemployment Office. In order to preserve your unemployment benefits and collect No-Fault, you must complete the following steps:

1. Obtain a letter of disability from your doctor indicating that you are unable to work.
2. Submit the doctor's letter of disability to the unemployment office. Get a letter from unemployment stating the weekly rate of your payments and the dates you became eligible for benefits.
3. Mail the unemployment information to the no-fault insurance carrier.

**V. New York State Disability:** If you are receiving New York State Disability, mail a photocopy of one of the disability checks to the No-Fault insurance company, as that amount will be deducted from what No-Fault should pay. New York State Disability must be applied for with your employer's insurance company within 30 days of your accident or within 30 days from the date you become disabled. If you are unsure if you are entitled to receive this benefit, check with your employer

immediately. New York State Disability pays for 26 weeks (not including the first week you are disabled). The No-Fault insurance carrier will pay 80% of earnings (for only the first week). New York State Disability will pay a maximum amount of \$170.00 per week. This amount is deducted from the 80% of lost wages paid by your No-Fault insurance carrier.

**a. Travel Expenses:** To receive payment, you must indicate the name of the health care provider, the date of the office visit, and the round trip mileage. The No-fault insurance company is required to pay \$25 per day total for travel expenses and household help only during the first year after the accident. Claims must be submitted within 45 days of the travel. If you were in the course of your employment at the time of crash, the workers' compensation will pay your travel expenses and you will not collect anything from the No-Fault insurance company.

**b. Household Care:** To qualify, your doctor must provide a letter stating household care is required. The doctor's letter should be sent to the No-Fault insurance company along with the form provided by our office, listing the dates on which care was provided. Both you and the person providing the household care must sign the form. You will need to pay for household care out-of-pocket and submit receipts or copies of checks to the insurance company in order to receive reimbursement. Most No-Fault insurance carriers will not pay for household care that has been rendered by a spouse, parent, or family member. If you were in the course of your employment at the time of the crash, workers' compensation does not provide a household help benefit. Costs incurred for household help must be submitted to your No-Fault insurance carrier within 45 days of service.

**c. Prescriptions:** To receive reimbursement for prescription expenses, receipts for all prescriptions must be submitted along with the appropriate prescription form provided by your legal team. Always write the name of the doctor who prescribed the medicine and the name of the medication on the receipt. Claims must be submitted within 45 days of the prescription being filled. If you were in the course of your employment at the time of the crash, Workers' Compensation will pay for the prescription expenses and you will not collect anything from the No-Fault insurance company.

**d. Death Benefit:** A copy of the signed death certificate must be provided to the No-Fault insurance company in order to receive the death benefit. Some carriers will want letters of administration from the court.

**7. Timing and Payment:** The No-Fault carrier has up to 30 days from the date they receive all submissions to evaluate your claim. For example, if you make a claim for mileage due to a doctor visit, the No-Fault insurance carrier can wait until they receive the corresponding medical record for the same date to confirm that, in fact, you went to the doctor on the day claimed.

## **8. Common Sense Rules When Submitting Paperwork to the No-Fault Carrier or Workers' Compensation Carrier:**

- a. Photocopy everything you send to either the No Fault Carrier or Workers' Compensation Carrier.
- b. Write your claim number, name and address on every submission.
- c. Be sure to send claims to the correct address.

## **9. The “Independent” Medical Exam and Denial of Benefits:**

**a. The “IME”:** At some point, the No-Fault or Workers’ Compensation insurance company will send you to a doctor they hire to determine if you require additional medical treatment. This is called an Independent Medical Examination or “IME”. There is, however, nothing independent about it. When you receive a letter from the No-Fault or Workers’ Compensation insurance company requesting the exam, please contact your Finkelstein & Partners Case Manager. It is important to attend your IME appointment as failure to do so could result in the cancellation and denial of any further No-Fault or Workers’ Compensation benefits.

**b. The Denial:** If the insurance company doctor says you will not benefit from further medical treatment, your insurance company will deny all further treatment from that type of doctor. This is called a “denial”. Your No-Fault benefits will remain open and available for treatment with other types of doctors. For example, if you are treating with a neurologist for neck pain and your No-Fault insurance company denies future neurological care after a neurological IME, you can, and should, see an orthopedist for the neck pain if you feel it is medically necessary to do so.

**c. Medical Care After The Denial:** If you have private health insurance, your private health insurance company may begin paying future medical bills after a denial. If you do not have private health insurance, you are not required to accept the IME doctor’s opinion. You may continue to treat with the type of doctor benefits were denied for and then arbitrate the cost future medical treatment after the lawsuit is over. An independent arbitrator will be asked to decide if the No-Fault insurance company was correct in denying your benefits. If you win the arbitration, the No-Fault company will be required to pay for medical treatment and lost wages that were properly submitted within 90 days of treatment. If you lose the arbitration, you are responsible for payment of the medical care if you have no other health insurance that will pay for it. Your Finkelstein & Partners Case Manager will explain the arbitration process to you.

### **d. Important Reminders about Insurance Medical Exams:**

1. Do not miss your appointment with the doctor.
2. The insurance company can have you attend more than one IME. You are required to attend all IME’s to continue your benefits.
3. If there is a denial:
  - a. Try to get your personal health insurance to cover your medical payments.
  - b. Consider seeing a different specialist whose benefits have not been denied for the same symptoms.
  - c. Continue to submit all your medical bills to the No-Fault and Workers’ Compensation carrier even if they have been denied.
4. You should not arbitrate a No-Fault denial until your lawsuit is over.

## **10. Underinsured, Uninsured and No Insurance:**

**a. Underinsurance Coverage:** If the value of your harms and losses exceeds the amount of insurance available from the at fault vehicle, we will determine if there is additional coverage available. There are several ways that additional coverage may

apply:

1. Through the Underinsurance coverage of the vehicle you were in at the time of the accident.
2. Through the Underinsurance coverage of a vehicle you own, even if that vehicle was not involved in the accident.
3. Through the Underinsurance coverage of a vehicle owned by any relative that lives with you, even if that vehicle was not involved in the accident. If there is additional coverage available, we will pursue it up to the value of your harms and losses. Your Finkelstein & Partners legal team must examine the Declaration page of each policy to determine if such coverage exists. Please provide your Finkelstein & Partners Case Manager with a copy of the entire automobile and any umbrella insurance policies for the vehicle you were in, as well as your own policies and the policies of any relative who lives with you and owns a motor vehicle.

**b. Uninsurance:** Uninsurance coverage applies if the at fault vehicle is not insured. If a vehicle you own, or the vehicle you were in, is insured, the uninsured coverage for that vehicle may make you eligible for a money award if you have a qualifying injury as outlined above.

**c. No Insurance:** If the at fault vehicle has no insurance and you do not own a car or live with a relative that owns a car, then you may be eligible to file a claim with the Motor Vehicle Accident Indemnification Corporation (MVAIC). MVAIC provides minimum insurance coverage to people injured in car crashes when no other insurance exists. MVAIC requires all claimants have a qualifying injury as outlined above.

**d. Filing for Underinsurance, Uninsurance, MVAIC:** In order to protect your rights, your legal team must file three forms with your own insurance company, putting them on notice of a **potential** claim. Notice must be filed within 90 days from the accident. Failure to do so will prevent you from making a claim against your insurance company for benefits (which you already paid for with your premiums). Your future premiums are not likely to be affected by filing a claim for underinsurance and uninsured benefits. Your legal team will also file with MVAIC just in case it turns out there is no available insurance through any insurance policy.

## 11. Property Damage to Your Vehicle:

**a. If you have collision coverage** in place for your vehicle, the property damage to your vehicle will be reimbursed to you from your own insurance company. Your insurance carrier should pay your property damage minus your deductible. If you have “automobile rental coverage” as part of your policy, your insurance company will pay for a rental car while your vehicle is being fixed. Check directly with your insurance company to determine what coverage you have in place.

**b. If you do *not* have collision coverage** in place for your vehicle, you must seek compensation for the damage to your vehicle from the insurance company for the “at fault” vehicle. The insurance company of the car responsible for the crash will generally inspect your vehicle and offer an amount based upon their evaluation of the damage. We recommend that you obtain your own estimate from a repair shop so you can accurately determine if the insurance company’s offer is fair. If your vehicle is deemed a total loss, you will be offered the book value of your vehicle, not replacement value. If you choose to rent a vehicle but did not buy “automobile rental coverage”, the

other insurance company is not obligated to pay for your rental. However, they often will, if you provide a copy of your rental agreement and proof of payment.

**c. Storage fees:** Once the insurance company makes an offer regarding the property damage to your vehicle, they will stop paying storage fees to the repair garage for your car. Therefore, do not leave your car at a repair garage that charges for storage after the insurance company makes a property damage offer because you will be responsible for future storage fees.

### **I. Important Reminders About Property Damage:**

1. After a crash, contact your insurance company and make arrangements for them to:
  - a. Take photos of the damage to your car.
  - b. Have an insurance adjuster prepare an itemized estimate of the vehicle's damage if you have paid for collision coverage on your policy.
2. If possible, you should take pictures of the accident scene and the damage to the vehicle you were in before any repair work is performed.
3. Remove the vehicle from a storage garage that charges a storage fee after a property damage offer is made.

## **IV. Construction Accidents**

In New York State, construction accident law is very complex as there are several special statutes and rules governing construction. Fortunately, Finkelstein & Partners has handled thousands of construction cases and has the expertise you need to handle your case. A thorough investigation is often necessary to determine what law applies and who is responsible for an accident. Finkelstein & Partners' investigation generally includes the names of general contractors and sub-contractors at the job site, as well as gathering witness statements, photographs of the scene, copies of relevant contracts, insurance policies, and job documents, including safety memos, work permits, and daily logs. The following is a basic overview of the New York State Labor Law:

1. Generally, we must prove the work being performed was agreed to by contract. Commonly, a contract that details the work to be performed exists between the owner, general contractor, construction manager, and sub-contractor. These contracts often set forth who is responsible for purchasing insurance for injuries that occur on the job site.
2. Responsibility for the incident depends on how the accident occurred.
  - a. **The "Scaffold Law":** Section 240(1) of the New York State Labor Law makes property owners and general contractors responsible for injuries in certain cases. Section 240(1) provides:

*"All contractors and owners and their agents, except owners of one and two-family dwellings, who contract for, but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning, or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be constructed, placed,*

*and operated as to give proper protection to a person so employed.”*

If you were involved in any of the activities described in the last paragraph, the owner of the property and the contractor may be responsible for your injury. Generally, in a Labor Law 240(1) violation, the property owner and contractor are 100% responsible for your injuries and your actions in how the accident happened are GENERALLY not a factor.

**b. “Protection from Holes in Flooring”:** Section 241(1-5) of the New York State Labor Law provides absolute protection to workers from injuries that occur on floors, stairways, shaftways, or by lifting equipment. Generally, in a Labor Law 240(1-5) violation, the property owner and contractor are 100% responsible for your injuries and your actions in how the accident happened are GENERALLY not a factor.

**c. NYS Industrial Code or OSHA Violations:** Section 241(6) of the New York State Labor Law protects workers from injuries that occur as a result of a violation of a specific safety regulation contained in the NYS Industrial Code. Unlike Section 240 or 241(1-5), your actions are considered in determining fault for the accident.

**d. “Safe Place to Work” Statute:** Section 200 of the New York State Labor Law is the “safe place to work” statute that requires owners or general contractors who supervise the work to provide a generally safe place to work. Your actions are considered in determining fault.

### 3. Interplay of Workers’ Compensation and Your Case.

**a. Workers’ Compensation Benefits:** If you were in the course of your employment at the time of your accident, you must apply for workers’ compensation benefits through your employer. These benefits include payments for lost wages, life-time medical expenses for treatment of injuries related to your accident, and prescriptions. Workers’ compensation law is complex and we strongly recommend that you ask your Case Manager to have a representative from our sister firm, **Fine, Olin & Anderman, LLP**, to contact you so they can assist you in obtaining all your workers’ compensation benefits.

**b. Workers’ Compensation Lien:** If you have received any workers’ compensation benefits and we are successful in receiving a monetary award, you will be required to reimburse the workers’ compensation insurance carrier from the proceeds from your settlement. Your Finkelstein & Partners legal team will negotiate the reimbursement for you.

## V. Dog Bite Cases

In order to hold the owner of a dog responsible for the actions of their dog, we must prove two facts:

1. The animal had vicious propensities, and
2. The dog owner knew, or should have known, the dog was vicious before the bite.

If the dog has previously bitten someone, the dog will likely be considered vicious and the law presumes the owner was aware of the dog’s *vicious propensities*. Even if a dog has never bitten someone before, the owner may still be found responsible for your injury if the owner knew the dog had vicious or mischievous propensities. For example, if the dog is kept as a

watch-dog for protection, the owner should know the dog has a propensity to bite. Additionally, if the dog that bit you previously showed its teeth, growled, or charged, the dog may be found to be vicious and the owner responsible for your injuries.

Speak to your neighbors, postman, or friends of the owner of the dog to find out if they've observed vicious propensities on the dog's part. If they have, please advise your Finkelstein & Partners Case Manager immediately.

## **VI. Slip (or Trip) and Fall Cases**

There are many laws governing slip (or trip) and fall cases. Generally, property must be maintained in a reasonably safe condition. If a defective condition existed that caused your injury-producing event, and the person responsible to maintain the property knew or should have known about the defective condition and failed to cure the condition, we may be able to recover for your related injuries.

Property owners are generally responsible for property maintenance. However, responsibility for maintaining the property can be shifted to someone else by contract. For example, a tenant may be responsible to maintain the property if the tenant's rental contract provides that the tenant is responsible.

**1. Notice is Required:** Successful resolution of your case will require that your Finkelstein & Partners legal team prove that the person responsible for the property knew, or should have known, of the defective condition. There are two ways to determine whether the party responsible for maintaining the property had notice of the defective condition.

**a. Actual Notice:** If the party responsible for maintaining the property received proper written notice, or was told about the defect, or created the condition and failed to fix it in a reasonable time, that person may be found liable.

**b. Constructive Notice:** If the defective condition that caused your fall existed for such a long period of time that the party responsible for maintaining the property should have known about it, the party responsible for maintaining the property may be found responsible for your injury.

**2. Snow and Ice Fall Down Injuries:** Snow and ice cases are subject to special laws that limit liability for the party responsible for clearing and sanding areas where snow and ice accumulate. In most instances, the obligation to plow, salt, or sand does not start until after the storm has ended. Once the storm has ended, the party responsible for property maintenance has a reasonable amount of time to plow, salt, or sand. Once a party undertakes to plow, salt, or sand, it must be done so reasonably, although there is no obligation to clear the snow and ice perfectly.

**3. City, Town, State, and Other Municipality Responsibility:** When someone falls on property owned by a municipality, there are several special rules that apply. While the rules may vary between municipalities, notice will always be required. If the municipality did not receive notice of the defective condition that caused your fall, it is not responsible for your injuries. Many municipalities require prior written notice of the defective condition in order for them to be responsible for your injury. Finkelstein & Partners' investigation will determine what notice requirements exist if you fell on

property owned by a municipality. We will also determine if the municipality had the necessary prior notice of the condition.

**4. “Pictures are Worth 1,000 Words”:** Pictures that show the existence of the defect at the time of your incident are critical. If you have photos, please provide them to your Case Manager. If you can take photos, please do so as soon as possible. The pictures should show the defect and its relationship to large, fixed objects such as houses, stores, or intersections.

## VII. Products Liability Cases

Products liability law is a challenging area of law, often involving complex litigation and significant expense. When a manufacturer or distributor sells a defective product, the defect often causes serious injuries to an unsuspecting user of the product. Your Finkelstein & Partners legal team will work to demonstrate that the defective product played a significant role in causing your injuries.

Manufacturers and distributors are generally responsible for three types of product defects:

**1. Manufacturing Defects:** A manufacturing defect is an imperfection during the manufacturing process that causes the product to fail during its use. For example, a car manufacturer who installs faulty brakes in one car it builds will be responsible for the injuries caused by that car’s brake failure, even if all other similar cars manufactured brakes were not defective.

**2. Design Defects:** A design defect may exist when a product is manufactured exactly as intended, but still poses an inherent danger to the user. In this case, the manufacturer may be responsible for failing to adopt a safer, alternative design. For example, a car manufactured as intended may be defective because of poor design in the placement of the gas tank resulting in excessive explosions and fire during accidents.

**3. Inadequate Warnings:** Dangerous products should include user warnings. If a manufacturer or distributor of a product fails to provide adequate warning of particular dangers that were known or knowable, they may be responsible for injuries you incurred in the use of that product.

## VIII. Steps and Terms of a Lawsuit

**1. Summons:** The summons gives notice to the responsible parties (the defendants) that Finkelstein & Partners is suing on your behalf that you (the plaintiff) are making a legal claim against them.

**2. Complaint:** The complaint provides a concise explanation of how the accident happened, who was involved, as well as where and when it happened. The complaint will include a claim for money damages. This amount does not indicate how much money you get or how much your injuries are worth. We may claim \$1,000,000 to \$5,000,000, but this amount only puts the defendant on notice that we are seeking money damages. **It does not relate to how much money your case is worth.** You or your spouse will sign the complaint to verify its accuracy.

**3. Suing on Behalf of Your Spouse:** If you are married and living with your spouse both at the time of the accident and the time your complaint is served, Finkelstein & Partners will include a claim for your spouse, with your consent. This claim asks for damages that your spouse suffered as a result of your injury. Your spouse may be entitled to money damages for the loss of love, companionship, affection, society and sexual relations as a result of your injury. If the case is settled, however, the settlement is generally for the injured person, not for the spouse.

**4. Answer:** The defendant's insurance company will hire a lawyer for the defendant and will respond to the complaint with an answer. In response to the claims made in the complaint, the defendant's answer may admit some facts and deny some facts.

**5. Medical Authorizations:** Determining your physical condition is critical to winning your case. Your Finkelstein & Partners legal team will require medical records for all treatment you received related to this accident, as well as for treatment related to prior or subsequent similar conditions. In addition, the defendant's insurance company is entitled to get all related medical records so they can fairly evaluate your claims. To allow Finkelstein & Partners and the negligent party's insurance company to get the necessary records, you will need to sign papers authorizing the medical care providers to release the records.

a. Many medical providers and employers will require original, signed, and notarized authorizations. As a result, you will sign many authorizations. Authorizations are valid for only 90 days. Therefore, if we have authorizations that are outdated you will be asked to sign additional authorizations.

b. The following organizations and individuals may require signed authorizations for records multiple times throughout your case:

- i. Hospital(s)
- ii. Internal Revenue Service
- iii. Treating doctors and health care providers (current and prior)
- iv. Employer(s)
- v. No-Fault or Workers' Compensation insurance carrier
- vi. School(s)

**6. Bill of Particulars or Interrogatories:** After we receive the defendant's answer, we provide to the defendant's lawyer a document called the bill of particulars. This describes in detail how the accident happened; the injuries you sustained in the accident; which doctors have been treating you and what their findings are; what your occupation was; how many days you missed from work; past and future lost wages; past and future medical expenses; and any other critical information related to your claim.

**7. Examination Before Trial:** At an examination before trial (EBT), also called a deposition, you will be asked questions, under oath, by the lawyer for the defendant's insurance company. A lawyer from your Finkelstein & Partners legal team will attend the EBT with you, and prepare you beforehand for all relevant questions to be expected at the EBT. The defendant's lawyer can ask only relevant questions about the accident and your injuries. Your Finkelstein & Partners lawyer will ask the defendant questions, under oath, about how the accident occurred. The EBT is usually held at the defense

attorney's office or at the Finkelstein & Partners' office.

**a. Adjournments of EBTs:** It is not unusual for the defendant's attorney to cancel the EBT with short notice at least twice during the process. After the second cancellation, your Finkelstein & Partners legal team will ask the judge to order the defendant to complete the EBT. Unfortunately, these delays are out of our control.

**8. Medical Exam:** The defendant insurance company is permitted to hire a doctor, for purposes of trial, to examine you. This is also called a defense medical examination or DME. It is separate from the No-Fault or workers' compensation DME described above. The insurance company's doctor will examine you to determine what injuries you sustained. Frequently, the insurance company doctor will minimize the extent of your injuries. You are required to attend these exams; failure to do so can result in dismissal of your case. Your Finkelstein & Partners legal team will rely upon your treating doctor to state the true severity of your injuries.

**9. Trial:** We do not know which cases will settle before trial, that's why we handle every case as if it will be decided by a jury. If your trial is lost, Finkelstein & Partners will not charge you for our legal services. The defendant, however, can require you to pay certain expenses by entering a judgment against you.

## IX. How Long Will Your Case Take?

<b>48%</b> SETTLE	<b>60%</b> SETTLE	<b>75%</b> SETTLE	<b>87%</b> SETTLE	<b>94%</b> SETTLE
<b>PRE- LAWSUIT</b>	<b>LAWSUIT NO JUDGE</b>	<b>FIRST CONFERENCE</b>	<b>SECOND CONFERENCE</b>	<b>TRIAL DATE</b>
GENERALLY UP TO 3 YEARS	EBT ADJOURNED TWICE BY DEFENDANT	JUDGE ORDERED EBT AND PHYSICAL	IS EVERYTHING DONE?	3 MONTHS TO 16 MONTHS

Finkelstein & Partners does not control the length of this process, and we will not attempt to settle your case until we know the full extent of your injuries. Once your doctors have the results from the necessary tests and have advised you of the full extent of your injuries from the accident, your Finkelstein & Partners legal team will try to settle your case.

Unfortunately, insurance companies don't always offer a fair settlement. If they do not, we will initiate a lawsuit on your behalf. Once started, the time it takes to conclude your lawsuit will depend greatly upon which judge is assigned to your case. We will, however, seek out every opportunity to settle your case fairly, quickly, and without a trial.

## X. Access To Your Case

Finkelstein & Partners, LLP is one of a few firms in the nation to offer clients the ability to view their Personal Injury case file online. Because we are a "paperless law firm", our

innovative “Access Your File Online” feature allows you to monitor your case and its progress, view your medical documents, your case timeline, and maintain communications with your legal team. Our well-tested firewall and security codes ensure that you and your Finkelstein & Partners legal team are the only people who can view your personal file. In the secure part of our website, you can also view instructional videos to aid in preparing for different phases of your case.

Once you retain our firm and are assigned a case number, an Internet Access Request form will be mailed to you. You must sign and return this form to your Case Manager. Once your Case Manager receives the Internet Access Request form s/he will contact you by telephone to verify the information. Your User ID and Password will then be sent to you via e-mail.

## **XI. Retainer Agreement**

Finkelstein & Partners will only charge for legal fees if we are successful in recovering money for your claims.

Please read the retainer agreement carefully. Finkelstein & Partners is required to file a retainer statement with the court indicating that our firm is representing you.

## **XII. Medicare, Medicaid and Medical Liens**

Medicare, Medicaid and medical providers may claim a lien on your monies. Medicare and Medicaid may have a statutory right to recover monies you are awarded in the lawsuit. A medical lien is an agreement by you to pay the medical provider’s bill out of your share of the lawsuit proceeds. If your lawsuit is not successful, or you do not recover enough money to satisfy the lien(s), you remain responsible to pay the medical provider directly. Private health insurance companies do not always have a lien on your share just because they paid medical benefits. The agreement with your health insurance provider must be reviewed to determine if there is a lien. Medicare, Medicaid and medical liens have complex legal issues that are continuously changing. Please refer to the retainer agreement regarding the evaluation of medical liens.

If you establish a lien on your case with a treating doctor or medical facility, you are responsible for the entire amount due. For your convenience, your Finkelstein & Partners legal team will contact all medical providers who have an established lien on your case and pay them, out of your share, the monies owed.

## **XIII. Disbursements and Expenses**

Litigation costs, expenses and disbursements necessary to perform legal work on your behalf during our representation include court filing fees, investigator fees, expert witness fees, focus group fees, and many other costs which are fully outlined in the retainer agreement. The Court’s rules provide for an election of two different ways of providing for the payment of litigation costs, expenses and disbursements and are illustrated in the chart.

*The attorneys' fees will be calculated based upon the choice made in the retainer and both choices are illustrated here:*

<b>Law Firm agrees to pay all litigation costs, expenses and disbursements and client never pays any costs upfront, even if lose.</b>		<b>Client agrees to pay all litigation costs, expenses and disbursements even if lose.</b>	
Gross Recovery:	\$10,000.00	Gross Recovery:	\$10,000.00
Attorney Fee (33.3%):	\$3,333.00	Costs, expenses, disbursements:	\$1,000.00
Net Recovery:	\$6,667.00	Net Recovery:	\$9,000.00
Costs, expenses, disbursements:	\$1,000.00	Attorney Fee (33.3%):	\$3,000.00
<b>CLIENT SHARE</b>	<b>\$5,667.00</b>	<b>CLIENT SHARE</b>	<b>\$6,000.00</b>

## **XIV. Social Media**

Be very cautious when using Facebook, Twitter, or other social networking websites. You need to use discretion when posting anything online, whether it be updates, photographs, tweets, etc., and should utilize all privacy settings to prevent information from being publicly available. Even so, you should assume that anything you post about yourself will be accessible by insurance companies and defense attorneys, and that it will be used against you in your case.

The potential exists that you may be required to give access to your social networking website information to the insurance company and their lawyers. Spoliation is the destruction of evidence. Destruction of evidence can result in court imposed sanctions, including the dismissal of your case forever. It is absolutely necessary that you make good faith efforts to keep, maintain and preserve all information, documents, photographs, computers, hard drives, etc., that are related to the claims of your lawsuit. When in doubt about whether to keep or discard any such information, please keep the information as a precautionary measure.

## **XV. Funding**

There are companies out there that will advance you money based on your case. This is sometimes referred to as case funding. If the funding entity approves your request, they will place a lien on your case.

**IT IS THE ADVICE OF YOUR LEGAL TEAM THAT YOU DO NOT ACCEPT FUNDING FOR YOUR CASE.**

The amount you will owe the funding company will increase substantially as time goes on. Most funding companies use an extremely high interest rate formula to increase the amount of the lien until your case concludes and the funding company is paid. If you choose to proceed with the funding of your case, our office will be obligated to pay the funding company from the proceeds of your case. Since we cannot predict when your case will conclude, the amount you will owe may be quite substantial. In addition, the law firm charges a fee for the processing of this loan. Should you apply for additional loans during the course of your case, an additional fee will be charged for each application the firm completes on your behalf.

## **XVI. Your Rights As a Client**

You are entitled to be treated with courtesy and consideration at all times by your lawyer and all other lawyers and personnel in your lawyer's office.

You are entitled to an attorney capable of handling your legal matter competently and diligently in accordance with the highest standards of the profession. If you are not satisfied with how your matter is being handled, you have the right to withdraw from the attorney-client relationship at any time (court approval may be required in some matters and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge).

You are entitled to your lawyer's independent professional judgment and undivided loyalty uncompromised by conflicts of interest.

You are entitled to be charged a reasonable fee and to have your lawyer explain at the outset how the fee will be computed and the manner and frequency of billing.

You are entitled to request and receive a written itemized bill from your attorney at reasonable intervals. You may refuse to enter into any fee arrangement that you find unsatisfactory.

You are entitled to have your questions and concerns addressed in a prompt manner and to have your telephone calls returned promptly.

You are entitled to be kept informed as to the status of your matter and to request and receive copies of paperwork.

You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter.

You are entitled to have your legitimate objectives respected by your attorney, including whether or not to settle your matter (court approval of a settlement is required in some matters).

You have the right to privacy in your dealings with your lawyer and to have your secrets and confidences preserved to the extent permitted by law.

You are entitled to have your attorney conduct himself or herself ethically in accordance with the Code of Professional Responsibility.

You may not be refused representation on the basis of race, creed, color, religion, sex, sexual orientation, age, national origin, or disability.

## **IMPORTANT NAMES, DATES & TELEPHONE NUMBERS**

\_\_\_\_\_  
**MY CASE MANAGER IS:**

\_\_\_\_\_  
**TEL/EXT#:**

\_\_\_\_\_  
**MY TRIAL ATTORNEY IS:**

\_\_\_\_\_  
**TEL/EXT#:**

### **MY NEXT APPOINTMENT IS ON:**

\_\_\_\_\_  
**DATE (MONTH/DAY)**

\_\_\_\_\_  
**TIME (A.M./P.M.)**

### **NOTES:**

## **Our Practice Areas**

As a client of Finkelstein & Partners, LLP, you've come to expect superior service, personal attention, and unparalleled legal experience from our knowledgeable Personal Injury team. Rest assured, you can expect the same great service and excellent representation from us for all of your legal needs. Finkelstein & Partners is a full-service law firm, committed to providing our clients with a broad spectrum of legal expertise to meet your needs.

**Asbestos Injuries  
(Mesothelioma)**

**Auto Collisions**

**Bankruptcy**

**Birth Injuries**

**Bus Accidents**

**Construction Accidents**

**Commercial Litigation**

**Creative and Corporate Consulting**

**Real Estate Transactions**

**Debt Restructuring and Loan Modification**

**Defective Drug Litigation**

**Divorce and Property Settlement**

**Product Liability**

**Sexual Assault**

**Slips and Falls**

**Social Security Disability Benefits**

**Train Accidents**

**Traumatic Brain Injuries**

**Trucking Collisions**

**Veteran's Compensation**

**Wills and Estate Planning**

**Workers' Compensation**

**Family Court**

**Medical Malpractice**

**Motorcycle Collisions**

**Nursing Home Negligence**



*This Guide is not intended as an all inclusive legal document. It is not a substitute for professional legal counsel. It is intended to be used in conjunction with the appropriate legal representation.*

**1-800-LAW-AMPM (529-2676)**



**1279 Route 300 Newburgh, NY 12551**

With office locations throughout New York and New Jersey

**[www.LAWAMPM.com](http://www.LAWAMPM.com)**

This Guide is not intended as an all inclusive legal document. It is not a substitute for professional legal counsel. It is intended to be used in conjunction with legal representation provided by Finkelstein & Partners, LLP. The information contained herein is accurate as of 05/14.

©Copyright 2018 Finkelstein & Partners, LLP, 1279 Route 300, Newburgh, NY 12551