

# THE ABCS OF MOTOR VEHICLE ACCIDENT-NEGLIGENCE CLAIMS IN OHIO

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November 17, 2008

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Motor vehicle accident claims are among the most common claims encountered by businesses and insurance companies alike. The majority of such claims assert a simple negligence theory of recovery. For this reason, companies must become educated, knowledgeable and prepared to face such claims.

The first step in the education and preparation process is to become familiar with the concepts and defenses that commonly arise in motor vehicle accident-negligence claims. Following are common concepts and defenses used in motor vehicle accident cases:

## Comparative Negligence

One common defense is that the claimant was also negligent and at least partially responsible for the accident, damage and/or injury. If this defense is presented at trial, the jury will decide what percentage of negligence rests with the claimant, as opposed to the defendant. If the percentage of responsibility allocated to the claimant is greater than that allocated to each defendant, the claimant will be barred from recovery. If the claimant's percentage of responsibility is less than that of each defendant, the damages awarded at trial will be reduced by the percentage of responsibility allocated to the claimant.

## Contribution

Where two or more parties cause the same damage or injury, each party is liable for the full amount of damage. However, a party paying more than its fair share of damages may assert a claim against the other party to recover the difference between its fair share and the amount it paid to the claimant.

## Insurance

Upon receiving notice of a claim, notification should immediately be provided to any and all insurance companies who might potentially provide coverage for the claim. If notice is not provided to the insurance carrier in a timely fashion, the insurance policy may allow the carrier to decline to cover the claim on that basis.

Upon receiving notice of the claim, the insurance company will make a determination as to whether the claim might be covered under the applicable policy. If there is even the possibility of

coverage, the insurance policy will likely require that the carrier hire an attorney to defend the insured in any lawsuit relating to the claim. To the extent that the claimed damages exceed the dollar amount covered by the insurance policy, the defendant may wish to hire a separate attorney to protect against an award exceeding the monetary limits of the insurance policy.

Whether or not insurance is involved in a motor vehicle accident-negligence claim, the defendant should take a direct role in staying informed about the status and handling of the claim.

## Negligence

To recover under a negligence theory, a claimant must prove that the defendant owed a duty to the claimant, the defendant breached that duty, and that the breach directly caused an injury or damage to the claimant.

## Negligence Per Se/Traffic Violations

When a driver violates a traffic ordinance, the driver is negligent as a matter of Ohio law. However, questions remain as to whether the violation caused the accident, whether the accident caused any damage or injury to the claimant, the extent and value of any damage or injury, and whether the claimant was also negligent.

## Negligent Entrustment

A common claim asserted in motor vehicle accident-negligence cases is that the owner of the vehicle is liable for the negligent actions of the driver. This claim fails unless the claimant is able to prove that the owner permitted the driver to operate the vehicle, the driver was incompetent to drive the vehicle, and the owner knew or should have known of the driver's incompetence. Typically, such a claim would arise where the driver is intoxicated, driving without a license or driving with a suspended license.

## Recoverable Medical Expenses

An injured claimant is entitled to recover necessary and reasonable expenses arising from an injury. In 2006, the Supreme Court of Ohio entered a landmark decision in the *Robinson v. Bates* case, stating that both the original medical billing and the adjusted amount accepted as full payment can be presented at trial to prove the value of the treatment provided by the respective medical providers.

In other words, a jury may award the claimant either the original amount charged by the medical provider or the amount actually accepted as full payment. In practical terms, this means that the claimant might be awarded only the amount paid by the health insurer to satisfy the medical bills, rather than the amount originally billed by the medical provider.

Given that there is often a significant difference between the originally billed versus paid amounts, the *Robinson* decision makes the potential award to an injured claimant at trial all the more difficult to predict.

## Statute of Limitations

In Ohio, a claimant has two years from the date of a motor vehicle accident to file a lawsuit alleging negligence. If two years pass and a lawsuit has not been filed, that claim is barred.

## Setoff

Where two or more parties cause the same damage or injury, and where one party settles the claim asserted against it, the remaining party is entitled to reduce the ultimate damage award at trial by the settlement amount paid by the other party to the claimant.

## Sudden Emergency

If a driver is faced with a sudden and unexpected occurrence or condition that demands prompt action without time for deliberation, other than a self-created emergency, the driver may assert the sudden emergency defense. However, the driver must still demonstrate that his or her conduct was reasonable under the circumstances.

Where the emergency results in the violation of a traffic ordinance, the defense only applies if the driver proves that compliance with the ordinance was impossible. Weather conditions, wet or icy spots on the road, mechanical failures and brake issues do not constitute sudden emergencies.

## Sudden Medical Emergency

Where the driver of a vehicle is suddenly stricken by a period of unconsciousness, which the driver had no reason to anticipate and which makes it impossible for the driver to control the vehicle, such failure to control is not negligent. The sudden medical emergency defense may apply, for example, where a driver has a sudden heart attack or unanticipated fainting spell.

## Tort Reform

Effective April 7, 2005, the Ohio Legislature enacted a statute limiting the amount of damages a claimant can recover for pain, suffering and other “non-economic loss.” Pursuant to the statute, a “non-economic loss” award cannot exceed \$250,000 or three times the amount awarded in “economic loss” (such as lost wages and medical bills), with a maximum limit of \$350,000 for each claimant or \$500,000 for each occurrence.

This rule does not apply to losses relating to permanent or substantial deformity, loss of use of a limb, loss of a bodily organ system or any permanent physical injury that permanently prevents the claimant from being able to independently care for him or herself and perform life-sustaining activities. These limitations also do not apply with respect to claims asserted against the state of Ohio, claims against a municipality, or wrongful death actions.

## Vicarious/Employer Liability

Claimants typically assert negligence claims against both the driver and the employer of the driver. Employers are generally liable for their employees’ actions performed in the course and

scope of employment.

In a motor vehicle-specific situation, the determination of whether an employer is liable for the actions of its independent contractors is fact-specific and sometimes governed by federal mandates. For this reason, a company should seek the opinion an attorney in making such determinations.

For more information regarding the vicarious liability of Ohio employers, refer to the article written by the author, entitled: "Ohio Employers' Liability for Actions of Employees and Independent Contractors."

For many companies, motor vehicle accident-negligence claims have become an unavoidable cost of doing business. However, unlike traditional accident claims, today's claimants often seek six and seven-figure recoveries, making proper handling and active supervision of such claims more important than ever.

In order to effectively manage such claims, companies must increase their awareness of the common concepts and defenses in motor vehicle accident-negligence cases, which can be critical to the assessment and resolution of such claims.

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