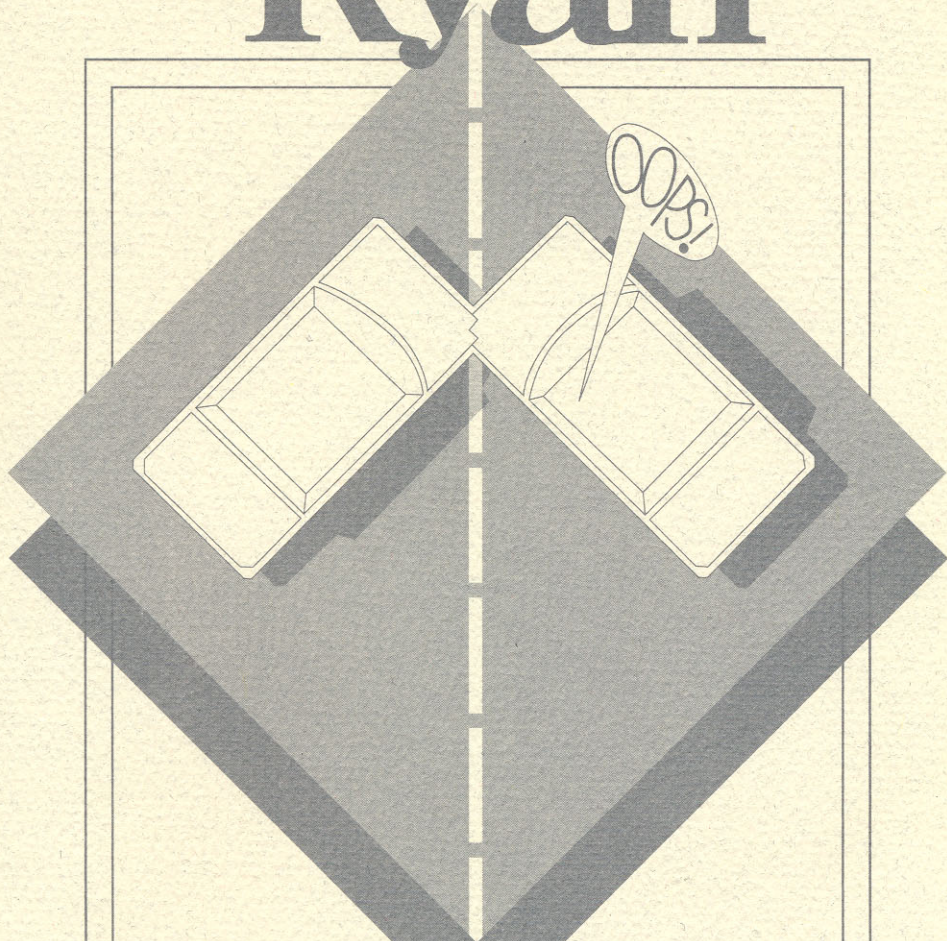
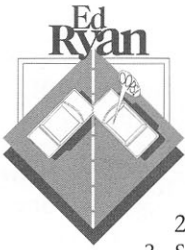


# Ed Ryan

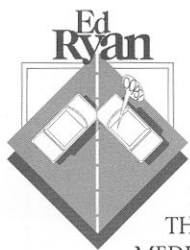


NEW YORK  
NON-INJURY  
ACCIDENT KIT



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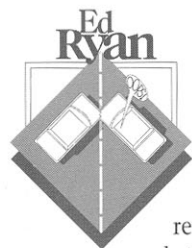
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## **INTRODUCTION**

The purpose of this kit is to provide you with basic information and forms to help you resolve property damage claims which occur in a non-injury motor vehicle accident. **IF THE ACCIDENT IN WHICH YOU WERE INVOLVED RESULTED IN INJURIES, ALL THOSE WHO WERE INJURED SHOULD IMMEDIATELY OBTAIN MEDICAL CARE AND SHOULD CONSULT AN ATTORNEY WHO IS EXPERIENCED IN HANDLING ACCIDENTAL INJURY CASES.** If only property damage to your vehicle or its contents was involved, this kit answers most of the common questions that arise regarding how to resolve your claim.

When only property damage occurs, a lawsuit with attorney involvement generally is not practical. The cost of direct attorney assistance is too high. Even a lawsuit which you handle without a lawyer's assistance may not be a reasonable option. A lawsuit takes time. When your primary objective is to get your car repaired as quickly as possible, these delays can be counter-productive. In addition, if an insurance company is on the other side, it will have an attorney. Unless you also employ an attorney, you will be at a disadvantage. If you hire an attorney on a case involving only property damage, you may pay as much or more in attorney's fees as you recover. As a result, this kit focuses primarily on negotiating a settlement rather than filing a lawsuit. For those situations, however, where a lawsuit is your only remaining option, we have included simple, easy-to-use instructions and sample forms as well as other information that reflects recent changes in the law and forms.



## **AT THE ACCIDENT SCENE**

### ***1. Should I call the police?***

The police and other law enforcement officers who investigate automobile accidents must file written accident reports if an accident results in bodily injury or death or substantial damage to property. It does not take much damage at current repair costs to exceed the statutory minimum, so it is always a good idea to contact the police. In some cases, the parties may decide not to involve the police. Although this may be less time consuming, the police provide a valuable investigatory resource. The police report will include information from the accident scene such as point of impact and length of skid marks, which may help to establish which driver was at fault. In cases where the police are not called, especially where there are no witnesses, the other driver may be more likely to later deny fault for the accident.

### ***2. What should I do until the police arrive?***

Your first responsibility is to find-out if anyone was injured in the accident and make sure an ambulance or other medical personnel are called if the injuries appear to be serious.

You should exchange information required by law to be given by each of the parties involved in the accident. This includes the name, address and telephone number of the driver of each vehicle as well as each driver's automobile insurance company and the appropriate policy number. If witnesses do not wish to remain on the scene until the police arrive, obtain their names, addresses, and home and work telephone numbers.

### **3. Should I move my car before the police arrive?**

Although it is better not to move your car after an accident (this makes the investigation easier), traffic should not be obstructed any more than necessary. Therefore, you may have to move your automobile to allow traffic to continue. If you move your car, try to remember its exact location after the accident and before you moved it out of the way of traffic. Provide this information to the investigating officer. Before moving any cars, it would be wise to mark on the roadway the position of each of the tires on all cars involved in the accident.

### **4. What will the police do when they arrive?**

The police are required by law to prepare an accident report in situations involving injuries or substantial property damage. To complete the report, the investigating officer will interview the parties involved in the accident as well as other witnesses. The investigating officer will gather appropriate physical evidence (location at point of impact, length of skid marks, whether each vehicle's equipment was functioning properly, etc.) and the officer will issue citations as the circumstances indicate. The police also will require each party to prepare an "exchange card" which has the information that you may already have obtained from the other party regarding his or her identity and automobile insurance information. You should obtain the name and badge number of the investigating officer and determine which agency he or she works for (i.e., City Police Department, County Sheriff's Department, State Police). New York State also requires each driver to fill out an accident report (Form MV-104), a copy of which is enclosed and to file it within ten days of the accident.

### **5. What happens after the police complete their investigation?**

If your vehicle is driveable, you will be permitted to drive it away on your own. If not, you must make arrangements to have the vehicle towed or the police will make those arrangements. Be certain to get the name and address of the towing company and the location where your vehicle will be stored. If the police tow the vehicle, you may want to make arrangements as soon as possible to remove it to your own property because you generally will be charged a daily storage fee while your automobile is on the storage lot. Be sure to check your own insurance policy; some policies will reimburse you for certain towing charges.



## **IMMEDIATELY AFTER THE ACCIDENT**

### **6. Can I get a copy of the police accident report?**

Yes. Most accident reports are completed and available within ten days after the accident. You can obtain a copy for a nominal fee at the offices of the investigating agency. You can ask for the report by simply giving the names of the drivers, and the date and location of the accident. You should get a copy as soon as possible. It will provide valuable information that may help you deal with the insurance company or with the other driver.

## **7. What happens if traffic citations are issued?**

In most automobile accidents, the investigating officer will determine whether New York law has been violated and will issue a citation to one or more of the parties involved in the accident. For more serious violations of New York law (for example, DWI and reckless driving), criminal citations may be issued. In most cases, however, the citations are considered civil in nature and are handled by local Justice Court or City Court.

If you receive a citation, the date and time for you to appear in court will be printed on it. At that time, you can admit the violation and pay the fine or request a later hearing at which time you can present evidence and argue that the citation was improperly issued. You have the right to retain an attorney for these matters. For the more serious criminal matters, or if someone was injured in the accident, it would be wise to consult a lawyer. In some cases involving criminal citations, if you cannot afford to hire an attorney, the court may appoint an attorney to represent you at no cost.

If you plead guilty or you are found guilty at trial in a **criminal** case, this fact may be used against you in a later civil lawsuit for any damages arising from the accident.

Your insurance company is required to issue you a card showing that you have the insurance coverage required by New York law. If you do not have that card or proof of insurance at the time of the accident, you may be given a citation. Prior to the hearing on that ticket, you can present evidence to the court that you had insurance at the time of the accident and the citation will be dismissed. If you did not have insurance at the time of the accident, you are subject to a possible fine and suspension of your driver's license and auto registration as well as a monetary penalty imposed by the Department of Motor Vehicles.

## **8. What should I do after the investigation is completed?**

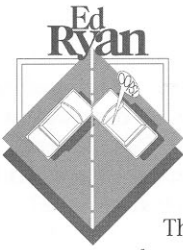
Promptly notify your insurance company of the accident. If your car is still driveable, you should obtain repair estimates from two reputable body shops. You also should take photographs which show all the damage to the vehicle from several angles. If you believe the car is a total loss, you should make some effort to determine the pre-accident value of the car. You may do this by reviewing the newspaper classified ads to determine the selling prices of similar cars. You also should check with used car dealers in your area to determine the cost of similar cars and consult the N.A.D.A. Eastern Edition Book and other evaluation services at the local library or at your bank.

Finally, you should prepare a written statement of the circumstances surrounding the accident while those facts are fresh in your mind. Maintain a file folder in which you keep all pertinent papers (police report, photographs, diagrams, estimates, correspondence from insurance companies, etc.).

## **9. Should I get written statements from the witnesses?**

It generally is advisable to obtain a statement from witnesses to the accident. These statements should be written, dated, and signed. This should be done as soon after the accident as possible, while the incident is still fresh in their minds. These statements can be extremely valuable if the other driver or that driver's insurance company later claims the accident was all or partially your fault. Be aware that if the witness statements indicate some fault on your part, the other side may eventually use them against you.

The investigating officer usually will list witnesses on the police report, and he or she also may obtain statements from them. Statements will be included in the report, if any are obtained.



## **DEALING WITH THE INSURANCE COMPANIES**

### ***10. What should I do if the other party does not have insurance?***

The "exchange cards" or other information you have obtained from the other driver should tell you if that party has insurance.

If the other party was not insured, you can make a claim under the collision coverage of your own policy, assuming the damages exceed your deductible. Your uninsured motorist coverage will not apply. Uninsured motorist coverage is limited to claims for bodily injuries. If you do not have collision coverage, however, your only option will be to attempt to recover your damages from the driver or owner of the car who caused the accident. If you want to have your car repaired immediately, you will most likely have to pay the cost yourself, and then try to recover that expense from the other driver or his insurance company. You can start that process by sending the other driver a letter, along with copies of the estimates or repair bills, and ask for payment for the cost of the repairs. It may be necessary to work out a payment schedule if the other person is not able to pay all the damages at once.

If the person responsible for the accident refuses to pay your damages, your only recourse may be to file a civil lawsuit. You either can hire an attorney, or you can file suit yourself in Small Claims Court or Justice Court. Instructions on how to do this are included with the sample forms in the back of this kit. If your damages exceed the Justice Court limitations, your case must be filed in Supreme Court. It will be difficult, however, for you to handle the case in Supreme Court without an attorney. Generally, the parties to an accident are not entitled to have their attorney's fees paid by the losing party in a lawsuit. Consequently, depending on the amount in dispute, with most property damage claims, it may not be economically feasible to hire an attorney. You may, however, wish to discuss your claim with an attorney before you file a lawsuit. Shop around for consultation fees; they vary widely for this service.

All vehicles in New York are required to have minimum levels of liability insurance. Unfortunately, some drivers still are not in compliance with the law. Under the New York law, if another person was not insured and you obtain a court judgment against him or her, that person's driver's license and vehicle registration can be suspended until the judgment has been fully paid. This creates some additional incentive for the person who caused the accident to pay your damages.

### ***11. Which insurance company should I contact?***

If you think the accident was partially or entirely your fault, you should contact your own insurance company. If the accident was entirely your fault, the only claim you can make will be under the collision coverage of your policy, if you have that coverage. If you believe the accident was at least partially the fault of the other driver(s), you still should contact your own insurance company but you also should notify the other driver's insurance company that you intend to make a claim.

## **12. What will the insurance companies do?**

The insurance companies will investigate the claim and make a determination regarding liability (that is, who is responsible for the accident). The insurance company often will ask you to give a written or recorded statement of your version of the accident. Before providing any type of statement to the insurance companies, you should make every effort to prepare for the statement and organize your thoughts so the statement is an accurate description of what happened.

## **13. What if the accident was partially my fault and partially the fault of the other driver?**

New York is known as a "comparative negligence" state. This means that in determining responsibility for the accident, the relative fault of each of the parties is established. If it is determined that you are completely without fault and the other driver is 100% responsible for the accident, that driver or his insurance company is responsible for 100% of your damages. On the other hand, if the other driver is 60% responsible and you are 40% responsible, the other driver or his insurance company is responsible for only 60% of the damages to your car, and you or your insurance company will be responsible for the remaining 40% of your own damages. Similarly, you and your insurance company are responsible for 40% of the damages to the other driver's car, and that driver is responsible for the other 60% of his own damages. The allocation of fault in these cases is a complicated issue. As a result, these cases often are difficult to negotiate. The issue of comparative fault (the respective percentages of fault of each driver) is negotiable.

## **14. What happens when more than two vehicles are involved?**

Multiple vehicle accidents can become very complex because the relative degrees of fault, and hence percentage of responsibility for the accident, must be determined and allocated to the respective drivers. If you believe two or more other parties were at fault for the accident, you should contact each party, or the insurance company for each, and try to work-out the percentages of fault for each. If you only are able to settle with one party, be sure the release papers state that the party is compensating you for a specified percentage of your total damages. For example, if you agree with party "A" that "A" is 40% at fault and your total damages are \$1,000.00, you can only collect \$400.00 from "A." Party "B", also partially at fault in the accident, is not bound by your agreement with "A" (either as to percentages of fault or the total amount of your damages), but would not be liable for more than 60% of your damages in any event. (In this example, the other party's liability could not exceed \$600.00.)

## **15. Am I entitled to a rental car?**

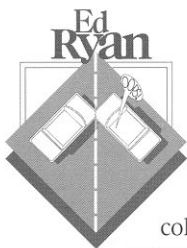
Because automobiles are so essential to our way of life, obtaining a rental car is often a major concern to individuals involved in an automobile accident. As a basic rule, if the other driver clearly caused the accident, and your car is not safe to operate or is under-going repairs, you are entitled to a rental car or compensation for the loss of use of your car while it is inoperable. Whether the other driver's insurance company will assist in providing you with a rental car varies from company to company. Some insurance companies will provide a rental car for your use until your vehicle is repaired. In that case, you generally will not have to pay any money out of your pocket. Other insurance companies will require that you rent an automobile on your own and the company will reimburse you at a fixed daily rate. This rate usually is fairly low, so you should shop around to get the best rental price. Some insurance companies will compensate you on a weekly basis while others will not reimburse you until your entire claim is settled.

Although you are entitled to a car that is comparable to the car that was damaged, as a practical matter, most insurance companies will willingly compensate you only for basic transportation at a fairly low rental rate. If you rent a more expensive car and pay for the difference out of your own pocket, it may be difficult for you to obtain the difference from the insurance company without getting involved in a lawsuit.

The rental car will be available to you until your automobile either is repaired, or if the insurance company "totals" your car (see paragraph 25), until a reasonable offer is made on your car. You are entitled to a rental car even if you have other transportation available to you.

Some car rental companies have "replacement car" rates that are lower than regular rental charges. Be sure the rental company knows you are temporarily replacing a damaged vehicle.

If you are unable to make appropriate arrangements with the other driver's insurance company, you should check your own policy to see whether or not you have coverage to provide a rental vehicle.



## **GETTING YOUR CAR REPAIRED**

### **16. What damages am I entitled to?**

Generally, where repairs are appropriate, the amount you can collect from the other driver or his insurance company is the reasonable cost of repairs.

The time you must take-off from work or from your other activities to obtain estimates, deal with the repair shop, negotiate with the insurance company, etc., is not compensable as part of your property damage claim. In certain unique circumstances, if you can prove that the accident resulted in definite expenses to you as a consequence of the accident you might be able to recover these from the other insurance company. In most cases, however, you would not be successful without first hiring a lawyer, and the cost of proving such damages may often exceed any compensation you would receive.

### **17. Which insurance company will repair my automobile?**

If it is clear that the other party was at fault in causing the accident, and if you have collision coverage on your automobile policy, you have two choices: You can insist that the other driver's insurance company repair the automobile or you can have the automobile repairs paid for by your insurance company under your policy.

If you cannot come to a speedy agreement with the other driver's insurance company regarding the responsibility for the accident and the amount of the damages, this will delay your automobile being repaired. In that case, you should have your own insurance company pay for the repairs rather than continuing to fight with the other driver's insurance company. If your own company repairs the vehicle, it would cover the entire repair costs (excluding your deductible) regardless of who caused the accident. If your own insurance company pays for the repairs, it may attempt to collect the amount it paid from the other driver's insurance company, if that driver was at fault. If your company is successful in doing this, it also should collect the deductible that you have previously paid, and that should be returned to you. You should request that your company do this for you.



In some cases, you may find it is easier to work with your own insurance company. It may be more willing to make repairs to your satisfaction than the other party's insurance company. Obviously, your own insurance company would like to keep you as a customer, whereas the other insurance company has no similar incentive.

***18. Will my insurance rates be affected if I make a claim under my own insurance policy?***

If the accident clearly was not your fault, your premium should remain unaffected by any claim under your own collision coverage. If your company attempts to increase your premium as a result of an accident that was not your fault, you should discuss this with your insurance agent. If you receive no satisfaction, contact the New York State Department of Insurance.

***19. What if the other driver's insurance company is to repair my car?***

If you do not have collision coverage, or if you are unwilling or unable to pay the deductible, you should seek to have the driver who was at fault or his insurance company pay your damages. That insurance company may be cooperative and satisfy you that the repairs will be done in a prompt and satisfactory manner.

If your car is driveable, the other party's insurance company may want you to go to a drive-in claims office for an appraisal. You should make arrangements with the adjuster assigned to your claim for an appropriate time. If the car is not driveable, you should notify the adjuster of the location of the car so it can be viewed by the adjuster. In some cases, arrangements will have to be made to have the automobile towed to a dealer for an estimate. Also, be sure to let the company know if the car is being stored and the amount of the storage charges.

***20. Can I select the body shop to make the repairs on my car?***

The insurance company (your's or the other party's) must compensate you for the amount reasonably necessary to repair your car. Often, insurance companies will have made arrangements with certain repair shops for reduced rates, and they will ask that you have your car repaired by that shop. Although you have the legal right to select the shop where your car is to be repaired, the insurance company is required only to compensate you for the reasonable repair cost (which may be less than your own shop of choice would charge). You may be responsible for the difference, if the additional costs are unreasonable.

The choice of body shops is a matter subject to negotiation with the insurance company. If the estimate given by the insurance company's shop is far lower than the estimate you received from the repair shop you select, you should have your repair shop discuss the matter with the insurance adjuster. Alternatively, ask your repairman to review the insurance company's estimate and point-out to you why that estimate is unreasonably low. You should take this information to the insurance company to see if you can work-out a compromise. If no agreement can be reached, you have the choice of either accepting the company's repair estimate or paying your repair shop to do the work and then file a lawsuit against the responsible party (or your insurance company, if you are making a claim under your own collision coverage) for the cost of repairs. (This is a difficult matter because the insurance company may hire an attorney to contest your lawsuit and the cost of resolving the case in court may exceed what you reasonably can expect to receive.)

### **21. Who is responsible for faulty repairs?**

If you discover when you pick-up your car that the repairs have not been completed satisfactorily, discuss this immediately with the repair shop. If the shop is unwilling to make further repairs that you think are necessary, contact the insurance company at once to see if the problem can be resolved. If the company refuses to authorize further repairs, and if the repair shop claims that the repairs were satisfactory both in terms of the quality of the parts used and the workmanship, you have limited options. Generally, faulty workmanship is the responsibility of the repair or body shop, as it would be if you were having repair work performed in the absence of insurance. If satisfactory results cannot be worked-out, you may need to take your vehicle to another body shop to correct the problems. This would, then, give rise to a claim against the original body shop. This may require a lawsuit. Know your body shop's reputation before you commit to repairs.

### **22. Can I insist on new or dealer manufactured parts?**

Repair shops, often at the direction of the insurance company, may attempt to repair the car with used parts or with parts manufactured by someone other than the original manufacturer of your car. For example, if your car is a Chevrolet, the repair shop may attempt to either install used parts or parts which are not manufactured by General Motors. If you are having the repairs performed under the collision coverage of your own policy, be sure to check the policy to see what it says with regard to the type of parts that can be used for the repairs. You can negotiate with your insurance company on this point.

If the other party's insurance company is performing the repairs, you generally are in a better position to insist on new or manufacturer quality parts if you can show there is any potential defect in the parts that the repair shop or insurance company wants to use. If the parts proposed are of demonstrably less quality (for example, they are not treated for rusting, or are not as strong as the parts that were in your original car), you have a good argument that new or higher quality parts must be used. Generally, however, used parts in good condition are permissible since the parts in your car which are being replaced also were used. Once again, this comes down to a point of negotiation with the insurance company. Unfortunately, if the insurance company refuses to negotiate, and you feel strongly about the matter, your only recourse may be to file a civil suit.

### **23. Do I have to sign a release?**

At the time you pick-up your car from the shop where repairs were made, you may be required to sign a release giving-up any future claims against the responsible party and his insurance company for the **property damage** to your car. You should ask the repair shop to allow you to inspect and test drive the car before signing the release to make sure there are no apparent defects or problems. You also should be sure to read the release form you sign and make sure it is limited solely to property damage and does not give up any other claims you might have, including those for bodily injuries and for other accidents.

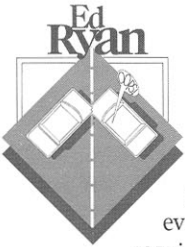
#### **24. What if my car is "totaled"?**

In some instances, especially with older cars, the cost of repair will exceed the fair market value of your car. Where an automobile is, for all practical purposes, destroyed and not reasonably capable of repair, you are entitled to the difference between the vehicle's value before the accident and its salvage value, if any, after the accident. The value before the accident can be determined by a variety of sources including reference to the N.A.D.A. Eastern Edition Book, newspaper ads offering similar cars for sale, and statements from car dealers or other services that appraise automobiles.

If your car is totaled, the insurance company, as a condition of paying you the value of your car, may require that the car and the title be turned-over to the company. Alternatively, the company will establish a "salvage value" for the car and you may be able to negotiate with the insurance company to receive the fair market value of the car less the salvage value, in which case you still could keep the car.

If you disagree with the figure the insurance company uses regarding the fair market value of your automobile, you can negotiate with the adjuster using information from the sources mentioned previously. Unfortunately, most insurance companies use a particular service to estimate value, and they are not always willing to give you more than that service indicates the automobile is worth. If they are offering you substantially less than what you feel your car is worth, your only option may be to file a civil lawsuit.

If your vehicle is totaled, you also are entitled to some reimbursement for taxes and registration fees.



## **BODILY INJURIES**

#### **25. What if I later find I was injured in the accident?**

If you have signed a general release form which is not limited to only property damage, any future injuries might be your own responsibility, even if the other driver was at fault. The insurance company has no right to require you to give-up any potential bodily injury claims in order to settle your property damage claim. Be sure that any release you sign is limited to property damage only. If you discover at any time after an accident that you were injured by the accident, promptly contact an attorney who is experienced in handling accidental injury claims.

#### **26. If I find at a later time that I was injured in the accident, who will pay the medical bills?**

Sometimes, a person may be injured in an automobile accident but the injuries will not become apparent until weeks or even months after the accident. If this occurs, you should seek medical attention at once.

If you do have accident-related injuries, you should consult an attorney who is experienced in handling accidental injury cases. Most attorneys who practice personal injury law are willing to consult with you about your accident-related injuries for free and, if you retain them to represent you, it generally will be on a contingency basis, which means the lawyer will earn a fee only if the case is successful.

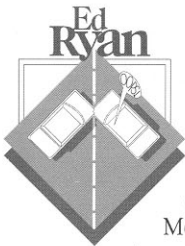
If the other driver was at fault but was uninsured, you can proceed by contacting a New York State agency called, in short, "M.V.A.I.C.". This is a complicated procedure and the assistance of an attorney is strongly recommended.

If you were on your job at the time of the accident, contact your employer about filing a Worker's Compensation claim.

In some instances, an insurance company will require you to pay your medical bills and then it will reimburse you. There always is the possibility that the insurance company will deny that the injury is accident-related, depending on the amount of time which elapsed between the accident and your first treatment by a doctor. For this reason, it is critical that you have any injuries which appear to be accident-related checked-out by a doctor as soon as possible after you experience symptoms.

New York State Insurance Law requires that all vehicles carry a minimum \$50,000.00 of Personal Injury Protection (P.I.P.) coverage per "covered person" including the driver, occupants and pedestrians. Medical bills and loss of wages up to \$2000.00 per month will be paid subject to certain limitations. See enclosed "No-fault" brochure.

Remember, however, that any claim involving injuries and medical expenses should include a consultation with a lawyer experienced in handling accidental injury claims.



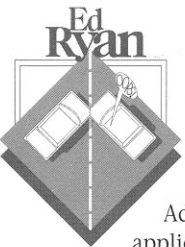
## **LITIGATION AS AN ALTERNATIVE**

### ***27. When should I seek the advice of a lawyer concerning property damage questions?***

Most personal injury attorneys will handle or assist with property damage claims when they also are representing a client with a claim for injuries. If you were not injured, however, it may be worth your while to consult an attorney only if the amount in dispute is relatively large. In some cases, a single consultation with an attorney may be helpful. Shop around by telephone for consultation fees; they vary for this service.

### ***28. How do I proceed in Justice Court or Small Claims Court?***

If you are unable to resolve your claim through negotiation, you may wish to file a claim (lawsuit) in your local Justice of the Peace or Small Claims Court. Sample forms and instructions for doing this are included in this kit. Also, information and assistance are available by contacting the Clerk of the Court.



## **CONCLUSION**

Every reasonable effort has been made to insure the information presented in this kit is correct. It is not possible, however, to address every conceivable fact situation in pamphlet form.

Additionally, laws change and specific fact situations may require the application of a different rule of law. For this reason, you should consult an attorney or contact your local bar association's lawyer referral service if you have questions that are not answered here.

***When an injury occurs...***

Some injuries do not show up for days or weeks after an accident. If you experience pain or other symptoms following an accident, see your doctor immediately.

If you have been injured or lost a loved one in an accident, we would like to help you at Ed Ryan. You can see us for free, without obligation. In fact, we are paid a fee only when your claim is won and you collect.

**Ed  
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