

# Self-help Guide for presenting or defending an Auto Claim

We recommend that all persons hire an attorney or seek legal counsel through one of the social agencies providing legal assistance. If you cannot hire an attorney, consider coming to court to review proceedings well in advance of your trial date.

This list is merely an overview of some legal issues you might consider in presenting/defending your case. It is not remotely close to a substitute for having competent legal counsel represent you.

The same legal issues apply to both plaintiff and defendant.

There are 4 things the plaintiff must prove to get damages from an automobile accident.

- 1) She/he owns the damaged vehicle
- 2) The defendant was either the driver or owner of the other vehicle involved in the accident
- 3) The defendant was negligent and
- 4) The amount of damage she/he has suffered as a result of the accident

Plaintiff has the burden to prove to the court by a preponderance of the evidence, that it should award damages. In other words, it is up to the plaintiff to convince the judge that the 4 things listed above are more likely true than not.

The defendant can challenge any of the 4 things above that plaintiff has to prove. The defendant can also prove that the plaintiff's negligence helped cause the accident, which is commonly referred to as comparative or contributory negligence.

- 1) Plaintiff is the owner of the damaged vehicle:

The registration certificate for the vehicle is evidence of who is the owner.

- 2) The defendant was either the driver or owner of the other vehicle:

Plaintiff can establish that the defendant was driving the other vehicle involved in the accident through her/his own testimony or the testimony of an eyewitness. Defendant's ownership of the other vehicle can be established the same way as listed in part (1).

- 3) The defendant was negligent:

Negligence is behavior different than the behavior of a reasonable person under the circumstances. A few examples of negligent driving of an automobile include following too closely and driving too fast for the traffic, road, & weather conditions, failing to yield the right of way when required, and failing to give an appropriate turn signal.

- 4) Measure of damages:

Damages can include the reasonable value of repairs made necessary by the accident, the cost of renting another vehicle if the plaintiff's vehicle was incapable of use, and the value of any permanent loss in value, provided that total amount of these items does not exceed the fair

market value of the automobile before the injury. In the alternative, plaintiff may prove the difference in fair market value of the automobile before the injury and afterwards.

(a) Reasonable value of repairs

Plaintiff must establish the reasonable value of labor and materials. Estimates are not sufficient to show the reasonable value of repairs. The reasonable value of repairs can be established through the testimony of a mechanic or by giving the judge evidence of the amount paid for the repairs such as the receipt.

(b) Cost of renting another vehicle

In order to get the cost of renting another vehicle, the plaintiff must show that his automobile was not functional as a result of the accident and the cost of actually renting another vehicle. The estimated or average cost of a rental car is not sufficient.

(c) Value of permanent loss in value

If the damaged vehicle cannot be returned to its former condition through repairs, then the difference between the fair market value before the accident, which is detailed below, and the fair market value after the repairs would equal the permanent loss in value. In order for the plaintiff to testify to the permanent loss in value, she/he must have sufficient basis for her/his opinion, which is discussed in more detail below.

(d) Fair market value of the automobile before the injury

The plaintiff, owner of the automobile, can testify as to her/his opinion of the fair market value only if she/he has some knowledge, experience, or familiarity with the value of the property or similar property and she/he must give reasons for the value assessed and also must have had an opportunity for forming a correct opinion. Mere ownership of the automobile does not qualify or give to the owner the necessary basis for his opinion of the value of his vehicle. The plaintiff needs to educate her/his self on the value of her/his vehicle. Plaintiff can become self-educated through investigating the blue book value or the price advertised in the classified ads of the local newspaper for automobiles similar to the one damaged. The make, model, time of purchase, purchase price, the way the vehicle was maintained, the mileage, the condition of the interior and exterior, accessories, and the general mechanical condition should support plaintiff's opinion of the fair market value.

(e) Fair market value of the automobile after the injury

Similar to fair market value before the accident, plaintiff can testify to fair market value after the accident as long as she/he has sufficient basis for her/his opinion. During plaintiff's testimony, she/he should describe in detail the nature and extent of the damage to her/his vehicle. Salvage value can be based on the average of prices offered at various salvage yards.

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