

Personal Injury 201:

Weather and Other Winter Seasonal Considerations



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Introduction

Many personal injury claims involve a person or establishment failing to fulfill their legal responsibilities. Sometimes, those responsibilities can depend on the surrounding conditions or circumstances. This eBook will focus on liability for injuries related to seasonal issues like driving in inclement weather and slip-and-falls due to snow and ice, as well as DUI liability, an issue that is relevant all year long but important during the winter holidays.

Personal injury laws help protect you by allowing you to recover compensation for your injuries and the pain and suffering they cause in your life. An experienced attorney can help you recover the compensation you deserve for your injuries, but it's important that you work with your attorney to help ensure your legal claim is as strong as possible.

This eBook will help you understand and preserve your rights every step of the way through your personal injury claim.

Winter Driving and Auto Accidents

Whether a party is liable for an auto accident that causes injuries depends on whether they were negligent (i.e., whether they failed to use the amount of care they were obligated to use) and whether (or how much) an injured person's own actions contributed to the occurrence.

Winter driving can be challenging and increase the potential for collisions and motorist-pedestrian accidents. There are approximately 500 fatalities in the United States per year due to icy road conditions. In addition to being aware of winter driving "best practices," it's vital to know New Jersey winter driving laws.

NJ Law Requires You Clear Snow and Ice from Vehicles

New Jersey is one of just a few states that require all drivers remove all ice and snow from a vehicle before getting on the road. This includes removing snow and ice from the hood, windows and roof. Drivers who fail to do so can be ticketed regardless of whether the snow and ice dislodge from the vehicle or cause any actual problems; fines are \$25 to \$75 for each offense.

If ice or snow dislodges from an improperly cleared vehicle and causes property damage or injury to others, non-commercial vehicle owners face fines of \$200 to \$1,000 for each offense. If the vehicle is a commercial vehicle, such as a tractor-trailer, the fines range from \$500 to \$1,500. New Jersey law also provides that a driver is civilly liable (i.e., can be subject to a lawsuit) for damage or injury caused by snow or ice dislodging from a vehicle.



Legality of Studded Tires

Studded snow tires, which have small nubs of metal in them to increase traction on ice and snow, are legal on vehicles in New Jersey between November 15th and April 1st. Studless snow tires are another option to increase traction in winter conditions, and they can be legally mounted on your vehicle any time of year (but perform less optimally and wear more quickly in warm weather). Tire chains are also permitted and recommended for the best traction on ice or hard-packed snow. Keeping your tires in good repair and using weather-appropriate accessories is part of fulfilling your duty of care to other drivers on the road, and failure to take appropriate precautions may be evidence of negligence.

Duty to Maintain a Safe Distance and Speed

Motorists have a duty to keep a safe distance from the vehicle in front and maintain a speed consistent with the road conditions. In wet or slippery conditions, stopping distance will be longer, and it may be necessary to leave more space between cars while passing. The NJ Department of Motor Vehicles recommends following no closer than 6 car lengths, or 6 seconds, behind a vehicle when driving in packed snow conditions and 12 car lengths in icy conditions. While there is no prohibition against passing a snowplow, drivers are advised to exercise extreme caution and leave adequate clearance when doing so.

Careless or Reckless Driving May Be Ticketed

In the winter, careless driving causes many accidents. A driver may receive a ticket for "careless" driving if he or she "drives carelessly or without due caution and circumspection in a manner so as to endanger or likely to endanger person or property." This can include many kinds of failures to drive safely in winter conditions. A motorist who "drives a vehicle heedlessly, in willful or wanton disregard of the rights or safety of others, in a manner so as to endanger, or be likely to endanger, a person or property" can also be ticketed for reckless driving, a much more significant offense. Both violations can result in points against or restrictions on your New Jersey driver's license, fines, fees, and potential jail time (especially for repeat violations.)

Auto Repair Estimates and Bills

If your vehicle is damaged in an auto accident, do not ever accept a repair estimate offered by an insurance company without first seeking opinions from two additional reputable automotive repair technicians. Retain copies of any and all paperwork pertaining to the damage and repairs to your vehicle.

Making sure you get accurate statements and contact information from witnesses can make all the difference in litigating or settling your case. Your attorney may hire experts to investigate and/or testify about the weather conditions, the traffic patterns at the location of the accident, your injuries or disabilities, or other special knowledge that helps prove the other party's liability and the amount you should be compensated.



Slip, Trip and Fall Accidents: Winter Considerations

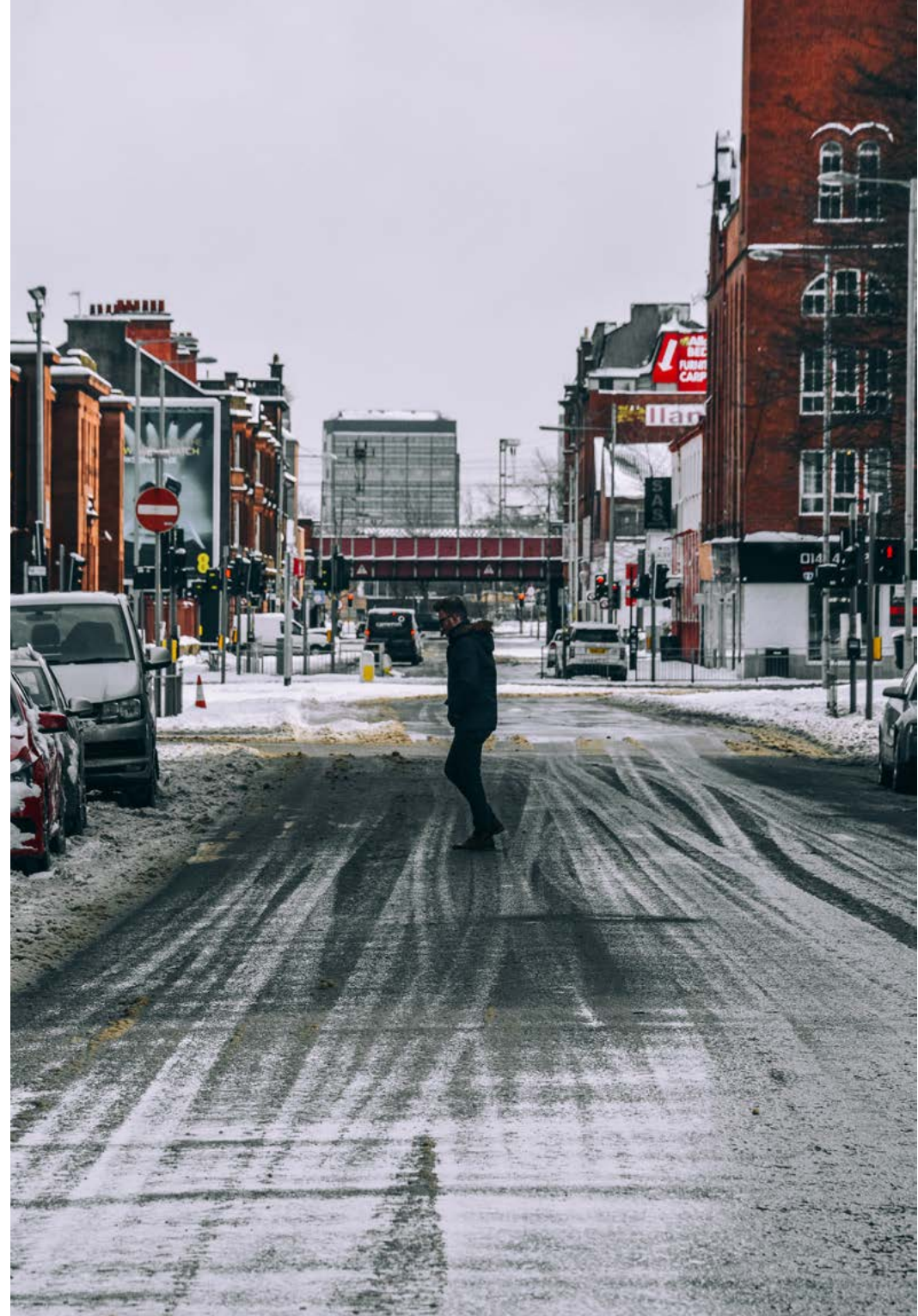
As snow and ice pile up over the long winter months, it's harder and harder to struggle through some neighborhoods

on foot, to run errands like walking to the store, and to get to work on public transportation. Impassable or icy sidewalks, walkways, and parking lots can be hazardous, not to mention inconvenient. But who is responsible for making sure these areas stay safe and clear of snow and ice during the winter months?

SIDEWALKS AND PUBLIC PROPERTY

Many municipalities have passed ordinances requiring that homeowners keep the sidewalks next to their property in good repair, including removing snow, ice, and any other hazards or debris as appropriate. Highland Park, Red Bank, and Jersey City have ordinances that specifically address snow removal following a snowfall and prescribe fines for noncompliance. These regulations typically fine violators per occurrence or per day the sidewalk is deemed to be unsafe. However, many townships do not have such an ordinance and merely encourage property owners to clear sidewalks.

Further, the New Jersey Supreme Court has consistently reaffirmed that a pedestrian who sustains injuries because of dangerous sidewalk conditions, including buildup of snow or ice, has very limited rights to recover damages – even if the property owner was in violation of a local ordinance. Lawsuits against owners of residential property for injuries sustained on an adjacent sidewalk are not allowed under New Jersey law. The Tort Claims Act also bars suits against public entities like cities and municipal service providers for injuries on public sidewalks and other public lands, like parks or trails.





Private Property, Driveways, and Walkways

Although a homeowner isn't liable for the sidewalk in front of his property, the driveway and walkways are a different story. Premises liability law in New Jersey holds property owners accountable for injuries caused by unsafe conditions on their property due to negligent property maintenance, which can include failing to remove snow or ice. Property owners have a duty to exercise reasonable care when maintaining their property and must provide adequate warnings to those entering the property where a hazard exists. The liability extends not only to people who have been invited on to your property (e.g., your guests), but can also include those who have not been invited on to your property but are there for a lawful purpose (e.g., mail and delivery persons.)

Commercial Property

Commercial property owners are also required by New Jersey law to remove snow and ice within a certain period of time and to take measures such as salting or sanding to ensure that their premises are safe for guests, customers, employees, and passersby. Owners are also obligated to remove ice and snow from the sidewalk in front of their commercial property. A person injured on an adjacent sidewalk can bring a claim against the individual or entity that owns the property.

Property Repairs or Subsequent Remedial Measures

Slip, trip, and fall accidents are frequently caused by hazardous conditions on property, including weather conditions such as icy patches. Once an accident occurs, a property owner frequently fixes the problem or takes extra steps to ensure the hazard does not continue. While this may seem like admitting fault, this won't be admissible to show that a property owner was at fault for your accident; this is because it's better for everyone when hazardous conditions are removed, so no one else gets injured! But a property owner fixing the condition IS relevant to whether he or she owns the property and has the right and responsibility to maintain it, so if you see any repairs being made or subsequent safety measures being taken, you should document them, photographically if possible.

Knowledge of Hazards

Property owners are liable for injuries if they either knew or should reasonably have known about the hazards that caused them.

For example, a restaurant owner would be expected to know that the steps up to the entrance could be slippery in winter conditions but might not be expected to know about a broken downspout causing runoff through the bushes that froze into a hazardous patch of black ice around the side of the building (a hidden hazard). If, however, another patron told the owner about the condition earlier in the day that you slipped and fell on the ice patch, he might be liable for your injuries if he failed to take steps to reduce the hazard.

Property owners are required to take reasonable care to maintain their property and ensure it remains safe for visitors. If you have reason to believe that a property owner knew of the hazard that caused you to trip, slip, or fall, you should tell your attorney immediately.

Comparative Negligence

If you are equally or more responsible for your own injuries, you may not be entitled to recover any damages at all from the property owner – even if there was a hazard. Your degree of responsibility can also reduce your damages if you successfully litigate against a property owner but are partially responsible.

If you are injured, you should document both the overall weather conditions at the time of your injury and the condition of the property on which you were harmed. Making sure you get accurate statements and contact information from witnesses can also make a significant difference in litigating or settling your case.

Your attorney may hire experts to investigate and/or testify about the weather conditions, the building or property codes of the premises on which you slipped, tripped, or fell, your injuries or disabilities, or other special knowledge that helps to prove the other party's liability and establish the amount you should be compensated.



Liability for DUI-Related Injuries

Sharing good cheer is part of the holiday season. If you're hosting a party where you'll be serving alcohol, however, you must also be aware of your responsibilities and potential liabilities. The New Jersey Licensed Alcoholic Beverage Server Fair Liability Act, a law known as a "dram shop" statute, allows a person injured in an alcohol-related auto accident to file a lawsuit against someone who served or provided alcohol to an at-fault intoxicated driver. Unlike many other states, New Jersey's dram shop laws allow injured parties to file claims not only against businesses (like bars or restaurants) but against private social hosts as well.

Dram Shop Laws Hold Bars and Restaurants Accountable

Under New Jersey's dram shop laws, a claim for personal injury or property damage can be brought against a licensed alcoholic beverage server for negligent service. "Negligence" requires that either:

- **Alcohol was served to a visibly intoxicated person, or**
- **Alcohol was served to a person who the server knew or should reasonably have known was a minor.**

An injured party can bring a lawsuit if an establishment's negligent service of alcohol was the "proximate cause" of "reasonably foreseeable injuries." The service must be sufficiently related to causing an injury to be held to be the legal cause of that injury, and the injury must be of the sort that is likely (not merely possible) to occur in the circumstances.



For example, a bar serves six Manhattans to a petite woman over the course of two hours. Witnesses say she was slurring her words by her fifth drink. Shortly after she leaves the bar, she drives her car into oncoming traffic, causing an accident; the driver of the other car must have extensive surgery and physical therapy for a broken leg that he suffered in the collision. On these facts, it is likely that a court would determine that the bar's over-service proximately caused reasonably foreseeable injuries to the other driver.

On the other hand, let's say the same woman leaves the bar and decides to break into a jewelry store. The night watchman observes her shatter a window. As he chases her away, he trips over uneven pavement and falls, breaking his leg. It's unlikely that he could bring a successful claim against the bar for over-service because even if her intoxication contributed to her decision to commit the crime, the connection is probably not sufficient to be the legal cause of his injuries

Dram Shop Laws Make Social Hosts Liable, too

In addition to imposing liability on commercial establishments, New Jersey allows someone who has suffered damages as a result of an alcohol-related accident to seek damages from a social host who provided alcohol to a person who caused an accident. The definition of "provided" under this law is much broader than you might expect. It can include allowing guests to serve themselves alcohol at a party where you are the host. It also considers a host to have "provided" alcohol that other guests bring to a party.

If an intoxicated person causes a motor vehicle accident that harms another person, the injured person may seek damages from a social host if:

- **The social host provided alcohol to the person who caused the accident (under the statute's definition of "provided".)**
- **The person was visibly intoxicated in the presence of the host, or the beverages were provided "under circumstances manifesting reckless disregard of the consequences" to another.**
- **The circumstances created an "unreasonable risk" of harm to life or property.**

An intoxicated person who injures himself or herself cannot sue a social host under the dram shop laws for those injuries. However, New Jersey case law has held that a patron can sue a bar or other commercial establishment for injuries sustained as a result of being over-served.

Recoverable Damages Under Dram Shop Laws

A plaintiff can recover a variety of different kinds of compensatory damages from a social host or an alcohol-serving establishment under New Jersey dram shop statutes. The laws are meant to "make a plaintiff whole," i.e., to compensate for the losses a plaintiff suffered as a result of an accident. Allowable compensatory damages include:

- **Medical and hospital bills**
- **Bills for rehabilitation or therapy**
- **Lost wages**
- **The value of household services and childcare the injured person would otherwise have performed**
- **Property damage, and**
- **Pain and suffering.**

New Jersey also allows those injured in dram shop and social host liability claims to seek punitive damages: extra amounts that are intended to punish someone who exhibits gross negligence, recklessness, or intentional bad behavior. A person has two years from the date of his or her injury to file a dram shop lawsuit in New Jersey.

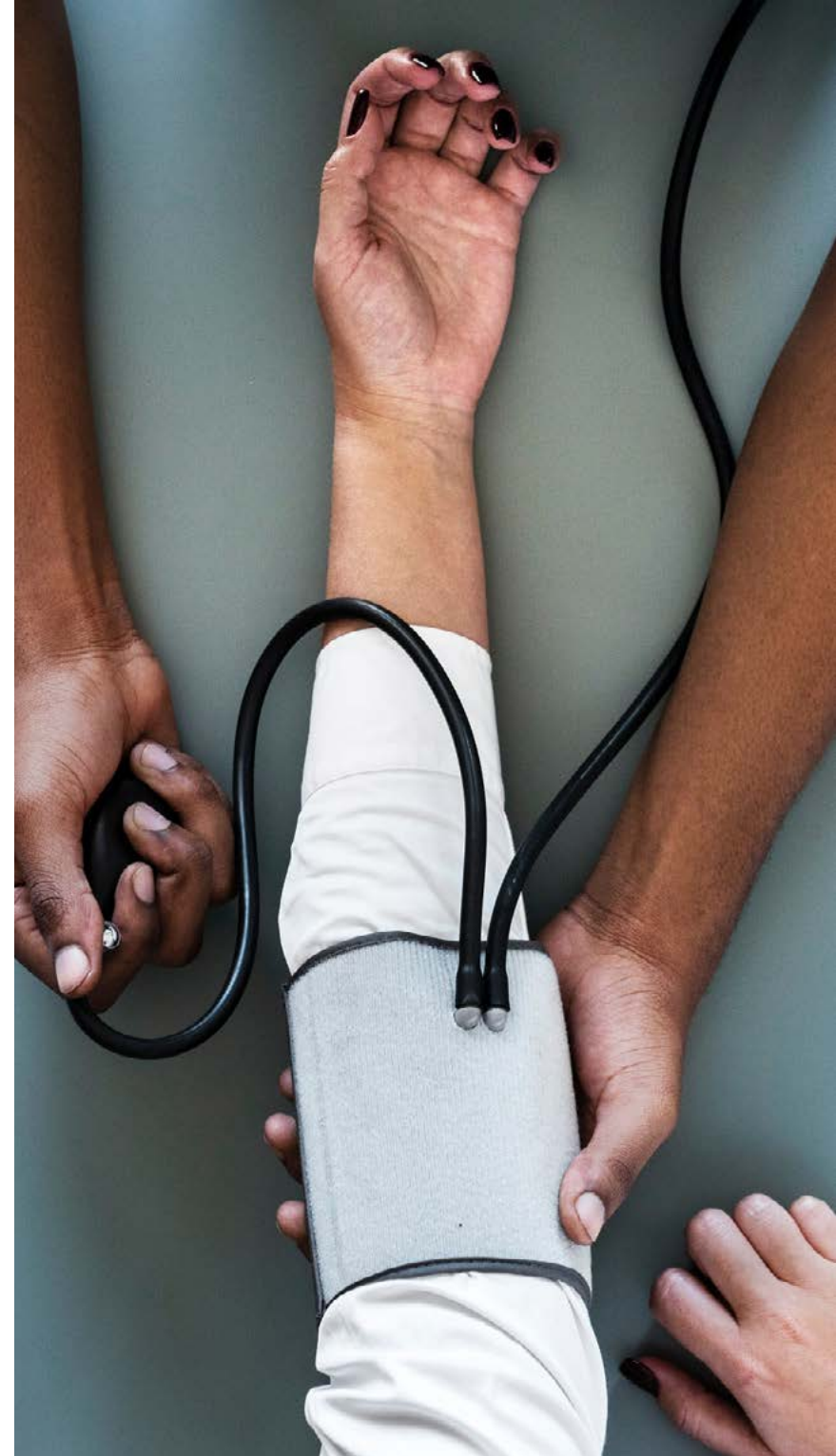
Injured? Take Action Immediately

First Steps – To Do ASAP

After suffering any injury, first make sure that everyone at the scene (including yourself) is safe. Move out of harm's way (e.g., off to the side of the road, away from harmful machinery, etc.) and call emergency medical personnel if appropriate for yourself or others.

At the Scene & Right After an Injury Occurs:

1. Exchange contact information with the other parties involved, if possible, or memorialize as much information as you can about the other party. For example, if you're injured on someone's property, write down the address; if you're hit by a car that doesn't stop, get the license plate, make, and model of the vehicle.
2. If there are witnesses to the occurrence, get their contact information also (including telephone numbers and email addresses). If they are willing, you might ask them to make an audio or video statement about what they witnessed, using a cell phone or other recording device.
3. Exchange insurance information with any involved parties – auto, property, and/or umbrella insurance information, as appropriate.
4. Photograph the scene of the occurrence, as well as any apparent personal injuries. Make sure you get photos of signs, signals, and traffic, weather, or property conditions.
5. Make a police report. Many areas no longer dispatch police units to minor traffic accidents or property occurrences, but always call the police at the time of the accident. If they don't come to the scene, ask how to make a police report of the incident – you may have to go in to the precinct office or station.
6. Seek immediate medical treatment. Even if you don't receive emergency treatment at the scene of the occurrence, make an appointment as soon as possible with a care facility or your primary care physician to evaluate any potential injuries. Many times, injuries worsen in the few days after an occurrence. Seeking immediate care can improve your chances of both receiving the best treatment possible and recovering appropriate compensation for your losses.



After the Fact: Follow-Up Actions & Ongoing Care

1. Call your insurance provider, if applicable. Your insurer may prefer you see specific medical providers for your continuing care and may help you with immediate medical expenses. (Later, your insurer might be repaid some of these expenses if you recover in a lawsuit or settlement.)
2. Follow your recommended ongoing medical treatment plan. If your care provider recommends additional treatment for your injuries, be diligent about your care plan (including at-home exercises and follow-up appointments.)
3. Keep a journal. In addition to writing down your recollections of the initial injury and occurrence, write down your progress with your recovery and care program. This should include how you feel physically and mentally, progress logs of your care or treatment plan, and things you are unable to or restricted from doing because of your injury or treatment.
4. Be attentive to your social media. Everything that you post on the Internet (Facebook, Twitter, Instagram, etc.) will be considered in litigation, so make sure that how you are portrayed by your own and other people's posts is intentional, accurate, and not misleading.
5. Record your missed work. Keep track of every hour or day you miss work because of injury restrictions, treatment, or doctor's visits, including missed opportunities (e.g., if you are a freelancer or contract employee and have to turn down work). If it's possible to obtain written documentation of your missed time and corresponding lost wages from your employer, do so.
6. Record any missed school. If you're attending school, keep track of hours missed or classes marked "incomplete," any consequences you suffer (for example, not being able to advance with the rest of your class or enter a scheduled program), and any expenses you incur as a result.



Your Attorney Is Your Advocate

An experienced personal injury attorney can help you during every step of your recovery from your personal injuries – physically, emotionally, and economically. Having a guide to help you investigate the responsible party's liability, compile your information and expenses into a manageable demand package, and reasonably value your damages will help ensure you are fairly compensated for your injuries. We look forward to helping you with all your family law needs.

Mark | Lavigne LLC team of experienced attorneys will help you recover for your personal injuries.

Contact Us for a FREE Consultation!