

## Motor Vehicle Accidents Occurring Outside of Ontario

With so many Ontario residents fleeing to the warmer weather in the South each year, unfortunately, a few will be involved in motor vehicle accidents while away. If you are injured in such an accident there are two completely different legal systems that must be considered. If you are from Ontario and the accident occurs in the US you could commence a lawsuit in Ontario, or the State in which the accident occurred, or in both, depending upon the injuries, facts of the accident and the insurance available to all parties.

Usually, what is referred to as the “substantive law” (the law determining who is at fault) is the law of the place where the accident occurred. This would also include the very important issue of the limitation period, the time within which you must commence a lawsuit. Often the US limitation period is shorter than the Ontario period and if you miss the US limitation period you may not be able to fall back to an Ontario accident claim and limitation period if the court finds that the “forum conveniens” (the better place to conduct the action) is in the US.

Another very important issue is our no fault accident benefits available through Ontario Insurance policies. Even if the accident is in the US you may be able to claim accident benefits from your own auto insurer. You must give the insurer the required notice and follow Ontario law.

Also, some US States have their own accident benefit coverages (each State is different) that you might be able to access.

Many States require very low liability coverage for their drivers, some as low as \$25,000. Therefore if you are injured by someone else’s negligence you may only

have access to \$25,000 coverage for that driver. This amount may be far less than your actual damages but unless that driver has significant personal assets which you can pursue, or you can find other sources of coverage, you are out of luck. This is further complicated by the fact that there seems to be an inordinately high number of totally uninsured drivers in some US States (Florida for one).

The main other source of coverage is your own Family Protection Endorsement (OCPF 44R) found in your auto policy. This coverage can raise your protection against uninsured/underinsured parties to, in many cases, \$1 million or more.

There are problems with the OCPF 44R coverage however in that the amount of coverage may have to be divided between all claimants if there are multiple persons injured, not just you, and therefore you may not have available to you the full amount of the OCPF 44R coverage.

The OCPF 44R coverage can actually reimburse you for more than you would receive through a claim against the at fault driver as, according to one recent court decision, you would not be subject to the threshold and deductible amounts that reduce Ontario tort awards.

You should discuss this coverage with your insurance agent before going South to be certain that you have the coverage that you require.

If the above seems complicated, it is. If you are injured in a motor vehicle accident in the US and do not know a good personal injury lawyer there, you may wish to consult your Ontario lawyer. He can advise you and also retain for you a qualified US lawyer to work together on your case to get the best results from both jurisdictions.

The above is not to be considered as legal advice. You must consult your own lawyer.