



## THE SUMMARY JUDGMENT WEAPON

In a lawsuit to recover for personal injury suffered in a motor vehicle accident, sometimes liability is clear cut. When I represent a client in a lawsuit claiming injury because a car rear-ended his or her vehicle, or because the other car ran a stop sign, I usually file papers with the court, known as a "motion," seeking "summary judgment." This means that I am asking the judge to direct a favorable verdict for my client based just on the papers submitted, without need for a jury trial.

Winning such a motion saves considerable time and expense later, makes a case far easier to settle, and even starts statutory interest running on the eventual judgment against the defendant. However, winning a summary motion still leaves for a jury trial the determination of how much money the injured person's injuries are worth, and even to determine if the injured person breaches New York State's No-Fault "serious injury" threshold. (For more on this, see my free book, \*Warning! Things That Can Destroy Your New York Accident Case [And The Insurance Companies Already Know These Things].)

A second benefit of making a summary judgment motion on the issue of liability is that it forces the defendant driver to set forth his or her version of the accident in writing, sworn to under oath. This saves time and money for my client as it makes an oral deposition of the defendant-driver unnecessary - because we learn from defendant's papers the defense position about the happening of the accident. We do not have to chase after the other side to force the driver to give a deposition, and we save the expense of utilizing a court reporter to transcribe the driver's oral deposition testimony. There are also occasions where the driver does not put in a sworn statement (or affidavit) and, under New York case law, that is an automatic win for my accident victim's summary judgment motion.

Third and finally, even if the defendant-driver does put in papers and defeats the summary judgment motion, without a deposition he or she must still come to court to testify at a liability trial. Under certain circumstances if a driver can't be found (maybe he or she has moved away) or dies, the deposition testimony could be used as trial evidence against my client. Without that deposition the absence of the driver from trial pretty much guarantees my personal injury client a win; an additional benefit of making a summary judgment motion and getting the other side's story on paper.

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