

**Your Rights
After A Serious
Accident Injury**

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INTRODUCTION

The purpose of this brochure is to provide basic information to help you grapple with serious injury claims which occur in a motor vehicle accident. This brochure answers the most common questions which arise regarding your claim, as well as what to expect.

When serious injuries occur, you will have your hands full dealing with dozens of problems only you can handle. You will need a lawyer to protect your claim and assure you get the compensation you deserve. This brochure should give you an idea of what you will face, the steps you may need to take to protect your interests, and how to select an attorney.

First Priorities for Injured Persons & Their Families

As a first priority, an injured person should get all the treatment needed to ensure a rapid recovery from injuries. If you are a family member of an injured person, be sure they have your full support and the everyday details of life are handled for them. The following are the sort of “details” someone should be assigned to handle for the injured person:



Checklist

- contacting other family members who should know
- arranging for child care, including pickup from school
- notifying the injured person's employer
- arranging for deposit of payroll checks
- checking the status of rent / house payments
- confirming phone and utility payments are current
- checking auto & health policies for possible coverage
- checking for the existence of “disability” insurance for car or home loans
- arranging for housekeeping and shopping while the injured person is incapacitated
- checking the status of car payments
- obtaining names and phone numbers of physicians who are treating the injured person
- providing insurance information to the hospital and doctors involved

MEDICAL TREATMENT AND BILLS

After taking care of the first priority “details,” there are many important decisions to make to ensure medical and other expenses are managed effectively.



How will I pay for my medical treatment?

First, determine if there is any insurance coverage. If there is, give the policy number and company name to the medical care providers so bills can be sent directly to the insurance company. A variety of insurance may be available to pay medical expenses. If you have a medical insurance plan (through work, a spouse, or otherwise) that coverage will, in most instances, apply. Additionally, a standard coverage available on most automobile policies is **medical payments** coverage. If you have **medical payments** coverage under your auto policy, it generally entitles your medical bills be reimbursed up to the limits of your policy, regardless of who was at fault.

If you were on the job at the time of the accident, state law provides that the employer pay 100% of your medical expenses through its **workers' compensation** coverage.

There are other ways to pay for treatment needed which require consulting an attorney who is experienced in handling accidental injury cases. An attorney who specializes in personal injury law can assist you in making certain that you are using all available insurance coverage to pay your bills. Most attorneys practicing personal injury law offer free

consultation about your accident-related injuries. 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 you win.

➔ ***What if I cannot afford my medical treatment?***

In most cases, injured persons receive the treatment needed. Yet, you may need to rely on an attorney specializing in personal injury cases to guide you through the maze of payment alternatives. The attorney can also assure the hospitals and doctors involved will be paid.

➔ ***What if the insurance company refuses to pay my bills?***

There is the possibility the insurance company will refuse to pay the bills (although they may take care of your initial expenses to show they want to “help”). In some instances, an insurance company will require you to pay your medical bills and then reimburse you.

The insurance company may deny one or more of your injuries as 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 by a doctor as soon as possible after you experience symptoms. You should talk to a lawyer if there is any refusal to pay medical bills.

➔ ***What should I tell my doctor about my accident and injuries?***

The doctors who treat you will know you were involved in an accident, and will not generally ask for much detail. However, you should be careful not to overstate what happened such as “the other guy was driving 80 when he hit me!”

You should give the doctor as much detail as possible about what happened to your body in the accident including things such as portions of your body that were struck, location of bruises, areas of soreness, whether you lost consciousness, and problems with vision or memory. You should also be prepared to describe the kind of pain you experience, including the location of the pain; whether it is sharp or dull; whether it involves burning, tingling, or numbness; how long it lasts; what kinds of activities seem to aggravate the pain; and whether medication helps.

Finally, it is most important your doctor know your first priority is getting better, and you will do whatever is necessary to make a complete recovery.

➔ ***What about my other bills?***

Anyone who has a serious injury will accumulate bills that cannot be paid or kept current. The first thing you must do is get the best estimate from your physician as to how long you will be unable to work. Then you must face reality. If you are going to be off work and unable to pay your bills, start immediately to make

arrangements to reduce your expenses. This may include moving out of your apartment or house, and into the home of a friend or family member. This may mean selling a car to avoid a car note you will not be able to pay if you are out of a job. The key is to take action NOW, before things get really bad. A lawyer may be able to help considerably with fending off creditors while your claim is pending, but cutting your expenses will still be necessary.

DEALING WITH THE INSURANCE COMPANIES

➔ ***Should I try to deal with the insurance companies myself?***

Claims adjusters work for insurance companies and must act for their interests. It's that simple. If you have serious injuries, there is too much at risk to go forward without professional help.

The insurance companies have lawyers protecting their interests, you need the same protection.

If the accident was the other driver's fault (and the other driver has insurance), his/her insurance company will be responsible for your expenses, although you may need a lawyer to get everything you deserve.

➔ ***Which insurance company should I contact?***

You should contact your own insurance company for claims under the collision and medical payments coverage of your policy.

Your uninsured/underinsured auto insurance coverage may apply, if the other driver is uninsured or has less insurance coverage than you have. If your uninsured/underinsured coverage applies you will probably need a lawyer to assist you.

← What if the accident was partially my fault and partially the fault of the other driver?

Virginia is known as a “contributory negligence” state. Contributory negligence is the failure to act as a reasonable person would have acted for his or her own safety under the circumstances. In a case in which you and the other driver are negligent, any negligence on your part which contributed to cause the accident will bar you from recovering. For example, even if you are deemed to be only minimally at fault for causing the accident (say 5% at fault) you are barred from recovering for your injuries under Virginia law.

Because of the contributory negligence law in Virginia, extreme caution must be used when giving a statement to an insurance adjuster. An adjuster will be seeking evidence to claim you were at fault. You should allow an experienced attorney, and not an insurance adjuster, to determine whether you were contributorily negligent in causing your accident

West Virginia is known as a “comparative negligence” state. This means that if you contribute 50% or more to the accident taking

place, you are prevented from making any recovery from the other driver. 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. But for example, if the other driver is 90% responsible, and you are 10% responsible, the other driver or his insurance company is responsible for only 90% of the damages to your car under West Virginia law. If there is any proof that you were more than 49% at fault, your case may not be winnable. Whether and how comparative negligence applies to your case requires complicated legal analysis that should be done by a lawyer.

If you were partially (or completely) at fault, your insurance will pay for the damages to your auto under the collision coverage of your policy, assuming the damages exceed your deductible. If you did not carry collision coverage, and you were at fault, there may be no insurance coverage for your property damage.

➔ What should I do if the other party was at fault and does not have insurance?

The information you obtain 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 uninsured motorist coverage of your own policy, up to the limits of that policy

If you do not have uninsured motorist coverage,

your only option will be to attempt to recover your damages from the driver or owner of the vehicle that caused the accident. It is unlikely that you will be able to collect significant damages from any uninsured person because they can simply file bankruptcy on any amount owed to you as a result of the accident.

☞ ***If the other driver is uninsured and refuses to pay, what can I do?***

If the other driver has no insurance and refuses to pay, you will have to rely on the uninsured motorist coverage for yourself or the car that you were in at the time of the accident. Under Virginia and West Virginia law, all drivers must be “financially responsible” for damages they cause by use of a motor vehicle. There is, however, no legal requirement in Virginia or West Virginia that drivers have insurance. Under the Virginia and West Virginia law, if another person did not have insurance coverage (and he/she refuses to pay your damages) that person’s driver’s license and tags can be revoked and the license will remain revoked until the damages have been paid after you go to court and get a judgement against them. This creates some additional incentive for the person who caused the accident to pay your damages if they were responsible. You may have the other driver’s license revoked by contacting the Commissioner of the Virginia Department of Motor Vehicles (804-367-6602), and the West Virginia Commissioner of Highways (304-558-2723).

***COLLECTING
EVIDENCE ABOUT
THE ACCIDENT***

☞ ***Should I get a copy of the accident report?***

Yes, the police and other law enforcement officers who investigate automobile accidents must file written accident reports if an accident results in bodily injury, death, or substantial damage to property. The police report will include information from the accident scene such as point of impact and length of skidmarks, which may help to establish which driver was at fault.

At the accident scene, the investigating officer will give you the number of the police report (if asked). Most accident reports are completed and available three to four 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 its number, or if you do not have the number, 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 an insurance company or with the other driver.

☞ ***Do I need photos of the accident scene or vehicle damage?***

The location of vehicles and distances involved will be in the accident report. Actual photos of the accident scene are usually necessary. Most lawyers provide such services as part of their normal investigation, including the

measuring of skidmarks and preparation of scale drawings of the accident site. It is often useful to photograph the intersection or roadway in preparation of a lawsuit. Photos of damage to vehicles should be taken before damages are repaired.

☞ ***What about witnesses?***

Witnesses are usually identified on the accident report. It is important to collect information from these witnesses. This includes their name, address, work, and home telephone numbers, and details of their recollection. Taking witness statements requires skill and should be done by someone who is experienced in handling personal injury cases.

GETTING YOUR CAR REPAIRED

☞ ***Am I entitled to a rental car?***

As a basic rule, if the other driver clearly caused the accident, and your car is not safe to operate or is undergoing 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. This is an item typically handled by your attorney.

☞ ***What damages am I entitled to receive?***

Generally, where repairs are appropriate, the amount you can collect from the other driver

or his insurance company is the reasonable cost of repairs. If your repaired vehicle is worth less because it was wrecked, you are entitled to the difference in the vehicle's value. You are not paid for the hassles you may experience. 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.

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


If you do not have collision coverage, or if you are unwilling or unable to pay your policy's 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. Also, be sure to let the company know if the car is being stored and the amount of the storage charges.

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

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 reasonable repair costs (which may be less than your own shop's estimate).

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 whether 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.



***Do I have to
sign a release?***

When you receive money for car damages, you will 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.

If you receive the check before the repairs are completed, you should ask the repair shop to allow you to inspect and test drive the car

before final payment to the repair shop to ensure there are no apparent defects or problems. **You should 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.**

➔ ***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. In such an instance, the insurance company is only required to pay the actual cash value of the car on the open market, not what you feel it was worth to you.

Where an automobile is destroyed and not reasonably subject to 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. **Guide**, newspaper ads offering similar cars for sale, and statements from car dealers or other services that appraise automobiles.

If you own a newer car that has been financed, the fair market value may be less than the money you owe to the bank or finance company. The insurance company could pay the fair market value, and you could still owe money on your (now wrecked) car. 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 insurance company. 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.

GETTING COMPENSATION FOR YOUR INJURIES

In Virginia and West Virginia, claims for personal injuries must generally be preserved by filing a lawsuit **within two years of injury or the claim will be barred.**

➡ ***What legal compensation is allowed when an injury results from someone else's negligence?***

If you are injured due to someone else's negligence, you are entitled to be compensated for your medical expenses; the value of property damaged in the accident; lost wages; loss of future earning capacity; past, present, and future pain and suffering; and diminution in your ability to enjoy life. A parent of an injured child is entitled to the "loss of services" associated with a child's injury, and medical expenses. In West Virginia the spouse of an injured party is entitled to be compensated for the loss of the normal love and affection disrupted by a serious injury.



When should I seek the advice of a lawyer?

The sooner you seek the advice of a lawyer, the better. Early investigation can make the difference between winning and losing a case, and advice from an experienced attorney can help you through the most difficult times ahead. Most personal injury attorneys represent clients in injury cases on a “contingent fee basis.” This means they are paid a fee only if they win your claim and you collect.

If you have a serious injury, it is important that you hire a lawyer experienced in handling injury cases. Most lawyers will be interested in representing you if they think you have a good case, but how do you make the right choice?



How do I find the right lawyer for me?

As a first requirement, your lawyer should be a specialist whose practice primarily handles injury cases. A lawyer who routinely handles criminal cases, divorces, wills, and other legal matters may not have the depth of experience needed to maximize your recovery. You should seek a lawyer who has trial experience, particularly in accident and injury law. Perhaps the easiest way to determine whether an attorney has the experience needed is to verify that he/she is certified by the National Board of Trial Advocacy. Board certified attorneys have to meet rigorous requirements involving trial experience, ethics and legal knowledge.

MEETING WITH A LAWYER

☞ ***What information should I bring to my first meeting with a lawyer?***

You should bring any information collected which will help the lawyer understand your case. This may include the following: accident report, automobile insurance policies, information about the other driver, medical records, photos, newspaper clippings, etc.

☞ ***What should I look for during my meeting?***

You can learn much about a lawyer from what happens during your first interview and what you see around you.

☞ ***Checklist***

- Can the lawyer answer your questions in a way you understand?
- Does the lawyer have trial experience in accident and injury work?
- Is the lawyer board certified for his/her work with accidental injury cases?
- Does the lawyer restrict his/her practice to accident and injury law?
- Does the lawyer appear to take your case seriously.
- Does the lawyer's office have the aids needed to show a jury your injuries?
- Does the office appear to be well organized?
- Does the lawyer have support staff to keep things moving when he/she is working on another case?
- Is the lawyer successful?
- Does he or she own or rent the office they occupy?

CONCLUSION

Every reasonable effort has been made to ensure that the information presented here is correct. It is impossible to address every conceivable fact situation in a brochure. No brochure can teach the legal analysis sometimes required in accident cases. Laws change and specific fact situations may require the application of a different rule of law. For this reason, you should consult an attorney if you have questions not answered here and to confirm your chosen course of action is correct.

Accident and Injury Law Centers, P.C.

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