



WEST VIRGINIA CAR ACCIDENTS

101 A CRASH COURSE
ON PROTECTING
YOUR RIGHTS

INTRODUCTION

An Introduction to West Virginia Car Accidents

If experience has taught us anything, it's that some things in life simply are beyond our control. Car accidents are a perfect example. You may buy only the safest vehicles, turn your cell phone off when you turn your car on, obey all traffic laws, never drink and drive, always wear your seat belt and practice defensive driving like a pro.

Still, due to the decisions and actions of another driver, you may be involved in a crash. In fact, according to an article on Forbes.com, the odds are that you will be in at least three to four auto accidents during your lifetime, or roughly one crash every 18 years.

The law firm of Mani Ellis & Layne, PLLC, has prepared this Guide to help you understand what you can control – your response to a car accident. You can take charge right after a crash, and you can stay in control until you collect the verdict or settlement you are entitled to receive.

Knowledge is power. Our goal is to put you in that power position by providing you with a “crash course” on your rights and options after an accident.

In this Guide, we provide a series of eight “lessons” that cover:

- **LESSON NO. 1 – WHAT YOU SHOULD DO AFTER A CAR ACCIDENT**

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You should take certain steps immediately after a car accident, including at the scene of the crash and in the days that follow. (We include a checklist that you can print and keep in your car.)

- **LESSON NO. 2 – TAKING CARE OF YOUR HEALTH**

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We discuss the importance of getting medical treatment after a crash and what you can do if you are concerned about your ability to pay for treatment.

- **LESSON NO. 3 – GETTING BACK ON THE ROAD**

Page 13

We review the options you have for repairing or replacing your car when it is damaged in a wreck as well as what you can do for transportation while your property damage claim is being resolved.

- **LESSON NO. 4 – ANATOMY OF A CAR ACCIDENT CASE**

Page 17

An attorney can play a pivotal role in pursuing the compensation you deserve after an auto accident. We walk you through the steps of a typical case, from your initial consultation to the collection of compensation.

- **LESSON NO. 5 – INVESTIGATING YOUR CAR ACCIDENT**

Page 22

We explain what goes into a car accident investigation and the two main goals of the investigation: Determining why your crash happened and who should be held responsible.

- **LESSON NO. 6 – CALCULATING YOUR DAMAGES**

Page 27

Every financial recovery after an auto accident is different. However, we guide you through the main types of damages that typically are sought in a car accident claim.

- **LESSON NO. 7 – SOURCES OF COMPENSATION**

Page 32

Your ability to collect the damages you are due to receive after a crash will depend on the availability of auto insurance. We take you through the many different policies that may come into play.

- **LESSON NO. 8 – RESOLVING YOUR CASE, MOVING ON WITH YOUR LIFE**

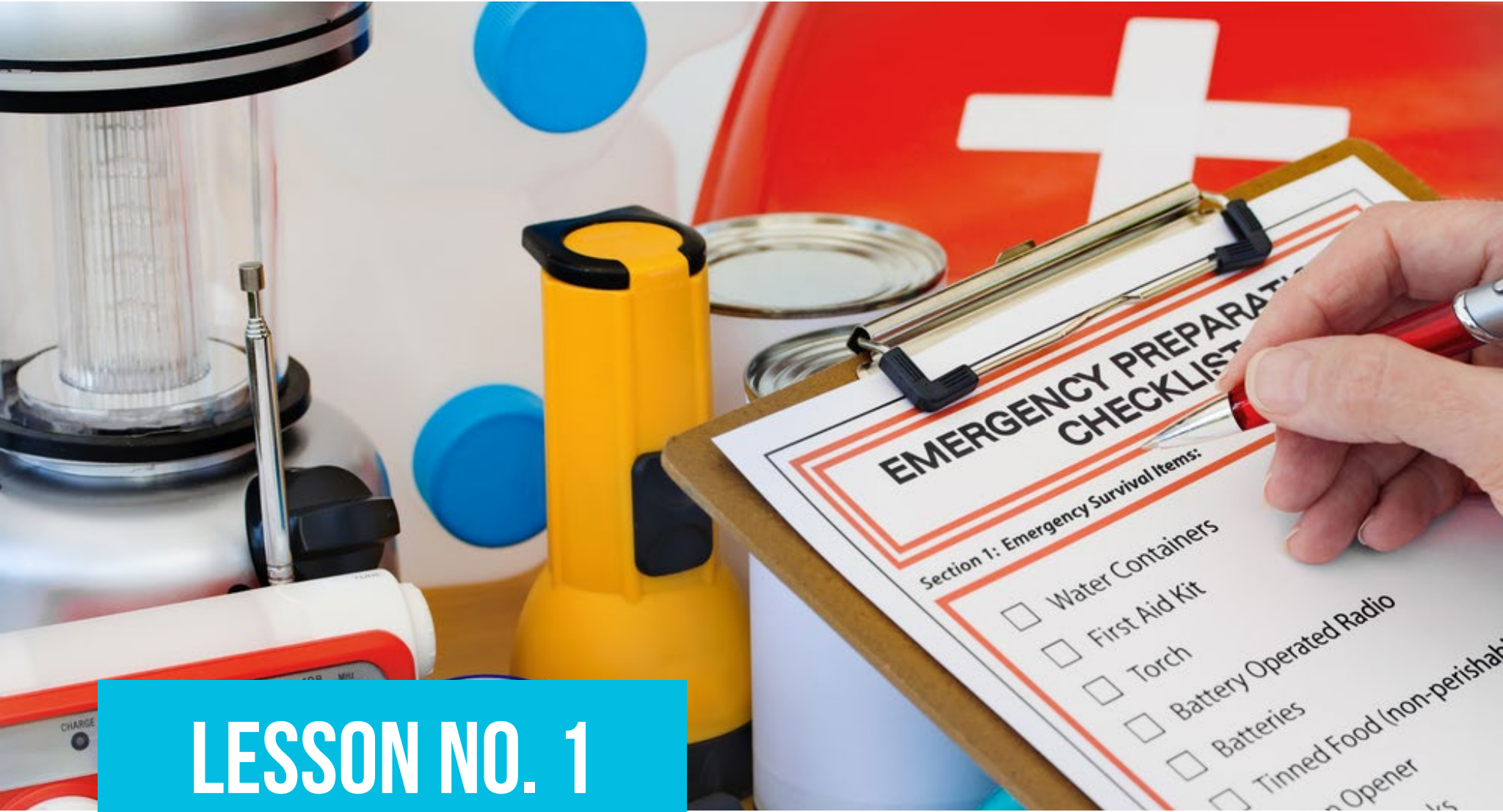
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We explain what goes into resolving your case through negotiation of a settlement or through litigation of a case in the courtroom. We also describe how any claims on your recovery may be handled and how funds are disbursed.

At the end of each lesson, we provide links to “course materials.” These are sources of information we have cited in the lesson and/or source that may shed more light on the topic. While we hope that you find this Guide to be helpful, we urge you to not rely on this Guide to try and handle a car accident case on your own. Instead, you should work with an experienced car accident attorney who will give your case the care and attention it deserves and make sure your rights are fully protected throughout the process.

Course Materials

- [How Many Times Will You Crash Your Car?](#) Forbes
- [Traffic Safety Facts](#), National Highway Traffic Safety Administration
- [Analysis of Fatal Crash Data](#), West Virginia Department of Transportation



LESSON NO. 1

WHAT YOU SHOULD DO AFTER A CAR ACCIDENT

Nobody plans to get into a car accident. Still, you should plan ahead in case you are ever involved in one. Being prepared will help you to protect the health and safety of you and your passengers. It also will protect your right to pursue full compensation for your property damage, bodily injury or the loss of a loved one. You should prepare yourself for an auto accident in three ways.

First, you should keep several helpful items in your car.

Second, you should have a checklist of steps you should take at the accident scene. When you are in the middle of the chaos and confusion that can follow a crash, being able to glance at this checklist and stay on track will come in handy. Finally, you should act carefully and cautiously when you deal with others – particularly insurance companies – in the days following the wreck.

As you will see below, we believe one of the essential steps will be to contact an attorney. Above everything else, working with an experienced lawyer can greatly reduce the stress and burdens you are certain to experience in the aftermath of a crash.

Before you hit the road, make sure you have the following items in your car:

- Current West Virginia vehicle registration
- Auto insurance card (or other proof of coverage)
- List of emergency contacts (spouse or other family members or friends)
- Small camera (if your cell phone does not have a camera feature)
- Pen and notebook
- Flashlight (check your batteries)
- Cones, warning triangles or emergency flares
- Set of jumper cables
- Lug wrench, tire jack and spare tire (even a “donut” tire would do)
- First-aid kit
- Bottle of water



You should be prepared for the possibility that you may be stranded or waiting for help to arrive. In West Virginia, this means you should be ready for the cold. We suggest that you keep these items in your vehicle as well:

- Coat
- Blanket
- Gloves or hand warmers
- Non-perishable snack

Finally, there is always a possibility that your vehicle could get stuck in a grassy, muddy or snowy area off the road – especially if you drive in rural areas. If you have room in your car, you should also consider stocking it with:

- A small shovel
- Tire chains
- Kitty litter (you can spread it for traction).

Reacting at the Accident Scene

Even though an auto accident can be a stressful, frightening experience, take a deep breath and do your best to stay calm. By doing this, you can avoid making rash choices or saying things you may later regret. Next, go through the following steps:

- **Check on everyone's condition.** Check to see if you, your passengers and those in the other car have suffered any injuries that need emergency medical attention. While using a first-aid kit on yourself or family members may be OK, we would caution against moving or treating others. Allow emergency responders to handle that.
- **Call for help. Dial 911 as soon as you can.** Even if the accident seems to be a minor one, you will want police to respond, observe the scene and prepare a crash report.
- **Gather information from witnesses.** Many people will stop when they see an accident – but they won't stay for long. Use your notebook and pen to get the names and phone numbers of anyone who witnessed the crash.
- **Get photos before you move the cars.** All cars involved in the accident will eventually be moved or towed away. If possible, take photos before this happens. Try to get shots of the front and back of each car as well as shots of their interiors.
- **Exchange information with the other driver(s).** You can share your name and insurance information with the other driver(s) in the wreck. However, be careful about what you say. Do not admit fault, and do not get emotional.
- **Provide basic information to the responding officer.** Answer the officer's questions and provide any information that will help the officer to prepare the crash report. Get the officer's name and the report number.
- **Get medical treatment.** If you are not taken away in an ambulance, then take yourself to the emergency room or to a family doctor as soon as possible.

Following the Accident

Missteps in the aftermath of a car accident can be costly. We suggest that you do the following to stay on the right course:

Write down what happened. As soon as you get home after an accident, write notes about what occurred in the crash.

- **Ask yourself questions such as:**
 - o What were you doing right before it happened?
 - o What did the other driver do?
 - o Did any driver try to avoid the crash?
 - o Did the other driver appear to be intoxicated?
 - o What were road and weather conditions like?

Make these notes while you can still remember important details.

- **Make a follow-up doctor visit.** It can take several days for the symptoms of brain injuries and other internal injuries to appear. This is why you should schedule a follow-up examination with your family doctor.
- **Get a copy of your crash report.** Contact the local law enforcement agency that responded to your accident or contact the West Virginia State Police and request a copy of the crash report that was prepared in your case. You should be prepared to pay a nominal fee.
- **Report the accident to your insurance company.** Your insurance policy may actually require that you notify the company within a certain number of days after a crash. You can call or submit a copy of your crash report to the agency. Do not give a recorded statement.
- **Keep everything.** Store all medical bills, repair bills, work records, insurance correspondence and other documents related to your accident in a safe place. Do not throw away anything. You may also want to keep an ongoing journal that documents how the crash has impacted you.
- **Contact a lawyer.** Do your research and find a lawyer that you believe you can trust with handling your case. Make sure to go through a consultation with the attorney. Bring your information to the meeting and don't be afraid to ask questions about your rights and options.

- **Don't talk with another insurance company.** You may be contacted by an insurance company for another party involved in your crash. Do not give any statements. Refer the claims adjuster or attorney to your lawyer. Never sign a settlement or release until it has been reviewed by your lawyer.
- **Don't talk about your accident.** While it can help you to cope with the aftermath of a crash by talking about it with family and friends, you should not discuss it in public or post anything about the crash on social media sites.

If you follow all of these steps, it can greatly improve your chances of reaching a satisfactory outcome in your car accident case. However, nobody is perfect. If you fail to take a few of these steps, it may not be necessarily fatal to your case. Again, we urge you to contact an attorney as soon as possible after a crash so that your situation can be reviewed by an experienced legal professional.

Course Materials

- [West Virginia Car Accident Checklist \(downloadable PDF\)](#)



LESSON NO. 2

TAKING CARE OF YOUR HEALTH

A car accident can cause a wide range of injuries. They can range from mild injuries such as cuts and scrapes to more severe injuries such as traumatic brain injury, spinal cord damage or – in the worst cases – death.

If you have been in an auto accident, your primary concern should be to get seen by a doctor as quickly as possible and to get treated for your injuries – whether they are mild or severe.

If you delay getting medical treatment, you face serious health risks. You may also jeopardize your ability to obtain compensation for your medical expenses, wage losses and other damages. If you wait several weeks after a crash to see a doctor, an insurer may claim you were not really as hurt as you claim. The insurer may also allege that you did not suffer your injuries in the crash.

Do not let concerns about paying for your health care to get in the way of seeking the treatment you need. As we explain in this lesson, several insurance options may be available to you.

At-Fault Driver's Liability Coverage / UM or UIM Coverage

Ultimately, if your accident was caused by another driver's negligence, then that driver's auto insurance liability coverage should pay for all medical expenses related to the crash. You can work with an attorney to pursue a recovery of those expenses through a settlement with the person's insurer or by going to court.

If you were injured by an uninsured driver or by a hit-and-run driver, you could seek a recovery of your medical expenses by filing an uninsured motorist (UM) claim with your own auto insurance provider.

In many cases, an at-fault driver may have liability coverage that does not cover all of your medical expenses. In fact, given the high cost of medical care in West Virginia and across the country, this is common.

If this occurs in your case, you could seek a recovery through your own underinsured motorist (UIM) coverage. (If you have not purchased a UIM policy, it is highly recommended that you do so). A UIM claim typically would seek the difference between what the at-fault driver's policy covered and the limits of your UIM policy.

Paying Your Medical Bills While Your Car Accident Claim is Pending

While the above options may be pursued, it may take time until you ultimately collect a settlement or verdict. While your claim is pending, you may need to turn to other options to cover your medical bills. The following are options that may be available to you:

• **Workers' Compensation Medical Benefits**

If your car accident occurred while you were working, all of your medical bills could be paid through your employer's workers' compensation insurance. You would simply need to file a claim for medical benefits with the West Virginia Offices of the Insurance Commissioner.

In the West Virginia workers' compensation system, you can select your own doctor. Workers' compensation would pay for all of your medical expenses, including transportation costs you incur while getting to and from the hospital. It is important to note that you would not be responsible for deductibles or co-payments if your medical expenses were covered by workers' compensation.

You can receive workers' compensation medical benefits while your claim against the at-fault driver – typically called a third-party liability claim – is pending. However, your employer's workers' compensation carrier would have the right to recover all benefits it provided to you by taking that amount from any settlement or verdict you obtain.

- **Medical Payments Coverage**

Medical payments coverage, or “med pay,” is an optional insurance policy you may have purchased. You could turn to this policy as well while your claim against the at-fault driver is being resolved.

As with workers' compensation, your auto insurance provider would likely seek reimbursement of what it paid by filing what is called a "lien" on your recovery from the at-fault driver.

Medical payments coverage often is limited. Most policies typically cover \$10,000 or less. Still, if you have this policy, it can help to ensure your medical care goes uninterrupted after being injured in a crash.

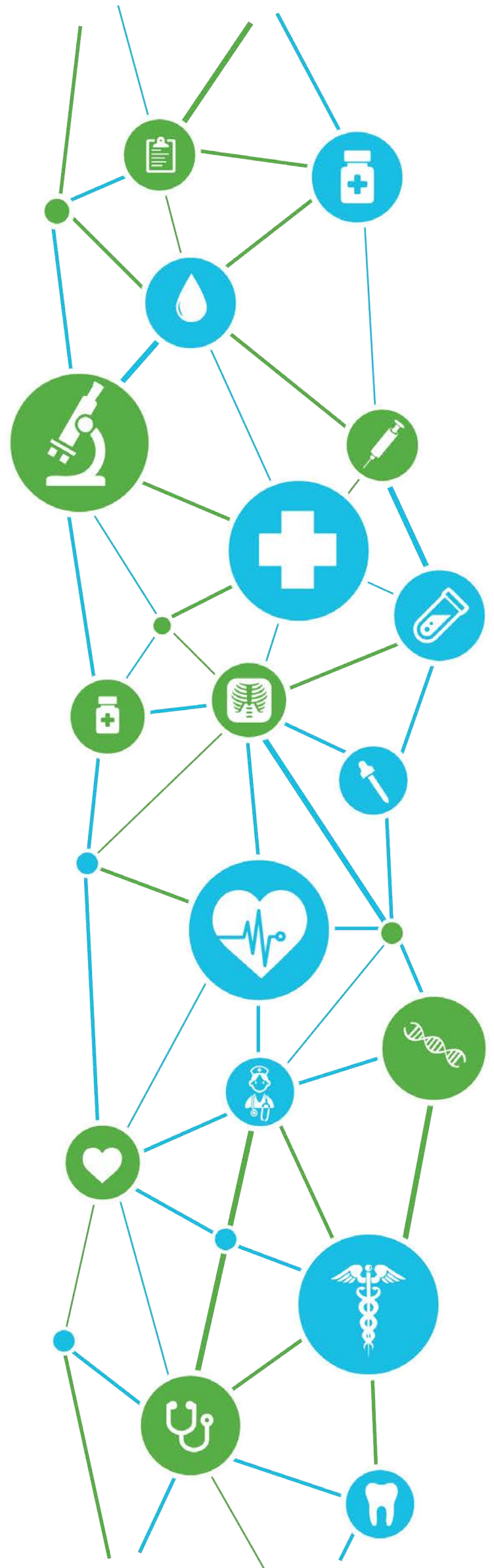
- **Private Health Insurance**

Your own health insurance is another option. In fact, it is one that most people turn to after a car accident as they sort through their other options.

A health care provider typically would provide treatment to you and then file a claim with your insurer. The health insurance company would then file a lien on your recovery.

You would also be billed for any deductible or co-pay expenses that you owe. Make sure to keep those bills. You can seek a recovery of those out-of-pocket expenses through a settlement or verdict.

In some cases, a lawyer may need to provide a “letter of protection” to a health care provider. This is a written promise that the provider will be paid any amounts that you personally owe once you obtain a verdict or settlement.



- **Medicare or Medicaid Coverage**

Medicare is government-provided health insurance for those with limited financial resources. Medicare is health insurance for those ages 65 and older. These programs are administered in West Virginia by the state's Department of Health and Human Services Bureau for Medical Services (BMS).

If you are eligible for Medicaid or Medicare coverage, you can work with the BMS in getting your medical bills paid while your case is pending. Again, BMS would seek to recover the amount it paid from the settlement or verdict you obtain.

Don't Let Cost Concerns Interfere with Your Medical Treatment

The bottom line is that you should never go without medical treatment after you or a loved one is injured in an auto accident in West Virginia. Many options are available to you. A lawyer can explain these options to you in more detail and help you to pursue the option that works best for you. The attorney can also seek the full amount of compensation you are due as the result of your accident and resolve any liens attached to your recovery.

Course Materials

- [A Consumer's Guide to Auto Insurance](#), West Virginia Offices of the Insurance Commissioner (OIC)
- [Workers' Compensation Rules Index](#), OIC
- [Medicaid](#), West Virginia Bureau for Medical Services



LESSON NO. 3

GETTING BACK ON THE ROAD

Getting treatment for your injuries should be your main concern after a car accident. However, taking care of your transportation needs will be a high priority as well.

After all, your car may have been heavily damaged in a crash. It may need extensive repairs before you can drive it again, or it may be totaled.

If the car was your only means of transportation, you may be suddenly facing a serious crisis. Without your car, how will you get to work? How will you get to the store? How will you pick up your children from school or daycare?

In this lesson, we discuss the immediate and long-term solutions that may be available to you if your car needs to be repaired or replaced after a crash.

Filing a Property Damage Claim with the At-Fault Driver's Insurance Company

If another driver's careless or reckless driving caused your car accident, your first option would be to file a property damage claim with that driver's auto insurance company. In addition to seeking compensation for your vehicle damage, the claim could seek a recovery of all other property losses you may have sustained.

All registered vehicle owners in West Virginia are required by law to carry a minimum of \$10,000 in property damage liability insurance. This insurance covers the property damage that a driver causes.

Usually, a property damage liability claim with another driver's auto insurance company would be handled separate and apart from a bodily injury claim. It also typically would be resolved much sooner than the bodily injury claim.



If your car is repaired

The insurer usually will choose the auto repair shop and provide an itemized list of repairs that will be done. However, you have the right to challenge what work is done to your car.



If your car is replaced

The insurer will look at the prices paid in your area for cars that are the same year, make and model and have the same features and arrive at the market value for your car. Again, you can challenge this value, especially if it is much lower than the value you would find in sources such as the NADA guide or Kelley Blue Book. Also, the insurer may not take into account the improvements you made to your car such as putting on brand new tires or getting major engine work done.

Here's how the process generally works:

First, you would file a claim with the at-fault driver's auto insurance company. Then, the company would assign a claims adjuster to your case.

The adjuster would examine your vehicle to determine whether it should be repaired or "totaled." Generally speaking, if the cost of repairs would be greater than the market value of a car, the adjuster will declare it to be a total loss.

While your car is being repaired or while you are waiting to be paid the fair market value for your car, the insurer should provide you with a rental car or allow you to rent a car and apply for reimbursement.

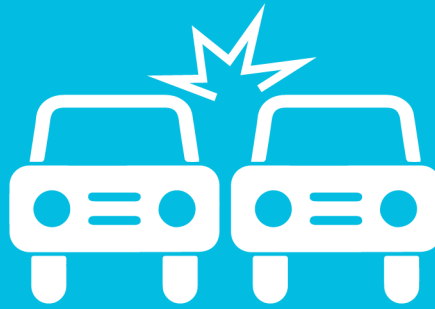
Filing a Property Damage Claim with Your Own Insurance Company

If another driver did not cause your accident, or if an at-fault driver's insurance fails to pay for certain vehicle damages, you may be able to file a property damage claim with your own insurance company. It will depend on what type of auto insurance you have bought.



Comprehensive

This will pay for any damage caused by theft, vandalism, a flood or a fire. It also will pay for damage which results from hitting an animal such as a deer (a very common occurrence in West Virginia).



Collision

This will pay for damage to your car that was caused by crashing into another vehicle or a fixed object such as a tree, light post, stop sign, guardrail or bridge abutment. If you are leasing or financing your car, you may be required to have this coverage.

Policies that may cover your damages include:

You may also have insurance that provides car rental reimbursement or pays for towing or labor.

An attorney can carefully review your auto insurance policy and help you to determine what property damage coverage is available to you.

What Can You Do If a Crash Reduces Your Car's Value?

Finally, you should be aware that you can seek damages if a car accident reduces your car's value after it has been repaired. This is called a diminution of value claim.

The reality is that any car that has been involved in a wreck will lose value. People simply will pay less for a car that has been in a collision.

However, a diminution of value claim is usually only appropriate if a car had significant value before an accident. In other words, it may be proper to pursue a claim if your brand new car or a vintage automobile was damaged in a crash.

Protect Your Rights If Your Car Is Damaged in a Crash

As you can see, your transportation issues can be efficiently and effectively resolved if your car is damaged in an accident. A lawyer can play an important role in protecting your right to a full recovery of your property damages. So, you should make sure to get legal assistance rather than handling an insurance claim on your own. If you or a loved one has suffered serious injuries in a crash, a lawyer can handle your property damage claim as a preliminary step in representing you.

If you are like many people, you will want to take care of your property damage claim as quickly as possible. However, for many reasons, you may be delayed in taking action. Just keep in mind that, in West Virginia, you will need to bring your property damage claim within two years after an accident, or else your claim could be barred.

Course Materials

- [A Consumer's Guide to Auto Insurance](#), West Virginia Offices of the Insurance Commissioner (OIC)
- [NADA Guides](#)
- [Kelley Blue Book](#)



LESSON NO. 4

ANATOMY OF A CAR ACCIDENT CASE

Getting into a car accident can be a scary experience, especially if you or a loved one is seriously injured. You may also be frightened at the idea of taking legal action against the person responsible for your crash. One reason for this fear: You may be unsure about what will be involved in the process.

In this lesson, we will describe what to expect when you pursue a car accident claim – from the moment you contact an attorney to the day you receive the financial recovery you deserve. We break the entire process into six stages and provide details about what typically occurs at each stage.

After getting through this lesson, you may realize that the process is not as intimidating as you may have first thought. This is especially true when you work with an experienced attorney who will close attention to you and your case.

Consultation

The first step in your car accident case is to find an attorney who is right for you and to schedule a consultation. Most law firms do not charge for this consultation. Some law firms may be flexible about where it is conducted. It may take place at one of the law firm's offices, your home or the hospital. It may even be conducted by phone or over the Internet.



You should be ready to provide basic information about your case. Think in terms of the “five Ws” of journalism. Be prepared to tell the attorney:

- When your accident happened
(date and time of day)
- Where it occurred
(city, county and state; street name)
- Who was injured in the crash
- What injuries you have suffered
(and treatment you have received to date)
- Why you want to take legal action.

If you can bring a copy of the police accident report, auto insurance policy and photos you may have taken of the crash scene or your injuries, it would be helpful to the lawyer. However, those items certainly are not required.

You should know that everything you say to the lawyer will be confidential. You must be open and honest. Feel free to ask as many questions as you would like.

At the end of the consultation, the attorney may wish to review your case more, or you may agree at that time to enter into a contract. You will find that the majority of law firms represent car accident victims on a contingency fee basis. This means they will charge no fees for their legal services or costs of handling the case unless you obtain a verdict or settlement.

Once you are represented by a lawyer, you can and should refer any insurance companies that contact you to instead speak with the lawyer. This will protect you. It also will alleviate much of the stress you may be experiencing.

Investigation

Your attorney will investigate your car accident for two reasons: To evaluate your case and to prepare it for litigation. The investigation will be primarily aimed at answering three questions:

- Why did your accident occur?
- Who should be held responsible for it?
- How much physical, emotional and financial harm have you suffered?

The attorney may conduct the investigation on his or her own or work with the firm's investigative team. Early in the process, the attorney may need to send a letter to other parties involved in the case, informing them that they should not conceal or destroy any evidence or else face a "spoliation of evidence" claim.

The investigation may include:



Analyzing the
crash scene



Inspecting all
vehicles involved



Downloading
"black box" data



Interviewing
eyewitnesses



Tracking criminal
charges (if filed)



Obtaining cell
phone records



Reviewing the
crash report



Getting alcohol/drug
test results



Reviewing all
insurance policies.



Obtaining medical
and work records

While compiling evidence, the attorney also will likely consult with experts such as an accident reconstruction specialist, physician and life-care planner. These experts can help to explain why a crash occurred and assist in calculation of the damages you may be entitled to receive.

Pre-Trial Litigation

Some cases can actually be resolved without the need to file a lawsuit. A claim can be made to the insurance company, and a settlement can be reached through direct discussions with the insurer.

Otherwise, your attorney would proceed with filing a lawsuit, or complaint. The lawsuit typically is filed in the county where the accident occurred. A copy of the lawsuit is filed on all parties involved in the case.

Once a complaint is filed, the case will move into an evidence-gathering process called “discovery.” Both sides can send questions to each other called “interrogatories.” They can also request copies of documents and other items. They may need to get court orders to get the other side to comply.

During this stage of the case, witnesses may be asked to provide sworn written statements called “affidavits.” They may also give sworn oral statements in a “deposition.”

It is possible that an insurance company will ask you to undergo a medical examination. If so, you should demand that your doctor conduct the exam.

Negotiation

By conducting a thorough investigation and being aggressive throughout the discovery process, your attorney should be prepared to present your case to the insurance company for settlement talks.

The process starts with the attorney sending a “demand letter” or “demand package” to the other driver’s insurance company. The letter sets out the attorney’s assessment of why the accident occurred, why the driver is responsible and how much you should receive in damages.

The insurance company may respond with an offer that is different than the amount demanded. Your attorney and the insurance company may then engage in negotiations. A mediator may be brought in to get both sides to agree.

The goal is to arrive at an amount that will fully and fairly compensate you for all of your losses, including your:

- Past and future medical expenses
- Lost income and diminished future earning capacity
- Mental anguish
- Pain and suffering.

If a settlement is reached, you will sign a “release” that shields the other driver from any future liability in your case. Within roughly a month, the insurance company may send the settlement funds to your attorney for disbursement. In reality, most car accident cases are resolved in this manner. However, if no settlement is reached, the case will proceed to trial. Settlement talks may still continue through trial – and even after a verdict is reached.

Trial

A trial typically is broken into two stages: Determining liability and determining damages. In many cases, a party may admit liability, and the trial will be entirely focused on how much you should receive in damages.

During the trial, both sides will have the chance to present evidence. The evidence can include documents, exhibits and testimony by experts and other witnesses. You may testify, or it may not be necessary for you to do so. The length of a trial will mainly depend on how much evidence both sides present. When the trial ends, the jury will return a verdict. If both liability and damages are at issue, the jury will render two separate verdicts. The court will then enter a judgment. Either side may file post-trial motions or file an appeal.

If the court enters a judgment in your favor, your attorney may need to take legal action to enforce the judgment and collect what you are owed.

Disbursement

The final stage of the case is the disbursement of funds – whether they are obtained through a settlement or a verdict. Your attorney should work as efficiently as possible to resolve this stage so that you can move on with your life. Typically, the funds are deposited in your attorney’s trust account. The attorney will first resolve any liens on your recovery. For instance, a portion of your recovery may go towards satisfying a health care lien or a workers’ compensation lien.

Next, your lawyer will deduct the amount charged in attorney’s fees and case costs, including investigation expenses, expert fees and court costs. You will then receive an amount in either a lump sum or through a series of payments, whichever you choose based on your lawyer’s recommendation.

We encourage you to review the links below to find out more information about the West Virginia courts system.

Course Materials

- [Court Information by County](#), West Virginia Judiciary
- [Circuit Courts](#), West Virginia Judiciary
- [Accessibility Information](#), West Virginia Judiciary



LESSON NO. 5

INVESTIGATING YOUR CAR ACCIDENT

As we stated in Lesson No. 4, the investigation of a car accident will be the first step your attorney takes after an initial consultation. The investigation will serve two purposes.

First, the investigation will help your lawyer to evaluate your claim. The lawyer can determine fault and potential damages that can be pursued. If the investigation reveals that no other party was at fault, or the the cost of litigation would outweigh the amount that could be recovered, the lawyer would likely advise against pursuing a case.

Second, the investigation will allow your lawyer to prepare your case for the filing of a lawsuit and for trial – if needed. In some car accident cases, an attorney can obtain a settlement for a client without the need to go to trial or even file a lawsuit. However, to gain leverage when working with an insurance company towards a settlement, the lawyer should prepare the case as if it is going to court.

With those goals in mind, in this lesson, we turn to what goes into a typical car accident investigation. As you will see in this lesson, the questions your lawyer will strive to answer through a carefully conducted investigation are:

- Why did your accident occur?
- Who should be held responsible for it?
- How much physical, emotional and financial harm have you suffered?

Why Did Your Accident Occur?

Driver error is a leading cause of car accidents. In this sense, most crashes are not really “accidents” but rather the result of careless or reckless decisions and actions by other drivers.



According to the Model Minimum Uniform Crash Criteria, types of driver errors that commonly contribute to auto accidents are:

- Exceeding the posted speed limit
- Driving too fast for conditions
- Running a red light or stop sign
- Disregarding other traffic signs and road markings
- Failing to yield the right-of-way
- Making an improper (or illegal) turn or pass
- Following the vehicle in front too closely
- Failing to keep in the proper lane
- Over-correcting or over-steering
- Swerving to avoid an object or due to road conditions
- Driving on the wrong side or in the wrong direction.

Of course, the underlying cause for these driver errors may be drunk driving, distracted driving, fatigued driving or simply aggressive driver behavior.

The investigation can identify which of these factors may have been involved in your crash by collecting evidence and analyzing it along with accident reconstruction experts. The evidence often includes:



Crash scene photos and observation

It is very helpful to take photos at the scene of the accident – before vehicles are moved, debris is swept away and vehicle interiors are cleaned. If you did not take photos, police or other first responders or witnesses may have taken shots that are available. Your lawyer can also send an investigator or accident reconstruction expert to the scene to take photos of skid marks, tire marks, red lights, traffic signs and other evidence that can reveal facts about an accident.



Eyewitness statements

Your lawyer also will interview any known witnesses of the accident, including other motorists, passengers, bystanders, police or other emergency responders. They can describe what they saw, heard or even smelled at the crash scene (such as the odor of alcohol on a driver's breath). Witnesses may later provide sworn written statements (affidavits) or sworn oral statement (depositions). They may also be called on to testify if a case goes to trial.



"Black box" data

An electronic data recorder (EDR) can be found in most late-model vehicles. An accident reconstruction expert can download this data from all vehicles involved in your crash. (A court order may be needed since the black box belongs to the vehicle owner.) This data can indicate the speed at the time of the crash and whether brakes were applied at the time of impact. A lack of braking, for instance, may indicate that the other driver was distracted and failed to see you before the collision occurred.



Vehicle inspections

Damage to the exterior of the vehicle can indicate the point of impact, estimated speed of the vehicles and other facts. The vehicle's interior can also contain evidence such as beer cans or other alcohol containers or a cell phone or other items that may have distracted the driver. An inspection may also indicate a mechanical flaw that contributed to the crash.



Surveillance camera footage

West Virginia has banned red light and speed cameras since 2006. However, many stores and businesses use surveillance cameras that may have captured your crash on video. This can be valuable evidence.



Alcohol/drug test results

If police suspect that a driver was impaired by alcohol or drugs, the police will conduct breath, blood or urine testing. These test results can play a key role in determining why your crash occurred. (Any criminal proceedings will be tracked and reviewed as well in an investigation.)



Cell phone records

Given the prevalence of texting and talking on cell phones while driving, it is now standard to subpoena cell phone records in crash investigations. These records can reveal whether the other driver in your accident was distracted at the time of the crash.

A police accident report typically does not serve as evidence in a car accident claim, but it does provide valuable information that can help in the investigation, including providing driver information and witness names.

Finally, to make sure no evidence is lost or destroyed, it is especially important to start right away the investigation of any crash involving a tractor-trailer or other commercial motor vehicle. This evidence can include company records such as logbooks, inspection and maintenance records and cargo records.

Who Should Be Held Responsible for Your Accident?

In addition to determining why an accident happened, an investigation must look into who should be held responsible. Parties in addition to another driver who may be held liable include:

- A bar, store or restaurant (if the business sold alcohol to a minor or to a noticeably intoxicated patron, and that sale contributed to the driver's intoxication and your crash)
- An employer (if the driver was working at the time when he or she collided with you such as in a trucking accident) In some instances, a crash may not be caused by a driver's negligence. Other parties may need to be held accountable such as:
- A mechanic who made faulty repairs that rendered a car unsafe
- A manufacturer of a defective automobile or automotive part
- A government agency that allowed a road to fall into disrepair.

Liability of these other parties can be established through cell phone records, receipts, repair invoices and other documents that are sought in an investigation. If a defective automotive part is at issue, an investigation may already be underway by a state or federal agency. Additionally, your attorney will investigate the insurance coverage of the other driver and all other parties who may be responsible for your accident and injuries.

What Physical, Emotional and Financial Harm Have You Suffered?

Finally, an investigation of your crash by your attorney will seek to determine the amount of damages you should seek in your claim, including:

- | | |
|------------------------------|--|
| • Property damage | • Past and future medical costs and related expenses |
| • Scarring and disfigurement | • Lost income and diminished future earning capacity |
| • Emotional distress | • Pain and suffering |
| • Loss of consortium | • Punitive damages. |

As part of this investigation, the attorney will review your medical bills and records (you will need to sign a form that gives your lawyer access to those records). Also, the attorney will review your work history, including pay stubs and documents relating to fringe benefits.

Finally, your attorney will consult with medical experts and others such as economists and life-care planners in order to arrive at a full and fair amount of damages that should be sought in your case.

Remember: Under West Virginia law, a person typically has only two years from the date of a car accident in which to file a claim. This is called the statute of limitations. An investigation should be started as soon as possible in order to take action within this time period.

Course Materials

- Driver Actions at Time of Crash, MMUCC



LESSON NO. 6

CALCULATING YOUR DAMAGES

Two main legal issues typically arise in auto accident cases: Liability and damages. Liability requires establishing proof “beyond a preponderance of the evidence” that a party’s negligence caused your accident and injuries.

Four elements must be established:

Duty – The party owed a legally recognized duty to you. For example, as a driver, the party owed a duty to operate his or her vehicle on the road as a reasonable, prudent person would under the same or similar circumstances.

Breach – The party failed to live up to his or her duty. For instance, the party drove at a speed that exceeded a posted limit or was dangerously fast given road and weather conditions.

Causation – As a result of the party’s actions or omissions, you suffered injuries. This is called “proximate cause.” It basically means that, but for the party’s actions or omissions, you would not have been hurt.

Damages – You suffered actual physical, emotional and financial harm. Calculating damages generally involves arriving at an amount that will make you “whole,” or put you back in the position you were in before the accident occurred – or as close as possible.

The damages may be economic and non-economic in nature. In this lesson, we will focus on the different categories of damages that may be pursued in a West Virginia auto accident claim.

Property Damage

You should recover for all property losses and expenses you incur due to a crash, including the cost of all mechanical and cosmetic repairs done to your car.

If the cost of these repairs outweighs the car's fair market value, then it should be declared a total loss, or "totaled." You should receive the fair market value so you can buy a new car.

Additionally, you should be compensated for the costs you incur to rent a vehicle or to arrange for alternative transportation while your claim is being resolved.

In many situations, a property damage claim is resolved before a claim to recover damages for bodily injury or death.

Medical Expenses

You should be fully compensated for all past and future medical expenses you incur for the care and treatment of your accident-related injuries, including:

- Ambulance services
- Emergency room treatment
- Surgery
- Hospitalization
- Follow-up doctor visits
- Medication
- Rehabilitation and therapy
- Assistive devices
- Ongoing nursing care

A claim for past medical expenses can be established through medical bills. You can establish a claim for future medical expenses through input from experts such as a life care planner – usually a doctor, registered nurse or rehabilitation specialist.

For instance, an expert can prepare a life care plan that can be presented during settlement negotiations or admitted as evidence in a trial. In your case, a life care plan would assess your future medical needs and the costs of meeting those needs.



Lost Wages

You should receive compensation for all income you have lost due to your inability to work because of your accident-related injuries, including your salary, fringe benefits, bonuses, commissions and/or self-employment income.

You should also recover compensation for your reduced future earning capacity if an accident leaves you with a disability that prevents you from earning what you did before or from earning any income at all.

This category of damages can be established through evidence such as pay stubs and benefits statements. It can also be established through experts who assess your future economic losses.

Pain and Suffering

In contrast to the above damages, this category is non-economic in nature. In other words, pain and suffering cannot be objectively determined through bills, receipts or pay stubs. It is a subjective category, or a matter of opinion.

An amount typically is established by demonstrating the severity of the harm suffered in an accident, including:

- Multiple injuries
- Scarring and disfigurement
- Amputation of a body part
- Loss of use of a body part.

In many cases, the amount sought for pain and suffering represents a multiple of what is sought in economic damages.

Loss of Consortium

This is a separate but related claim that may be brought by family members who are deprived of your services, companionship, care and affection due to the injuries you have suffered in an accident. It is called a “derivative claim.” Typically, a recovery is sought at the same time as other damages.

Punitive Damages

Unlike other types of damages, punitive damages are not aimed at compensating a car accident victim for his or her losses.

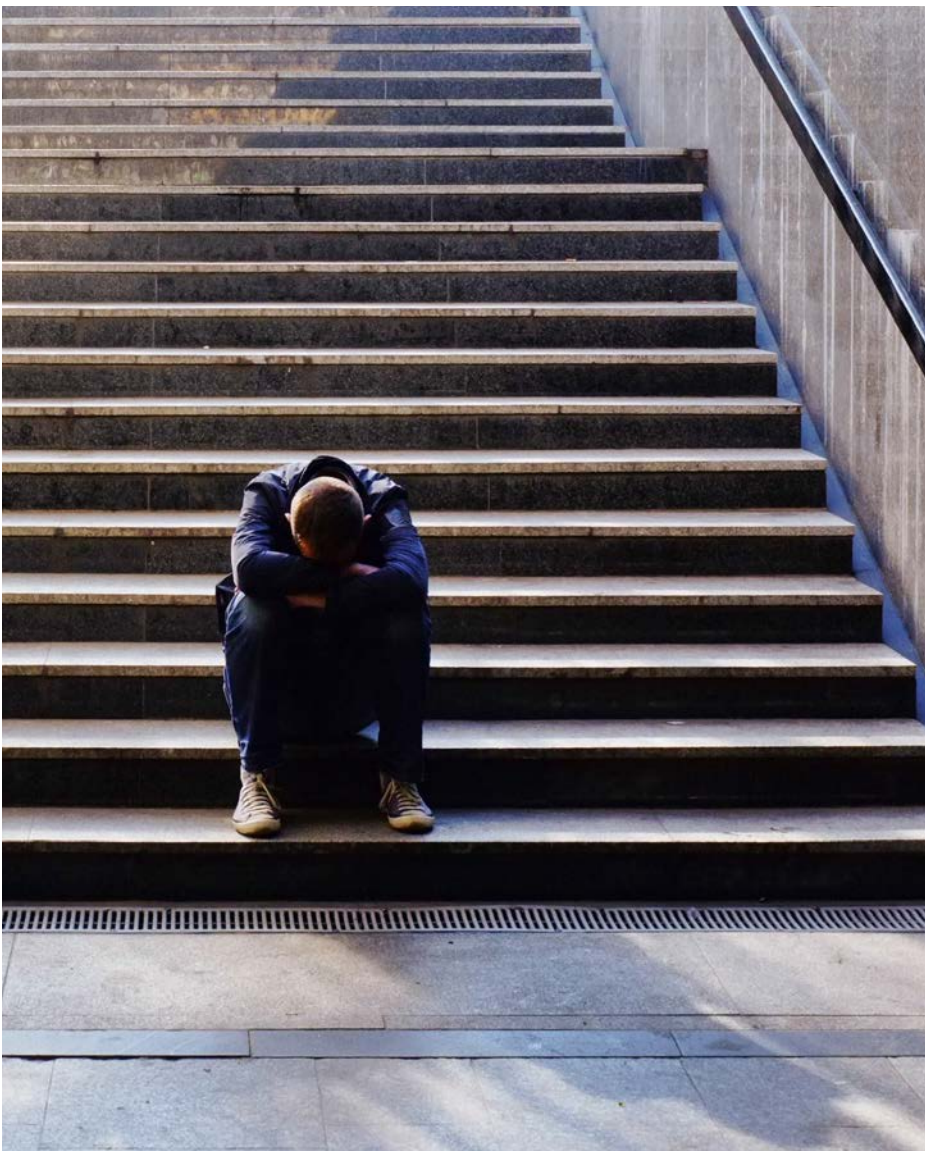
Instead, they are aimed at punishing and deterring conduct that was done with “actual malice toward the plaintiff” or with “a conscious, reckless and outrageous indifference to the health, safety and welfare of others.”

For example, punitive damages may be warranted in a crash caused by a drunk driver. In West Virginia, punitive damages must be proven by “clear-and-convincing” evidence. This is a more demanding standard than preponderance of evidence.

Additionally, punitive damages are capped in our state at \$500,000 or four times the amount awarded in compensatory damages – whichever is greater.

Wrongful Death Damages

If a car accident resulted in the death of a loved one, you may seek to recover a different set of damages in a wrongful death claim.



These damages may include:

- Reasonably expected loss of your loved one’s income (what he or she would have earned over a normal life span)
- Loss of the services, protection, care and assistance your loved one would have provided
- Care, treatment and hospitalization expenses arising from your loved one’s injury
- Reasonable funeral expenses.

You may also seek to recover non-economic damages such as:

- Sorrow, mental anguish and solace
- Loss of your loved one’s society, companionship, comfort, guidance and “kindly offices.”

How Can Comparative Negligence Affect Your Damages Claim?

Finally, it is important to discuss the impact that your own negligence may have on your ability to recover damages as well as the amount you can recover.

West Virginia is a modified comparative fault state. If you are determined to be 50 percent or more at fault for an accident, you could be barred from a recovery. Otherwise, your recovery would be reduced in proportion to your degree of fault.

For example, let's say you suffered \$100,000 in damages in a car accident. You are determined to be 25 percent at fault. Your recovery would be reduced by 25 percent. So, the damages you could recover would be limited to \$75,000. If you were found to be 50 percent at fault, however, you could not recover anything.

As you can see, much goes into determining the damages recovered in a car accident claim. This is why you should work with a lawyer who will carefully investigate your case and assess your damages and who will work closely with experts to calculate the proper amount that should be sought.

Course Materials

- [Actions for Injuries](#), W. Va. Code § 55-7-1, et seq., West Virginia Legislature



LESSON NO. 7

SOURCES OF COMPENSATION

When you seek compensation for your property damage, medical expenses, lost wages, pain and suffering and other damages after a car accident that was caused by another driver, your source of compensation would be auto insurance.

You would seek a financial recovery through the at-fault driver's insurance and, most likely, you would turn to your own coverage as well. Your recovery could come through a settlement with the insurance company (or companies) involved in your case. If needed, you would seek a recovery by going to trial.

This is why it is important to know what types of auto insurance policies may be involved in your case if you are hit and injured by another driver. In this lesson, we provide an overview of those policies.

After you get through this lesson, we suggest that you review your own policy to see what types of coverage you carry and the amount of coverage available to you. You may find that you want to change your policy and increase certain levels of coverage.

Liability Insurance

If you register your vehicle in West Virginia, you are required by law to carry two types of liability insurance: Bodily injury and property damage. This insurance pays for the injuries or damage you cause in a crash.

So, if you are in an accident caused by another driver, you would file a claim with that driver's liability insurance provider.

You must carry liability insurance in minimum limits. These limits represent the highest amount that your insurance will pay per person or per accident.

In West Virginia, the minimum liability insurance limits you must carry are often referred to as "20/40/10." This means the mandatory limits are:

- \$20,000 in bodily injury coverage (per person)
- \$40,000 in bodily injury coverage (per accident, or injury to two or more persons)
- \$10,000 in property damage (per accident).

It is safe to say that the majority of insured drivers in West Virginia carry liability insurance in only these minimum limits. However, you have the option of purchasing liability insurance with higher limits (and it may be advisable if you wish to protect your assets such as your home, business and personal property in the event of a crash).

Uninsured Motorist

Even though liability insurance is mandatory in West Virginia, a high percentage of drivers do not have it. In fact, according to a recent study by the Insurance Research Council, about 12.6 percent of the country's drivers lack auto insurance.

To address this issue, West Virginia requires registered vehicle owners in our state to carry uninsured motorist (UM) coverage as well. This is insurance that you purchase. It pays for your bodily injury damage and property damage if you are in a crash that is caused by an uninsured driver or a hit-and-run driver.

Our state requires you to carry UM coverage in the following minimum limits:

- \$20,000 in bodily injury coverage (per person)
- \$40,000 in bodily injury coverage (per accident)
- \$10,000 in property damage (per accident).

However, your insurer must offer you the option of buying UM coverage up to the following maximum limits:

- \$100,000 in bodily injury coverage (per person)
- \$300,000 in bodily injury coverage (per accident)
- \$50,000 in property damage (per accident).

Underinsured Motorist

Your auto insurance company must also provide you with the option to purchase underinsured motorist (UIM) coverage. This insurance would pay for your bodily injury or property damage losses if they exceeded the at-fault driver's coverage.

In West Virginia, your insurance must offer UIM in the following minimum limits:

- \$20,000 in bodily injury coverage (per person)
- \$40,000 in bodily injury coverage (per accident)
- \$10,000 in property damage (per accident).

However, you may purchase UIM in higher amounts. In fact, it is highly recommended that you purchase both UM and UIM above the minimum limits.

Buying extra coverage may not result in much of a difference in your monthly premium payments, adding only a slightly higher amount. However, it could mean a major difference in your ability to be adequately compensated if you are in a crash with an uninsured or underinsured driver – especially when one considers the ever-rising costs of medical care.

Medical Payments

Another type of optional auto insurance coverage you can purchase is medical payments, or “med pay.” As we described in Lesson No. 2, this coverage can pay for your medical bills – regardless of who is at fault.

However, med pay limits typically are low. This coverage basically is intended to help you to get through an emergency. Many people will then turn to private or government-provided insurance to cover their medical bills while a personal injury claim is pending.

Collision and Comprehensive

Collision and comprehensive coverage are optional as well. However, if you are financing or leasing a car, your lender may require that you purchase these coverage options.

Collision pays for the repair of damage to your car when it is caused by a collision with another vehicle or with an object such as a tree or light post. Comprehensive coverage pays for non-collision damage to your car such as that caused by a fire, flood, theft or vandalism.

With most policies, you would need to pay a deductible, and your insurance would cover the remaining amount.

Other Types of Coverage

Insurance companies today provide many other insurance options such as:

- Towing and Labor – This is coverage to pay for towing your car from the accident scene and paying for repairs (up to your limits).
- Rental Reimbursement – This is coverage to pay for renting a car while your car is being repaired or replaced.

As with medical payments coverage, the limits for these types of coverage may be low. However, they can help you to get through a difficult, emergency situation.

Again, we suggest that you carefully review your auto insurance policy to determine what types of coverage you have purchased and the amounts of that coverage. If you have been involved in a crash, an attorney can review your insurance policy with you and help you with filing claims for just compensation and dealing with insurance companies.

Course Materials

- [A Consumer's Guide to Auto Insurance](#), West Virginia Offices of the Insurance Commissioner (OIC)
- [Mandatory Compulsory Insurance Requirements](#), West Virginia Office of the Insurance Commissioner
- [New Study Reveals a Declining Trend in the Percentage of Uninsured Motorists](#), Insurance Research Council



LESSON NO. 8

RESOLVING YOUR CASE

When you file an auto accident claim with an insurance company, you want to resolve your case as quickly as possible so that you can move on with your life. At the same time, you want to make sure that you are fairly and fully compensated for the harm you have suffered. Your attorney's goal will be to achieve both of those goals while seeking to resolve your case.

In this final lesson, we discuss the two most common ways a car accident claim is resolved: Settlement or trial.

Settlement of Your Claim



After your lawyer completes investigation of a case, the lawyer will send what is called a “demand letter” to the other driver’s insurance company.

The demand letter will present the lawyer’s version of what occurred in your crash and ask the insurance company to pay a specific amount in compensation in a settlement. It can be a simple letter or a package of materials that includes photos, diagrams and even video.

Ultimately, a settlement will allow your case to be resolved much sooner than if the case went to trial.

While your lawyer was investigating your case, the insurance company was doing an investigation of its own into its insured driver’s potential liability and the estimated value of your claim. Some insurance companies may use a special software program to calculate a car accident claim’s value. If the insurance company agrees that the liability of its insured driver is clear, and its estimated value of your claim matches with what is demanded, your case could be resolved without the need to even file a lawsuit.

However, in many cases, the next stage after a demand letter will be for your lawyer and the insurance company lawyer to enter into settlement negotiations. A neutral party called a “mediator” may be brought in to move these negotiations along. The mediator usually is a retired judge or lawyer who has been trained in facilitating agreements. However, the mediator cannot force you and the insurance company to enter into a binding agreement.

If a settlement is reached, you will sign a document called a “release.” In a release, you would agree to accept the insurer’s payment of your claim in exchange for refraining from bringing any future legal action against the insured.

It is important to note that many cases today are resolved through another form of alternative dispute resolution called “arbitration.” In fact, if you are seeking the settlement of an uninsured motorist / underinsured motorist (UM/UIM) claim with your own insurance company, you may have signed a contract that requires you to submit your case to arbitration.

In arbitration, both sides present evidence, but they usually are not bound by the same rules of evidence that apply in court proceedings. The case is then decided by a single person, or arbitrator, or by a panel. You and the insurance company can select this single arbitrator or panel. In contrast to mediation, the result of arbitration is binding.

Trial



In most cases, a lawsuit must be filed against the other driver before a car accident case can be resolved. The lawsuit is called a “complaint.”

A lawsuit must be filed within a specific period of time after an accident. This is called the statute of limitations. In West Virginia, a car accident lawsuit generally would need to be filed within two years after the date of the crash or within two years after the death of a loved one from injuries suffered in the accident.

The complaint sets forth the basic facts of your case, including how your accident occurred and the amount of harm you have suffered. It would be filed in the Circuit Court in the county where your crash occurred.

The filing of the lawsuit begins a formal evidence-gathering process that is called “discovery.” As we explained in Lesson No. 4, this process involves sending questions to the other driver that are called “interrogatories” and making requests for documents. Depositions, or sworn oral statements, and affidavits, which are sworn written statements, may also be collected from potential witnesses.

If other driver (or his or her insurance company) refuses to comply with a discovery request, your lawyer may need to file a motion with the court to compel compliance. In addition to discovery, pretrial motions may be filed, including motions to dismiss a claim or motions for summary judgment. These motions basically assert that a case be decided by a court without the need to go to trial.

Discovery may ultimately lead to settlement negotiations. However, if the insurance company refuses to make a full and fair settlement offer, the case would proceed to trial. (But settlement talk could continue through trial and even after a verdict is returned.)

A car accident trial typically consists of two stages. In the first stage, the jury must determine if the other driver is liable. In the second stage, the jury must determine how much you are entitled to receive in damages (and whether your damages should be reduced in proportion to your degree of fault).

Your attorney would establish your case through evidence such as photos, documents, diagrams, computer simulation and testimony from experts and eyewitnesses. The other driver would have the opportunity to present evidence as well.

The jury would then deliberate and reach its decisions, or “verdicts.” If the jury rules in your favor, the judge would enter a judgment, stating the amount you are entitled to receive. The other driver, however, may file a post-trial motion or appeal that would seek a new trial or other relief from the judgment.

After a judgment is entered (and all appeals have been exhausted), it may be necessary for your lawyer to take action to enforce the judgment and collect what you are owed (plus interest) from the insurance company and/or the other driver.

You become known as a “creditor,” while the other driver becomes known as a “debtor.”

The actions your lawyer takes on your behalf could include:

- Lien – Placing a lien on any non-residential real property the debtor owes
- Levy – Seeking seizure and sale of the debtor’s property by the sheriff (or a levy), with the proceeds of the sale going to pay you
- Garnishment – Garnishing a percentage of the debtor’s bank account or wages.

As you can see, a case becomes more complex and can take much longer to resolve when it goes beyond settlement. For this reason, your lawyer’s primary goal will be to seek a settlement.

Disbursement

The final step in resolving your case is the disbursement of funds obtained through a settlement, arbitration award or judgment. If some of your expenses were previously paid by another party – for instance, a private health insurer, Medicaid / Medicare or a workers’ compensation insurer – a lien may be attached to your financial recovery.

Additionally, if you were represented on a contingency fee basis, your attorney would deduct all costs and attorney fees from your recovery before arriving at the amount you should receive in either a lump sum or through a series of payments (called a structured settlement).

Your lawyer should work to resolve any liens and legal fees as efficiently as possible while ensuring that you have the amount you need to move on in life with the medical treatment and financial security you deserve.