I've Been in a Car Accident...

What Happens Now?

Enjuris is a collection of resources to help people after a life-altering accident or injury. Share your story
You’ve been hurt in a car accident. What happens now?

Contents

1. BASICS  You’ve Been Hurt in a Car Accident. What Happens Now?  
   - What to do after an accident  
   - When is it just a matter for insurance, and when should I get a lawyer involved?  

2. DOCUMENTATION  Documenting What Happened  
   - What documents do I need in a personal injury claim?  

3. INSURANCE  Working with Insurance  
   - Steps to an insurance claim settlement  
   - The other person's insurance company  
   - Accidents with uninsured or underinsured drivers  
   - Steps to take with insurance after a car accident  
   - The independent medical exam  
   - If your insurance company ignores or misleads you  

4. HIRING A LAWYER  Hiring an Attorney  
   - Choosing a personal injury attorney  
   - Your first meeting with a personal injury attorney  
   - Negotiating fees with a personal injury lawyer  
   - Why might a personal injury attorney decline my case?  

5. EXPENSES  Dealing with Expenses After Your Accident  
   - How your settlement is calculated  
   - Did you contribute to the accident?  
   - Best ways to keep track of expenses  
   - Calculating pain and suffering  
   - How to include loss of wages  
   - Caps on how much compensation you can receive  
   - Options for covering your medical costs after an accident  

Please note that this is an e-book provided for educational purposes only. The information in it is not legal advice. Talk to a licensed attorney about all legal issues that could potentially affect your case.
6. CLAIMS PROCESS  The Process: How Long it Takes & Your Choices 41
   - Statutes of limitations 41
   - Sending a payment demand letter 44
   - Mediation, arbitration, or going to court: which is best? 46
7. SPECIAL SITUATIONS  Special Situations 49
   - Rear-end car accidents – when you need a lawyer 49
   - Jurisdictions that involve multiple states 51
   - Collecting car accident damages from a government agency 54
8. LEGAL CONCEPTS  Basic Legal Concepts 56
   - What you have to prove in a car accident 56
   - 3 simple methods to prove fault in a car accident 57
   - What is liability? 58
   - Fault vs. no fault in a personal injury case 61
   - Shared fault rules 63
9. INJURIES  Common Injuries from Car Accidents 66
   - Whiplash 66
   - Concussions 68
   - Cervical spinal cord injuries 70
   - Thoracic spinal cord injuries 72
   - Lumbar spinal cord injuries 74
APPENDIX 77
   - More resources 77
   - State-by-State Car Accident Statutes of Limitations 78
   - Printable forms 80
The last thing anyone ever expects is to be involved in a car accident, but they happen every day. In the U.S. alone, the Insurance Institute for Highway Safety reports tens of thousands of fatalities every year.

Statistics show that even the most cautious motorists can be involved in some sort of accident in their lifetime. Being prepared is the best defense and will save you time, money and maybe more injuries.

What to do after an accident

Fleeing the scene of an accident is against the law in all 50 states. The driver is required to remain at the scene until law enforcement arrives. The key is to remain calm and remember these steps.

Call the police immediately.

Whether it was a fender-bender or a serious crash, call 911. Their account will become record. If the accident occurred in the middle of the road, the vehicles should be moved to maintain the flow of traffic; if they are immovable, the driver and all passengers should remain in the vehicle until police arrive. Turn on the hazard lights.

1. **Get medical attention:** The number of people who think they’re fine after an accident and then feel pain a day later is too many to count. This hurts a legal case and slows down recovery. Getting to a doctor right after an accident ensures that injuries are identified and documented for your insurance company, which will streamline your approval.
2. **Contact your insurance company:** Once your injuries have been treated, contact your insurance company to report the accident. They'll ask you a number of questions and send you documents to fill out. Any information you have (see number 3, below) will help the representative process your claim.

![Enjuris Tip:](image)

**Enjuris Tip:**

Review your coverage and exclusions. Most importantly, keep detailed notes of your phone conversations, including names, dates, times and titles of the people you speak with. Make sure to be honest with your insurance provider.

Don't give any written or recorded statements to your insurance representative until you're sure you understand your coverage. You're not obligated to allow the insurance provider to record your phone conversation. When in doubt, talk to a lawyer. Also, don't automatically accept the appraisal or estimate of your losses provided by your insurance representative.

3. **Take pictures/write down everything:** If you can, write down or take pictures of everything regarding the accident scene and the cars involved in the accident. This will be valuable if you have trouble receiving a favorable response from the insurance company or if you want to hire a personal injury lawyer. Cuts, scrapes and bruises heal quickly, so having photos of the injuries is a smart decision.

4. **Write down expenses related to your claim:** Car accidents are devastating, and you will likely encounter financial difficulties because of your accident. It’s important that you keep a good record of expenses in case you need to file a lawsuit. Use a notebook or an Excel spreadsheet and make a receipt of expenses related to your claim.

   - medical care and supplies
   - expenses for rental vehicle or alternate transportation
   - expenses paid by relatives who had to help you

5. **Speak with an attorney:** Do not sign any documents that you don’t understand. Get representation to ensure that your rights are protected.
You've been hurt in a car accident. What happens now?

Helpful reading and documents

- Accident report form
- List of 30 documents you may need
- Tips for filing an insurance claim
- Post-accident diary
- Worksheet to track expenses

Check out the Appendix for our Post-Accident Journal form and Accident Expenses worksheets.

When is it just a matter for insurance, and when should I get a lawyer involved?

If any of the following apply, you should consider hiring a lawyer:

- Broken bones, hospital stay, long-term health affected
- Someone died in the accident
- Medical treatment costing more than a couple thousand $$
- Missing more than a couple days’ work, school, or normal activities
- Non-economic losses like emotional trauma, pain and suffering, loss of companionship
- There is dispute over whose fault the accident was
- Multiple people were harmed in the accident
- The accident took place in a construction zone or other questionable area
- The paperwork does not look accurate (police report, insurance communications)
- Details are complicated (technical, legal, medical)
- Insurance is not playing nice

Here is how to determine whether you have a case for negligence:

- Are you injured in any way?
- Did the person who injured you owe you a duty of care?
- Did that person act in a negligent way or in violation of law?
- Did that wrongful act result in damages?
Enjuris Tip:
The term "damages" refers to an amount of money the law says the wrongdoer must pay to the person who has suffered loss or injury. You and your lawyer will work together to calculate the amount of damages, but they can include things like wages lost from missing work, medical expenses, repair expenses and so on.

The statute of limitations for your state defines the timeline within which you need to file a case, so you will want to act as quickly as possible after the initial injury. The first meeting with an attorney will likely be free, and any personal injury attorney should be willing to speak with you. If they don't handle your type of case, they will be able to refer you to someone more qualified.

Don't be put off if you aren't told you have a case in the first meeting. A lawyer has to determine whether you are an appropriate and credible witness, whether there is enough evidence to proceed, and whether there will be enough damages to make the case worthwhile – both for him and for you.

**When do you not need an attorney?**

You will not need an attorney if:

- No injuries happened/only injuries to property
- The potential settlement is too small to justify hiring one
- You pursue the defendant in small claims court
- The insurance company offers a fair settlement amount

**Helpful reading and documents**

[Statutes of limitation by state](#)
You've been hurt in a car accident. What happens now?

Basics  >  Documentation  >  Insurance  >  Hiring a lawyer  >  Expenses  >  Claims process  >  Special situations  >  Legal concepts  >  Injuries  >  Appendix

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Checklist

Documenting What Happened

What documents do I need in a personal injury claim?

An accident or injury claim can require various types of documents or evidence. What documents you need will be based on the nature of the accident, the specific injury and damages resulting from the incident.

- **Police reports:** These are considered public record and are available to all parties. There may be more than one depending on how many officers responded. Don't take these as gospel; they're a good starting point for investigation. It's also important to note that a legal case can be pursued even if no police record is present.

- **Witness statements:** These are statements by people who saw or heard the accident. Make sure to get their contact information, as they can be difficult to track down.

- **Victim/client statements:** The victim or client statement should be taken as soon as possible so the victim’s recall is at its best. Victims can also use our post-accident journal template to document pain and suffering, reduced daily capabilities, and other ways the accident has impacted their lives.

- **Medical reports:** These include all emergency room records, doctor care records, autopsy reports and rehabilitation reports. These records can also extend to preexisting conditions.

- **Research into past violations or safety concerns:** These records involve safety records or inspection reports, such as when cars were serviced or if parts were recalled.

- **Video or photography:** These include media taken before, during or after the accident.
You’ve been hurt in a car accident. What happens now?

- **Private investigation records**: Investigators can be hired by any party involved in an accident, and they’re usually retained to see if the other party is lying about something.

- **911 dispatch calls**: These provide a real-time account as to the nature of the accident. They also open a window and let investigators see the emotion of the caller close to the time of the accident.

- **W2/1099 forms**: These show your lost wages during the time you were recovering from an accident. If you’re a freelancer, you can also show that you paid less in estimated taxes to the IRS, which will illustrate that you made less during that quarter.

- **Receipts**: These will prove how much you’ve spent on things like medical supplies, medications, expenses for rental vehicles or alternative transportation, etc.

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**Helpful reading and documents**

[List of 30 documents you may need](#)

Check out the Appendix for our Post-Accident Journal form and Accident Expenses worksheets.
Steps to an insurance claim settlement

Before you file an insurance claim, it’s important to make sure that your injuries have stabilized. This is called “maximum medical improvement,” and filing before this can mean that some of your expenses may be lost in the shuffle. You don’t want to settle before knowing the extent of your injuries.

On the other hand, each state has its own statute of limitations in order to prevent you from waiting too long to file.

Once you’ve collected evidence and you know the full extent of your damages, it’s time to file your claim.

1. **Submit a demand letter:** The first step is to submit a demand letter to the responsible party’s insurance company. This should include how the accident happened, how the defendant is responsible, the extent of your injuries and damages, and how you have suffered because of these damages. Lastly, your demand letter should conclude with the amount you desire to seek for your claim (the sum of all of your damages).

   Each of these points should be backed up with facts and supportive evidence in order to prove your claims. Make sure to include copies of your medical records, the police report, and any other documents you may have for your case.

   *What if I don’t like the insurance company’s response?*
You've been hurt in a car accident. What happens now?

The insurance company might say you haven’t proven your case and are owed nothing. If this is the case, you should speak to a personal injury attorney as soon as possible.

Most often, the insurance company will respond with a lower amount than you demanded, which starts the negotiation process.

2. **Negotiate your claim**: Insurance adjusters do not want to offer the full compensation amount. It’s important to know your facts and stand your ground in order to receive the compensation you deserve.

   **Enjuris Tip:**
   If you fail to reach a settlement, you may have to take your claim to the courts.

3. **Head to court**: Depending on how much you have suffered, small claims court may be appropriate. You aren’t required to have legal representation in small claims court.

   If your claim deals with higher compensation, you will need to take your case to civil court. In this situation, it is advisable that you hire a personal injury attorney, especially since so much is at stake.

**Helpful reading and documents**

- [6 steps to writing an effective demand letter](#)
- [Wondering how long your injury claim could take?](#)

Check out the Appendix for our Post-Accident Journal form and Accident Expenses worksheets.

### The other person’s insurance company

Many experts would advise you against speaking with the other person’s insurance company. While you do need to call your own insurance company to report the accident, you are under no obligation to talk to the other driver’s carrier.

The best way to deal with the other insurance carrier is to consult with a personal injury attorney. He or she will deal with them.
The other insurance company isn’t your friend.

Insurance companies have a financial interest in protecting the interests of their client. And of course, they have an interest in protecting their own financial interests. They represent both interests by doing two things as much as they can:

- Denying the maximum number of car accident claims.
- Negotiating the lowest possible settlement on car accident claims.

This boils down to the following: to reduce claims they pay, the insurance company must deny claims made.

Most car accident victims aren’t insurance adjusters or attorneys

The insurance adjuster knows that you don’t have an intimate knowledge of insurance codes or legal regulations. This lack of information will be to their advantage. He or she will also try to record you; this statement will probably be used against you later in the process.

You don’t know your whole medical situation

If you had a serious car accident, your full medical diagnosis may not be complete. Speaking to an insurance adjuster too early in the process could give an inaccurate portrayal of your injuries.

Enjuris Tip:
But many experts would advise you to not give a recorded statement to any insurance company at all without the advice of a personal injury lawyer. Trust nobody but your attorney.

That’s why insurance adjusters are notorious for trying to get on the phone with car accident victims ASAP. They want to get a good idea of what the case likely is worth. This is known as a ‘reserve value.’ It is difficult to get them to rise above that value after that.

Exceptions when you would consider talking

If you had a minor car accident and the other driver is clearly 100% at fault, you might talk to the other adjuster to get the matter settled fast. You may consider doing so if the police report stated the other driver unequivocally caused the wreck. If the other driver was cited by the police – even better.
You do need to give a statement to your own car insurance company

You do have a contractual obligation to cooperate with your car insurance company. Your insurance policy may contain language that requires you to give a recorded statement if the adjuster requests it. If they do ask, you can ask the adjuster to tell you the exact language in the contract that requires it.

Remember that your own insurance company can potentially take a position against you. So, think very carefully about every fact you give in a recorded statement to your own insurance carrier as well.

But many experts would advise you to not give a recorded statement to any insurance company at all without the advice of a personal injury lawyer. Trust nobody but your attorney.

Accidents with uninsured or underinsured drivers

The purpose of a car insurance policy is to prevent an accident from causing hardship in your life beyond the emotional and physical trauma car wrecks already carry.

Medical bills can become astronomical, and if lawyers get involved, a portion of the insurance policy proceeds end up paying their office. But what if someone who isn’t insured or doesn’t have enough insurance to pay for those medical bills hits you? Do you sue them personally and get a check for $10 a week forever?

You may have a policy that foresees this scenario in your own insurance policy: an "underinsurance policy.” There are even “uninsured motorist” policies as well.

These anticipate that you might be hit by someone who isn’t insured and allow you to collect against your own insurance company for a predetermined amount or for the difference between what the driver is insured for and what you still need to cover your medical bills.

Steps to take with insurance after a car accident

If you’ve been in a car accident with an uninsured motorist or a driver whose insurance policy isn’t sufficient to cover your injuries and damages, take the following steps:

• Whether or not the other driver has an insurance policy, your first order of business after making sure you’re physically sound is to get his contact information.
You've been hurt in a car accident. What happens now?

• If he does have a policy but informs you it won't cover your damages, you should still take policy information from him. A car accident attorney can help you understand what, if any, benefits you are entitled to from the other driver’s existing policy.

• Check with your own insurance company about the terms of your uninsured motorist policy. They may have specific requirements such as a signed statement from the other driver admitting his lack of car insurance coverage. Your attorney will be able to help you with this.

Enjuris Tip:
Check with your own insurance company about the terms of your uninsured motorist policy. They may have specific requirements such as a signed statement from the other driver admitting his lack of car insurance coverage.

• Once you have obtained all relevant information, including statements from the other driver and police reports where applicable, submit your claim to your own car insurance company. All automobile insurance providers are different.

• Submitting a claim may be all that’s required to receive the benefits available to you. If this is not the case, however, you may need to involve an auto accident attorney.

• Your most important tool after a car accident with an uninsured motorist is documentation, so securing contact information and obtaining statements from the other driver, the police officer on the scene and any witnesses is key to receiving compensation for your injuries and property damage. Include photos of the scene as well if you can.

• Make sure you get copies of not only your medical bills, but also any records, test results, and doctor’s notes from your medical chart stating your physician’s affirmation that the car accident was in fact the cause of your injuries. Records of your car repairs and copies of relevant bills should also be included.
The independent medical exam

When you get into an accident and submit an insurance claim for reimbursement, sometimes your insurance company wants to make sure that you are as injured as you’ve claimed.

An IME is a doctor’s appointment with a doctor on the insurance company’s payroll.

Many insurance policies mandate that you submit to IMEs or automatically forfeit any reimbursement; additionally, courts can mandate that plaintiffs submit to an IME.

Because the doctor is paid by the insurance company, many attorneys feel that the result is a foregone conclusion. Courts and arbiters take this into account during settlement phases.

**If the results are skewed, then what’s the point?**

This has been debated by lawyers for decades, and the result they keep returning to is that it’s one of those necessary evils.

A prejudiced result can show more than a bit of truth. For example, even the most biased doctor can’t make you move more than you’re physically capable of doing. There are several ways of showing how limited you are.

**How to handle an independent medical exam**

These can get a bit complicated, so it helps to bring a friend or relative. An IME begins as soon as you arrive at the doctor’s office. Some doctors have their staff watch you walk inside so they can compare how you act later. No, we’re not joking. The exam begins and ends in that parking lot. They will continue to watch you in the waiting room.

Your friend can write down everything that happens during the appointment. Bring a list of your medications and your medical record. Have everything numbered, and if the doctor asks to make copies, make sure you get everything back.

Some people ask how they should dress and act during an IME. Don’t act any differently than normal. Be comfortable – wear sweatpants and a T-shirt.

**The actual examination**

Arrive at least 15 minutes early. Be polite. You’ll likely have to fill out a medical questionnaire in the waiting room that includes a pain scale. These measure your pain on a scale from 1 to 10. Don’t assume that you need to jump to an 8 for them to take you seriously – an 8 is comparable to a root canal.
Can I record my IME?

Neither the doctor’s attorney nor yours will likely be present. Depending on the state, the doctor has to be aware that he is being recorded and must consent. It’s best to keep to a pen and paper during the appointment.

Don’t let this doctor take any x-rays or other hard tests without your attorney’s permission.

Since your attorney will not be present, the doctor might try to do more tests. Don’t be intimidated. If you can’t reach your attorney to ask about the test, then reschedule. Don’t do anything more than simple physical examinations.

Enjuris Tip:
The doctor might be distracting you so he can find inconsistencies in your story. That is the crux of an IME. If he can weaken your narrative, then the insurance company doesn’t have to pay you as much.

Be honest. Don’t try to create new injuries. Don’t make your current injuries sound worse than they are. Just be yourself, explain your injuries and lay it all out on the table.

The appointment should last fewer than 30 minutes. He or she will do a simple battery of tests that include range of motion, reflexes, pain response, Q&A, medical history, and walking (such as on your heels and toes). Be complete with your medical history. Include everything, even if it doesn’t pertain to the accident.

Here are some tips:

• Be descriptive with your wording. Don’t say “painful” or “it hurts” – say it stabs, it burns, it wrenches.
• Make sure you understand each question before you answer it.
• Don’t expect every test to hurt. Doctors have ways of doing range of motion tests that don’t cause pain. Conversely, if something does hurt, don’t be afraid to speak up.
• Cooperate fully and don’t be rude. The doctor is doing his job, and so are you.
• The doctor might be distracting you so he can find inconsistencies in your story. That is the crux of an IME. If he can weaken your narrative, then the insurance company doesn’t have to pay you as much.
• Don’t talk to the doctor about the specifics of the case or anything about your life beyond small talk.
When the examination is done, thank him for his time and make sure that you have all the materials with which you arrived. Afterward, write down your post-appointment impressions of the IME. These notes will be given to your attorney.

If the results turn out to be unfair, your attorney can argue inherent bias – and he can also point out the obvious, like your injuries that cannot be spun. Those cannot be buried even in the most biased of reports.

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If your insurance company ignores or misleads you

When an insurance company refuses to pay benefits owed or uses misleading information to deny your claim, they are acting in "bad faith," and you may have grounds for a lawsuit.

Determining grounds for a bad faith lawsuit

Insurance providers might violate their obligation to act in good faith in a number of ways. If any of the following situations sounds familiar, you may be looking at a potential bad faith lawsuit:

- **The workers’ compensation insurance provider won’t even look at my claim:** The time limit for filing a claim in a workers’ comp case varies by state, but is sometimes as brief as only a few months. The insurance company’s hope is that if they delay your claim long enough, the statute will run out. In these situations, the insurance company is counting on you to be uninformed. Protect yourself by knowing your state’s laws in reference to your claim. A workers’ compensation attorney can help you understand your rights and determine if the workers’ comp insurance company is acting in bad faith.

- **I was injured in a car accident, and the personal injury policy won’t pay out:** Personal injury coverage on car insurance policies exists to keep a driver from suffering undue financial hardship, but sometimes these insurance providers simply refuse to pay a claim.

If you can prove that your injuries resulted from the accident and that the personal injury policy in place legally covers you, consider contacting a personal injury attorney experienced in car accident lawsuits. He will know what methods car insurance companies use to unfairly deny claims, and can determine if the denial constitutes an act of bad faith.

- **My claim was denied based on false or misleading information:** Companies offering workers’ compensation insurance, personal injury policies, life insurance – just about any first party insurance policy, really – sometimes try to circumvent their obligation to act in good faith with misleading or false
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Information. They may mislead you about the nature of the coverage in an attempt to convince you that your claim isn't valid, or they may bombard you with unnecessary forms or requests for information. Here, again, the insurance company is banking on the average person's lack of knowledge about their rights.

What to do if you suspect and insurance company is acting in bad faith

Document everything. This includes medical bills and all records related to your injury, and also all correspondence with the insurance company. Avoid talking on the phone to the insurance provider. Instead, demand everything in writing.

If you choose to pursue a bad faith case, make sure you hire an attorney familiar with the specifics of your situation and the laws in your state. An experienced workers' compensation attorney should handle any case regarding workers' comp, while a personal injury attorney is best qualified to deal with cases involving car insurance companies.

Helpful reading and documents
Guide to workers compensation cases
Choosing a personal injury attorney

Evaluating personal injury attorneys is a big part of finding the right attorney for your case. See here the steps to follow.

Find 3-5 attorneys to approach and use the free initial consultation.

- Ask friends and family for referrals
- Ask lawyers you know or have worked with on other matters
- Check online (legal directories, state/county bar associations, reviews, etc.)
- Social media (Facebook, Google Plus, etc.)

Interviewing personal injury lawyers

Print out our interview worksheet and take it along. Make sure you’re comfortable with each answer, and write down any specifics so you can compare details among attorneys later.
Here’s a list of other areas to check out when evaluating personal injury attorneys:

1. **Past client reviews:** Find independent directories to see what their past personal injury clients say.

2. **Knowledge of your part of the state:** Have they tried or settled similar cases in your city or county?

3. **Who will be assigned to your case:** Make sure all the questions you ask are relevant to the specific lawyer assigned to your case.

4. **Experience with your type of case:** How many personal injury cases they have handled in your state for your type of accident or injury? Do other lawyers refer cases to them?

5. **Overall experience and resources:** Firm age, size, experience, connections with doctors and expert witnesses relevant to your case. Awards and leadership roles in organizations can also be good indicators.

6. **Comfort with going to trial:** Find out how many of their cases go to trial and the success rate of those that do.

7. **Negotiation ability:** Ask what sort of settlements they have obtained (remember, 95% of personal injury cases are settled without trials).

8. **Your personal comfort with the lawyer:** Do you feel comfortable talking to them about explicit details of your case? Do they answer questions to your satisfaction?

9. **Payment:** How do they expect to be paid? Are there any fees or terms that would change if the case goes to trial, for example?

10. **Timing:** Ask specifically when your lawsuit will be filed and how long they anticipate it will take. Make sure they do not have so many pending cases right now they can’t devote proper time to yours.

11. **Your expected role:** Ask the attorney what expectations they will have of you.

12. **Past problems:** Has the attorney ever been censured or disciplined by any legal or ethics committees in the past?

13. **How disagreements are handled:** If you and the attorney disagree on accepting a settlement, for example, what happens?

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**Helpful reading and documents**

- [Where to find a personal injury lawyer](#)
- [Printable form with interview questions to ask an attorney](#) (Also included in the Appendix)
Your first meeting with a personal injury attorney

In order to make your first meeting go as efficiently as possible, you’ll want to make sure you bring all of the paperwork and documentation related to your injury and incident.

Gather these various documents before your first meeting:

1. All medical information
   - Documents explaining diagnoses and treatment
   - Bills from doctors and hospitals
   - Bills from physical therapist and/or chiropractor
   - Documents explaining any future treatment needed
   - Name and address of ambulance service used (if any)
   - Name and address of hospital where you were first taken
   - Dates you were admitted and released from the hospital
   - List of current prescription medications

2. Insurance information
   - Paperwork explaining health insurance coverage
   - Paperwork outlining auto insurance coverage (if the injury was a result of a car accident)

3. Documentation of any lost work or income as a result of the injury (including dates missed)

4. Copies of all official report(s)
   - Police report with details of the incident
   - Other reports taken of incident

5. Any photos that were taken of the accident scene or injuries.
Questions a personal injury lawyer may ask you

A personal injury attorney does not ask questions to make you relive the moments of your accident – they ask because it will help you win your case. For that reason, it’s important to give them all of the details that you can.

Let’s look at some possible questions they may ask at your first meeting:

- What specific injuries are you dealing with and how are you feeling now? How much pain are you experiencing?
- Have you seen a doctor, and what is was the prognosis? (If you haven’t seen a doctor, they will strongly advise that you do in order to get documentation of your injuries.)
- Have you talked to any other lawyers or insurance representatives about your accident and what details did you give them?
- What type of auto and medical insurance coverage do you have? (You should also have the coverage details on hand.)
- Have you given a recorded statement about your accident or injury to your insurance company?
- Where are you employed? For how long? What do you do there?
- Have you been in any other accidents (before or since the one you are meeting about)?
- Have you received any notices of lien claims? (Bring lien notices with you.)

You’ll see you can also expect to sign any necessary authorizations so they can go ahead and get started requesting records right away:

- Insurance authorization
- Wage loss authorization
- HIPPA-compliant authorization to obtain medical records

And the lawyer will want copies of your insurance cards, including Medicare or Medicaid.

It’s also important to explain how this incident has affected you, your family, and your everyday tasks – making a list of specifics beforehand can help you talk through it in the meeting. Pain and suffering (as it is called in legal terms) is one aspect that can be valuable when your attorney is building your case.
How to decide if this lawyer is right for you

You are not tied to choosing the first personal injury attorney you meet. We recommend meeting with at least a couple.

If you don’t want to meet in person with each potential lawyer, you can get a good idea of their experience and demeanor through online reviews or a phone call to their office. However, we don’t recommend hiring a personal injury attorney until you’ve had an in-person meeting.

Paperwork and understanding lawyer fees

Once you’ve committed to a particular attorney, he or she will have you fill out a client agreement, fee agreement and medical release.

You’ll need to have the uncomfortable discussion of what he or she charges for their legal services.

Helpful reading and documents

- Sample diary form
- Preparing to meet with a personal injury attorney

Negotiating fees with a personal injury lawyer

Most lawyers, as is the norm in the industry, handle personal injury fees on a contingency basis, meaning they only take a portion of the settlement or verdict if they’re successful in getting money for the client.

The percentages, however, are all over the place, and some accident lawyers have hidden costs.

Why does one firm only work on contingency while another expects certain costs to be paid in advance? Is there really a benefit to be gained from working with a practice that wants 40% of the recovery versus one that only wants 25%?

If you like the firm but aren’t thrilled about their fees, how much room do you have to negotiate?
Contingency-based fees – what are they?

The majority of injury law practices work on contingency.

This means that you, as the injured party, agree to pay a portion of any compensation that’s recovered to the firm when the case is settled or a verdict is handed down.

Enjuris Tip: Usually, you agree to pay a portion of any compensation that’s recovered to the law firm when the case is settled or a verdict is handed down.

There are several reasons for this practice within the industry:

1. A lot of injured people end up in situations where they cannot afford to pay up front for counsel, because of medical bills and lost work time.
2. Secondly, it provides the attorneys an incentive to work harder to achieve a higher settlement amount.
3. Thirdly, the risk of higher settlements and verdicts can drive insurance companies and responsible parties to choose to settle sooner.

Accident attorney fees and what to look for

There are several things to look out for when considering the fees you’re expected to pay.

The first issue is up-front costs.

Most injury practices offer free initial consultations, so you shouldn’t have much trouble at least finding someone to talk to regarding the merits of your injury claim.

Secondly, you’ll want to learn what the accident attorney’s fee is. 33.3% is considered a typical starting point – although there is no standard fee across the industry.

Some firms will raise the fee if the case has to go to trial to 40%, for example, and they may also require you to pay expenses.

Competition in the field is driving fees down, with some firms now going as low as 15%.
You’ve been hurt in a car accident. What happens now?

If a case is smaller, the firm will want a greater portion of the recovery in order to be compensated for its time.

It is possible to find injury law practices that work on hourly or flat rates. You should be prepared, however, in this scenario to put up a lot of your own money early on in the process.

It’s also likely that the practice taking on your case will want expenses for investigators, travel and other needs paid up front.

**Negotiating with a personal injury attorney**

There is an essential tension between the client and the attorney when dealing with fees. As an injured person, you’ll wish to get as much money as possible.

There’s also a fear that if the case settles quickly, you won’t be getting your money’s worth from the lawyer. You’ll owe them the agreed-upon percentage, no matter how long the case takes. From the attorney’s perspective, the fear is reversed.

A personal injury lawyer worries that he or she may end up shelling out money for specialists to testify, only to end up footing the bill if the case results in no recovery.

There is no happy medium, and that means you have to be prepared to negotiate.

As with almost any deal, you should shop around. If you can find several similar law firms in your part of the state to take on your case, it’s prudent to find who has the best fee structure.

If you like one firm’s service but want a lower fee, don’t be afraid to ask. If you have a good case, there’s a chance that the firms you’re talking to will be comfortable budging a bit on fees in order to get it.

Time is always of the essence. You’re also likely already dealing with a lot of bills, and getting compensation means paying those sooner.

**Your lawyer may not have to charge you a single penny**

In some cases the attorney may not have to even charge their client a penny. In these cases, the attorney collects a “reasonable hourly fee” from the losing side.

If you are in a situation where you must have an attorney represent you, do not be afraid to ask the attorney how she plans on collecting her fee.
Why might a personal injury attorney decline my case?

You will want to interview a few different personal injury lawyers before you decide which attorney to hire. Don’t be discouraged if a lawyer turns down or refuses your case.

Just as you are evaluating the attorney, he or she is also evaluating your personal injury case’s potential, as well as their costs and ability to represent you well. There may be other factors unrelated to your injury or accident, also. Here are a few reasons why your case could be refused:

- **Difficulty establishing liability**: Just because someone was injured does not mean that someone else is legally required to pay for these injuries.

- **Inadequate amount of damages**: The amount of money that a personal injury case can be awarded is based on the damages that the plaintiff (the person injured) suffers. Damages may include property damage, medical expenses, lost time from work, lost earning capacity, mental anguish and pain and suffering. An attorney must be able to justify taking the time and expending the necessary resources to handle the claim.

- **Limited resources of the defendant**: A personal injury lawyer may also reject a case if he or she believes that the defendant (the person to be sued) does not have the proper resources to pay the claim. In most personal injury cases, insurance coverage is available to help pay for the damages that the victim sustains.
  
  However, in some situations, insurance coverage may be denied or a private party may not have insurance coverage that applies. In that case, the defendant’s resources will need to be tapped into in order to collect on the eventual settlement or judgment. If a defendant is financially unable to pay for the damages that he or she is responsible for, the lawyer may not receive his or her agreed upon fees.

- **Expense of the case**: Because most personal injury cases are taken on a contingency fee basis, the lawyer may invest time with no guarantee of payment.

- **Your case involves a novel issue**: If there is a complex and novel issue involved in a case, the lawyer may not feel that he or she has the experience to handle the case.
You've been hurt in a car accident. What happens now?

- **Conflict of interest:** Attorneys must adhere to a strict set of ethical guidelines. If they violate these guidelines, they can risk losing their professional license. An attorney may reject a client if he or she previously represented the defendant.

- **Poor rapport with client:** In some instances, a personal injury attorney may not feel that he or she has good rapport with a particular client. If the attorney feels like the client does not trust him or her, the attorney may simply not take the case rather than face client difficulties down the line.

- **Other attorneys rejected the client:** Sometimes a client who has been rejected by previous attorneys may raise red flags that a new attorney may want to avoid.

- **Statute of limitations has expired:** An important reason why a personal injury attorney may reject a client is when the relevant statute of limitations has expired. Even if the client had a good case, the expiration of the statute of limitations bars the client from proceeding with the case.

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Helpful reading and documents

Find the statute of limitations for your state.
Dealing with Expenses After Your Accident

**How your settlement is calculated**

"How much do you think my case is worth?" This is the second question that people ask when they meet with an attorney. (The first is, "Do you think I have a case?")

For liability cases, the basic rule is that the settlement should roughly equal the extent and intensity of injuries. Using the most common type of accident as an example (motor vehicle accidents), insurance actuaries reveal an average award of $24,000 per case in 2013.

Most law firms add together time off work plus medical costs and multiply that value by four to reach an estimate for settlement discussions.

Others provide estimate calculators for clients to use on their websites. Let’s dive deeper into that calculator and see how attorneys reach those numbers.

**The personal injury calculator**

The calculator is an easy way to get a ballpark estimate of what your case is worth. This way you can get an idea of how attorneys should be responding to you.

There are a few types of damages for which you could potentially recover:
You've been hurt in a car accident. What happens now?

- **Economic (special) damages** – costs of medical treatment, estimated future medical treatment, lost earnings, future lost earnings, property damage, out-of-pocket expenses
- **Non-economic (general) damages** – pain and suffering, emotional distress, inconvenience, loss of consortium (companionship of husband, wife or partner), loss of enjoyment of life
- **Punitive damages** – punishment

Focusing specifically on the general damages – how on earth do you calculate those? How do you put a number on “My back hurts and I might be out of work for the rest of my life”?

In theory you could use a “per diem” rate and calculate the number of days you’ve been in pain and try to multiply that by the number of days you actually suffer pain, but if you end up being in pain the rest of your life, that won’t work.

Make sure to take into consideration whether you were a factor in your own injuries. Were you not wearing a seatbelt? Did you walk into traffic? You’ll need to be honest because many states have comparative fault statutes.

**Enjuris Tip:**

Many states have comparative fault statutes, which take into account how much you contributed yourself to the accident.

This is when attorneys use what they call “the multiplier.” An insurance adjuster will add up special damages and multiply that by a number between 1.5 and 5. That number will be low or high depending on specific facts in your case:

- Severity of injuries
- Medical treatment received to date
- How much treatment you anticipate needing in the future
- Prognosis (are you expected to recover?)
- Permanent or long-lasting effects?
- Impact on your daily life

Please note that this is an e-book provided for educational purposes only. The information in it is not legal advice. Talk to a licensed attorney about all legal issues that could potentially affect your case.
You, of course, will argue for a higher multiplier, while the adjuster will argue for a lower multiplier. Sometimes the ceiling (5) will be increased depending on the severity of injuries, but that is for extraordinary cases in which there is permanent disability, recovery is prolonged, the injuries are immediately apparent and so on.

When a value for general damages is calculated, that is added to the rest of the damages for an estimated settlement value. This total number is what your attorney will argue for during negotiations, though he will likely pad it and give himself room in case things go south.

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**Did you contribute to the accident?**

Your geographic location also could put a damper on your settlement. When a state takes into account your actions in an accident, your settlement would be reduced by the percent you contributed. There are three basic types of contributory or comparative negligence rules, which are as follows:

- **Pure comparative negligence:** Your settlement would be reduced by your percentage of fault, with no limits:
  - Alaska
  - Arizona
  - California
  - Florida
  - Kentucky
  - Louisiana
  - Mississippi
  - Missouri
  - New Mexico
  - New York
  - Rhode Island
  - South Dakota
  - Washington

- **Modified comparative negligence:** Your settlement would be reduced by your degree of fault. If that is greater than 50%, you can't win anything.
  - Arkansas
  - Colorado
  - Connecticut
  - Delaware
  - Georgia
  - Hawaii
  - Idaho
  - Illinois
  - Indiana
  - Iowa
  - Kansas
  - Maine
  - Massachusetts
  - Michigan
  - Minnesota
  - Montana
  - Nebraska
  - New Hampshire
  - New Jersey
  - North Carolina
  - North Dakota
  - Ohio
  - Oklahoma
  - Oregon
  - Pennsylvania
  - South Carolina
  - Tennessee
  - Texas
  - Utah
  - Vermont
  - West Virginia
  - Wisconsin
  - Wyoming

- **Contributory negligence:** This is the harshest of the three. You can't win any damages if you're found to even be 1% at fault. If you're found to be even the tiniest bit careless, your settlement will be zero.
  - Alabama
  - DC
  - Maryland
  - Virginia
We’ll discuss this legal concept further in a later section.

Best ways to keep track of expenses

The best way to make the most out of the settlement is to keep track of expenses.

Know where your money is going -- make an Excel spreadsheet with columns designating the payee, the amount, the dates that bills are due and whether they are paid (and by whom – you or your insurance company, because you’ll need to track whether you have been reimbursed). Then you can also scan in the relevant bills so that everything is kept in a file on your computer. That way, everything can be emailed to your attorney, and you also have a backup on your computer.

We have a handy spreadsheet for your reference in the Appendix, which will help you get started.

Helpful reading and documents

Worksheet to track expenses

Calculating pain and suffering

The concept of pain and suffering addresses the loss of comfort, happiness and opportunity that follows an accident.

It should be noted that medical expenses do typically figure into the baseline calculations used by most insurance companies when calculating pain and suffering.

A common figure that’s used throughout the industry is a multiplier between one and five. This means that pain and suffering is calculated over and above medical expenses at that rate.

For example, if an individual’s medical bills amounted to $50,000, the calculated pain and suffering for a 3X multiplier would peg damages at $150,000. The total combined award for pain and suffering alongside medical expenses would be a total of $200,000.
Arriving at a figure for pain and suffering

The biggest thing injured people need to do is document everything. If you felt psychological trauma, it’s important to work with a practitioner and clearly document what you felt. The same goes for pain.

Many attorneys encourage their clients to maintain daily logs like this one to note when they felt pain and how long they endured it. The best way to get the maximum payout from an insurance company is to present clear documentation of how you felt in the months following an accident.

If that seems like a lot of work, try to remember that the difference between a 2X-3X multiplier being applied to your claim is a net of 50% more money.

Exceptions to the pain and suffering multiplier

The multiplier is a framework for arriving at a specific figure. There are easily imagined instances where a different number can be arrived at.

Consider an injury that may have been costlier in terms of suffering than in medical costs, like a major facial scar.

The medical costs that accompany a disfiguring scar may end up being in the low thousands. Most people would see it as unfair for a person who was horribly disfigured to be paid $25,000 in pain and suffering damages simply because it only cost $5,000 to address the immediate medical issue.

How to claim pain and suffering damages

The technical term for pain and suffering is general damages.

These damages are distinct from special damages, which cover medical bills, damaged property and other things that are easy to quantify. They’re also distinct from punitive damages, which are typically only granted as part of a lawsuit.

If you remember anything about pain and suffering, remember this

Once a settlement has been reached, that’s almost always the end of the matter. It’s important to make sure that you receive enough money to properly compensate you for problems that may last well into the future.

If you believe you’re entitled to damages for pain and suffering, your primary goal should be to thoroughly document everything you experience.
Your lawyer will need to be able to present a clear set of dates while negotiating a settlement with the insurance company. By being diligent with documentation, injured parties can improve the likelihood that they’ll be awarded general damages based upon a higher multiplier.

Helpful reading and documents

Post-accident diary

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How to include loss of wages

When you’re injured because of someone else’s negligence, you may be able to recover compensation – including income that you lose.

In addition to compensation for property damage and medical expenses, injured victims may be able to recover damages for the wages they lost because of the accident.

Ask your employer for a letter that contains:

- How long you were off work
- How your pay changed
- Special projects you were working on before the accident that would have affected your pay
- History of bonuses or promotions
- Lost perks from work
- Any benefits used

There are a number of different types of damages that may be considered in the category applying to income lost, including the following:

- **Lost wages:** This is money lost because a person had to take time off work to recover for injuries sustained during an accident. To calculate these damages, a person multiplies his daily wage by the number of days missed. If the person works a variable number of hours each week, the court may use an average number of hours multiplied by the number of days and the hourly rate.
• **Loss of other benefits**: A person is also entitled to recover for the loss of other benefits in addition to the loss of wages. Examples are sick days used to recover, vacation days, etc.

• **Lost earning capacity**: This form of damages asks for compensation for the difference between the earnings that a person may have earned had the accident not occurred and what he will earn because of the accident.

## Proving lost income

The court may look at a number of different documents to help determine the actual value lost. Some documents that may be evaluated include:

- Past check stubs
- Former tax returns
- Documentation of direct deposit amounts
- Employment letters
- Bank statements

The victim and the defendant may be at odds regarding the value of lost earnings. Economists and other expert witnesses may be required to help shed light on the value of the lost wages, benefits and earning capacity.

This is especially true when a person has suffered a disability at a young age when he may not have had much time to demonstrate earning capacity before the debilitating accident occurred.

## Self-employment

A more complicated process is involved when a person is self-employed. This is because it can be difficult to substantiate such earnings when someone is not paid with a regular paycheck.

However, there are still ways to substantiate these earnings such as by providing income tax returns that show income, business records that show the amount of revenue, and expenses and other statements that demonstrate this information.

Another simple way to prove this would be to show the plaintiff’s record of estimated tax pay-ins. Self-employed individuals are supposed to pay quarterly taxes based on their earnings, so if those pay-ins took a sharp dip, the court will be able to see that it coincided with the accident.
You’ve been hurt in a car accident. What happens now?

Proactive steps to take

- Get a doctor’s note with a prognosis and the amount of time victim should be off work
- Use a post-accident journal to track days off work and symptoms
- Ask employer for a note stating how long victim was off work and any benefits used

In some cases, expert financial advisors may need to be contacted. An economist or vocational expert may be able to estimate how an accident affected a person based on his current age, projected earnings, career trajectory, potential raises and ability to work in a different career.

Caps on how much compensation you can receive

After an accident, you’re concerned about how you’re going to pay for the looming medical bills and account for the lost time at work. Compensation can offer you help, but what if there are limits or caps on that compensation?

Types of damages

There are a variety of damages that may be requested in a personal injury case. These damages can include economic damages, non-economic damages, wrongful death damages, and punitive damages. These damages basically determine the compensation you could receive in a settlement.

Economic damages

Economic damages are generally easier to prove and are more objective in nature. They typically include damages that have had a monetary impact on the victim. Economic damages can include:

- Medical bills
- Loss of earning capacity
- Property damage
- Future medical expenses
- Lost income
- Vocational rehabilitation
- Household services
- Costs associated with making renovations to a home to account for a disability
Non-economic damages

Non-economic damages are more subjective than economic ones, and they aren’t as easy to calculate. Non-economic damages often boil down to how much a jury feels someone should be compensated from an accident.

Juries typically use a multiplier to calculate the value of non-economic damages, but this is a basic guide. Instead, the jury also relies on its own beliefs regarding the value of these damages. Often, different juries come up with very different values for non-economic damages because they cannot rely on documented evidence (bills or receipts) that are used to calculate economic damages.

Some examples of non-economic damages include:

- Pain and suffering
- Mental anguish
- Humiliation
- Loss of enjoyment of activities
- Loss of consortium
- Loss of enjoyment of activities

While these damages may be more difficult to substantiate, they are very real damages. Sometimes the pain after an accident continues well after the medical bills have been paid. A personal injury accident can often cause lasting impact on the victim including not being able to participate in favorite activities, not being able to fully participate in daily living activities, or not being able to interact on the same social level as the one did before the accident.

Wrongful death damages

If the injury results in a person’s death, the surviving family members may bring forth a wrongful death lawsuit. Damages that may be available in this type of lawsuit include:

- Funeral expenses
- Burial expenses
- Medical expenses prior to death
- Loss of financial contribution
- Loss of consortium
- Loss of companionship
- Loss of services and support

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Punitive damages

Unlike other damages that are intended to make a person whole after an accident, punitive damages are designed to punish the responsible party and are generally limited to gross negligence cases. For example, a car manufacturer may have to pay punitive damages to you if they were made aware of defects in their product which they neglected to fix, and which then caused your injury.

Damage caps

The jury is usually responsible for determining the amount of damages to award in a personal injury case; however, many states have laws that limit the amount of damages so that even if a jury awards a higher verdict, the verdict will be reduced to adhere to the limit rule.

Each state can establish its own damage cap, but there is also a federal cap on non-economic damages in medical malpractice cases.

Juries may not be aware of damage caps. Therefore, if they award a higher amount to a victim, this award is later modified so that the victim gets less money than his or her peers believed was fair.

The defendant involved in a personal injury claim may not be as willing to settle the case early on because he or she knows that the damages can only go up to a certain amount, and that can ultimately prolong the process and cost both parties more in legal fees and resources.

Options for covering your medical costs after an accident

Covering medical costs after an accident can be difficult. However, if you work with your attorney during this time you will find that there are options available for you that ensure you receive the proper medical care without causing a financial disaster.

Even if you don't have an attorney, there are options for covering medical bills after an injury, though you will be better off working with a lawyer if at all possible.
Auto policy coverage, in the case of car accidents

Depending on the laws of your state and the type of insurance policy covering the event, your car insurance will likely cover between $10,000 and 25,000 of your medical expenses.

If your state is a no-fault state, these payments will come from your policy.

If it is an at-fault state, the payments will come from the insurance policy of the person that is at fault for the accident.

Personal health insurance may kick in to help cover medical costs after an accident

After the amount available under car insurance has been maxed out, some states will allow your personal health insurance to cover some of the expenses. This will depend on policy and state law.

The remaining bills, however, as well as ongoing expenses, are the responsibility of the injured party.

What else can be done to cover medical expenses?

Contingency-based medical billing

One of the most important services that your personal injury attorney may provide is access to medical care providers that bill on a contingency basis.

What this means is that the attorney arranges with the doctor for your medical care costs to be delayed until a settlement is reached with the insurer over the accident. Once that settlement is reached, the law firm reimburses the medical care providers for their services out of the settlement check.

Your attorney will make sure that your medical costs are all included as part of any settlement offer so that you do not suffer additional financial harm by having to pay for medical costs out of settlement monies designated for your losses and future care.

The big myth: Who is responsible for covering medical costs after an accident or injury?

The responsible party is under no obligation to pay your bills.
The truth is, you can sue for compensation of these medical costs, which is part of what every accident attorney includes in their request for compensation – but the other party is not obligated to pay these bills until a court tells them to. Once a settlement is reached with their insurer, the bills will be covered in the settlement.

Until then, these bills simply add up for the injured party.

**What if the specialist you need does not accept contingency payments?**

If your attorney cannot make arrangements with a doctor or medical facility on your behalf, you will be required to pay for your medical care.

Obtaining a personal loan or looking into lawsuit funding may be an option for you. However, you will need to look at these options closely so you understand how these products work and how much they will cost to repay.

**Litigation funding**

Litigation funding is funding that provides a loan against the compensation you will receive when your accident or injury case is finalized.

These types of loans can be processed quickly and do not require credit checks or any type of credit ratings. However, these loans can be costly to repay if you are not careful.

**What happens if you do not pay your medical bills?**

The first thing that you should consider is that if you do not pay your medical costs, the care provider may refuse additional treatments. This could have a long-term effect on your health and the quality of your life.

The second thing is that medical facilities turn their debts over to collection agencies and the harassing phone calls will begin.

You will also have to worry about how these unpaid bills will impact your credit rating. Impacting your credit score could cause additional problems for you in the future.

**Your attorney may be able to help delay billing**

If you have bills coming in that you cannot pay, speak to your attorney. Many times your attorney can contact the medical center and make arrangements on your behalf so that paying the bills can be delayed until your settlement is finalized. This will help prevent the bills from going into collection and ruining your credit standing.
If you've run out of options for paying medical bills

Let's say you don't have insurance or the help of an attorney. Many people consider bankruptcy, as it can wipe out the debt to the medical provider. However, bankruptcy carries with it so many potential complications for your future that you would do well to consider talking to the hospital or health care provider first.

**Talk to the hospital or health care provider about medical costs after an accident.**

Sometimes the hospital or provider will be open to negotiating a smaller bill, a discount on overall charges (for a down payment or simply outright), or a gradual payment plan, even if it's a small amount per month. Speak to the billing office at the medical institution.

Check other places to determine whether you're eligible for financial assistance:

- Medicaid
- State children’s health insurance plan
- Local assistance programs.
- Financial aid from hospitals or medical clinics

Other parties who can help or provide advice on covering medical bills after an accident

- Non-profit credit counselor
- Medical billing advocate
- Hospital ombudsperson
- Support groups that exist to help others in similar situation to yours

When you are facing all of the medical costs associated with your accident, it’s easy to feel overwhelmed. Understanding how these bills are paid and where you can access medical care without causing a financial crisis to yourself and your family will alleviate some of this stress.

Keep track of all your expenses with our Expense Worksheet, which you can find in the Appendix.
You've been hurt in a car accident. What happens now?

Statutes of limitations

After a car accident, it's almost an insult to learn that you have a deadline to file a lawsuit or insurance claim.

What is the statute of limitations? It bars a claim after a certain period of time has passed. When the statute of limitations begins, the clock starts ticking from the time of the injury or when the plaintiff should have reasonably known of the injury.

Typical exceptions to the statute of limitations

While some states have their own specific exceptions created by statute or contract, there are universal exceptions that can toll the statute of limitations and extend the filing date beyond the statutory period.

1. **The defendant has left the state**: If the defendant isn't there to file a claim against, then how are you going to win your case? You can't file against a ghost. The courts understand this, and they give some leniency in terms of waiting for your defendant to come back to town.

2. **The defendant is a minor/legally incompetent/legally unfit to stand trial**: The statute of limitations is tolled until the incompetency is removed or the minor reaches age 18.

3. **The defendant is dead or imprisoned**: You can bring a claim against the defendant’s estate. If the defendant is imprisoned, you can wait until he has made parole.
4. **At war/active military duty**: Courts generally wait until the state is no longer embattled for suits to continue. Likewise, if a party is on active military duty, the statute of limitations is tolled until he or she returns.

5. **Tolling agreements**: Both sides can enter a tolling agreement in order to waive the statute of limitations. This preserves the right to file for the plaintiff and can actually minimize court costs for the defendants because the certainty of the agreement allows both sides to clearly assess their positions and conduct effective negotiations.

6. **Equitable tolling**: This is when the plaintiff could not reasonably have discovered the cause of action, despite due diligence on his part, until after the statute of limitations period had passed (for example, an asbestos claim in which the plaintiff did not discover his cancer until 20 years later).

**How long will my injury claim take?**

One of the biggest questions you may have as you decide whether it’s worthwhile to pursue a personal injury claim is simply: How long will it take?

**Reaching an injury settlement can take months or years.**

There is no typical personal injury case. Every fact pattern, issue, party, and injury differs, even if slightly. It will be impossible to predict how long your case might take until you receive a settlement or award of damages.

That said, most accident and injury claims seem to be settled within one to two years. Here’s a look at the major steps and generalizations on timing. As always, talk to an attorney for insights on your own case. Many personal injury law firms offer brief, free consultations.

**Step 1: Engage an attorney**

When: right away

If you are out of work for more than a couple of days, if you break a bone, or if your medical bills total more than a couple of thousand dollars, you might want to hire a lawyer.
You’ve been hurt in a car accident. What happens now?

Step 2: Starting a case

- Beginning the initial paperwork and process with your lawyer.
- Letting the other party know you intend to file a claim.
- The statute of limitations determines how long you have to file a claim. This time limit varies by state.

Step 3: The discovery process

How long: 6 months – 1 year, maybe longer

- Digging up facts, gathering and producing documents (police reports, medical records, etc.), taking depositions and witness statements.
- Investigating any disputes about the event.
- May include accident reconstruction or other research.
- Waiting for Maximum Medical Improvement (MMI) or a firm prognosis from a medical expert.
- Exchanging documents: submitting a demand letter after sufficient information has been gathered. The insurance carrier or other party will respond. And so on.

Step 4: Court motions

- The case may be dismissed or have a judgment entered due to factors such as jurisdiction, venue, improper process, default, etc.
- This can happen even before the discovery process.

Step 5: Attempt settlement

- Settlement by negotiation, mediation, or arbitration. Most cases will be settled.
- If settlement is not reached, a lawsuit may be filed.
- Depending on where your case stands in the statute of limitations, the lawsuit may be filed sooner.

Step 6: Go to trial

- Settlement might also occur during the trial process.
- Motions and other arguments will occur, separately from the jury hearing the case.
Step 7: Verdict

How long: 1-2 years from filing suit

- If the plaintiff wins, the defendant owes him or her the amount determined by the jury.
- The defense may appeal, which could force settlement for a lower dollar amount than the jury set.

Step 8: Appeal

- If the appeal is successful, there may be a new trial or a settlement.

Step 9: Collection

- If the plaintiff is successful, collection of the judgment begins (or efforts to collect).
- The judgment may be a lump sum or it may be broken up into payments.

Timing depends on several factors

- Complexity of case
- Severity of injuries
- Your patience
- Amount of damages
- Case load in your jurisdiction
- Defendant’s willingness to settle

*Information has been greatly simplified and timing is approximate. For example, holding out for a trial does not guarantee a larger award. Timing and process for your case will depend on your case details and the parties and court involved. Please talk to your attorney for options in your specific situation.

Sending a payment demand letter

As a plaintiff in a personal injury case, it’s in your best interest to settle out of court. Legal battles can take years to resolve, and the longer the case lasts, the more fees accrue. While mediation is one option, resolving your claim may be as simple as sending a payment demand letter.

Submitting, in writing, your plans to pursue a claim emphasizes your willingness to invest time and resources in getting restitution for your financial loss, and offers the defendant an opportunity to settle out of court.
Additionally, if you submit a payment demand letter and are still ignored, your personal injury attorney may find that information useful if your case does end up in mediation or the court system.

Writing a payment demand letter for your personal injury claim

1. Language matters

You may be angry about the cause of your injury or the lack of resolution up to this point, but insults and heated language will hurt your case, not help it. Be polite and businesslike, and stick to the facts.

Your language should also be specific regarding what you consider an acceptable resolution. List the amount you are seeking in monetary damages and the date you expect to receive payments, as well as any other action you expect the defendant to take, such as repairs to keep similar incidents from happening in the future.

Make it clear that your hope in sending this letter is to settle out of court and save both parties the inconvenience and frustration of a long legal battle.

2. Leave no doubt of your intent

You can make the seriousness of your position clear in a couple of ways. The first is by ensuring that your letter is professional in appearance. The second and more pointed way to make your intentions clear is to state them outright. Let the defendant know that if your letter is not met with a satisfactory resolution, your next step will be to file a court case. A personal injury attorney can help with appropriate phrases.

3. Include all relevant facts

Review the facts of your case in the body of the letter. Although the defendant should know the history of the incident, write your payment demand letter as though you are addressing someone with no previous knowledge of the case. This keeps you covered in the event an out-of-court settlement can’t be reached, at which point your letter becomes evidence. Make sure to keep at least one copy of the letter for this reason as well.

In addition to your written restatement of facts, enclose any other documents that support your version of events. This can include medical records, police reports and witness statements, or any other items you feel support your claim.
When a payment demand letter doesn't work

A payment demand letter will have the desired effect in about a third of all cases that use them. If your attempt to settle out of court is unsuccessful, however, you may need to hire a personal injury attorney.

Mediation, arbitration, or going to court: which is best?

If you have found yourself injured because of someone’s negligence, you have a few options in the personal injury case process when it comes to pursuing compensation.

On the one hand, going to court is always an option; however, many choose to settle their compensation amount outside of the court system by using a mediator or an arbitrator. What many do not understand, however, is the difference between these options and which one is best for their personal injury case.

Mediation

Reaching a stalemate in an insurance negotiation means that you may need to solicit the help of mediation.

This way of reaching an agreement involves an impartial third party (the mediator) that helps both sides reach a reasonable agreement.

Both parties sit down with the mediator and discuss their respective sides of the case; each party also gets to speak to the mediator privately. The mediator then uses the gathered information to persuade the parties to meet in the middle for an amount that the mediator feels is fair considering what's been presented.

Lawyers can decide also to seek the help of a mediator, or a court could make the use compulsory. Either way, it is not required that a settlement be agreed upon even when a mediator is used; mediators cannot make legally-binding contracts.

Mediation is typically quicker and more cost efficient than going to court in a personal injury case.

If a settlement isn’t reached through mediation, there are still other ways to come to an agreement.

Arbitration

Arbitration is similar to mediation in many ways. It is still a means to reaching a settlement outside of the courts; however, the decision made by arbitration is usually binding and must be abided by.

Please note that this is an e-book provided for educational purposes only. The information in it is not legal advice. Talk to a licensed attorney about all legal issues that could potentially affect your case.
An arbitrator or a panel of arbitrators acts similarly to a judge.

They will review the evidence presented by both parties and come to a decision for how they feel compensation should be awarded.

However, arbitrators have fewer restrictions than judges when it comes to deciding and viewing evidence. For this reason, arbitration is a cheaper and less formal option than a courtroom, but is typically more formal than mediation.

Depending on the details of a case, arbitration could be a voluntary decision or made mandatory. Many companies put arbitration clauses in their contracts forcing disputes to be settled in this way rather than going to court. However, arbitration can be voluntary if both parties agree to seek help negotiating terms.

Just as with a mediator, arbitrators will listen to both sides’ arguments. These arguments will include evidence from your case and can even include witnesses.

Unlike a mediator, however, an arbitrator will come to an official decision on how they feel compensation funds should be awarded. That decision can be either binding or nonbinding. If it is binding, you and the other party must abide by the arbitrators’ decision, just as you would with a judge.

It’s possible to repeal an arbitrator’s decision, but unlikely.

If the decision is nonbinding, you have the option to reject the arbitrators' decision and seek settlement through another means of negotiation, just as you have the right to when using a mediator.

**Going to court for your personal injury lawsuit**

Mediators and arbitrators do not always lead to settlement. If this is true for you, choosing to go to court may be the best option for your case.

Depending on how much compensation you are seeking, you can proceed to either small claims court or to civil court for damages larger than your state's limit.

A judge will hear the evidence of both parties, evaluate the claims, and reach a decision that he or she believes is fair under the law. A judge's ruling is legally binding meaning that the plaintiff and defendant will have to adhere to the decision, even if they aren't happy with it.

Court decisions are based on presented evidence, so this means that gathering that evidence can take some time and monetary resources.

For these reasons, the majority of cases are settled outside of court through mediation or arbitration.
Deciding on how to proceed with your personal injury case

Ultimately, how you decide to come to a settlement agreement for your personal injury case is up to you and your legal help.

For most, the risk of losing in court is too high to proceed in that way, and most cases are settled outside of court whether by the help of a mediator or arbitrator or through simple negotiation with the defendant.

If you are having trouble deciding, it’s best to consider your relationship with the defendant, how much you feel you are owed in compensation, and whether or not you are willing to put up costs. Choosing more casual means of reaching settlement, like mediation or arbitration, can save relationships and cost less than court settlements.

However, if the defendant’s insurance company is nowhere close to making a fair offer, or if other settlement methods have failed to make headway, going to court can offer you a final means to reaching a compensation settlement and end a frustrating negotiation process.
Rear-end car accidents – when you need a lawyer

Rear-end accidents are the worst accidents you don’t even see coming.

Many people think that because rear-end accidents presume automatic fault on the part of the other driver, they don’t need a lawyer. To be fair, this is usually the case.

"Why should I split my settlement with an attorney when the ending’s already written?" you think. Well, let’s back up a few steps.

Were you completely spotless in this scenario?

Think long and hard about your driving and your car. When’s the last time you had your vehicle checked out? Are your tail lights in working order? Remember, you usually don’t know a tail light is out until someone tells you, since you can’t see it. If you are driving a car that has faulty signals or a blown light, the driver behind you will not be held automatically liable.

This is also the case if you suddenly reverse or do something else unexpected. If you decide to stop in traffic when every natural inclination is to keep going, a judge would likely side with the other driver. If traffic came to a halt and you had to stop, that would be considered.

That’s what keeps the court system in business.
Where do you live?

The next question is whether you live in a fault or no-fault state. The idea in no-fault states is that all drivers are required to carry insurance – that way, if they get in an accident, they can just recover damages from their own policies rather than from the other driver and refrain from slowing down the court system with unnecessary lawsuits.

The injured drivers can sue for pain and suffering, but only if their injuries are exceptionally severe. Each state has a certain threshold, either verbal or monetary, that they have to meet. Instead those drivers usually rely on a PIP policy – which stands for personal injury protection.

In a fault state, everyone can sue anyone. An injured driver can sue the other driver personally or his insurance company, or both! Everyone pays according to each party’s degree of fault in the accident.

How bad are your injuries?

If you got rear-ended, you might only have whiplash – or you might have a broken neck. Liability might be assumed for the driver who hit you, but his attorney is going to argue mitigating circumstances and that your injuries aren’t as bad as they seem to lower damages.

The idea here is that even though liability is certain, there is a sliding scale of how much has to be paid out. Insurance adjustors have their own internal calculations for how bad an injury is, and you will have to illustrate exactly how injured you are. It’s all well and good that you’re in the right, but now you want your money. Are you capable of fighting to get it?

You’re going to have to go against both the insurance adjustor and this attorney’s years of expertise and knowledge of the law, and meanwhile, you have a broken neck.

Is the other driver insured?

One of the worst things that can happen is when the other driver is uninsured. What are you going to collect against? If you’re in a no-fault state, you can at least collect against your own policy. Many drivers even plan for this and have an uninsured motorist policy for this very eventuality. Some states require it.

But what if you don’t?

The only other option is to sue the uninsured driver, which can turn out to be expensive and not worth your time. Generally the result is a payment plan of some small sum every week until the judgment is paid off. It might
satisfy your sense of revenge to receive $60 a week, but after court fees, it might not be worth it.

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**Jurisdictions that involve multiple states**

Accidents in one state are hard enough – can you imagine adding another?

Many people can, because if you have an accident that involves a driver from another state or an employee whose company has foreign headquarters, you are looking at a case with multistate involvement.

This is called diversity jurisdiction and falls under the control of federal courts – these are specifically for cases in which the amount in controversy exceeds $75,000 in value and no plaintiff shares a home state with any defendant. These cases are incredibly time-consuming, costly and lengthy.

**What's different in a multistate personal injury case?**

When you have a normal accident – if there is such a thing – there is a plaintiff and defendant in a single jurisdiction.

Using a car accident as an example, the plaintiff is harmed by the defendant in some way and the plaintiff sues for damages. This is a fairly streamlined process because the plaintiff will find an attorney to help him and there is only one jurisdiction to deal with.

A multistate case is more complicated. Let’s say you are from New Jersey and are driving through Maryland to visit your grandmother when you are rear-ended by a delivery truck.

Basically, you have made minimum contact with the state by crashing your car into it, so you can file your case there.

Your car is totaled, and you later have to deal with both your health and auto insurance companies reimbursing you for claims starting in a different state.

One would think that you could file wherever you lived, but that’s not quite true. States have sovereign power, and one of those powers is to claim jurisdiction over controversies that happen on its roads.

These are called “motorist statutes,” and each state has one.
So where do we file the case?

In this example, you are driving in a different state and hit by a driver who is in the course of his employment.

That means not only will you have to employ an attorney in Maryland, where the accident occurred, but you will also need to find an attorney in New Jersey, where you’re from.

The Maryland attorney is called “local counsel.” You need someone licensed in the state, because attorneys are state-specific and have to take separate bar exams to be qualified.

As such, your New Jersey attorney has only a vague idea how to handle a Maryland car accident case and needs all the help he can get.

The case needs to be filed where the accident occurred.

So, in this case, it’s filed in Maryland federal court because of the diversity jurisdictional requirement. This obviously puts a great amount of stress on everyone involved in the case, seeing as literally nobody involved is actually from Maryland.

Meanwhile, the delivery driver’s corporate headquarters are located in Florida.

This means you have to add that factor as well and list them as a defendant. When an employee is injured on the job, the employer is generally responsible. This legal doctrine is called respondeat superior. If the employee were goofing around on the clock or taking a quick detour for personal matters, the employer’s responsibility might be debatable. For argument’s sake, we’ll say the driver was on track with his deliveries and not taking any detours for coffee.

In theory, you could choose to sue the defendant in Florida, where the company’s headquarters are. But that would mean you would physically have to travel to Florida for hearings and meetings, and you would also need to retain local counsel there as well.

You will also want to consider which state has the more beneficial statute of limitations and damage caps on insurance claims. You’ll want to take into account the effort of traveling, filing, the cost involved and how much time you are willing to invest.

But what about my settlement in a multi-jurisdictional case?

Multistate cases mean that costs pile up far more quickly than they would with a regular case. So far you already have two attorneys who need to split costs.
You’ve been hurt in a car accident. What happens now?

Luckily your New Jersey attorney won’t take much – probably a nominal amount for being a placeholder – but it still cuts into your settlement.

If it goes to a jury, however, you will probably be staying in a hotel in Maryland for a while, and what will that do to your job situation in New Jersey?

You’ll have to travel to and from Maryland for attorneys’ meetings, depositions, independent medical exams and hopefully settlement meetings like arbitration. That comes out of your pocket, unfortunately.

If it goes to a jury, however, you will probably be staying in a hotel in Maryland for a while, and what will that do to your job situation in New Jersey?

And those depositions? Your attorney will have to hire someone down in Florida to depose people in the corporate headquarters. They’ll have to depose the driver, wherever he lives – and if he’s a truck driver, that could literally be anywhere. And, depending on the severity of your injuries are, the corporate headquarters might be surveilling you to see how severe your injuries actually are.

Investigators might be watching you walking to your car, going into work, carrying your groceries, laughing with your friends and looking positively normal.

Defendants like that take multistate cases far more seriously. Crossing state lines means the stakes have gone up, and more people have gotten involved.

**What should I do differently?**

On your end? Nothing, though do be aware that you might be filmed by a surveillance team if the case is worth a large amount.

As a personal injury plaintiff, the only thing you need to focus on is healing from the accident and getting better on physical, mental and emotional levels.

Your local attorney has handled multistate cases before, and if he hasn’t, find someone who has.

The only thing different about a multistate case is that every few months, you will gear up for a big trip to another state for a few very long meetings and possibly a doctor’s appointment. This will exhaust you on a level you didn’t realize was possible, but afterward you will be one step closer to a settlement.
Collecting car accident damages from a government agency

Following most car accidents, the next steps are clear. You trade insurance policy and contact information with the other driver and the process of filing claims begins. Suppose, however, the other driver is a government employee who is on the job.

What are your rights?

Getting in a car accident with a government body changes the rules entirely. It’s no longer as simple as filing a claim with the commercial car insurance provider. In many cases, the law grants the government immunity. This means the person at fault for the auto accident and any injuries and property damage may be legally protected from any recourse.

You aren’t without rights in these situations, though. A car accident attorney can help you interpret state, local and federal laws and tell you how to proceed.

Your first step in protecting yourself from financial hardship after a car wreck with a government entity is to file your claim immediately. One of the protections afforded those representing the government is a statute of limitations. Therefore, you may only have a few months to submit your claim to the state or local agency responsible for the accident.

Prepare your formal written claim and be sure to include the following:

- Your full contact information including name and address
- Your personal statement about the auto accident, including facts supporting your claim of negligence
- The date the car accident occurred
- How much you are seeking in damages, based on and supported by medical and repair bills

Assuming the car wreck involved a non-emergency government entity such as a city garbage truck, you may have little difficulty receiving restitution. Cases where the other driver was operating an emergency vehicle like a police car, ambulance or fire truck are trickier. A car accident attorney can tell you what to do in these situations.
What to do after an auto accident with a federal government entity

The larger the government involved, the more complex filing your claim becomes. These sorts of car wrecks fall under the Federal Tort Claims Act. The Act requires you to prove negligence on the part of the government employee driving the vehicle, and carries a two-year statute of limitations.

The details of your claim remain the same. Contact information, factual statements and bills supporting your claim of financial hardship will need to be provided. A specific form, Standard Form 95, is required for any case alleging negligence on the part of a federal government employee in the course of doing his job.

Having submitted your own statement within the required time frame protects your right to sue. In the event that the government rejects your claim, you have six months in which to file a federal lawsuit. A car accident attorney can guide you through this process and represent you in your suit if necessary.
You've been hurt in a car accident. What happens now?

What you have to prove in a car accident

A car accident involving more than one vehicle typically falls under negligence.

You have to prove four things in a negligence case: duty of care, breach of that duty, causation and damages. If you are the plaintiff in the case, proving negligence on the part of the defendant can mean the difference between having your medical fees and damages covered or being left with a large financial burden.

Illustrate that the defendant owed you a duty of care

The key phrase here is “duty of reasonable care.” Drivers are required by law to operate motor vehicles conscientiously and take care to avoid injury to others. Your task, or that of your car accident attorney, is to show proof that the defendant was not exercising reasonable care when the car wreck occurred.

Show that the defendant breached his duty of care

The standard here is "reasonable care." This is an objective standard, so the defendant had to act as any other reasonable person would in the same situation. If you can show that a reasonable person wouldn't have reacted the same way, then you're golden for proving a breach of duty.
You've been hurt in a car accident. What happens now?

Causation and damages

Points three and four should be discussed together, because you have to show that the breach was the fault of the defendant and that his actions specifically caused your injuries.

The court system needs proof of this loss in order to assess the validity of your case. Make sure to gather all medical records and billing statements related to your injuries and financial hardships, as well as any repair bills for damage to your car.

You have to show that the defendant was both the actual and proximate cause of your injuries. In terms of actual causation, you need to show that but for the defendant’s actions, you would not have been harmed. This is called the “but for” test. Sometimes the absurdity of the English language calls for substitutions like “if not,” but legally it serves the same purpose. If not for the defendant doing what he did, you would not have been injured. Not only that, but the defendant must have been the proximate cause as well – the injury must have been foreseeable. A reasonable person would think that texting while driving could result in an accident, for example.

3 simple methods to prove fault in a car accident

Obvious traffic law violations

Assigning fault in a car wreck is clear cut when one party has clearly broken traffic laws.

Violations can include speeding, failure to yield, running a stop sign and a number of other specific issues.

Car accidents involving rear-end collisions and left turns

Proving fault is often simple and straightforward in cases of “no doubt” liability, including rear-end collisions and left-turn impacts.

These can be potentially deadly crashes for the plaintiff, resulting in serious vehicle and bodily damage. Because they have little ability to escape from the collision, liability is heaped almost entirely upon the defendant.

In rear-end collisions, the law supports the driver in front.

This applies even if the defendant is driving incredibly close to his bumper, as you would when frustrated by...
a slow driver in traffic. The idea is that the rear driver should know to fall back and leave a few car lengths in between him and the front driver.

With left turn crashes, these auto accidents are identifiable by the specific damage caused to both cars. The turning driver will have damage on the front of his car, while the other automobile’s damage will appear on the front-right side.

As with rear-end collisions, the straight-traveling driver may still hold some liability in a left-turn accident if he is found to have run a red light or exceeded the speed limit.

Fault supported by police reports

Officers might not always show up to the accident scene. If they don’t, go to the closest station and report the accident yourself. Try to get the other driver to accompany you if possible.

Make sure to check the report for factual inaccuracies.

If the error is something like a time or place mistake, that can be easily fixed. In terms of something bigger like who was at fault, though? That requires forms and bureaucracy. Each station likely has their own procedures, so it’s best to consult with an attorney in order to streamline the process.

What is liability?

Personal injury liability and three types of tort law

In law, the concept of liability hinges on the notion that an individual has a certain set of responsibilities in any given situation.

The types of torts giving rise to liability can be classified according to intent:

1. **Negligence** – This type of tort refers to when there is a duty of care for one person to protect someone from harm but fails to support that duty unintentionally.

   - For example, the owner of a corner store has a responsibility to keep the location’s steps and sidewalk clear of any hazards, such as ice and water, that might pose a risk to anyone who may pass by.
You’ve been hurt in a car accident. What happens now?

Basics > Documentation > Insurance > Hiring a lawyer > Expenses > Claims process > Special situations > Legal concepts > Injuries > Appendix

• Similarly, drivers have a responsibility to properly maintain the braking mechanisms on their vehicles in order to reduce the risks that other motorists face by simply being on the same road.

Negligence is the most prevalent type of tort pursued in personal injury cases.

2. Intentional – An intentional tort is when someone hurts another on purpose. This can sometimes lead to criminal charges also (personal injury torts fall under civil law, not criminal, just to distinguish the two here), including:

• battery
• false imprisonment
• fraud
• invasion of privacy
• conversion
• assault
• intentional infliction of emotional distress
• defamation
• trespass
• invasion of privacy
• trespass

3. Strict liability – This liability exists regardless of fault or intention. In strict liability, the person who was injured only needs to prove the injury and that the other person or company caused it. Strict liability exists in situations that inherently carry danger or possibility of causing harm. Strict liability tort laws require people and businesses to take every possible precaution in those situations.

The most common example of strict liability in personal injury cases is product liability. When a company makes a product available to others, it must take every reasonable precaution to make sure the product will not harm the people who buy or use it.

Three common types of injuries in civil cases

There are three common types of injuries people are found liable for in civil cases:

• Bodily harm
• Pain and suffering
• Emotional distress

Bodily harm
Bodily harm is overt damage to one's person. This is what we think of when we imagine auto accident claims or slip-and-fall cases.

Compensation for bodily harm typically extends to medical expenses required to stop the immediate problem from killing or further harming a person.
Beyond that, one can usually also recover money to cover on-going care costs and expected future medical bills, such as physical therapy expenses.

**Pain and suffering**

Pain and suffering can be a product of the injuries that have occurred. The loss of a hand, for example, is worth much more to an injured person than just the medical expenses required to address the immediate problem.

**Emotional distress**

Emotional distress is the product of someone’s actions harming another party so badly on a psychological level that they can no longer function as well as they once did.

**Responsibility**

There are normally two particular reasons a person might be found liable for an injury that someone else suffered. These are:

- A duty of care
- Intentional and outrageous behavior

**Duty of care**

A duty of care arises from situations where people or organizations are typically expected to take care of problems that present a potential risk to the general public. Most types of negligence claims fall under the duty of care.

**Intentional and outrageous behavior**

Intentional and outrageous behavior covers everything from provocations to direct physical harm done to others. Outrageous behavior usually enters into injury cases when someone makes a threat or does something far outside accepted social norms.

**Immediacy**

In order to prevent everyone from suing everyone else for everything, the law in most states requires a level of immediacy (proximity) in order for someone to seek damages.

If a motorist maims another driver during an accident, that motorist can only be held liable for injuries to the people most immediately harmed by the incident. This usually means that liability only covers people who were present at the time the incident occurred.
Harm

In order to be held liable for an injury, demonstrable harm must have occurred. It is also expected that the harm was extreme in some way.

If two cars bump each other at low speeds and no damage is done and no passengers are hurt, there is no basis for seeking compensation. Harm needs to be quantifiable.

Fault

Very few incidents in life are entirely the fault of a single party. The law recognizes this and asks parties to apportion blame accordingly.

The challenge for the insurance companies involved is figuring out how much fault to assign to each person.

In most states, if an individual is found more than 50% responsible, that person cannot seek any compensation. The prevailing party, however, will only collect the portion of the damages for which they were deemed not responsible.

Fault vs. no fault in a personal injury case

Fault, a type of liability, is typically the primary determination of whether a personal injury victim can expect to receive compensation for the injuries that he or she suffers. In order to understand the role fault plays in personal injury cases, it is important to grasp how a typical case is structured.

Legal responsibility

Simply because someone sustains an injury does not mean that there are grounds for a lawsuit. In order for a person to receive compensation for the injuries that he or she sustains, he or she has to pursue compensation from a party who is legally responsible for the injuries.

Legal responsibility is based on statute, case law or other legal constructs. It is also based on the particular circumstances of the case.

Depending on the rules used in the state, the plaintiff may be able to pursue compensation from any or all responsible parties. Liability may be apportioned to the multiple responsible parties, or the plaintiff may be able
You've been hurt in a car accident. What happens now?

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Basics  >  Documentation  >  Insurance  >  Hiring a lawyer  >  Expenses  >  Claims process  >  Special situations  >  Legal concepts  >  Injuries  >  Appendix

You've been hurt in a car accident. What happens now?

to receive compensation from one party who can then pursue the other liable parties.

Being able to pursue multiple defendants can help increase the likelihood of collecting on a judgment or making a claim on an insurance policy that compensates the plaintiff for his or her injuries.

Some additional parties that may bear responsibility include:

- **An employer** - The employer may be responsible for the conduct of his or her employees
- **A parent** - A parent may be held liable for the tortious conduct of his or her child
- **A property owner** - A property owner often has a responsibility to individuals invited onto his or her property or lawfully present on the property.

**The victim's own carelessness**

In personal injury cases, the person who is injured may also sometimes be partially responsible for the accident.

In most states, a person in this situation still usually has the right to recover for the damages he or she suffered, but the amount of damages may be reduced by his or her degree of fault. This concept is referred to as comparative negligence. This calculation may be determined during negotiations with the insurance adjuster or by a jury if the case goes to trial.

**Other legal theories**

While negligence is the most common legal theory in personal injury cases, it is not the only legal theory. Some other legal theories can establish grounds for compensation, including:

**Negligence per se**

In some cases, if a defendant completes certain actions, his or her negligence is assumed by law without having to prove the traditional elements of a standard negligence claim. This can occur when there is a specific statute that provides a legal basis for the claim.

One example is reckless driving that causes injury to a pedestrian.

**Intentional misconduct**

Assault cases, intentional infliction of emotional distress, false imprisonment, and other legal torts are based on intentional conduct and not merely carelessness.
**Strict liability**

In some cases, strict liability applies. In these cases, negligence does not have to be proven. As long as the plaintiff shows the relationship or basis for strict liability, the defendant may be liable. This can occur in product liability cases or dog biting cases, for example.

**No fault**

In cases where the proposed defendant is not at fault and not legally responsible, the victim may be able to file an insurance claim against his or her own policy.

Some states have auto insurance no-fault laws in place in order to decrease the number of legal claims. In these states, each party involved in a car accident seeks payment for medical expenses against his or her own insurance policy regardless of which party was actually responsible for the accident.

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**Shared fault rules**

Separate rules may apply when the injured person shares part of the fault for the accident. The rule that prevails is based on the state law where the personal injury case would be tried.

Some of the concepts that may apply when a victim is partially to blame include:

**Comparative negligence**

Some states decide to split the blame and financial responsibility tied to the damages that the victim suffers based on a comparative negligence theory. In these states, the victim can recover for his or her damages, but the amount of damages is reduced by his or her portion of the fault.

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**Enjuris Tip:**

In states with comparative negligence, the victim can recover for his or her damages, but the amount of damages is reduced by his or her portion of the fault. The boil down: If you have any blame at all in your accident, you may receive less compensation for your injuries. See the previous section “Did you contribute to your accident?” to find whether this applies for your state.
You've been hurt in a car accident. What happens now?

For example, if the victim suffers $100,000 in property damage, medical expenses, lost income, and pain and suffering, he or she may be able to recover $70,000 if it is determined that the victim was 30% at fault for the accident.

This apportionment of fault is based on negotiations between the personal injury attorney and insurance adjuster if the case is settled or by the jury if the case goes to trial.

**Pure comparative negligence**

Some states allow victims to collect for damages even when they are highly responsible for the accident. The victim's damages are totaled and then reduced by the apportioned percentage for which the victim was responsible.

For example, if the victim was 70% responsible for the injury and damages were $100,000, the victim could still recover $30,000.

**Modified comparative negligence**

Most states use a modified comparative fault model. This model uses either a 50% or 51% bar rule, meaning that if the victim's own negligence met the threshold percentage, he or she is barred from making a claim and recovering anything. This rule ensures that victims are not able to bring forth a claim if they are equally responsible for the accident or mostly responsible for the accident.

**Contributory negligence**

A different rule that may apply is that of contributory negligence. This concept is based on the idea that individuals should not create an unreasonable risk to themselves and then try to sue another party to recover damages.

Traditionally, this rule would bar recovery for a plaintiff that had contributed to the accident to any degree. Because of the potential harsh results of this model, only a few states apply this rule.

**Fault among multiple defendants**

In some cases, the victim was clearly not responsible for the accident to any extent.

However, there may be multiple parties who are named as defendants who may share fault. When this situation
arises, rules regarding joint and several liability may apply:

**Joint and several liability**

Joint and several liability is a rule that allows the personal injury victim to sue for and recover the full amount of damages from any one defendant. Therefore, the plaintiff can sue one defendant even if multiple defendants are to blame.

This is typically the defendant who has more available resources and from whom the victim believes he or she can recover. He or she does not have to sue the party that is more responsible for the accident than the other parties.

This rule applies in jurisdictions that use it when the co-defendants are liable to the same victim for the same harm. The injury did not have to actually occur at the same time.

After the defendant is ordered to pay the victim for the full extent of recoverable damages, the defendant can recover the percentage of damages that the other parties caused by suing them.
Whiplash

Whiplash is one of those invisible car crash injuries that can make it hard to work, sleep and generally enjoy life.

**Common symptoms of whiplash after a car accident**

- Pain and stiffness in the neck and shoulders. Muscles will tighten after the crash to protect the injured area.
- Jaw stiffness and soreness. Pain from a sore neck and back can radiate to the jaw area. Alternatively, you might be clenching your teeth because of pain, which can cause TMJ.
- Headache. Look for pain at the base of your skull, which shoots up the back of the head and to your ears.
- Arm pain or weakness on one or both sides. This is a sign of nerve damage in the neck.
- Dizziness, nausea and vomiting. This can be caused by nerve damage in the neck.

**Whiplash overview – how it happens**

Whiplash is known officially as Whiplash Associated Disorder, or WAD. It occurs most often in car accidents when the head is whipped forward to back or side to side.

When another car hits yours, inertia from the tremendous impact will make your head continue to move while your body is restrained by the seatbelt.

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Whiplash injuries can happen in any type of car accident, but it is most common in rear-end crashes.

**Whiplash detection and diagnosis**

Whiplash can be tricky to detect and diagnose. Many people may not feel significant symptoms at first; they could appear hours or even a few days after the car wreck.

This happens because your adrenal glands pump adrenaline and cortisol into the bloodstream right after a car crash. Because of this numbing effect, you might think you’re fine after the initial impact.

This fight-or-flight response will mask your pain temporarily, but when the effect wears off, the pain could be severe.

A whiplash injury that does not appear immediately after the crash is one of the biggest reasons you should always see a doctor after an accident. You want to have your possible whiplash injury diagnosed and treated immediately.

**How to build your whiplash personal injury case**

Building a strong case for compensation for your whiplash injuries is different than clearly visible accident injuries. With non-visible injuries, it is really important to build a strong case on paper right from the start.

- **Go to the doctor now:** Right after the accident, be evaluated by a doctor. If there is even a day's delay in going to see the doctor, the insurance company will try to deny that your injuries are related to the accident. And good luck trying to convince a claims adjuster about your injuries if you wait longer than that to be seen by the doctor!

- **Collect documentation:** Any whiplash injury will have to be well documented to get you compensated. The insurance adjuster wants to see medical proof of a neck injury before she will pay you. You should keep all records, including your ER forms, medical charts, X-Rays, MRIs, blood tests, notes from the doctor, etc.

**Independent medical examinations (IMEs)**

If your doctor diagnoses your injuries as whiplash and orders treatment, it is tough for the insurance company to balk. But it does happen from time to time.

The adjuster could tell you to submit to an independent medical examination, or IME. This is a physical that is conducted by a doctor from the insurance company.

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Independent medical exams are inherently biased, but they are still part of the routine. Courts and arbiters take into consideration the fact that they are biased because there are some parts the insurance company cannot spin, such as actual test results.

Many insurance policies mandate that the insured submit to IMEs or risk forfeiting their payout. Courts can also compel the plaintiff to submit to an IME as well, so don’t try to skip that appointment. It will reflect poorly on you and your case.

We suggest that you treat this like any other doctor’s appointment. Arrive on time, treat the doctor with respect and try to forget that he is being paid by your adversary.

**Whiplash lawsuit**

Whether your lawsuit will be successful or not depends upon many factors. If you are in a no-fault state, filing a lawsuit for whiplash can be hard because of the injury threshold and damage requirements.

Under the no-fault laws for many states, you can only sue for injuries and pain and suffering under certain conditions. In other cases, your own auto insurance policy is supposed to cover your damages.

If you are not in a no-fault state, you may have more success filing this type of lawsuit.

**Concussions**

Doctors like to say, “When you’ve seen one concussion, you’ve seen one concussion.”

Generally speaking, a concussion is the result of a force to the head, and that’s it. This can be from a punch, fall or extreme outside source, like a car accident.

The presentation of concussions can vary widely and have a vast array of symptoms:

- Headaches and neck pain
- Difficulty remembering words, names or phrases
- Getting lost or becoming easily confused
- Change in sleep patterns
- Tinnitus (ringing in ears)
- Increased sensitivity to light and sound
- Neck stiffness
- Trouble concentrating
- Rapid mood changes
- Nausea
- Blurred vision
You’ve been hurt in a car accident. What happens now?

Basics > Documentation > Insurance > Hiring a lawyer > Expenses > Claims process > Special situations > Legal concepts > Injuries > Appendix

This kind of traumatic brain injury can occur even if your head does not hit a hard surface.

**Types of concussions**

A concussion is a closed head injury, meaning that nothing penetrated the skull cavity like pieces of glass from the windshield or a shard of metal. An open injury would mean exactly what it says. Those injuries are far more dangerous and can lead to death.

In terms of concussions, there are six different types:

- **Cognitive/fatigue:** This type of concussion relates to memory, tiredness and recall. You will have difficulty forming new memories, recalling old memories and learning new information. You might also be increasingly irritable, tired and grouchy.
- **Vestibular:** The vestibular function governs your ability to balance. If you have an ear infection, that is why you will get vertigo; your vestibular senses are completely overridden.
- **Ocular:** If you suffer from an ocular concussion, you will have trouble tracking objects with your eyes. They might even move independently of each other, like a chameleon.
- **Post-traumatic migraine:** This manifests as sensitivity to light and sound. There may be halos around lights and sounds might be louder. This can trigger nausea and intense headaches.
- **Cervical:** These concussions are deceiving because "cervical" actually refers to the upper neck region, which is located right below the head. The pain in the cervical region flows upward to the head and then back down, almost in a circular motion. This leads to a rebound effect that creates endless headaches. It is also difficult to figure out where the pain starts and stops.
- **Anxiety/Mood:** Concussions can also change an individual’s personality, such as when he cannot stop worrying despite evidence to the contrary or when he becomes very irritable about inconsequential things.

**What to do in the case of a concussion**

Just because you cannot see an injury does not mean it isn’t serious, so don’t let your loved one try to go to work and definitely don’t let them drive. You shouldn’t be driving for at least 24 hours after a concussive episode. While only 5% of concussions result in serious internal bleeding, it is best to treat all concussions as serious.

If you have been injured after a car accident, make sure you’re monitored very closely. Watch for the following symptoms:
You've been hurt in a car accident. What happens now?

- Vomiting
- Seizure
- Amnesia
- Loss of consciousness
- Shaking
- Dilation of pupils
- Difficulty speaking

If any of these occur, you should receive medical attention immediately.

When you are discharged from the hospital's care, have someone stay with you for at least the first 24 hours. It used to be said that you shouldn't sleep if you have had a concussion, but that was because we did not have the equipment necessary to look inside of a person's skull to see what was wrong. These days, it is perfectly acceptable to sleep once a doctor has cleared you. In fact, it's even encouraged.

Health outlook after a concussion

Most of the time, concussions clear up on their own within a few days or a week. There can be times, however, when the concussions stick around and morph into chronic headaches.

This is called Post-Concussion Syndrome, and the symptoms mirror the aftermath of an acute concussion: headaches, dizziness, fatigue, nausea, sensitivity to light and sound, etc. These are mostly tension-type headaches and are associated with cervical injuries. This syndrome is debilitating and can interfere with life's activities.

Cervical spinal cord injuries

The cervical spine is important because not only does it encase the spinal cord, but it also holds up your head, which is fairly heavy. Cervical bones are small, but they are strong enough to hold up the approximately 10 to 13 pounds of your head, as well as rotate, side bend, whip to the side, and whatever other dance moves you feel like doing.

Additionally, the cervical spine allows for blood to flow to your brain. It is the gateway that keeps the operation running. So when those bones are compromised, the entire operation comes to a halt.
What happens when the cervical spinal column is damaged?

Injuries to the cervical spine can happen at any time and because of any activity. The most common are motor vehicle accidents, high-contact sports, industrial accidents, assaults and falls. The injuries can range in intensity:

- Bone bruises
- Nerve compression by discs
- Fragments of metal or bone lodged in spinal cord
- Disc degeneration
- Compression or injury to the spinal cord

Bone bruises are painful, almost to the level of a fracture, but they generally just need time in order to heal. Disc degeneration, on the other hand, happens to all of us because discs lose water as we age. This means they lose their height, which lessens their threshold for shock absorption. As such, their ability to handle forces from running, jumping and other activities is not what it used to be, and the bones become weakened. This leads to them herniating or bulging.

If a cervical injury just involves the vertebral discs, this is actually the best outcome because it’s the easiest to treat.

Vertebral discs act as shock absorbers between the vertebrae, allowing the bones to move freely and have more range of motion. The discs have an outer shell and an inner jelly that can leak out and inflame the surrounding nerve roots. Sometimes a disc can bulge out of place and trap a nearby nerve, causing intense pain. Treatments include steroid shots, selective nerve root blocks, radiofrequency ablation, Botox injections and sometimes surgery if the nerve needs to be released.

Injuries that compress the spinal cord or cause foreign objects to become lodged within it are dangerous, as any damage to the cord itself can lead to paralysis or other issues, as we will discuss in more detail below.

What about the spinal cord itself?

The cervical spinal cord is a powerhouse within the human body. As you move higher up toward the brain, the more severe the damage becomes.

A spinal injury can be "complete" or "incomplete", which is based on whether you have any feeling underneath the level of injury. If you were injured at C6 and can still feel your left leg, then you have suffered an incomplete injury. Electrical signals can still reach the brain, and the spinal cord has not been fully compromised. If you have suffered a complete injury, you would not feel anything beneath C6 and would not be able to move.
Higher cervical injuries (C1-C4 vertebrae) result in the most damage and require around-the-clock medical care.

Lower cervical injuries (C5-C7 vertebrae) control the arms and hands, so the patient might feel pins, needles, tingling or pain. There may also be partial or total paralysis in the trunk, hands, wrists and legs. While the patient will likely be able to breathe and speak without assistance, it could take considerable effort. Like a higher cervical injury, the patient would not be able to control his or her bowels or bladder.

Surgery can sometimes relieve the pressure upon the spinal cord and restore some sensation or movement, but results vary and are not consistent. The surgery would need to be performed very soon after the injury, and even so it might not reverse the cord damage. The patient still might experience a loss of sensation throughout the body; paralysis; the inability to control his bowels or bladder; loss of sexual function; and pain, weakness and tingling.

What if I suffer a spinal cord injury?

Make sure to call 911 immediately. If you have a friend with you, let them assume control of the situation – have them put something firm on each side of your head, like heavy towels or even books, in order to keep your head from moving. If you’re alone, call 911 and then keep as still as possible until medical assistance arrives.

There are many organizations and resources in place to help you transition after your immediate hospital care, including one created by Christopher Reeve. You and your family will have a necessary period of adjustment, and that can be an emotionally taxing time. There is no such thing as needing “too much help.” It’s a very serious injury, and it will take a village to make you feel whole again. Never be afraid to ask for what you need.

Spinal cord injuries can change your entire world in a moment. Look through our resources to see if there are groups that can help. Remember that there will be successes and setbacks in your journey to recovery, and that no matter what, your resiliency will surprise you.

Thoracic spinal cord injuries

There are 12 thoracic vertebrae protecting the spinal cord, a delicate bundle of nerves that carries messages from the brain to other areas of the body. The thoracic spine lords over a wide range of the body – it is in charge of the abdomen, the torso, the back and the trunk. Basically, if there is anything in your midsection that requires moving, your thoracic spine controls it.
What happens when the thoracic spinal column is damaged?

When the thoracic spinal column is damaged, this is when you get to legitimately say, "I broke my back."

There are many conditions that can affect your thoracic spine, such as:

- Scoliosis (abnormal curvature of the spine or lack of curvature)
- Kyphosis (variation of scoliosis resulting in a hunchback)
- Spinal stenosis (narrowing of the spinal canal)
- Disc degeneration (loss of cushioning; fragmenting and breakdown)
- Spondylosis (arthritis developing in the spine),
- Spondylolisthesis (normal relationship between two adjacent vertebrae is lost)
- Vertebral compression fractures (when vertebrae are broken because of trauma or because of the aging process).

These can happen naturally as you age; a compression fracture can occur just because the discs are losing fluid as you get older. Still, you get to say, "I broke my back." It sounds impressive, so you might as well own it.

A thoracic fracture leads to decreased range of motion. Bones calcify and can develop arthritic restrictions after fractures, so twisting, moving and bending might be far more difficult. The likely result will be constant back pain.

Some thoracic spinal cord injury patients recover without difficulty, but because it’s a high-traffic area that cannot be completely rested during recovery (how do you entirely rest a back injury?), restrictions tend to develop in the fractures while they heal.

Despite that, the prognosis is still far brighter than cervical spine or lumbar injuries. A cervical injury could severely restrict movement in the head and neck; a lumbar injury could result in paraplegia or the inability to move the legs to their fullest extent.

While a thoracic injury might also result in paraplegia, it mainly depends on where the patient was hurt.

The vast majority of spinal column injuries (75% to 90%) occur without damaging the cord. This means that the only issue is the fracture itself. If the fracture isn’t caught by doctors early enough, it might cause malunion, which is when the bones don’t realign properly. This means any calcification could occur on an area where it’s not meant to be, like nerves. As healing usually takes up to 12 weeks, this might allow the bones to heal...
incorrectly – leaving the patient in intractable pain. This also leaves the window open for additional compression fractures.

Intractable spinal column pain is different than a thrown-out back. It’s constant and overwhelming, and it might require the patient to reassess his job situation if he works something like construction or delivery. Even desk jobs can be too much to bear. There are currently no treatments other than strengthening the core and pain control in the form of medication, so unfortunately, concessions might have to be made.

**What about the spinal cord itself?**

Most injuries to the thoracic cord occur in the lower region, T11 to T12 to be specific. This usually results in paraplegia.

The T1 through T8 vertebrae control a significant portion of the upper body, so an injury there could affect chest and abdominal functions. Coughing, swallowing and talking are under the purview of these nerves, so damage to that area might result in the use of a ventilator. While arm and hand function are generally normal, as these are primarily controlled by the cervical nerves (C6 to C7), they might be significantly weakened because of the corresponding damage to the upper chest and torso.

A person who has suffered injuries to the upper thoracic region can likely expect to have an independent lifestyle, using modified cars or standing frames if he was rendered a paraplegic. However, if the injuries were only to the upper thoracic, the patient will likely be able to walk normally.

T9 through T12 injuries, however, might result in paraplegia as well as damage to the back muscles. This patient would have to use a wheelchair and relearn other tasks like dressing and being self-sufficient in order to live alone. However, there are cars that can be modified for these patients, and he or she would very likely be able to retain a large measure of independence after relearning specific tasks.

**Lumbar spinal cord injuries**

The lumbar spine refers to five vertebrae in your lower back that connect your thoracic spine to your sacral spine – in terms of location, think around the curve of your abdomen. This is where all your power for lifting and twisting comes from. This area also bears the most weight, so it can become the most damaged over time.

In fact, low-back pain is one of the most common ailments as we age because this area naturally starts to break down as a lifetime’s onslaught wears its defenses away.
That’s right. We get to look forward to cartilage disintegrating between joints, resulting in osteoarthritis or spinal stenosis, which causes that low-back pain we see so often in older adults.

Some great ways to combat this are to exercise at least a few times a week, strengthening your core and stretching your hamstrings. The longer you can stay strong and pliable, the better. Even walking outside is enough to start. Yoga and Tai Chi are also low-impact ways to work on your whole body.

**What happens when the lumbar spinal column is damaged?**

Here are just a few of the different types of problems the lumbar spinal column can have:

- Muscular problems
- Degenerated discs
- Osteoarthritis
- Damaged facet joints
- Sacroiliac joint dysfunction
- Spondylolisthesis
- Lumbar stenosis

**What about the spinal cord itself?**

The lumbar spinal cord controls everything from the hips down to the feet. As such, the prognosis for a lumbar spinal cord injury is actually fairly decent when compared to the cervical or thoracic regions, which are far more devastating.

Patients may experience paraplegia but will be able to use a wheelchair independently or even walk for short distances using braces or other walking devices. Unfortunately, they will not be able to control their bowels or bladder.

**What if I think I’ve just had a lumbar spinal cord injury?**

*Do not try to move. Repeat: Do not try to move.* Even if it’s only a wiggle to get to the phone, don’t try it. That wiggle could do some monstrous damage.

Call 911 and wait; medical assistance will arrive shortly, and they will transfer you to a rigid board that will keep your legs and spine from moving. This is imperative if surgical intervention is needed.

There are many organizations and resources in place to help you transition after your immediate hospital care, which will be very necessary because lumbar injuries are among the most emotionally and physically taxing. You will likely either be using a wheelchair or crutches of some sort, and your family will also need help...
You've been hurt in a car accident. What happens now?

adjusting. Don't be afraid to ask for help. There is never such a thing as asking for too much help for an injury like this.

Spinal cord injuries can change everything in an instant. Look through our resources to see if there are groups that can help. Don’t be afraid of setbacks or bad days, because there will be some. Just remember that brighter days are coming.

Helpful reading and documents

Rehabilitation and therapy after a spinal cord injury
Resources for emotional recovery after an accident
Tips on coping with chronic pain and depression as a result of injury

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More resources

Car accident stories by real people in our blog

- Dawne's Story: From Car Accident Survivor to Support Group Leader
- Careless Drivers Cause Major Trauma Even in Minor Car Accidents
- "I Had to Mourn the Person I Used to Be"

Want to share your story?

Music for grief and loss – some thoughts and a playlist

Reading Recommendation

Crash Course: A Self-Healing Guide to Auto Accident Trauma and Recovery (on Amazon)
# State-by-State Car Accident Statutes of Limitations

Time limit for bringing a claim or lawsuit after a car accident

<table>
<thead>
<tr>
<th>State</th>
<th>Time limit for personal injury claim</th>
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Printable forms

Download printable guides to help you get organized for your personal injury case

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A worksheet to prepare for your first meeting with a personal injury attorney – what to bring, what they’ll ask.

**Documents & Evidence Checklist**
Checklist of 30 items to help you prepare for making a personal injury or accident claim.

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Worksheet with questions to ask a personal injury attorney to help determine if he or she will be a good fit for your case.

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