



**ILLINOIS CAR
ACCIDENTS 101:
A GUIDE TO YOUR CASE**

Salvi, Schostok & Pritchard P.C.

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Introduction

You were riding along and driving safely. Out of nowhere, you were hit by another car. In a flash, your life has taken an unexpected and potentially devastating turn.

It may be only a temporary detour. You and your passengers may have suffered minor cuts and bruises. Your vehicle may be only slightly damaged. Within a few days or weeks, things could be entirely back to normal.

Or it could be a long-term, catastrophic situation. You and your passengers may be left with permanent scars and injuries. You may be facing expensive and ongoing medical bills. You may be unable to work. And your car may have been rendered a total loss.

In the worst case, you may have tragically lost the life of someone close to you.

Whether your car accident carries minor or major consequences, you have rights that need to be protected. Depending on the facts of your case, this may include the right to be fully and fairly compensated for all of your losses.

Your first step should be to learn as much as possible about these rights, your legal options and the process you could go through as you pursue relief through our Illinois legal system.

This is the purpose of “Illinois Car Accidents 101: A Guide to Your Case.” After reading through this guide, you should have answers to many basic questions, including:

- What can you do to replace or repair your car?
- Why did your accident occur?
- Who can be held liable for your losses?
- How will your crash be investigated?
- Will your case settle or go to trial?
- What can you recover?

The guide also includes a “Checklist” that explains the immediate steps you should take after your crash in order to protect yourself and your right to a recovery.

This guide is not intended to serve as legal advice. It cannot replace the guidance you would receive from an attorney who has the formal training and practical experience that it takes to efficiently and effectively handle your car accident case. In fact, at various points, the guide explains the essential services that a lawyer can provide to you and your family.

Ultimately, this guide should serve as a useful resource and help you to make the right decisions as you move forward with your life after an accident.

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Checklist: Steps You Should Take After a Car Accident

No one ever plans on getting into a car accident. However, if it happens to you, the steps you take in the immediate aftermath of the crash can have a long-term impact on your ability to recover compensation for your losses. You need to carefully avoid the wrong steps.

To help you take the right actions after an accident, please keep this checklist in a safe place in your vehicle.

1. **Take deep breaths and get as composed as possible.** It's natural to feel shock and confusion after a crash. However, you will need to take quick, decisive steps. You need to be thinking calmly and clearly as you proceed.
2. **Check on your passengers and those in the other vehicle(s).** If you are not too badly injured, check on the condition of those in the car with you and those in the other car. Do not move anyone. You don't want to do anything that could worsen the injuries.
3. **Move the vehicles off the road.** To reduce the risk of being hit by passing vehicles, you should try to move your vehicle off the road. You can assist in getting other vehicles to safer areas. Use your judgment. Do not move a vehicle if it appears that it would be unsafe to do so.
4. **Call 911.** Don't wait to call the police and report the crash and get

help for those with injuries. Police and EMS should arrive to the scene shortly. They will secure the area and make sure that anyone in need of immediate medical treatment is cared for right away.

5. **Exchange information with the other driver(s).** Make sure to get the name, address, phone number, driver's license number, license plate number and insurance information from all other drivers involved in the crash. You should provide your information as well.
6. **Get witness information.** Witnesses won't stay at the crash scene long. Make sure to get their names and contact information before they leave. You may even jot down brief notes of what they saw, heard and even smelled. Tell them they may be contacted in the future.
7. **Take photos or video.** Most phones have a camera and video feature. Use this device to take photos or record video of the accident scene, including any fresh skid marks, glass and debris, traffic signals, damaged trees or fences and damage to the vehicles. This allows you to preserve evidence that may be quickly lost or destroyed.
8. **Report the crash to police.** If a police officer arrives at the scene, provide all requested information to the officer so he or she can file an accident report. Stick to the facts. Do not admit fault or blame the other driver. Those are issues that will be resolved at a later time. Get the report number and request a copy within a day or so after the crash. If no officer arrives, you must report the crash to the police as promptly as possible.
9. **Go to the emergency room or see a doctor.** If you are not taken away by EMS, you should still go to the emergency room and get checked out. You may have internal injuries that you are not aware of. Within a few days, follow up with a visit to your family doctor. Make sure

you keep all records and bills concerning your medical treatment.

- 10. Report the crash to your insurance company.** You must report your accident to your own auto insurance company as promptly as possible. Again, do not admit fault or cast blame. Simply state the facts and provide answers only to questions asked of you. If you have hired an attorney by that point, state that all future communication will be through that attorney.
- 11. Do not speak to the other insurance companies.** You are not required to speak with the companies who insure other drivers involved in the accident. If an insurer contacts you — it's common for them to call within days and even within hours after a crash — simply refer the insurer to your lawyer.
- 12. Document your injuries and pain and suffering.** Take photos of any visible injuries you or your passengers have suffered. You should also keep a journal that documents your recollection of the accident, your injuries, the pain you have experienced and any difficulties you have faced while recovering. Make note of any limits that your injuries have placed on your ability to work and enjoy your life.
- 13. Contact an attorney.** If you have not contacted a lawyer earlier in the process, do so immediately. Ask the lawyer to meet with you about your case. In most cases, you will find that attorneys want to help and will provide a free consultation.
- 14. Be prepared, open and honest with your attorney.** When you attend an initial consultation with a lawyer, bring the accident report, your insurance policy, photos, other driver's names, witness names, medical records and receipts and any other information you think could be helpful. Don't exaggerate when you describe

the accident. If you want a clear assessment of your case, you will need to focus on the facts and be as open and honest as possible.

- 15. Check on your case status.** If an attorney takes on your case, never hesitate to call the attorney if you have questions or if you want to check on the status. After all, this is your case and your future. You have a right to know what is happening at all times.

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What Can You Do to Repair or Replace Your Car?

Your vehicle may be heavily damaged in an accident and unable to be driven. Naturally, you will be nervous about what you can do for transportation both in the short-term and long-term.

In general, your transportation issues can be resolved by turning to the at-fault driver's insurance coverage or your own policy.

The At-Fault Driver's Insurance

If another driver caused your accident, that driver's liability insurance can pay for the repair or replacement of your vehicle and for the cost of renting a car during the interim. In some instances, you may need to pay for the rental upfront and then seek reimbursement.

Under Illinois law, drivers must carry a minimum of \$15,000 in property damage liability insurance. In other words, if the other driver's liability is admitted or found by a jury, that driver's insurance company should pay up to that amount to fix any damage to your car or give you up to that amount to go towards buying a new one. (Many drivers carry higher minimums.)

Usually, the other driver's insurer will make the decision to repair or replace your car.

- **Repair** – If the insurer determines the car can be repaired, the insurer may require you to get the work done by a mechanic of its choice. However, you may be able to negotiate with the insurer to get the repairs made by your own mechanic.

- **Replacement** – If the insurer determines that repairing the vehicle would cost more than its actual cash value (ACV), it will declare it to be a “total loss” or “totaled.” The insurer will then issue you a check for what it has determined to be the car’s ACV, take possession of your car and sell it for salvage.

There are different ways to determine a car’s ACV. Typically, it will reflect the difference between the Kelley Blue Book value and any damage that existed before the car accident. An insurer may use its own computer program to arrive at the ACV.

You have a right to challenge the insurer’s decision to repair or replace your vehicle. You can also contest the insurer’s determination of your car’s ACV. For instance, you can make a counter-offer during settlement negotiations or take the dispute to court.

Your Own Insurance

In many instances, you may need to file a claim for repair or replacement of your vehicle with your own insurance company. It will depend on the insurance policies you have bought. Read these policies carefully: You may need to pay a deductible.

The types of policies include:

- **Uninsured Motorist Property Damage** – You can purchase up to \$15,000 in insurance to cover property damage caused by another driver who had no insurance.
- **Collision and Comprehensive** – This insurance can cover your losses regardless of who is at fault. Collision pays for damages caused by crashing into another car or fixed object. Comprehensive pays for damages caused by other factors such as fires. If you have financed your car, the lender may have required you to have this coverage.
- **Gap Coverage** – If you have leased or financed your car, this can cover the difference between your car’s ACV and the

amount you still owe on the loan or lease.

You may also have coverage that will pay for damage to customized features of your car, cover your towing or pay for a rental while your vehicle is being repaired or replaced.

Again, the insurer will typically make the decision on whether your vehicle is fixed or deemed to be a “total loss.” You can challenge your insurer on this issue as well as choice of mechanic or determination of your car’s ACV.

Your Lawyer’s Role



Make Sure Your Vehicle Is Properly Repaired or Replaced.

Your attorney’s first priority should be to make sure your transportation needs are immediately met after a crash. After all, you will need a way to get to work, take your children to school and go about your life’s other daily activities.

The lawyer can deal directly with the at-fault driver’s insurance company or your own insurer and seek a timely, full and fair resolution. Any concerns you have about the decision to repair or replace your vehicle, which mechanic will repair it or its actual cash value can be addressed by your lawyer during settlement negotiations or in court.

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Why Did Your Car Accident Occur?

After you are in a car accident, you will want to know, “Why did it happen?” The answer is important. If the crash happened because another party caused it, you should be able to recover compensation for your losses. In other words, the other party can be held liable.

These types of accidents generally fall into three categories:

- Driver error
- Defective automotive parts
- Defective roads.

Driver Error

In these cases, an accident happens because a driver was “negligent.” This means that the driver failed to exercise the care that a reasonable person would have exercised in the same circumstances. Common types of driver error include:

- **Tailgating** – The driver did not leave enough space from the car in front. This may happen due to inattention or because the driver is in a rush and “riding the bumper” of the other car. Unfortunately, rear-end accidents are common in Illinois.
- **Running a red light or stop sign** – The driver failed to see the traffic control or raced through it without thinking of the consequences. For instance, the driver tried to beat a red light or was looking down when he or she approached the intersection.

- **Failing to yield the right of way** – The driver did not slow down when merging onto the highway or turned in front of an oncoming car. This may happen because the driver isn't paying close enough attention and checking their mirrors. It may also happen because the driver makes a reckless decision to "beat" the other car to a lane or turn.
- **Driving into opposing traffic** – The driver either drove in the wrong direction or lost control of the vehicle and crossed the center line. This often happens when a driver is impaired by alcohol, drugs or a lack of sleep.
- **Speeding** – The driver violated the posted speed limit or drove too fast for conditions such as rain, snow, ice or fog. For instance, even though the posted speed limit may be 55 mph, it may be unreasonable for a person to drive that fast on a snowy night.
- **Driving while impaired** – The driver consumed enough alcohol or drugs that his or her ability to drive safely was impaired. For instance, the driver couldn't control the vehicle, follow at a safe distance, obey traffic signals or drive at a reasonable speed. As a matter of law, any driver with blood alcohol content (BAC) of 0.08 or above is considered too drunk to drive in Illinois. The limit is 0.04 for commercial truck drivers. A minor with any trace of alcohol is in violation of the law.
- **Driving while distracted** – The driver was talking on a cell phone, reading or sending a text message, playing with the radio or a GPS device, interacting with a pet or other passengers, smoking, eating or drinking – in other words, doing any number of different activities instead of focusing on the road and control of the vehicle.
- **Driving while fatigued** – The driver either fell asleep at the

wheel or was too impaired by fatigue to drive safely. A drowsy driver can actually be just as dangerous as a drunk driver. In contrast to drunk driving accidents, it can be difficult to establish the extent of impairment caused by fatigue.

Keep in mind: The driver may not have intended to harm anyone. Still, the driver may have acted carelessly or with a reckless disregard for the safety of others on the road. Under Illinois law, that driver can (and should) be held liable.

Defective Automotive Parts

In some cases, a car accident doesn't happen because of any driving error. Instead, the accident is caused by a faulty auto part (or your injuries are made worse because of the part).

Automotive defects can occur due to a flawed design or shoddy manufacturing of the car or its parts. Often, a manufacturer issues a recall due to the defect. However, the recall may come after several accidents, injuries and deaths have already occurred.

Common defects are:

- **Tires** – Defects in tires can cause blowouts or tread separation. A driver may lose control of the vehicle or suffer injuries in a rollover.
- **Unstable design** – Some cars are more prone to rollovers because of their design. In recent years, this has been an issue with SUVs and large passenger vans.
- **Brakes** – Defects in braking systems can lead to the brakes being too sensitive to pressure, failing completely or causing a car to “pull” to one side or the other.
- **Accelerator pedals** – Major issues have arisen in recent years due to sudden acceleration or sticking accelerator pedals.
- **Gas tanks** – Because of defects in gas tanks, explosions or fires

can result from otherwise minor collisions.

- **Safety features** – Accident victims often are hurt due to a defect in systems that are supposed to protect them in a crash. Examples are airbags, seatbelts and child restraint systems.

Defective Roads

Road defects often require bringing a legal claim against a state or federal government agency. These cases can be divided into two sub-categories:

- **Poor design** – An intersection may be unsafe because there is no stoplight or proper signage.
- **Poor maintenance** – Accidents may result due to potholes, loose pavement or deteriorating shoulders.

Your Lawyer's Role



Determining Why Your Accident Occurred

The cause of your accident can be the most important issue to resolve in your case. A lawyer plays a pivotal role in answering this question. The lawyer should have the resources to fully investigate the crash. The lawyer should also have an available network of qualified accident reconstruction experts who can analyze it.

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Who Can Be Held Liable for Your Losses?

After you determine why your car accident occurred, you can move on to the next question, “Who should pay for my losses?” This involves establishing a party’s “liability.”

Keep in mind that one or more parties can be liable in a car accident. Also, in Illinois, your own fault is taken into consideration.

The parties who are commonly found to be liable in car accidents include:

The Driver

When a person drives a car on the road, that person owes others a duty to drive reasonably safe. This duty is owed to anyone who shares the road with the driver. So, it includes other motorists, passengers in the driver’s car, motorcyclists, bicyclists and pedestrians. If a driver fails to live up to that duty and causes an accident, any of those victims can hold the driver liable for any property damage or bodily injury they suffer.

The Driver’s Employer

If the driver was acting for the benefit of his or her employer at the time of the accident, the employer can be held responsible for any harm the driver causes. For instance, the driver could have been making a delivery in a company van or returning from a business lunch. Many accidents occur when employees are conducting company business on cell phones while driving.

The employer may also be responsible because of its own negligence. This often arises when truck drivers cause crashes. The trucking company may be liable because it hired the driver without doing a required background check, failed to properly train and supervise the driver or actually encouraged the driver to ignore safety regulations by staying on the road too long.

Bar, Restaurant or Store

Under the Illinois Dram Shop Act, a bar, restaurant, store or any other business that is licensed to sell alcohol can be liable for the losses you suffer in an accident caused by a drunk driver. You need to show:

- The gift or sale occurred in Illinois
- By selling or giving away the alcoholic beverage, the business caused the driver's intoxication
- The driver's intoxication did, in fact, cause the accident
- The business can also be liable if it provides alcohol to a minor who, in turn, causes an alcohol-related accident.

Social Host

Social host liability in Illinois holds adults accountable for "willfully" supplying alcohol or drugs to a minor (person under age 18) that impairs the teen and, in turn, causes an accident. For instance, if parents host a prom party at their house where they knowingly allow teens to drink alcohol, those parents can be sued if one of those teens drives away and causes a crash.

Auto / Auto Parts Manufacturer

Many auto accidents are caused by defective vehicles or parts. Examples include cars with faulty tires, brakes, gears or designs that make the car prone to rollovers. In some instances, the car may not be "crashworthy." Airbags and seatbelts can fail. Roofs may collapse

upon impact. Gas tanks may explode in an otherwise minor accident.

The manufacturer's liability can be based on a design or manufacturing defect. It can also be based on its failure to issue a proper warning, or recall, concerning the defect.

These cases are called "product liability" claims. They are often resolved through a single class-action lawsuit or multi-district litigation proceedings (MDLs) in which many individual lawsuits are consolidated in the same federal court.

State or Federal Government

If you are involved in a car accident caused by a government employee or that occurs on a negligently maintained or designed road or bridge, you may be able to sue the state or federal government. However, these claims can be very complicated.

For instance, under the Illinois Tort Claims Act, you would need to give the state "notice" of the accident within one year after it happens. Your case would be heard in the Court of Claims. Your recovery from the state would be limited to \$100,000.

Bringing a claim against the federal government can be complex as well. Under the Federal Tort Claims Act, you need to give "notice" of the accident to the responsible government agency within two years after it happens. If, within six months, the agency denies your claim, you can go ahead with filing a lawsuit in federal court within six months. (If the agency gives no response, then no time limit is placed on you.)

Although the federal agency could settle your claim for up to \$1 million, the agency would need special approval to settle for any amount above \$25,000.

Joint and Several Liability

If more than one party caused your car accident, they can be held "jointly and severally liable" for your past and future medical expenses. This means you can collect all of these funds from any one

of the parties or from all of them.

However, if one party is found to be less than 25 percent at fault, that party would only be liable for only your other losses such as your lost wages and pain and suffering.

Here's an example of how this works: Party A and Party B both cause your accident. You suffer \$100,000 in medical expenses. You can sue both Party A and Party B and collect \$50,000 from each of them, or you could sue just Party A and collect all \$100,000 from him or her.

Taking Your Own Negligence into Consideration

Finally, you need to consider the role that your own fault plays in an accident. Your recovery is reduced by your degree of fault. If you are found to be more than 50 percent at fault, you can be barred from recovering anything (unless the other driver was drunk at the time).

For instance: You were hit by a driver who went through an intersection, but you were speeding at the time. You suffer \$100,000 in damages. If you are found to be 20 percent at fault, then the most you could recover would be \$80,000.

Your Lawyer's Role



Determine Who Should Be Liable

As you can see, many different parties can share responsibility for the harm you suffer in a car accident in Illinois. Your lawyer's role is to fully investigate your case and identify all of these parties. In the end, the lawyer's goal should be to ensure that you recover full compensation for all of your losses.

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How Will Your Crash Be Investigated?

Any investigation into a car accident should be aimed at answering these questions:

- Who caused the accident?
- Who should be held liable?
- How much can the victim recover?

The following are essential aspects of an investigation:

Police Reports

If police respond to your accident, an officer must fill out a crash report form. (No report is required if all drivers are insured, and there is only property damage of \$1,500 or less, or if one driver lacks insurance, and the amount of property damage is \$500 or less).

This form is called a “SR1050 form,” or “blue-and-white” form. Information about the crash that can be found in the report will include:

- Date and time of the crash
- Weather, road surface and lighting conditions
- Street and/or intersection, including posted speed limit and traffic control devices
- Number of vehicles involved
- Vehicle makes and models, VIN numbers, license plate numbers and listed owners

- Drivers' names, contact information, driver's license numbers and insurance coverage
- Apparent physical condition of the drivers (including blood alcohol content test results)
- Who was injured, types of injuries and hospitals that victims were taken to
- If any vehicles were damaged, where damaged and if they needed to be towed away
- Driver action that contributed to the crash
- Vehicle maneuvers just prior to the crash.

This report isn't the final word on your accident. However, it can be an important starting point for the investigation.

Accident Scene Evidence

The accident scene can reveal essential details about the crash. Photos and video should be taken of details such as:

- Skid marks (showing when a driver hit the brakes or failed to brake at all)
- Glass and debris (showing the force of impact or whether items in the car were thrown)
- Surrounding property damage (road signs, trees or other fixed objects)
- Curves, bends or dips in the road (showing the extent of visibility)

Damaged Vehicles

The vehicles should be photographed and examined to determine where the impact occurred (side, rear or head-on) and to assess the force of the impact. This inspection can also reveal whether safety devices functioned properly or parts such as tires and brakes malfunctioned.

Event Data Recorder

This feature is now commonly found in newer cars. It is also called an EDR or “black box.” Data can be downloaded that shows the car’s speed, brake pressure and steering just before the crash occurred.

Cell Phone Records / Other Electronic Evidence

It is common today to obtain cell phone and texting records from the at-fault driver’s mobile service provider. If the driver or service provider refuses to turn over this information, a court order (subpoena) can be sought.

This information can show if the driver was talking on a cell phone or texting at the time of the crash. The numbers dialed (or the actual content of the messages) can also show whether the communication was related to work.

Other electronic evidence can be sought to get a clearer picture of the accident. For instance, liquor store or restaurant receipts may indicate that a driver bought and consumed alcohol shortly before the crash.

Manufacturer Records & Recall Notices

If an automotive defect is believed to have caused a crash, it may be necessary to look into company records and examine whether a recall notice was timely issued. For instance, if a manufacturer knew there were problems with its tires, did the company warn consumers?

Witness Interviews

Other motorists, bystanders or passengers in the vehicles are all potential witnesses. They should be interviewed to determine what they saw, heard and even smelled (such as alcohol on a driver’s breath). These interviews may lead to sworn written statements (affidavits) or sworn oral statements (depositions).

Medical Records & Work Records

Any care and treatment that an accident victim receives — from emergency room treatment to rehabilitation — should be reviewed to determine the extent of injuries and their costs.

Work records should also be preserved. This evidence can establish how many days a victim has been unable to work, the amount of salary, bonuses or commissions lost or whether the victim has been unable to generate self-employment income.

Experts

Many different kinds of experts are consulted in a car accident investigation. They can help to develop the investigation and offer an opinion that sheds light on key issues in a case. These issues concern how an accident occurred and the extent of harm a victim suffered physically, mentally and financially.

These experts include accident reconstruction specialists, mechanics, engineers, doctors and nurses, psychologists, life care planners, vocational rehabilitation experts, financial analysts and economic experts.

Your Lawyer's Role



Conduct a Complete, Timely Investigation

Your lawyer should begin an investigation immediately in order to make sure evidence is not lost or destroyed. The investigation should also be completed in a timely manner.

Above all, the investigation should be thorough. All angles should be explored. The goal, after all, is to compile enough evidence to establish a claim and make the best case possible for full and fair compensation.

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Will Your Case Settle or Go to Trial?

Once you decide to take legal action after your car accident, your case will head towards one of two conclusions: Settlement or trial. Either way, you will be dealing with an insurance company.

Settlement is the preferred resolution. It takes less time and costs less than a trial. But if the insurance company refuses to make a fair and full settlement offer, you will need to protect your rights by going to court.

Let's take a closer look at the types of insurance policies you can turn to for compensation and examine what is involved with a settlement and trial.

Types of Auto Insurance Policies

A car accident can result in vehicle damage, medical expenses, lost wages, pain and suffering and other harm. You can obtain compensation by turning to either the at-fault driver's insurance coverage or your own.

The at-fault driver's insurance policy is called **liability coverage**. This is insurance that pays for a victim's property damage and bodily injury if you cause a crash. If you own and operate a car in Illinois, you are required by law to have this coverage in the following minimum amounts:

- \$15,000 per accident for property damage (car, tree, fence)
- \$20,000 per person for bodily injury
- \$40,000 per accident for bodily injury (if more than one person is hurt).

In most cases, you will seek to recover the maximum amount

allowed by the at-fault driver's insurance coverage in order to pay for your losses. This is also called the "policy limit."

You may have several different types of auto insurance policies that cover you. The two primary types are:

- **Uninsured Motorist (UM)** – You are actually required by Illinois law to have this coverage. It pays for bodily injury to you, your passengers, members of your household or others authorized to drive your car. It can cover you if you are hit by a car as a pedestrian or bicyclist. You must carry it in the minimum amounts of \$20,000 per person and \$40,000 per accident. You can turn to this coverage if the at-fault driver has no liability insurance, or if you are injured in a hit-and-run crash.
- **Underinsured Motorist (UIM)** – If you purchase UM insurance above the minimum limits, then you are required in Illinois to have this coverage, too. Otherwise, it is optional. This coverage can be essential to pay for bodily injury damages. It covers the difference between your UIM limits and the at-fault driver's liability coverage. For example: You suffer \$100,000 in medical costs. The at-fault driver's liability coverage limit is \$20,000. You have \$100,000 in UIM coverage. You would be able to recover up to \$80,000 in UIM to pay for your medical bills.

Many Illinois drivers carry other types of optional auto insurance coverage that will provide compensation regardless of who is at fault in an accident. These policies include:

- **Medical payments** – Covers medical and funeral expenses
- **Collision coverage** – Covers vehicle damage in a collision with a car or fixed object
- **Comprehensive coverage** – Covers vehicle damage for other reasons, such as a fire, theft or vandalism.

Settling with the Insurance Company

A settlement is an out-of-court agreement. You enter into this agreement with the insurer of the at-fault driver and/or any other party responsible for your accident. The amount should cover everything you could potentially receive if your case went to court.

Settlement negotiations start with making a demand. This is formally made in a demand letter that may be accompanied by a settlement package.

The settlement package can be a basic list of expenses, a glossy portfolio or even a video. The goal of the package is to convince the insurer that your case is strong, and the amount you are asking for is reasonable given the injuries and losses you have sustained.

Once the insurer receives the demand, the insurer will either agree to that amount or make a counteroffer. Back-and-forth negotiations can ensue. In some cases, a neutral third party called a “mediator” may be used to bring the parties together.

If a settlement is reached, you will sign a document, or “release,” in which you agree to accept the insurer’s payment in exchange for not bringing any legal action against the insured.

You will then receive your payment in either a lump sum or through a series of payments.

Going to Trial

Unfortunately, some insurers will refuse to offer a settlement that fully covers your losses. This requires going to court before a judge and jury.

In court, you will need to show that the other driver either broke the rules of the road or was unreasonably careless when driving. You also must show that the driver’s actions directly caused your accident and led to your property damage and/or injuries.

To show this, you must present evidence. This evidence can include photos, documents, illustrations, computer simulations and testimony from eyewitnesses and experts. The other party can present evidence as well.

Once both sides have presented their cases, the judge or jury will render its decision. This is called a “verdict.” If the verdict is in your favor, a decision will also be made concerning how much you should be paid. The court will enter a judgment in that amount.

After the trial, you or the other driver may find reason to file an appeal with a higher court. You cannot be paid until after all appeals have been exhausted.

Your Lawyer’s Role



Seek a Full Recovery for Your Losses

In addition to investigating your car accident, an attorney should track down and thoroughly review all available insurance coverage. Claims should be filed with the insurance companies of all parties who can be held responsible for your losses.

Your attorney should put together a persuasive and comprehensive settlement package and deal directly with the insurance company in settlement negotiations. The lawyer should prepare the case as if it is going to trial, which will give the lawyer leverage in these negotiations and have the lawyer ready to go to battle for you in court.

In some cases, a settlement may be reached with one party, while a trial is required to recover compensation for one or more remaining parties.

In the end, your lawyer’s role is to ensure that any settlement or verdict — or combination of both — covers the full amount of physical, mental and financial harm you have suffered.

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What Can You Recover?

Whether you recover through a settlement or verdict, the compensation you receive after a car accident should “make you whole.” In other words, it should put you back to the position you were in before the crash occurred.

Because the parties, facts and legal issues vary from case to case, the amount of the recovery varies as well. However, the following are types of damages that are generally sought.

- **Vehicle repair or replacement** – All mechanical and cosmetic repairs should be made to your car. If it is declared a “total loss,” your vehicle should be replaced. In some cases, any money you spent on renting a vehicle should also be reimbursed.
- **Medical expenses** – All past and future costs of your medical treatment should be fully covered, including everything from your emergency room treatment to surgery to rehabilitation.
- **Lost wages** – You should be compensated for all pay that you lose due to your injuries, including salary, bonuses, commissions and any self-employment income. You should also be paid for any reduction in your projected future earnings.
- **Pain and suffering** – You should be paid for any physical harm that you have suffered as the result of your accident. This will depend on the severity of your injuries. Obviously, a person who has spent weeks in the hospital with spinal cord damage

will have endured much more pain and suffering than a person who escaped an accident with minor cuts and bruises.

- **Emotional distress** – You should be compensated for any depression, insomnia or post-traumatic stress disorder (PTSD) caused by your accident.
- **Punitive damages** – In contrast to other types of damages, these damages actually punish the at-fault party instead of compensating you for the losses you have sustained. These damages are awarded where the at-fault party engaged in reckless conduct (drunk driving) or intentional wrongdoing (road rage).

If your loved one was killed in a car crash, you may be eligible to seek a different set of damages. These are called **wrongful death damages**. In addition to medical expenses that were incurred to treat your loved one, these damages may include:

- Funeral and burial costs
- Lost financial support
- Loss of consortium or loss of companionship.

Other Factors That Determine Your Case's Value

Two other factors could impact the amount you recover in a car accident case:

- **Comparative negligence** – If you are partially at fault for the accident, then you may have your claim reduced by the percentage of your fault. For instance, let's say you suffered \$100,000 in losses. If you were 20 percent at fault, the most you cover recover would be \$80,000. Unfortunately, if you are 51 percent or more at fault, you are barred from recovering anything unless the other party was engaged in especially

reckless conduct like drunk driving.

- **Insurance policy limits** – No matter how much you have suffered in losses, your recovery will be capped at the amount of available insurance coverage, including the at-fault driver's insurance and your own (or a combination of both).

Your Lawyer's Role



Determine and Seek Your Case's Full Value

Your lawyer should thoroughly investigate and review your case. In addition to determining the cause of the accident, the lawyer should determine the full extent of your losses. This requires going through receipts, medical bills and work records. It also requires consulting with experts who can estimate future medical treatment costs and lost earnings.

All of this evidence must be compiled and presented to the insurance company in the demand for a settlement. If the insurer refuses to pay the proper amount, the attorney should be prepared to present this evidence to a judge and jury.

Even after a settlement or verdict is awarded, an attorney may need to take additional actions to collect the amount owed to you. For instance, the lawyer may need to file a motion to enforce a judgment or honor a settlement.

Finally, the lawyer should make sure that all liens placed on your potential recovery by healthcare or workers' compensation insurers are properly dealt with before your final check is sent to you.

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About Salvi, Schostok & Pritchard P.C.

Compassion, experience, results and reputation: These are the qualities that distinguish the attorneys of Salvi, Schostok & Pritchard P.C., a leading Illinois personal injury law firm with offices in Chicago and Waukegan.

The firm focuses exclusively on representing those who have been harmed by the careless or reckless acts of others, including victims of car and other motor vehicle accidents, medical malpractice and nursing home negligence.

Since the firm was established, its lawyers have recovered more than \$800 million on behalf of their clients. This record includes more than 195 cases in which clients have recovered \$1 million or more for their losses and numerous record-setting verdicts and settlements.

Among the firm's most noteworthy cases is a \$33.2 million personal injury verdict that was obtained in 2009 on behalf of a drunk-driving accident victim. To date, this remains the largest jury verdict in Lake County history.

The law firm's equity partners have been named among the top 5 percent of attorneys in Illinois, as ranked by their legal peers.

Salvi, Schostok & Pritchard provides free initial consultations to those who have been harmed in motor vehicle accidents or who have lost someone close to them in a crash.

To learn more, visit the firm's website at **SalviLaw.com** or contact either one of its offices.

The firm takes pride in promptly responding to all inquiries and in providing highly personalized, professional service to its clients.

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