

Answers to Iowa CAR CRASH VICTIMS' TOP 10 QUESTIONS



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Answers to Iowa Car Accident Victims' Top 10 Questions

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If you or a loved one has been injured or killed in an Iowa car accident, you likely have many questions about your rights. Car accident victims are often left trying to navigate the confusing and frequently unfair process of recovering from an insurance company at the same time as they are dealing with a serious injury or even the death of a loved one. This guide is intended to help answer some of the most common questions that Iowa automobile accident victims have and to help you determine whether you should hire an attorney to assist you in recovering for your injuries caused by the crash.

The questions that will be addressed in this guide are:

1. What should I do when the other driver's insurance company contacts me?
2. Who should be paying my medical bills from a car accident injury?
3. What should I do after the accident to make sure I receive fair compensation for my injuries?
4. What if the other driver claims I was at fault for the accident?
5. What if the other driver does not have insurance or does not have enough insurance?
6. How do I know when to settle my claim and what is a fair amount of money to receive in settlement?
7. Should I hire an Iowa personal injury attorney to handle my car accident claim?
8. If I need an attorney, when should I hire one and how do I find the right one?
9. What if I don't have the money needed to hire an attorney?
10. What are the time limits for bringing a personal injury claim?

You may have many other questions that are not on this list and an experienced Iowa personal injury attorney may be able to help you.

1. What should I do when the other driver's insurance company contacts me?

Shortly after a car accident you will likely be contacted by an insurance adjuster for the other driver's insurance company. The insurance adjuster will likely ask for you to give a recorded statement and to sign a medical records release to allow the insurance company to

gather all of your past medical records and bills. Our office often advises our clients not to provide a recorded statement to the insurance adjuster, certainly not immediately after the automobile accident, as the statement may be used against you in the future if you are required to file a lawsuit to recover for your injuries. Additionally, while the insurance company eventually will have the right to review your medical records and medical bills in order to determine the value of your claim, often it is not in your best interest to provide them with a patient's waiver immediately after an accident. You should know that the other driver's insurance company will not likely pay your medical bills along the way and will only issue one settlement check at the conclusion of your case, which will be a full and final payment for your claim. Therefore, if the insurance adjuster tells you that the medical records waiver is required so that the insurance company can pay your medical bills, this simply is not true. When our office represents car accident victims, we gather all of the medical records directly from the client's medical providers and review them before providing them to the insurance provider. This allows the client to know exactly what is in their medical records before turning over all of that information to the defendant and their insurance carrier and helps us to best assess the value of our clients' claims.

If you want to settle your personal injury claim without the assistance of a lawyer, you will be required to speak with the other driver's insurance company; however, if you are represented by an attorney, the attorney will deal with the insurance company and you should not provide them with any information directly.

2. Who should be paying my medical bills from a car accident injury?

It is a common misperception that the other driver's automobile insurance is required to pay your medical bills as you receive them. In fact, the other driver's automobile insurance will likely issue you one lump sum payment as settlement of your claim, including reimbursement for

your medical expenses, which you must in turn repay to your own health insurance company or any auto insurance that initially paid the medical bills. Who should be paying your medical bills depends largely on what insurance and other resources are available to you.

If you have health insurance: Your health insurance company should pay your medical bills related to the accident and you should submit to your own auto insurer your copays, deductibles and other medical expenses not covered by your health insurance company, as discussed below. This is true even if you were not at fault for the car accident, and even if there is other auto insurance coverage with medical expenses available to pay your bills. Most health insurance policies provide that they must be repaid if you recover from the other driver's insurance company. However, you should continue to submit all of your medical bills related to the car accident to your own health insurance company, as this will likely save you money in the long-run. Your health insurance company may have contracts with some of your medical providers that allow them to pay a reduced rate for your medical care and therefore you repay your health insurance carrier a lower amount than if you had paid the medical providers directly the full dollar amount. If you are insured through Medicaid or Medicare, they also will continue to pay your medical bills until you have reached a settlement or obtain a judgment against the other driver. You will be legally required to repay them out of the settlement proceeds, if and when you receive money from the accident.

If you have health insurance and also have medical payments coverage under your own automobile insurance policy or an auto insurance policy for the vehicle in which you were a passenger: We usually recommend that you submit to your auto insurer only your deductibles, copayments, mileage to and from your medical appointments and other medical expenses that are not covered by your health insurance company. There are several reasons that we usually

recommend this. First, you will be able to have more of your medical bills paid through insurance instead of out of your own pocket. Since auto medical pay benefits often have very low limits, submitting all of your medical expenses to the auto insurer often will exhaust those limits at any early stage, leaving you with no insurance to cover expenses that your health insurance company will not pay. Also, if you submit all of your medical bills directly to the auto insurance company, they will likely pay the full dollar amount of those bills and not a reduced amount, like your health insurance company pays, and therefore you will end up repaying more money when you finally resolve your case.

Sometimes medical providers will request that you submit their bills directly to your automobile insurance provider; however, if your health insurance provides coverage for the care they are providing, you should submit those bills to your health insurance provider, not directly to your automobile insurance provider.

On a number of occasions, victims of auto accident injuries with whom we have spoken mistakenly believed that the other driver's auto insurer should or would promptly pay their medical bills, and did not turn the bills in to their own health insurer or auto insurer, resulting in delinquent bills, collection threats, and even lawsuits against them by medical providers. It is important to understand that the other driver's insurance company has no obligation to pay those bills, and in fact has no obligation to you at all concerning your claim. Their only duty is to defend their insured—the other driver or owner of the other driver's car—and to pay any judgment against their insured if a lawsuit is filed. While it often makes business sense for the other driver's insurance company to settle your claim in order to avoid the time and expense of a lawsuit and trial, it has no obligation to do so, and no real incentive to do so promptly.

If you do not have health insurance: You may be able to have some of your medical bills paid by your own car insurance through medical payments coverage, but only up to the amount of coverage you have under that policy (often \$5,000). You also may be eligible for medical care under state or federal programs. IowaCare is a program that will pay for certain medical care for some people who are not eligible for Medicaid. Participants in IowaCare are required to obtain medical care from participating providers, including the University of Iowa, Broadlawns Hospital in Des Moines and People's Community Health Clinic in Waterloo. A social worker for the hospital where you are being treated may be able to help you apply for this program. Children that are not insured may also qualify for a program called hawk-i which provides coverage for children whose families do not qualify for Medicaid, but still have limited income. More information about this program can be found at www.hawk-i.org. If you are eligible for or are already receiving Medicaid or Medicare, you should submit all medical bills from the accident to those programs. There are complex rules, procedures and formulas for reporting any money you recover for your injury claims to those programs and for repaying all or some of the money paid by Medicare or Medicaid.

If you receive emergency care from a hospital, the hospital may file a lien under Iowa's amended hospital lien statute to recover its charges from any recovery you make. Recent changes to that law limit the amount that a hospital can recover and require that it be reduced by the hospital's share of your attorney fees and lawsuit expenses. In addition, if you have no insurance, some medical providers will be willing to wait until your claim is resolved before recovering what you owe them. The key point is this: as discussed above, you must receive necessary medical care in order for your injury claim to receive fair consideration by the other driver's

insurance company and attorney, and ultimately by a jury if you do not settle your claim. An Iowa attorney familiar with these issues and resources can assist you if you have no insurance.

An Iowa personal injury attorney can help you to figure out the best way to maximize your recovery of medical expenses and often can help you to reduce the amount that you must repay to medical providers, insurance companies and other programs that initially pay your medical bills.

3. What should I do after the accident to make sure I receive fair compensation for my injuries?

The three most important considerations for every injury victim in assuring that their claims are fairly considered are:

a. Fully participate in medical treatment. Receive prompt, competent and thorough medical treatment for your injuries, fully advise your medical provider about the extent of your injuries, and consistently follow up with recommended medical care and treatment. While many persons with serious injuries are taken from the accident scene to the hospital by ambulance and are admitted for further care, many receive initial emergency care and then delay receiving necessary and recommended follow-up care. Some people even delay receiving initial care until their symptoms are so painful and disabling that they are compelled to obtain emergency care. There are several reasons that it is critical to your legal claims for you to obtain all necessary and recommended treatment. First, and most importantly, many traumatic injuries result in chronic disabilities that require prompt medical diagnosis and treatment in order to prevent aggravation of the injuries. Second, in any injury case, you have a legal obligation to “mitigate” your injuries and damages, in other words, to take all reasonable steps to recover from your injuries. If you fail to do so, the insurance company (and eventually the lawyer that the company may hire if you file a lawsuit) will blame you for not taking action to reduce your injuries. Third, the other driver’s

insurance company—and perhaps even the jury, if you do not settle your claim—will not give your claim the serious consideration it deserves unless there is medical evidence supporting your injury. In virtually every personal injury claim, the insurance company and defense attorney will highlight and argue about every delay and gap in medical treatment that is reflected in your medical records, and will claim that, since you did not follow up with treatment, you must not have been seriously hurt, or that you made little or no effort to recover from your injuries. People who are by nature reluctant to obtain medical care or just want to “tough it out” invariably are treated unfairly in resolving their claims. You should receive a prompt and thorough evaluation of your injuries and continue to follow your medical provider’s advice concerning ongoing care and treatment, both for obvious health reasons and to assure that you receive fair compensation for your injury. You also should know that, in any injury case, your medical records will be a crucial, frequently quoted and a highly emphasized piece of evidence. It is crucial that you honestly and thoroughly explain all of your injuries and symptoms to your medical providers. What you don’t say and do in getting medical treatment for your injuries can—and will—hurt you in resolving your injury claim.

b. Explore payment options. Learn about all available resources to assist you in paying for your medical bills and replacing your lost earnings while your injury claim is pending and then use the available resources to the fullest extent possible. Payment of medical bills is discussed more extensively in Section 2 above. You also need to explore any available resources to supplement your lost earnings, including private or employer-provided short term and long term disability and, if applicable, workers’ compensation benefits and Social Security disability benefits. An experienced Iowa personal injury attorney can advise you about the relationship between these benefits and any personal injury claim you may have.

The key point is this: Injury claims, especially serious injury claims and wrongful death claims, often take significant time to resolve, and often are settled too early and for too little, because insurance companies know that victims and their families need the money. Many injury victims with few other resources, and even those with other resources who are not knowledgeable about them or interested in pursuing them, settle their personal injury claims too quickly and for too little because of their immediate need for funds. To assure that your injury claim is fairly evaluated, you should learn about and consider using all resources available to you. Since using many of these resources may result in liens against or “subrogation” claims to any money you recover on a personal injury claim, you should carefully consider these issues and, if necessary discuss, with them with an Iowa personal injury attorney who is familiar with these issues.

c. Get legal advice, if needed. The third most important consideration for every car accident injury victim concerns whether and when to hire an attorney and, of course, whom to hire. These are important questions and are extensively discussed in Sections 7 and 8 below.

4. What if the other driver claims I was at fault for the accident?

It is best to get as much information about the accident as possible, and as quickly as possible, after an accident so that you can show that the other driver was at fault for the accident. This includes getting a copy of the accident report and all photos taken at the accident scene. Often there are witnesses to an accident or what occurred immediately after the accident who are not identified in the accident report and are only located after contacting known witnesses. If you decide to hire an attorney, the attorney will obtain all available reports, determine whether the other driver was charged with a traffic violation and, if necessary, speak with the investigating officer and any witnesses.

In Iowa you can recover a percentage of your damages even if you were partially at fault for the accident, as long as you were not more than 50% at fault. This is called comparative fault. If you were partially at fault for an automobile accident it may be in your best interest to speak with an attorney, because there are complicated legal issues that come up in these types of cases, including determining how the accident occurred, how much in damages you are entitled to recover and how much you must pay back to your insurance carrier. Some of these issues are discussed in greater detail in Section 6 below.

5. What if the other driver does not have insurance or does not have enough insurance?

If the other driver did not carry any automobile insurance or has liability limits that are lower than the value of your claim, you can submit a claim to your own automobile insurance if you carry what is called Uninsured or Underinsured Motorist Coverage. In Iowa, if you do not have Uninsured or Underinsured Motorist Coverage, you must waive in writing your right to obtain this type of coverage. If you did not sign a written waiver of your right, your automobile insurance company is required to provide you with coverage up to the statutory minimum amount, which is \$20,000. If you are unsure whether you have Uninsured or Underinsured Motorist Coverage or whether you signed in writing, it may be beneficial for you to hire an Iowa attorney to review your insurance coverage and advise you regarding what coverage may be available to you.

Recent cases from the Iowa Appeals Court have enforced time limits and other restrictions on bringing uninsured and underinsured motorist claims that insurance companies have included in the insurance policies. It is very important to have an Iowa personal injury attorney review your auto insurance policies to determine your rights and duties under the

policies concerning uninsured and underinsured motorist coverage before you make any decisions concerning how to resolve your claims.

Additionally, if the other driver did not have insurance it is possible that the owner of the vehicle, if different from the driver, may be responsible for your injury claim if the owner consented to the use of the vehicle by the driver. The owner of the vehicle may have insurance that would apply to your claim. Also, if you were hit by a drunk driver, it is possible that you may have a claim against the drinking establishment where the driver became intoxicated. An experienced attorney will investigate all possible claims you may have against all possible defendants and determine the total amount of insurance that may be available to you, even if the other driver did not have insurance.

6. How do I know when to settle my claim and what is a fair amount of money to receive in settlement?

One of the biggest mistakes that automobile accident victims frequently make is settling their claim before they have fully recovered from their injury or reached maximum medical improvement. Once you enter into a settlement agreement with the other driver's insurance company you will release the other driver and their insurance company from all claims you have, including claims for problems that arise in the future from your injuries. Therefore, even if your medical condition worsens in the future and you have additional lost earnings and medical expenses, you will not be able to recover them if you have already settled with the other driver's insurance company. If you are still receiving medical treatment for your injuries and have not recovered or have not returned to work, it may be in your best interest to wait to settle your claims. Additionally, it may be in your best interest to file a lawsuit against the other driver if their insurance company is unwilling to pay you the full value of your damages. In Iowa, most lawsuits for injuries caused by a car crash must be filed within two years after the date of the

accident. This is known as the “statute of limitations” and is discussed in detail in Section 10 below.

In order to understand how to evaluate a personal injury claim, you need to know what “damages” may be awarded in these cases. Iowa has a “modified comparative fault” statute. Under this statute, in a simple two vehicle auto accident case the injured person must first prove that the other driver is negligent or at fault—usually by violating some traffic law. If the other driver claims and proves that the injured person was at fault, the injured person can still recover if his or her fault is less than the other driver’s fault (less than 50% of the total fault causing the crash.) The injured person’s damages are reduced by his or her percentage of fault. For example, if the jury decides that the injured person is 20% at fault, the injured person will recover 80% of any money the jury awards.

In a personal injury case, the jury completes a form deciding whether to award damages and how much the injured person should receive for the following types of losses and expenses: 1) past medical expenses, 2) future medical expenses that are “reasonably likely” to occur, 3) past lost earnings, 4) future lost “earning capacity,” 5) past lost function of the body and mind, 6) future lost function of the body and mind, 7) past physical and mental pain, suffering and loss of enjoyment of life, and 8) future physical and mental pain, suffering and loss of enjoyment of life. While there are additional definitions for each of these items, as you can see, many of them are very general and difficult to clearly understand and apply.

If you hire an attorney the attorney will advise you regarding his or her opinion about the value of your case and obtain evidence to prove each of the above elements of damages. No attorney can tell you what a jury will award in your case, but they can research and tell you what juries have awarded in past similar cases.

7. Should I hire an Iowa personal injury attorney to handle my car accident claim?

If you only suffered minor injuries and have fully recovered from your injuries, you may be better off to try and resolve your claim without the assistance of an attorney. This is because attorneys commonly charge a fee based on a percentage of recovery—typically one third of the recovery—as well as the expenses of bringing a claim, and you may well receive more in settlement of your claim if you do not hire an attorney. However, if your injuries were more severe and ongoing it will be necessary to hire an attorney in order to assess the amount of these damages and obtain a realistic value of your claim so that you can receive fair compensation for your losses.

Before you make a decision concerning whether you should hire an attorney, and before you have any conversations with the insurance company for the other driver, we strongly recommend that you first speak with an attorney to determine your rights and what is best for you based on your specific circumstances. Most attorneys who represent persons with personal injuries, including attorneys at Brady & O’Shea, will be willing to speak with you without charge to help you to determine whether it makes financial sense for you to hire an attorney, to provide you with important early advice concerning your rights and the types of damages you are entitled to recover and useful suggestions concerning what you should do.

In Iowa, if your claim is over \$5,000 you are required to file in district court and not small claims court, and there are many procedural requirements and rules in district court. While you are not required to have an attorney to file a lawsuit in district court, as a practical matter you will need to do so.

8. If I need an attorney, when should I hire one and how do I find the right one?

Whether you are sure you need to hire an attorney or you just think you might need to do so, you should call an attorney as soon as possible after your injury. As discussed elsewhere in this book, many decisions—e.g., concerning contact with insurance company, who should pay your expenses, etc.—often must be made immediately following an injury. In addition, even if you resolve these early decisions on your own, waiting to contact an attorney can be fatal to some or all of your claims. For example, on a number of occasions, persons who were injured by drunk drivers failed to contact us early enough for us to identify the bar where the person was drinking and serve on that bar and its insurer a “dram shop” notice that must be served within six months of any accident in order to pursue a claim against the bar. In other cases, accident victims who waited until just before the statute of limitations ran out had difficulty finding the right attorney because there was not sufficient time for the attorney to investigate the claim. There are many other examples where delays in getting legal advice can compromise your claims.

Since injury attorneys commonly charge for their work on a “contingency fee” basis, and commonly do not charge for initial discussions concerning your claim, whether or not they eventually represent you, there is no financial reason to avoid contacting an attorney at the earliest stage, and many good reasons to do so as soon as possible.

Obviously you should hire the best attorney for your case. Hiring an attorney for a serious personal injury case is an important decision. But it is very difficult to determine who is best able to assist you. Sadly, because licensing rules for the practice of law allow all lawyers to handle personal injury cases, many attorneys with little experience or skill in representing victims of personal injury and wrongful death often do so. You should search for and locate an attorney with skill and experience in these cases.

Rating services: Because professional regulations for lawyers traditionally limited lawyer advertising, other methods have been developed to allow the public to identify lawyers with reputations for skilled representation. Martindale-Hubbell is a 140-year old, highly regarded service in which lawyers and judges rate other lawyers, and is commonly used by lawyers to refer persons to other lawyers outside their area of expertise and/or geographic location. Look for a law firm and lawyer with an AV rating. Only an estimated 9% of lawyers have this rating. Of course, word of mouth from satisfied clients as well as referrals from a trusted family attorney or relative are often great sources. However, other less known sources for the right lawyer are available.

Invitation-only trial organizations: Martindale Hubbell ratings are not limited only to trial attorneys—the type of attorney who handles personal injury cases. Several professional trial attorney organizations conduct extensive investigations of attorneys and offer membership into their organization to those who meet criterion for excellence in trial skills. In Iowa, the Iowa Academy of Trial Lawyers limits its membership to 3% of all practicing attorneys in Iowa. The American College of Trial Lawyers limits its membership to 1% of practicing lawyers in each state.

Plaintiffs' organizations: The above services and organizations rate both plaintiffs' attorneys, who represent injured people, and defense attorneys, who represent defendants and insurance companies. You should choose an attorney who focuses on representing plaintiffs. Iowa attorneys who commonly represent plaintiffs frequently belong to the Iowa Association for Justice (formerly the Iowa Trial Lawyers Association) and the American Association for Justice.

Once you have completed your background research, there is no substitute for talking with the attorney. It is both appropriate and helpful to speak with several attorneys before

making a decision. All experienced personal injury lawyers will give you a free consultation. You have no obligation to them until you agree to hire them and they agree to be hired. In Iowa, a contingent fee agreement (the common method for hiring an attorney in personal injury and wrongful death cases) must be in writing.

The attorney-client relationship in these cases is very close and requires that you have absolute trust and confidence in your attorney. Make sure you initially talk to the attorney, consider how well they and their staff treat you, how clearly and directly they answer your questions and how comfortable you are with them. There are many lawyers who can handle your claim, but not so many who should do so.

9. What if I don't have the money needed to hire an attorney?

Most attorneys who represent personal injury clients, including Brady & O'Shea, handle personal injury cases on a contingent fee basis. This means that if we are able to make a recovery on your behalf, we will be paid a percentage of the recovery—often one-third, although that percentage changes after trial or appeal.

Several years ago the rules in Iowa concerning payment by lawyers for out-of-pocket expenses in personal injury and other lawsuits changed. Before that time, the client—the injured person—was required to be responsible for paying all out-of-pocket expenses of the lawsuit, whether or not the injured person received any money when their claim was finally resolved. This law made many injured people who had worthwhile injury claims reluctant to pursue their claims since they did not want or could not afford to lose money if the court or jury rejected the claim. In 2007, this law was changed to allow the lawyer to advance all lawsuit expenses and for the lawyer, and not the client, to ultimately be responsible for those expenses if the case was lost. Since the adoption of this law, we will also advance all out-of-pocket litigation expenses needed

to pursue your case such as expert witness fees, filing fees, etc. While we will recover these out of any judgment or settlement we obtain on your behalf, if we do not successfully recover any damages for you, you will not owe us a fee and will not be required to reimburse us for any expenses we have advanced. We represent many people who do not have the money to pay an attorney an hourly rate, or even to pay the out-of-pocket expenses necessary to bring a lawsuit. They are often the persons who are most devastated by an injury. We do not believe that anyone with a serious injury should go without the assistance of a qualified personal injury attorney because they are unable to pay the attorney an hourly fee.

10. What are the time limits for bringing a personal injury claim?

In general, under Iowa law, an injured person or the family and estate of a deceased person must file a lawsuit within two years from the date of the injury or death. There are several exceptions to this rule, most importantly for injuries to a minor, which may be filed at any time before the minor reaches the age of eighteen. (However, a parent's claim for injuries to a minor child, including medical expenses for the child, is still two years from the date of the injury.)

Even though you may have two years within which to file a lawsuit, for many reasons you should contact an attorney as soon as possible after an accident, both to obtain general advice about your rights and to assure that, if you do hire an attorney, he or she will have sufficient time to fully investigate your claims and take all action necessary to bring a claim.

If you have more questions about your rights as a car accident victim, please contact our office at (319) 866-9277.