



Financial Recovery After A Drunk Driving Crash [\(En Español\)](#)

by Janice Harris Lord, ACSW-LMSW/LPC

Gratitude is expressed to Dr. Dorothy Mercer, J. Thomas McGrath, J.D., and Roy Plattel, J.D. for their assistance.

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This brochure is for informational purposes only. The contents are necessarily general in nature.

The user is advised that specific laws, rules, and regulations may vary from state to state. The financial outlay required when a loved one has been injured or killed can be a secondary victimization in itself. It is unfair that victims of drunk driving crashes have to pay both emotionally and financially for someone else's malicious or negligent act.

Funeral expenses, medical bills, travel and phone expenses and lost wages may leave the bereaved feeling overwhelmed.

The injured do not have funeral expenses but may incur all the above, need medical equipment, replacement of services, ongoing home care services, child care, psychological counseling, and repair or replacement of their vehicle. Loss of wages for the seriously injured can be catastrophic.

Unless numerous and adequate means of financial recovery are available, the death or serious injury of a breadwinner can mean a total alteration of lifestyle.

In order to complete the filing of various claims following a death, at least twelve certified copies of the death certificate will be required. If a spouse was killed or disabled, copies of the marriage license or certificate, military discharge papers, social security numbers of all family members, and birth certificates of minor children will be needed to collect benefits.

Social Security/Veterans Benefits

These benefits are available to survivors to replace, in part, family earnings lost because of the death or permanent injury of a wage earner.

A surviving dependent spouse and/or children will probably be eligible. A small death benefit to assist with funeral expenses is also available to a surviving spouse or eligible minor children.

Social Security and, for veterans, the Veteran's Administration, should be informed of a death or injury immediately. Injured veterans may be treated at V.A. Hospitals at no cost. It may be possible to file a claim by phone, but going in person is usually more effective. The nearest Social Security office will be in the phone book. The Veterans' Administration may be notified at Washington, D.C. 20420 or the nearest local V.A. office.

If the person killed was already drawing Social Security or V.A. and a check written to him or her arrives after the death, it must be returned. If it is made out to the deceased and the surviving spouse jointly, take it to the nearest office and it will be stamped so the surviving spouse can cash it.

In cases of serious injury, it will take some time before a determination about disability benefits can be made. Disability is defined by laws as the inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in disability for a least twelve months. Nevertheless, it is important to inform these agencies as soon as possible if the injury is serious enough that returning to work will not be possible for an extended period of time. Social Security Disability benefits are paid from the date of application for benefits, not from the date of the injury. Monthly checks usually start with the sixth month of disability.

The initial claim may be denied, but rate of success goes up with each appeal. If a claim is denied, do not hesitate to ask for Reconsideration followed by a Hearing, then a Review! A final course of appeal is to file suit against the Social Security Administration in Federal District Court.

Vocational Rehabilitation Services

Although eligibility criteria vary from state to state, all states have vocational rehabilitation programs for individuals with a disability which results in a substantial handicap to employment and for whom vocational rehabilitation services might be expected to benefit the individual in obtaining employment. Services pay for medical, psychological and vocational evaluation and treatment including hospitalization, surgery and therapy to decrease or remove the disability. Devices such as artificial limbs, braces and wheelchairs plus training in rehabilitation centers, trade schools, business schools, and colleges or universities enable individuals to learn a trade which compensates for the disability. Most Vocational Rehabilitation Services are located under State Offices in the phone book.

Banks

Your loved one may have had individual and joint accounts at various banking institutions. The rules governing when and under what circumstances funds can be withdrawn from such accounts vary widely from state to state and may depend on how a particular account was set up. In the case of accounts only in the name of the deceased, an administrator of the estate may have to be

appointed and the account changed to the name of the administrator. If the account is held jointly, the law in many states presumes that the surviving account holder is entitled to the remaining proceeds, at least up to a certain amount, which can vary according to the relationship of the survivor to the deceased.

A safe deposit box in the name of the deceased or jointly with someone else's name, may be sealed at the time of death. Requests for access to insurance policies, etc. must be signed and witnessed.

Permanently disabled individuals may be able to begin payouts on IRA's, annuities and other retirement benefits with proper documentation.

Life and Medical Insurance Policies

The money from a life insurance death benefit, payable to a specific beneficiary, should be immediately and automatically available to the beneficiary. However, delays are not unusual, especially if suicide was even remotely considered as the cause of death.

All policies should be read carefully prior to filing claims. Some life insurance policies include double or triple indemnity benefits if the insured died catastrophically. Many policies include an "incontestability clause" which states that the insurance company cannot dispute the validity of a policy after it has been in force for a specified period of time.

Check everywhere that records of the deceased may have been stored to be sure all policies are located. Contact the family attorney, stockbroker, financial planner, banker, accountant, and employer. Millions of insurance dollars go uncollected every year because no one knew about the policies. In addition to policies related to employment, some unions and professional organizations offer group life and/or health insurance to their members. Carefully examine health and hospital policies to be sure you know how to file claim for payment of final medical expenses.

After all policies of the deceased have been located and examined, notify each insurance company of the death and request appropriate forms. Then check any other existing policies in which the deceased was named as a beneficiary to change the beneficiary. The names on automobile insurance policies will also need to be changed.

The injured need to notify their own medical insurance and automobile insurance adjustors. That company will contact the liability insurer of the offending driver.

Victims may be eligible for payment of medical expenses by their own medical insurance and liable driver's automobile insurance. Check with each of them or consult an attorney on an hourly fee basis to see how best to get the bills paid.

Also check on all policies to see if they contain a "waiver of premiums" benefit which pays the premiums for the disabled individual.

Begin immediately to keep a chronological log of all new aspects of the injury as well as all expenses related to the injury including counseling and loss of wages.

If insurance companies delay or refuse to cover expenses, contact the State Board of Insurance at your State Capitol. It is possible to file suit against an insurance company who does not pay according to the law.

Employee Benefits

Sometimes, surviving family members do not know about employer policies because the policies are not stored in the home. Question the personnel department of the employer of the victim about all benefits, sick leave, vacation time accrued, and when checks may be expected. If dependents are covered on the health insurance policy, see how long coverage will continue. If coverage does not continue after a certain date, ask if options exist for a continuation policy for dependents. Often one has only 30 to 90 days to convert into a new policy, so timeliness is important.

If the surviving spouse is employed, his or her own policies should be checked. The deceased may also have been covered by them. After all claims relative to a death are filed, a new beneficiary will have to be named.

Check all health policies to see if mental health counseling is covered in the event it is needed.

Get clarification on whether or not vacation time will have to be taken to visit attorneys, to attend court hearings, and the multitude of other matters which must be handled during working hours. Ask if a subpoena will be required in order to not be penalized for attending court.

The injured will need to find out how long their job will wait and how long return-to-work rights continue. They need to learn whether they can get unpaid leave of absence when paid leave expires. They need to know if they may return to a less demanding job if necessary. It is critical to know if insurance premiums during the absence will be paid by the victim, the employer, or the insurer. Ask your U.S. senator or representative for information about the Americans with Disabilities Act and the Family Leave Act to assure that you receive all the benefits to which you are entitled.

In order to prevent confusion later, try to get an agreement about all of the above in writing. In some jurisdictions, victim advocates in the police or prosecutor's office will provide employer intervention services upon request.

Creditor Intervention

The unanticipated death or serious injury of a family member nearly always means that ongoing bills are set aside until immediate expenses are paid. Contacting creditors about the family crisis can be very difficult. A trusted friend or relative will probably be willing to help if asked.

If the person killed or injured was an income producer for the family, check all loan contracts, mortgages and credit card contracts to see if there is a clause which pays the balance in the event of death or incapacitating injury. If there is, notify the creditor immediately and request claim forms.

Next, list all creditors, their addresses, and the amount owed. Then consider the funds available after paying immediate expenses. Determine when and how much insurance money is expected as well as ongoing income. (Be cautious about accepting inadequate insurance settlements out of fear of facing creditors.)

From these figures, determine how much, if anything, can be paid on bills in the near future. Write each creditor, explain what has happened, advise regarding how much can now be paid per month, and when payment can be expected. State that you wish to agree to a payment schedule which will fit both your needs and the creditor's, and that if you do not hear otherwise, you will assume that the creditor agrees with the plan you have submitted.

Following a death, inform creditors that accounts in the name of the deceased need to be changed to the surviving spouse's name if the deceased did not have substantial debts charged to the cards. If the survivor has not had credit previously, a credit rating on his or her own may need to be established.

In some cases, emergency funds are available for bills. Public utilities such as the electric, gas or water company may extend credit if an application is completed. In the event that a landlord is uncooperative, phone the municipal office and ask for a copy of the City's Landlord/Tenant regulations. Most legal aid services also have summaries of these regulations.

It is to the creditor's advantage to work out payment schedules so he is eventually reimbursed. It is against the law in most states for a creditor to harass or intimidate a debtor. If the creditor refuses to accept the payment plan, write another letter and send a copy to your attorney. If that fails, ask a legal aid service or attorney, hired on an hourly rate basis, to intervene. If a trusted friend or relative is willing, ask him or her to handle all bills as they come in for a while. These bills can seem like another wave of victimization. Decide when you are ready to resume responsibility for your financial affairs.

Automobile Insurance Benefits

Victims should know if they are residing in a "no-fault" or "non no-fault" insurance state.

If residing in a no-fault state, costs are covered by the policy of each individual involved in the crash. This holds true even if the driver was driving someone else's vehicle. Check your state insurance code or call your State Insurance Commission at the State Capitol for defined coverage, time, and dollar limits. In addition to death benefits, property benefits, and medical benefits, inquire about use of a rental car, lost wages, replacement costs of services such as child care and housekeeping, mental health counseling benefits, future medical bills, loss of future earning capacity, and past, present and future pain and suffering.

Frequently no-fault benefits are open-ended in injury cases, paying bills as they are submitted. Others offer lump sum payments which require detailed anticipated costs and losses. Unfortunately, some insurance companies choose not to pay the bills requiring the filing of a civil suit. If the insured does not respond to the company's notification of termination of benefits letter, the company has successfully saved money.

In a non no-fault state, if the driver of an automobile was liable for the crash and has liability insurance, you will be eligible to receive benefits from the liability insurance company. Eligibility will have various conditions based on the insurance laws in each state. If the driver liable for the crash had no liability insurance at the time of the crash, you may be eligible to receive benefits from the uninsured/underinsured motorist provisions of your own policy. Again, the insurance laws of each state will define that eligibility.

Insurance adjustors may approach you soon after the crash. Decisions you make at that time may have far-reaching financial ramifications.

- If you choose to retain a civil attorney, refer all insurance agents, including your own, to your attorney.
- Before speaking with any insurance agent, be sure you know whose company the adjustor represents. If an adjustor comes to your home, ask for a business card. If the adjustor's language is confusing, say so. Even though you may discuss the case, it is wise not to give signed or recorded statements.
- Be fully competent and aware when discussing the case with an insurance adjustor. Grieving or painful injury can make you feel numb and confused. It can cause you to have poor memory. If you are not able to discuss the case rationally with the adjustor, ask him or her to return at another time. It is a good idea to have a trusted person with you when you discuss insurance.
- You may want to hire an attorney on an hourly basis to evaluate your case before signing an insurance release. These forms release a drunk driving offender or his/her insurance company from future liability. For example, soon after the crash the insurance company may say "We'll leave you this check for \$100,000 today if you'll sign the release." However, the offender may have \$300,000 of insurance but your ability to sue both the offender and insurance company is negated once you sign the release.

- Set up an organized file, including copies of crash reports, estimates on repairing or replacing the automobile, medical and funeral bills, and copies of letters having to do with the insurance settlement.
- Get several estimates on damages to the vehicle before settling on property damage. These may be obtained from body shops or automobile dealers. You can negotiate the insurer's offer if you have several estimates.
- Obtain copies of all medical bills before settling on the medical or bodily injury damages. It is very important to know the full extent of injury and prognosis for treatment before making a final settlement. This may take months. Keep a daily record of adverse effects of the crash, including psychological ones. Be sure that when doctors write medical assessments, they understand the injured victim's job description, employment history, and education in evaluating if when, or under what conditions the victim may return to work.
- Request a copy of each settlement offer in writing to avoid confusion or in the event you receive conflicting information. This does not need to be a formal typewritten letter, but may be handwritten, signed and dated by the person making the offer.
- The adjustor may or may not be able to advise you of your claim rights based on statutory insurance law, since adjustors do not have legal degrees. It is the job of the insurance adjustor to negotiate the best deal possible for the insurance company. Ask for a written copy of claim rights in your state. Know the statute of limitations for personal injury and property damage actions in your state. You may want to consult an attorney on an hourly fee basis for this information.

If you feel you are being treated inappropriately by a claims adjustor, contact his or her supervisor. If that is not satisfactory, write a personal and confidential letter to the president of the insurance company explaining what has happened. Your State Insurance Commission or State Board of Insurance may also be contacted. All legitimate insurance companies are regulated by a state insurance commission. Contact the switchboard at your State Capitol for the phone number. All phone or personal communication relative to a complaint should be followed up by a letter.

In many states, insurance companies are required to act in "good faith." In such states this means that if claims are unreasonably denied, if valid claims are not promptly paid, or if victim families are coerced into settling for less than is due them, this behavior may give rise to a cause of action in tort against the insurance company. Punitive damages may also be recovered upon proof of actual malice, fraud, or oppression, usually referred to as "outrageous conduct."

Homeowner's or Renter's Insurance

Your homeowner's or renter's insurance policy will probably cover loss of contents of the car such as luggage and purses including their contents to damaged clothing worn, subject to a deductible. Contact your insurer to learn how to apply. Usually an itemized list of lost or damaged items, age, and approximate purchase price is required.

Civil Suits

If the person responsible for the death or injury of your loved one has substantial income or assets which are recoverable, or if the liability insurance company has failed to offer a fair settlement for a claim, consider filing a wrongful death or personal injury suit.

Civil actions are totally separate from the criminal case. Although the State provides a prosecutor to try the criminal case, an attorney must be retained for a civil proceeding. Do not expect either attorney to advise on the other suit, although they should be interested in each others case to enhance their own. Civil actions depend largely on the type and extent of injuries or death inflicted. Recovery of medical, funeral and property expenses are usually the first to come to mind. Financial recovery is also possible for more remote damages such as past and future wage loss, and past and future pain and suffering. If one spouse is killed or injured, the other spouse can sue for loss of consortium (change in relationship) in some states. Some states also allow for punitive damages -- additional money to punish the offender.

If a public entity such as the city, county, or state government was responsible in any way for the death or injury through commission or negligence, financial recovery may be possible from them as well. Traditionally, governments have been immune from civil suits. Referred to as "sovereign immunity challenges," appellate courts in a number of jurisdictions have now found them responsible for such things as inappropriate parole release, inadequate probation supervision, and failure to arrest a drunk driver who later kills someone. However, even in states that do not allow you to sue the government, the statutorily designated persons must be notified about the crash within a relatively short time period.

In drunk driving cases, states with "dram shop" statutes or case law allow the drinking establishment that negligently encouraged an intoxicated person to continue drinking to be sued if that person later harms or kills someone.

To pursue any of these sources of financial recovery, you will need to hire a civil attorney.

Consider the following as you try to identify the best attorney for your case:

- Shop around. A good recommendation from another victim is often an invaluable piece of information. Interview at least three attorneys before making a decision. As you interview, ask what kind of cases they handle, how they charge, and what they think about your case. Tell them you will make the decision to retain them at a later date. Remember, however, that the degree and success the attorney has in pursuing a full and fair settlement of your claim often depends on opening the case at an early stage.
- Look for an attorney who concentrates a significant percentage of the practice on personal injury and wrongful death cases involving drunk drivers. If you use another type of attorney, note when you look at the contract whether additional fees will be required in co-counsel is retained.

- Ask if the attorney has more experience representing plaintiffs or defendants. Ask what percentage of trials he or she has won. Ask what percentage of the cases settle out of court. This will help you analyze how much trial experience the attorney has, which is important.
- Ask for an explanation, in terms you can understand, of negligence laws in your state which relate to your case, including the statute of limitations. Ask for a brief written summary of the merits of the case as the attorney sees it at that point. This will prevent confusion later on. Be skeptical, however, of an attorney who promises certain results. Air-tight cases simply don't exist.
- Be sure you understand the fee schedule. Does the attorney require a retainer fee for investigating the case? Will the work be done on a contingency basis (paid a percentage of the actual recovery)? Will any of the work be done at an hourly rate? Is a promissory note as security for fees required? If handling your case on a contingency basis, does the percentage differ if settled out of court, if going to trial, or if going to appeal? Will you be billed for out-of-pocket expenses (court fees, deposition fees) as they occur or will they accumulate until a settlement is reached? If the case is lost, are costs or fees still owed?
- Will expenses be deducted from the settlement before it's split or just from your portion?
- Negotiating on fees, carried forth in honest good faith, is professionally acceptable and legal in most states. If percentages are regulated by state law, the attorney should explain the statute to you.
- If negotiable, you may want to discuss an hourly fee for work on recovery for actual damages and contingency percentage which decreases as the amount of recovery for punitive damages increases. If there is no significant dispute on liability of damages, and only the insurance is recoverable, a contingency fee may result in a high fee for only a few hours work. The attorney may therefore work for your insurance recovery on an hourly basis.
- Be sure the employment contract to retain the attorney includes the fee schedule, is complete, specific, and clearly understood before you sign it.
- Ask the attorney for copies of all correspondence relating to your case, and request that he require the defendant and/or his insurance company to make all offers for settlement in writing.
- Make sure the contract lays out what you will be liable for if, at a later time you no longer want the services.
- Request that all bills for services be itemized and match them with the fee agreement.
- Ask for a receipt indicating payment and purpose of payment each time you pay your attorney.

If you exercise care in choosing your attorney, you will probably be satisfied with the services. Negligence in civil cases is exceedingly complex and open to a variety of interpretations. This short discussion can in no way provide information sufficient to understand the intricacies of your

particular case. Only your attorney can do that. Sometimes it is impossible for attorneys to give clear and concise opinions about cases.

If you become dissatisfied with the services your attorney is providing, the attorney should be told of the dissatisfaction. If a satisfactory relationship cannot be achieved, the attorney may be discharged. At the point of discharge, the attorney will be entitled to a fee for services rendered in keeping with the terms of the employment contract.

If you suspect that your attorney's conduct is unethical, you may file a complaint with the local Bar Association. State Supreme Courts also may disbar, suspend, or censure an attorney for unprofessional conduct. If you wish to take legal action against your attorney, you will need to do so through another attorney. Be certain of your facts before you undertake this cause of action.

Bankruptcy Issues

Bankruptcy Law is complex and attorneys sometimes tell their clients prematurely that there is no value in filing a civil suit against a drunk driver because even if he is found, liable, he will obtain bankruptcy to avoid payment. That may not be true.

Personal bankruptcy and corporation bankruptcy options differ. Personal bankruptcy options are Chapter 7 (Liquidation) and Chapter 13 (Wage-Earner Plan.)

Chapter 7 of the Federal Bankruptcy Code as amended in 1984 (Section 523(a)9) forbids the discharge of any debt arising from judgment or consent decree of liability for injury and damages incurred as a result of the debtor's operation of a motor vehicle while legally intoxicated.

Language of the 1984 amendment is vague, but case law has consistently found that the plaintiff-victim in a drunk driving crash does not need to file suit and obtain judgment before the defendant files for bankruptcy in order for the judgment to be found non-dischargeable. Likewise, the courts have consistently found that the bankruptcy court need not address the legal level of intoxication required by the criminal courts as pre-requisite to establish non-dischargeability.

In federal legislation sought by MADD and passed in 1990, Chapter 13 of the Federal Bankruptcy Code, the Wage-Earner Plan, was also amended. The new amendment no longer allows those convicted of drunk or drugged driving offenses to obtain bankruptcy under Chapter 13. The new law makes clear that debts arising from drunk driving or the use of drugs is now a nondischargeable debt, that the victim does not need to secure a judgment or consent decree against the drunk driver before making a claim of non-dischargeability, and it extends the coverage of the provision to those who drive while impaired by drugs as well as alcohol.

Qualified bankruptcy attorneys should always be consulted in these cases. The American Bar Association and most State Bar Associations have Bankruptcy Sections which can refer you to qualified attorneys.

Crime Victims Compensation

All states now have Crime Victims Compensation programs which reimburse crime victim families for out-of-pocket, non-property expenses. These benefits were designed for victims in situations where insurance and civil recovery are not available. Benefits include funeral expenses, medical expenses, loss of wages, and other financial needs deemed reasonable. In some states, dependents are eligible for lump sum benefits. All states with Victims Compensation programs provide for mental health counseling for survivors of someone killed. Many states provide emergency funds which are available within a few weeks of the crash.

Since regulations vary from state to state, it is wise to call the prosecutor, the police department, or your MADD chapter victim advocate to request a Victims Compensation Application. If you are still unable to learn about the program, call the switchboard of your State Capitol and ask to be connected to the person in charge of the Crime Victims Compensation Program in your state.

The crime must be reported to the police within three to five days, and the victim family must cooperate with law enforcement officials in the investigation of the case. These requirements are seldom a problem in cases of drunk driving. Application for Crime Victims Compensation must be made within 6 to 12 months.

If you are having difficulty with funeral expenses, inform your funeral director that you will be applying for Victims Compensation to cover the funeral expenses. The director then may be willing to forgo billing for the funeral for the time being.

You will be expected to submit bills or receipts with the application. Except for emergency awards, applications take weeks or months to process, so application procedures should be started as soon as possible. Additional bills may be submitted later.

Restitution

Restitution is money or services ordered by the court to be paid directly to the victim or surviving family by the offender after final conviction. The purpose of restitution is to make the offender personally accountable for his crime and to restore, in part, the victim's loss.

Victim requests for restitution can cover medical and funeral expenses, lost wages, ongoing counseling fees for survivors, or other expenses considered reasonable by the court. Requests for restitution must be accompanied by bills or receipts and should be presented to the criminal court judge through the prosecutor or probation department prior to sentencing of the offender.

Restitution requests are usually attached to the presentence investigation prepared by the probation department.

Although restitution is a very sound concept, it is not a quick or easy solution to financial stress. It is dependent upon conviction of the offender, which rarely occurs until months or years after the crime was committed. Offenders sometimes have limited income from which to pay restitution, especially if they are sent to prison. Procedures for the collection of restitution from the offender and transferring it to the victim are rarely adequate. And, once the offender is out of the criminal justice system, a means of monitoring the payments no longer exists.

Some states now require that restitution be ordered unless the judge states in the record the reasons for not doing so. A few states automatically attach a civil lien to the criminal judgment in order to assure payment after the criminal case is closed.

In most cases, unless a substantial lump sum of restitution is ordered immediately following trial, chances of actually receiving the restitution are slim.

State and County Social Services

Families with limited income and resources who are faced with death or incapacitating injury, may be eligible for emergency short term assistance from social service agencies. This assistance may include vouchers for rent, utilities, food and medication, but rarely cash.

A parent of dependent children may, if the wage-earner was killed or injured, qualify for Aid to Families with Dependent Children (AFDC) and should apply at the local State Department of Human Services or equivalent agency. Food stamps are also available for low income, low resource families. It usually takes several weeks to obtain AFDC or food stamps.

Parents of injured children up to age 21 may apply for Crippled Children's Services. Ask hospital social service works for information. Shriner's Hospitals also provide free care for children who qualify.

Loan closets for medical equipment are available in numerous communities. Local service clubs frequently loan items such as crutches, wheelchairs and hospital beds. Hospital social service departments, the Red Cross, local charities and churches willing to help may be identified through a call to United Way or local crisis hotlines. Victim witness programs and victim support groups may also be aware of financial resources.

Civil Rights/Legal Assistance for the Disabled

A disabled person has rights guaranteed by law to education, employment, health care and other public or private services which are federally funded. If an individual feels that his rights or the

rights of a loved one are being violated by a school, hospital or social service, write or call your regional Office for Civil Rights of the Department of Health and Human Services.

Every employer doing business with the federal government under contract for more than \$2500 must take "affirmative action" to hire handicapped individuals. An individual who believes he or she has been denied a job because of the disability by such a contractor should file a complaint with the Office Federal Contract Compliance, Department of Labor, Washington, D.C., 20210.

A Final Reminder

Try to refrain from making any unnecessary major financial decisions until a year or more after your loved ones' permanent injury or death. Decisions about revision of your will, moving, investments, sale of properties, etc., can be considered after your life has settled down a bit and after your capacity for clear and rational thinking has been restored.