

## **Step 1. I am not insured and only partially at fault**

Fault will be determined by a court if the parties to an accident cannot agree or there is conflicting evidence and versions of events. Generally Court decisions about fault will be based on:

- the availability and credibility of witnesses
- physical evidence (photos/footage, damage reports, skid marks on roads etc) and
- interpretation of the road rules

Generally, any driver who is negligent (does not take reasonable care) and causes damage as a result is at fault and will be responsible for the damage caused. If the insurer for the other party is contacting you and demanding payment, they may hold the belief you are 100% fault based on what their insured has told them. If you do not believe you are 100% at fault, you can consider:

1. providing them your version of events (including any supporting evidence, including witness statements). You should write a statement about what occurred. Draw a diagram of where the incident took place and any photos of damage to your car or the other driver's car is also useful. You should read the road rules that apply in the State where the accident occurred and see what rules may support you not being at fault.;
2. accepting that you are at fault or partially at fault and negotiating a settlement yourself.

The usual settlements where you agree you are partially at fault are either:

- both parties “walk away” and agree to cover their own repairs; or
- alternatively, you will need to determine the value of the repairs you require and the contributory percentage you both agree (see below).

**About contributory percentage** Where you and the other driver are both at fault you can both be made to pay for any damage you caused to the extent you were at fault. For example, if you contributed 50/50 to the accident you can only be made to pay for

50% of the damage to the other vehicle, and you can claim 50% of the cost of repairs to yours. Remember that the value of the cars will determine the outcome of an apportionment of liability. This means that if your car is not worth as much as the other car you may still end up owing quite a lot of money. **Example** *You hit a 2007 BMW in your 1994 Ford laser. The damage to your Laser is assessed at \$2,600 and the damage to the BMW at \$12,500. 50% of \$ 12,500 = \$6,250; 50% of \$ 2,600 = \$1,300. Therefore you owe \$6,250-1,300 = \$4950, in addition to paying to get your own car fixed!* To determine whether the other parties repair costs are fair, you may want to look into approaching your local independent mechanic and provide them with a copy of the invoice from the other party's insurance company, any photos of the damage and any other evidence such as witness statements about what happened. Ask the mechanic whether they would be prepared to provide you with a written statement/opinion about whether the items that have been repaired or the amount claimed is reasonable based on the nature of the accident. A statement from an independent mechanic is preferable to you simply arguing that in your personal opinion the repairs or amount claimed are not reasonable. If you reach a settlement, try and get it in writing and in full and final settlement of all claims arising from the accident.