



# **Your Legal Guide to Wyoming Car Accidents**

**FREEBURG  
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# **YOUR LEGAL GUIDE TO WYOMING CAR ACCIDENTS**

# TABLE OF CONTENTS

Introduction	7
Your situation	8
Overview of the Moving Parts in a Car Accident Case	9
Investigate the claim	13
Understand Your Physical Injuries	18
Understand Your Economic Harms	21
Establish Liability and Beat Their Defenses	22
Types of Insurance	26
Liens and Medical Bills	30
Negotiate With Insurance	32
Litigation – The Anatomy of a Motor Vehicle	37
Accident Lawsuit	
Statutes of Limitations	37
Choosing the Jurisdiction	38
File Complaint	39
Scheduling Conference	39
Discovery	41
Motions	42
Jury Trial	42
Do You Need an Attorney?	43
Rules of Thumb to Help You Determine If You	44
Need an Attorney	

Attorney Compensation	45
Attorney Biography	48
Final Thoughts	50
Bonus Section: Your Rights with Your Attorney	52
Good Communication	52
Your Client File	53
Control Over Major Decisions	53
Settlement	53
Conflict-Free Attorney	54
Competent	54
Fees	54

*Disclaimer: Thank you for reading my guide. If you downloaded this for free from my website, you should know that I am not your attorney and that this is not legal advice. This is just general information. Legal advice is specific to you and your situation. It's also something you pay for. Additionally, laws change, so this general information may be out of date or not applicable to you.*



# INTRODUCTION

If you or a loved one have been injured in a car accident in Wyoming, this guide is for you--learn your legal rights and responsibilities in Wyoming.

You didn't choose to be in this situation, but because you were injured in a car accident, you must deal with the aftermath. How can you best protect yourself? How can you ensure that the medical bills are paid? What about getting compensated for your lost wages, damaged vehicle, and other expenses?

As an attorney that handles car accident cases in Wyoming, I answer these questions every day. I talk to people in your situation. My goal with this guide is to help you understand what comes next and how to manage it. I want you to be positioned to get everything you can out of your situation and move on with your life. That is why I wrote this guide.

## Quick disclaimer:

Please understand how to use this information. First, everything in this guide is "most of the time" information and advice. It may not be the right information or advice for you. Your situation is unique to you. You will only get my legal advice if you hire me and we take the time to really understand your situation. Other attorneys do things differently and reasonable minds disagree. Use your common sense, and if you are in doubt about a point, talk to an attorney and get legal advice.

Also, laws and best practices change. I am writing this in January 2019. At some point in the future, this guide will be outdated. If that happens, I will do my best to update this guide.



## YOUR SITUATION

You were in car accident.<sup>1</sup> You are not alone. Each year, over two million people are injured in a reported car accident, according to the National Highway Traffic Safety Administration. In Wyoming, just over a 100 people die each year in car accidents.

The accident itself may have felt like it was happening in slow motion. You saw the other car lose control. It came into your lane. Both of you were moving, but time slowed down. Your vehicle went off the road. Totaled. You were in shock. Maybe you were taken to the hospital. Before the accident, you had plans for the next day, next week, next month. Now, those plans are on hold until you can work your way through the aftermath.

<sup>1</sup> Some plaintiffs' attorneys refuse to use the word "accident" in these situations. They believe that characterizing an event as an accident minimizes the other driver's responsibility. Instead, these lawyers believe, we should call it a car "wreck" to more accurately reflect the opponent's level of culpability. I understand the argument, but disagree for two reasons. First, people commonly use the word accident without confusion. Second, the other driver probably didn't mean to hit you or your vehicle. They may have been careless, or negligent, or a bad driver, but they probably didn't cause the accident on purpose. If they did, that's called vehicular assault.



# OVERVIEW OF THE MOVING PARTS IN A CAR ACCIDENT CASE

There are a lot of moving parts for you and your attorney to track following a car accident. Among other things, to resolve an accident claim you will need to figure out the following: What is the other driver's insurance? What is your insurance? Is there damage to your vehicle? What injuries do you have? How long will those injuries take to heal? Will the injuries fully heal? Do your injuries result in lost income? How will your injuries impact your home life, loved ones, and daily activities?

## ■ Insurance

The other driver was required to have insurance. Hopefully, you got a copy of their insurance card at the accident scene, or their insurance information is part of a police report. Once you find this information, you will be dealing with that driver's insurance company. If you have underinsured motorist coverage or medical payments, then you may also be dealing with your own insurance company. (I'll explain this in more detail in the insurance section).

## ■ Medical care

You may have gone to the hospital right away. However, injuries may have manifested over the days--and even weeks--following the accident. You will need to get the right medical care for your injuries, and it is important to do so as quickly as possible.

#### ■ Medical bills

With medical care, comes medical bills. If your treatment is first paid for by your health insurance policy, rather than the other driver's policy, it is likely that you will end up dealing with medical liens relating to who will ultimately pay for your care.

#### ■ Vehicle repairs

Sometimes your vehicle will be repaired. Sometimes it is totaled. The insurance company should pay for a rental car while your car is being repaired or while you find a replacement. Unfortunately, this does not always happen.

#### ■ Lost wages, work

Car accidents, and any subsequent medical care, often lead to missing work for some period of time. This may mean a loss of income, because if you are not working, you are not getting paid.

#### ■ Time

Once you start playing phone tag with an insurance company, the game never ends. You are on hold, your claim is transferred, reassigned, needs approval from a supervisor, etc. The process is both time consuming and emotionally taxing.



**Investigate  
the Claim**



**Understand Your  
Physical Injuries**

**Understand Your  
Economic Harms**



**Organize Medical  
Bills & Records**



**Establish Liability &  
Beat Their Defenses**

**Negotiation**



**Litigation**



**Trial**



## CONSULTING WITH AN EXPERIENCED ATTORNEY

An attorney with experience handling car accident claims can assist you in working through the many pieces of this puzzle. He or she can work with your insurer and can advocate for you in talking with the other party's insurance company and their lawyers.

The serious consequences of being in a car accident can impact your life in many important ways and over a long period of time. Therefore, it is worth taking some time to understand your case. Here is the road map of what you can expect as you navigate a car accident claim.

## INVESTIGATE THE CLAIM

Since you were in the car, it is probably pretty clear to you what happened. However, what matters in a car accident claim or lawsuit is what you can prove to an insurance company or a jury. You need to gather evidence. What are the potential sources of evidence?

### LAW ENFORCEMENT REPORTS

In Wyoming, every time an ambulance is dispatched to a car accident, local law enforcement should be notified. If the crash happened on a public roadway, either Wyoming Highway Patrol or the county sheriff's department will respond. In a national park, the park rangers respond. In a town, the responding agency will likely be the municipal police. In most cases, whatever law enforcement agency responds to the accident will draft a report. You need to get that report and see what it says.

The Highway Patrol uses a standard form with numerical codes for different parts of an accident investigation. There is a number if the trooper observes front-end damage. There is another number if you go to a hospital. Importantly, the form also usually includes the trooper's opinion as to who caused the accident. Sometimes the trooper will write the other person a citation or make an arrest if that person caused the accident. If the trooper's opinion is that the other driver caused the accident, this strengthens your claim. You are likely to receive some settlement offer from the insurance company, even without filing a lawsuit.

Note: This does not mean that you will receive a full and fair settlement offer; merely that if the other party is clearly at fault and you were injured, then the insurance company will probably make some offer.

Sometimes, all the trooper does is describe how the accident happened. In that case, the trooper says something like “vehicle one came into vehicle two’s lane of travel and struck vehicle two by the A pillar.” If that is your situation, then you will need additional evidence to show which driver was at fault. This will involve bringing in information from other sources. Which vehicle had the right of way according to Wyoming traffic statutes? What was the other driver doing right before the accident? Is there evidence that the other person was impaired or distracted? This information can come from a variety of sources.

## INTERVIEWS

If you are represented by an experienced car accident attorney, he or she will likely hire an investigator to look into the details of your accident. You may be asked to do an interview with your attorney’s investigator to review how the accident happened. The other party’s insurance company will want to talk to you too. Be wary if you get a call from their insurance company or an unidentified investigator who wants you to discuss the accident. I strongly advise my clients against talking to the other person’s insurance company without discussing it with me first. You do not have to talk to the other person’s insurance company, so do not let them bully you into making a statement before you’re ready. It is often a good idea to get interviews from everyone who was in your vehicle. If the collision happened in a public place, you will want statements from witnesses and passersby

## DIGITAL EVIDENCE

More and more vehicles have onboard computers that produce data about crashes. If you were involved in an accident with a semi-truck or commercial vehicle, then there should be a “black box” recording showing the vehicle’s speed. Not every case justifies retrieving this data and not every vehicle records data, but it is something to be aware of. Cell phone records are another common source of digital evidence. Was the other driver texting or distracted by their phone? Your attorney can use subpoenas to get that evidence from the phone company.

## PHYSICAL EVIDENCE

The damage to your car or body can tell you a great deal about how the accident happened. Typically, photographs of your vehicle will be included as part of a law enforcement investigation. Many of my clients also have their own pictures of the damaged vehicle or their injuries. Additionally, tow truck drivers sometimes record cell phone videos of the vehicle as it is being hooked up to the tow truck or loaded onto a trailer.

In some instances, it is necessary to have a mechanic or accident reconstruction expert evaluate the car. If your accident was the result of a defective tire, proving your claim will require an expert to inspect your tire. If you have a catastrophic injury, it is a good idea to preserve the vehicle so you can analyze the crash-worthiness of the vehicle and its safety systems. A good attorney can help you determine what evidence is necessary in your case and find the right experts to get that evidence

## EVIDENCE ABOUT THE OTHER DRIVER

People who represent themselves often skip this step, to their own detriment. It is always worthwhile to know a little bit about the other driver. Typically, you do not see that person ever again. Instead, if you are lucky, you exchanged information and are now dealing with their insurance company.

Before settling your case, you should take the time to understand the other person's insurance coverage. What are their policy limits? Do they have an umbrella policy? If the driver was driving his friend's vehicle, a rental vehicle, or a work vehicle, are there two insurance policies?

If there does not appear to be insurance coverage, does the driver have other assets that could be used to compensate you for your injuries and the damage to your vehicle? If you are in a situation where you have minimal injuries and are merely trying to get your vehicle's damage taken care of, then you may not need to investigate this. If you have serious injuries or permanent impairment, then you need to understand what there is to recover.

At Freeburg Law, I have access to special databases to perform asset checks. If the person who hit you has a fancy boat or expensive property, I want to know about it because this is important information to know about the opponent. I often hear from the other side's insurance company that they have low amounts of coverage and no assets. While I assume I can trust the insurance company to tell me the truth, these search tools allow me to verify those statements.



With the help of an experienced car accident attorney, you can be confident that your claim has been adequately investigated and that the other person is at fault. Hopefully, they have sufficient insurance coverage or other assets to take care of your injuries and economic losses.

As we investigate and develop your claim or potential lawsuit, we will cover each of the following important steps in order to make sure we don't miss anything and get you the best possible result.



## UNDERSTAND YOUR PHYSICAL INJURIES

You need to be able to prove the extent of your injuries in order to properly support your claim. Sometimes, your injuries will be simple to understand. If you have a broken limb, it heals, you do some physical therapy, and you're back to 100%; your treating orthopedic doctor can easily explain this. However, sometimes your injuries will take time and medical expertise to fully understand and explain. For example, if you suffered a brain injury as the result of the accident, it is likely that you will need to see a neurologist to understand both the injury itself and any symptoms and limitations you are likely to experience as a result. Moreover, because doctors and scientists are learning more about brain function all the time, our understanding of your injury may change over time.

I frequently work with doctors, nurses, and other medical professionals to understand my clients' injuries. It is common for me to talk to the doctor that treated you in the hospital. In some cases, in addition to your treating physician, I will also hire specialists or experts to review records

or examine your injuries in order to provide a comprehensive explanation of those injuries in a way that your treating physician cannot.

The most serious mistake people make in pursuing a car accident claim is failing to spend enough time and money to understand their injuries. If you think you have a minor injury, it is likely that you will want to settle the claim quickly and move on. That makes sense. However, if what you believe is a minor injury is really a major one, and you settle your claim for a minor injury amount, you are stuck. You will not be able to receive further compensation. You only get one shot at receiving an insurance settlement for your injuries.<sup>2</sup>

Often, to settle a motor vehicle claim involving a physical injury, the insurance company will want to involve their medical examiner. The insurance company calls this person an "independent medical examiner" but, because these examiners are only hired and paid by insurance companies, they are not really "independent." Their job is to minimize your injuries. You will need to be careful when dealing with these examiners so as to protect your claim. We may want to consider making an audio or video recording of the examination. This way, if the examiner mischaracterizes your injuries or statements, you will be able to prove it. In the examination, you will need to clearly detail all of your injuries and their impacts on your daily life.

<sup>2</sup>In some cases, it's possible to settle the property portion of a claim separately from the physical injury or economic loss portion.

For serious injuries, the best practice is to get experts involved. A life-care planner can help you understand the cost of future medical care or personal help, such as a home nursing aide. A mobility expert can help you understand the extent and effects of physical impairments. An economist can put a number on lost wages and future earnings. I have experience working with experts in each of these fields and understand when the expense of hiring an expert is worth it to your overall claim.

A photograph of a desk setup for budgeting. On the left is a silver calculator. In the center is a pen with a black barrel and gold-colored accents. To the right is a budget sheet titled "MY YEAR-BUDGET MANAGEMENT". The sheet has columns for "DATE", "INCOME / \$", "EXPENSE / \$", "BALANCE / \$", and "NOTE". Handwritten entries include: INCOME / \$: 15,000; EXPENSE / \$: 4,200, 570, 1,000, 850; BALANCE / \$: 15,000, 10,230, 9,230, 10,080. A small potted plant is visible on the far left.

## UNDERSTAND YOUR ECONOMIC HARMS

You may also have suffered economic harm as a result of your car accident. Types of economic harm include property damage, lost work and wages, and loss of future income. Essentially, any loss that you can quantify or hire an economist to quantify is an economic harm.

Some examples of economic harms are: a property damage claim for damage to your vehicle; the value of airline tickets for a flight you missed as a result of the accident or your injuries; wages you did not receive because you were unable to work after the accident; and future earnings or work opportunities you would have reasonably anticipated if not for the accident.

People generally have a good idea of their economic harms once they start making a list of all the ways the accident has affected them. However, until you put a pen to paper, you may miss something. I suggest you start documenting what you have lost by making notes and keep any receipts for costs incurred that are related to the accident in any way.<sup>3</sup>

<sup>3</sup>Some people take this too far. I had one client who wanted to be reimbursed for the Slim Jims she bought at the gas station on her way to physical therapy. Be thorough. Be fair. But don't be that person.

## ESTABLISH LIABILITY & BEAT THEIR DEFENSES

In many car accidents, it is clear who is at fault but insurance companies and defense attorneys can be very creative at finding ways to shift blame. It is important to lock-in fault early on. Let's talk about several ways to establish fault.

### MAKE SURE THERE IS A CONVICTION ON THE TRAFFIC OFFENSE

We already discussed law enforcement reports and how to investigate the claim. Let's say that your attorney obtained the law enforcement report showing that the other driver was speeding and received a citation for misdemeanor reckless driving. At this point, best practice is for your attorney to contact the prosecutor responsible for enforcing the traffic laws and let them know that you were hurt. If the prosecutor knows there was an injured victim, then it is more likely they will persist in prosecuting the other driver. There is a Wyoming Statute that gives victims of crime certain rights.

Your case will be much stronger if the other driver is convicted of a traffic offense. If your case proceeds to trial, that criminal conviction may be admissible in court. Even if no trial ever occurs, a criminal conviction is always useful in persuading the other driver's insurance company to admit liability.

Your best bet is to have your lawyer contact the prosecutor as soon as possible. Many people contest even minor traffic tickets and the other driver

may hire an attorney to work out a deal with the prosecutor (such as reducing the speeding ticket to a non-moving violation like expired tabs.) You want to prevent that from happening because the conviction for the traffic offense is compelling evidence in your case.

#### GET AN EXPERT TO DETERMINE FAULT

In some crashes, you may not know what happened. Maybe you never saw the other driver or you were knocked out and are not sure what happened. Maybe it was a hit-and-run.

In those instances, you may want to hire an accident reconstructionist. This person is an engineer who specializes in the physics of accidents. They will go to the scene and gather evidence. This could include measuring skid marks and the size of the debris field. They will also review law enforcement reports and read the applicable scientific literature on the type of crash and forces involved. They will usually prepare their own report of what happened and they may testify at trial.

#### THEIR DEFENSES

Wyoming is a "Modified Comparative Fault" state. This means a jury will be asked to assign a percentage of fault to each person involved in the crash, including you. If the jury finds that you are more than 50% responsible for the crash, you will not be able to recover any compensation for your injuries.

The easiest way to understand comparative fault is through a couple of examples. First, let's say you were hit while driving in an intersection. You had the right-of-way, however, your headlights were out. If it was daytime and your vehicle was plainly visible, a jury may say that the other driver is 100% at fault even though your headlights were out. Now consider that the crash happened at night and your car was hard to see without working headlights. In that scenario, the jury may say that you were 20% at fault because you failed to make sure your car had functioning headlights. In the second scenario, the money you get for your damages would be reduced by 20%--your share of the responsibility for causing the accident.

Comparative fault can get complicated and fact-dependent quickly, especially when there are more than two drivers involved in an accident. In any case, if you are over 50% at fault, you will not get anything. This means that the other driver's insurance company has a strong incentive to try to blame you for the crash in order to reduce the amount they will have to pay you for your injuries. In Wyoming, there is an association for insurance defense attorneys whose goal is to help those companies keep more money. Each year, this association gives an award named for the comparative fault statute to their "attorney of the year." Presumably, that attorney is skilled at using this statute to blame plaintiffs for their own injuries.



There are several types of other defenses available to defense attorneys. Some defenses are statutory. Perhaps they will claim that you were speeding, for example. Sometimes defenses are based on the insurance policy itself, such as a defense that the other driver was not insured to drive the other vehicle, even though that vehicle had insurance.

Like most things in the law, the key to overcoming defenses and establishing liability is a mixture of hard work, experience, and legal skill. Choosing a personal injury attorney who has handled car accident cases in the past will help ensure that you are getting the best representation possible.

# TYPES OF INSURANCE

There are several different types of insurance.

## ■ Bodily Injury/Liability:

This coverage pays for injuries. If you have been injured, then the other person's bodily injury/liability policy will pay for your injuries. This is what most people mean when they talk about insurance.

In Wyoming, there are low limits for this coverage. You are required to carry limits of \$25,000 per person and \$50,000 per accident. If you were injured by another person and they only had the minimums, then their insurance would pay out \$25,000 maximum. If you and a passenger were injured by another person, then they would pay out a maximum of \$25,000 to each of you for \$50,000 total.

## ■ Uninsured Motorist or Underinsured Motorist Bodily Injury:

This coverage protects you from other drivers that do not carry enough coverage. If you have \$50,000 in injuries, and the at-fault driver only has the minimum coverage to pay out \$25,000, then you can recover the remaining \$25,000 from your own underinsured motorist policy.

I tell everyone to get Uninsured or Underinsured coverage. I have seen too many cases where the at-fault driver has the minimum coverage and the accident victim has significant injuries. Underinsured Motorist coverage is typically only a small charge more. If you do not have Underinsured Motorist coverage, stop reading now. Go sign up and come back.

■ Property Damage Liability:

These policies cover property damage. If the other person damages your property (for example, they total your new car or run over your fence post), you can recover for that property damage under this policy.

■ Medical Payments (med pay):

A med pay policy covers medical payments, regardless of who was at fault. If you have this coverage and go for a ride in an ambulance, then med pay will pay for it. These limits are typically low--maybe \$5,000 to \$10,000.

■ Comprehensive:

This policy pays for property damage to the vehicle that is caused by things other than a car accident, such as theft, fire, or falling trees. There is typically a deductible for this coverage. It is a good idea to have this if your vehicle is financed or would be expensive to repair.

■ Collision:

This is a bit like an uninsured motorist policy to cover your vehicle. If an at-fault driver damages your vehicle in a collision, your collision coverage will pay for your repairs or replacement costs. If you financed your vehicle, then the lender likely required you to carry this.

## ■ Umbrella:

An umbrella policy protects above and beyond your auto insurance policies. You are typically required to have at least \$300,000 in coverage to be eligible for an umbrella policy. An umbrella policy may provide \$1-2M or more in coverage. Homeowners and higher net worth individuals should carry umbrella coverage.

Assume the person who hit you has a \$300,000 auto bodily injury policy, a \$1M umbrella, and that we can prove that the monetary value of your injuries is \$500,000. In that case, you could settle for the policy limits of the auto bodily injury policy and get the remaining \$200,000 from the umbrella policy.

Note: In most cases, these insurance policies do not stack. Under the example with a \$300,000 bodily injury policy and umbrella, you generally cannot recover \$300,000 from the bodily injury policy AND \$1M from the umbrella policy for a total of \$1.3M. You are limited to \$1M total from both policies. Sometimes a clever attorney can find a way to stack the policies. You will not know unless you look.

Umbrella policies protect people with assets. From our previous example, assume the other driver has a \$300,000 auto policy but they do not have an umbrella. Instead, they have a 401K retirement account with \$200,000 in it. The insurance company can write the policy limits check for \$300,000, and the injured person can go after the 401K to be made whole. Often you will not know whether they have additional assets without filing a lawsuit, hiring an investigator, or both.

# TYPES OF INSURANCE



## DRIVER 1

*If Driver 1 is at fault, how much insurance is there for Driver 2 to recover?*

*Driver 2 can recover \$25,000 from Driver 1, plus \$75,000 from his own UIM policy, and possibly Med Pay.*

Liability/Bodily Injury  
\$100,000 Coverage

Medical Payments  
\$5,000 Coverage

Under Insured Motorist  
\$100,000 Coverage

## DRIVER 2

*If Driver 2 is at fault, how much insurance is there for Driver 1 to recover?*

*Driver 1 can recover \$100,000 from Driver 2's policy and possibly \$5,000 from Med Pay.*

Liability/Bodily Injury  
\$100,000 Coverage

## LIENS & MEDICAL BILLS

In most car accident cases, someone has a lien against the money recovered. Typically, whoever fronts the cost of medical treatment has a lien, although a tow-truck company can also have a lien. For example, you incur \$10,000 in medical bills from an accident. You have health insurance through BlueCross BlueShield of Wyoming (BCBSWY) and \$5,000 in medical payments coverage through your own auto insurance carrier. When you go to the hospital for \$10,000 in treatment, your health insurance policy covers \$5,000 and your med pay policy covers the other \$5,000. Both BCBSWY and your med pay policy will have a lien for the \$5,000 that they spent on your care, assuming they did their paperwork correctly.

Let's say your attorney gets you a settlement from the at-fault driver's insurance company. At that point, you will likely have to repay BCBSWY and your med pay policy from the settlement proceeds. Your attorney should negotiate your lien with those parties.

If Medicare or Medicaid paid for your medical treatment, then they will have a lien even if they do not notify your attorney or the auto insurance carrier. In some horror stories, they come back years after a case settled and demand to be repaid. In my experience, dealing with Medicare or Medicaid liens adds at least six weeks to getting a case resolved.

If you have unpaid medical bills, your attorney should notify the provider and ask them to wait until the case settles for payment. There are certain laws and rules about when a hospital or medical provider can demand payment but a hospital will typically wait until a case settles before sending you to collections. If you are worried about unpaid bills after a car accident, an attorney can communicate with healthcare providers and billing companies on your behalf to notify them that a claim is ongoing and to make sure your bills will not be sent to collections.



## NEGOTIATE WITH INSURANCE (A.K.A. DANCE WITH THE 800LB GORILLA)

Once you understand your injuries, economic harms, and the insurance available, it is time to negotiate with the insurance company's representative, known as an insurance adjuster.

To my knowledge, every major insurance company requires their insurance adjusters to use software to evaluate motor vehicle claims. To simplify, the insurance adjuster inputs the details of the accident and medical treatment into their software program and the program outputs boundaries for settlement values. The adjusters will negotiate within (or



below) the range provided by the software. This makes the process a bit like negotiating against a computer and a human at once.

In rare circumstances, an adjuster can seek to deviate from the software range. This usually requires approval from the higher-ups within the insurance company.

The first step in negotiating is to put together a demand packet for the adjuster. A demand packet presents your claim to the insurance company and should include facts to establish liability. This typically means the demand packet includes the police report, a summary of your physical injuries (which may include medical records), and possibly statements from you and the opposing party.

It is important to present medical records appropriately. Your attorney will need to extract the medical billing codes associated with the treatment and build a timeline. It helps to extract specific records and include images and link those to the medical billing codes. You also need to document every expense associated with the treatment. This phase is not rocket science, but it can be tedious and technical, and requires meticulous attention to detail. If you overlook an expense or medical billing code, you will get a lower offer.

Once your attorney sends over the demand packet, negotiations ensue. In Wyoming, unfair claims settlement practices statute requires insurance companies to respond in a reasonable time. The courts interpret a reasonable time to be 30-45 days and that is accurate in my experience.

Negotiating with an adjuster is a mix of email, voicemail, fax, and phone calls. In big cases, or after a lawsuit is filed, you might negotiate with an adjuster in person. Many of the major insurance companies use adjusters in other time zones (for example, State Farm has folks out of Georgia.)

Attorneys employ various negotiating styles when working with adjusters. Some attorneys like to make threats (and some clients like to hear their attorneys make threats) or make every issue a big fight. That is not my style and I have found that I can be most effective by being friendly and prepared. Very, very prepared. I understand that on the other side of that phone call there is a person trying to get through their day. I need to give that person what they need to be able to go to their boss and justify a big check. If you provide them with the right information, you will get further and hopefully get that big check too.

However, there are also insurance adjusters that are difficult or downright sadistic. These adjusters frequently claim to misplace papers, lose voicemails, and dispute medical records. I have been told my client was faking PTSD; that my notes about a previous conversation were mistaken (i.e., I lied); and that letters I sent had disappeared (only to have the adjuster quote the missing letter back to me five minutes later.) With those adjusters, the gloves come off and I tell my clients to file a lawsuit.

Throughout the negotiation or litigation process, you and your attorney will need to be mindful of existing liens and deal with them appropriately. Let's return to the idea that your health insurance or med pay provider has a lien on the recovery. With those folks, you need to negotiate the liens at the same time as you negotiate with the adjuster. Your attorney's job is to get as big a discount as possible on the liens to put more money in your pocket.

Some law firms have a reputation for settling every case. These firms put their clients at a disadvantage. If the insurance company knows that your attorney is afraid to go to trial, they will lowball you. They know that your attorney will not back up their threats with a lawsuit.

Alternatively, some attorneys file every case. In my experience, these attorneys usually state that "you have to file the case" to get a fair settlement, and they do not bother negotiating before filing. That always struck me as odd--afterall, it does not hurt to ask and lawsuits can get very expensive very quickly. My clients love it when we can get their cases resolved efficiently (and cost-effectively.)

Like most things in the law, deciding whether to file a lawsuit is a balance. Even if your attorney is fronting the costs, a lawsuit will take a significant amount of your time and attention. You will also be required to participate in what lawyers

call "discovery," which means the other side will be able to ask you for any information they can relate to the accident and your injuries. This information can be difficult and time-consuming to collect, and may include personal information you may not wish to share. Most people underestimate the length of a lawsuit and the frustrations that come with litigation.

All that being said, part of me loves it when negotiations break down and it is time to file the case. I always start out negotiating in good faith. By the time negotiations break down, I know either (a) the insurance company and I have a genuine difference of opinion that needs to be resolved by a jury; or (b) the insurance company hired a bunch of jerks to adjust the claim and it is time to throw down.

Both scenarios are energizing. When I file a lawsuit, I expect to win. I expect to try the case and I am invested in seeing it through. While I love carefully and profitably putting together a demand packet, I did not go to law school to write letters to insurance adjusters. I went to law school to try cases so, if we file your case, it is time to rock and roll.

I have tried over 30 cases to a jury and another 50 cases as a bench trial to the Court. With each trial, I have gained invaluable experience about how to present a case, and I am proud of my skills in the courtroom.

# LITIGATION--THE ANATOMY OF A MOTOR VEHICLE ACCIDENT LAWSUIT

This section provides a high-level overview of the pieces of a lawsuit. It is not an exhaustive discussion of litigation and trial, nor is it my last word on the subject. Trial and litigation are both science and art. Litigation can and should be systematized but there is plenty of room for improvisation, especially in trial. I reserve the right to contradict anything in this section because your case and your legal strategy are specific to you.

## STATUTES OF LIMITATIONS

Be aware that there is something called a statute of limitations. It is the time limit you have to file a case and the specific time limit depends on the claims and the law. In Wyoming, the applicable time limits may be one, two, or four years from the date of the accident. Your lawyer will be able to determine which statute of limitations applies to your specific case. Screwing up the statute of limitations is the fastest way to lose your case.

## CHOOSING THE JURISDICTION

In Wyoming, you have four choices on where to file the case:

- Small Claims Court: No lawyers needed. The maximum amount of money you can claim is \$6,000. You go to court “Judge Judy style” and finish everything in two or three hours. If you have a fender bender and no injuries, this is an option. I do not do these cases.
- Circuit Court: Typically, this is in the county where the accident happened or the county where the other party (the defendant) lives. The maximum amount of money you can obtain is \$50,000. The cases are supposed to be done in seven months with minimal expert witnesses, a jury of six, and much less discovery. Car accident cases are rarely filed in Circuit Court but it may make sense depending on the facts.
- District Court: This Court is also likely in the County where the accident occurred or where the defendant lives. The court has general jurisdiction, meaning it can hear cases that are worth any amount of money, so long as a minimum of \$50,000 in damages is claimed at the outset. The parties may request a six-person or 12-person jury and the jurors generally will come from the same community where the accident occurred. They may know the parties and will likely know the road where it happened. If I have a case in a county for the first time, I will find a local attorney and get background on the judge. The majority of car accident cases are filed in district court.
- Federal Court: There are three federal judges in Wyoming and at least two magistrates that may possibly hear the case. There are a couple of ways to get into federal court. If there is a federal question involved, or the accident happened on federal land, you may be able to get into federal court. The other common way is if the parties are from different states and the amount of money claimed exceeds \$75,000.

Once we determine which court is right for your case, it is time to file the complaint.

#### FILE COMPLAINT

The complaint is the legal document that starts your case. Your attorney will prepare the complaint, which will set forth the basic facts of the case and your claims against the other driver.

Along with the complaint, you will file a summons, which is the document that the sheriff or process server uses to show that the other person has received legal notice of the complaint. Typically, the defendant has 20 or 30 days to respond with either an answer to the complaint or a motion to dismiss the case. If they file a motion to dismiss, it will be up to your attorney to respond, telling the court why your case should not be thrown out.

#### SCHEDULING CONFERENCE

In most jurisdictions, after the other side responds to the complaint, the court will hold a scheduling conference. You will not necessarily be at the scheduling conference. The purpose of the scheduling conference is for the court to set deadlines in the case. In complicated cases where there are a lot of medical experts and issues to understand, the court may set lengthy deadlines. In other cases, such as those in Circuit Court or cases that are relatively simple, the court may set shorter deadlines.

Typically, a court will give parties three to nine months to complete discovery or investigate the case. The court then sets a pretrial conference and some other deadlines, most of which are for your

attorney to worry about. Sometimes factors such as an attorney's schedule or the judge's schedule--both personal and professional--can affect the length of deadlines. For example, if the judge has a lengthy trial coming up or the other attorney has a medical issue, the judge may take that into account when scheduling your case. I do not want to make it sound as though any little thing can delay a case; most of the time everyone is working in good faith to do the best they can to get their job done. If one side wants too many delays or extensions, the judge will stop them and force them to participate in resolving the case. Most of the time in a simple motor vehicle accident case, both sides want to move efficiently.

## DISCOVERY

The first phase in the case is called discovery. The purpose of discovery is to develop the facts in the case. Sometimes this means doing more investigation of the accident where an accident reconstructionist goes to the scene (in some cases, we will have taken care of this in the pre-filing investigation phase.) Sometimes this means asking the other side questions in writing, which they have to answer under oath. Sometimes this means taking the other driver's deposition--an in-person interview where your attorney will ask that person questions under oath. It can also mean hiring experts to help explain the evidence in your case. For example, a medical expert may review and explain your medical records in an easy-to-understand summary. You may also have an economist review your notes and records on expenses to quantify the financial impact. Another common expert is a life-care planner. This expert estimates and prices the future medical treatment you will need as a result of the accident.



Discovery begins with initial disclosures, which are things each party is required to tell the other side about its case. Each side has 30 days to complete their initial disclosures. These disclosures include a list of every person with knowledge of the accident, a list of the documents you have that are related to the accident, a computation of the damages (note: often times this is completed later in the process, but if it has been done, you are required to disclose it under certain circumstances), and any insurance agreement that is relevant to the claim. That means, if you have been injured and filed a claim, you should be able to see the other side's insurance documents.

#### WRITTEN DISCOVERY REQUESTS

Each side has the right to ask the other side questions, require them to produce documents, and to admit to or deny statements. Your attorney will shape these discovery requests as they can be powerful tools to lock the other side into their version of events. Your attorney can require them to state in writing whether or not they think they are at fault or require them to produce emails and text messages (assuming there are not any privileges.) You can also ask them to admit or deny liability.

#### DEPOSITIONS

Depositions are our opportunity to ask the other side questions under oath in an interview setting. Depositions do not happen in the courthouse but rather in a conference room with a court reporter and the other person's attorney. You may also be deposed. Most folks have an idea of what a deposition is from TV. If you are going to be deposed, we will spend quite a bit of time preparing for the deposition ahead of time.

## MOTIONS

A motion is simply a request for the court to do something. They can be as short as a page or as long as a phonebook. As the litigation progresses, your attorney may draft or respond to motions for you. In a car accident case, the legal issues are usually straightforward but an unusual legal issue may pop up and require significant legal research to address.

## JURY TRIAL

If you have never watched TV, go catch up on Law and Order, Better Call Saul, The Goodwife, or Damages. I joke because this short book is not the right place to crank through all the pieces of a jury trial. Know that a short trial is two to three days and a long trial is more than a week. If there are significant injuries or uncertain liability, you are more likely to have a long trial.

It is rare for any case to go to trial. If your case goes to trial, we will be spending a lot of time together. It almost always takes over a year from the filing of a case to get to trial.

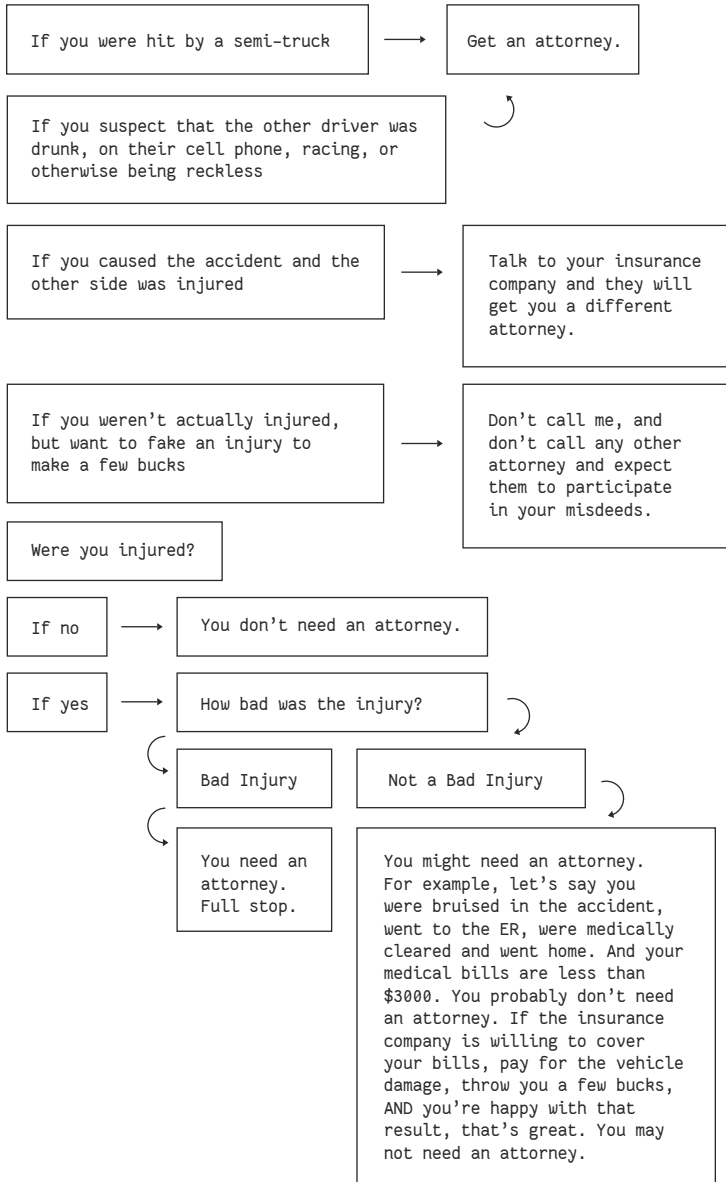
## DO YOU NEED AN ATTORNEY?

The short answer is “it depends.” Your case is unique to you and an attorney can help show that to an insurance company, judge, or jury. From my own experience, I know that “it depends” is not a satisfying answer.

The longer answer is that the insurance companies' own studies show that you are likely to get more money with an attorney, even after you pay your attorney's fee. (See more on this below in Attorney Compensation.) Even after paying the attorney's fees and reimbursing expenses, having an attorney on your side usually puts substantially more money in your pocket. This is an extreme example, but I once had a client who was offered \$400 from an at-fault driver's insurance. After I got involved and we figured out the client's own underinsured policy coverage, we ultimately recovered \$100,000 for the client.

That may not be a satisfying answer either. It is a bit self-serving for a lawyer to tell you that he will get you more money, even if it is true, so here are my rules of thumb for figuring out if you need an attorney. I am not promising that they are always applicable or that they are the right rules for your situation. Please do not rely on these to make a decision and then blame me if it does not work out. However, they may be helpful as you decide whether or not it makes sense for you to hire a lawyer.

## RULES OF THUMB TO HELP YOU DETERMINE IF YOU NEED AN ATTORNEY



Ultimately, the most important factor is your satisfaction. If you are happy with a low dollar amount, are not injured, and want to move on with your life, then you probably don't need an attorney (unless, of course, you are more injured than you realize.)

If you are not sure, call me at (307) 200-9720 or email me at [alex@tetonattorney.com](mailto:alex@tetonattorney.com).

## ATTORNEY COMPENSATION

My firm does personal injury cases on a contingent fee, where you do not pay anything out-of-pocket. When we win the case, we take a percentage. If we lose the case, I take the loss. If you are interested in an alternative fee arrangement, I will hear you out. Also, be advised that the fee arrangement discussed here is my general practice. Occasionally, because your case is specific to you, we may work out slight variations of the arrangements described here. You will sign and keep a copy of the Client Agreement so it will be laid out in writing for you. Here are how the fees generally work:

In Wyoming, most lawyers charge between 33% and 40% for a contingent fee case. In my firm, we start at 33% and step up to 40% if the case is not resolved within 90 days of filing. On top of the legal fee, there are costs associated with every case. My firm will front the costs of litigation. For example, we pay the filing fees, service of process fees, deposition costs, court reporter costs, expert witness costs, and a myriad of other costs

associated with your case. At the end of the case, those costs are reimbursed from the amount we win.

Let's say we win \$100,000 at trial. Since a trial usually happens more than 90 days after the case is filed, the firm gets 40% or \$40,000. On top of that, the firm spent \$10,000 over the 12 months leading up to trial on your case. You would receive \$100,000 minus \$40,000 minus \$10,000, or \$50,000. However, if there are medical liens in the case, your recovery would be reduced by the amount of the liens because we have to pay the liens.

In every case, I provide you with an itemized spreadsheet showing the amount won, the fee, and the expenses. I do not distribute any money until you sign off on the breakdown and distribution statement.

A certain kind of person will read about the attorney fee compensation and conclude it is a racket. Afterall, how hard can it be to negotiate with an insurance company or try a case to a jury and get a judgment? This person may even do arithmetic and conclude that, even if they gets less money by themselves, they are probably not getting less money after he factors in the cost of hiring a lawyer.

That person is wrong.

The insurance industry studied this exact question. The Insurance Research Council (an insurance industry group) wanted to know if injured people

who represented themselves ultimately got more money than injured people who hired a lawyer. They found that, in general, the injured people with lawyers received more money even after paying their lawyers fees. Various studies suggest that the injured parties receive on average 3 times as much, even after paying their lawyer.

That is amazing to me. Insurance companies have every incentive to cherry pick statistics to make lawyers look bad and they could not do it. I take those specific estimates with a grain of salt but the result overall makes a lot of sense based on my professional experience.

I have had several clients that came to me after getting frustrated with insurance companies and their lowball offers. For one client, the insurance company offered zero dollars; I got her a \$100,000 policy limits settlement. Another client was offered only \$400, and we ultimately recovered the policy limits \$100,000 for her, too. These are my best examples and I share them because I am proud of the results I got for these clients.

Occasionally, folks will try to negotiate the percentages with their attorney. In rare situations that may be appropriate but, in my experience in Wyoming, anyone who is any good at this is already busy enough.



## ATTORNEY BIOGRAPHY



## **My name is Alex Freeburg.**

I am married and live in Jackson, Wyoming with my wife Ragan and our boy Peter.

I like being a car accident attorney and trial lawyer. My clients are good people who were injured by someone else. As a result, they are dealing with an insurance company and a system designed to wear them down. They need someone to stand up for them.

I have always had a strong sense of fairness. When I was a kid, I liked to argue. I read books like it was my job. I am stubborn. Naturally, I became a lawyer.

When I graduated from the University of Washington law school, I wanted to try cases more than I wanted to make money. I became a prosecutor for a county in rural Washington and, in two years, I tried 25 cases to a jury.

While I loved the work I was doing on behalf of victims, I also realized that cops were not always right, that laws were not always fair, and that there was more to the law (and to life) than prosecution. I moved to Wyoming and soon opened my trial practice.

I have gotten great results for my clients and have earned several professional accolades. I am on the Board of the Wyoming Trial Lawyers Association and was the President of the Teton County Bar Association. You can always read more about me and my team on my website.

## FINAL THOUGHTS

If you have been injured in a car accident in Wyoming, I want you to call me. You do not have to do this alone and it is important to do it right. There are minefields on the path to resolving your case. Those minefields include medical liens, fake defenses, and negotiating tricks. Once you file a case in court, there are further challenges and it is my job to guide you through the process and make sure we get you the best result possible.

For most of my clients, injury cases are not about the money. ttThey are about being treated fairly and being heard. They are about holding the other parties responsible for their actions. However, when you get a lawyer involved, it also needs to be at least partially about the money. Our civil justice system is limited to measuring wrongdoing and injuries in dollars and cents and it is my job to work within that system to maximize the amount of money you recover.

After 20 minutes on the phone with me, you should know if you have a decent case. Please call my office: 307-200-9720. You can text that number. I will return calls on the weekend.

I believe that being a lawyer is a noble calling.  
One of my heroes, Teddy Roosevelt, once said:

***“It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat.”***

— Teddy Roosevelt

Thanks for reading,

Alex

# BONUS SECTION: YOUR RIGHTS WITH YOUR ATTORNEY

This section makes me nervous to write. But it shouldn't. I am going to tell you what your rights are with your lawyer.

Your rights with your lawyer are not optional. Lawyers are required to follow the Rules of Professional Responsibility for their state. We are regulated by the Courts and the State Bar Associations. In my case, I am licensed in three states and a member of three State Bar Associations (Wyoming, Idaho, and Washington). I am required to follow the Rules of Professional Responsibility for each state.

HERE ARE YOUR RIGHTS WITH AN ATTORNEY:

## ■ Good Communication

You are entitled to good communication from your lawyer. This is the obligation that is hardest for most attorneys to meet at all times for every client. You should know what is going on in your case and understand, or at least have a sense of, the documents in your case.

I ask for your understanding on this one. I have other clients and am subject to court deadlines. Sometimes I will not be able to respond to your call, email, or text as quickly as I would like. I try to respond to emails within 48 hours. You can text me about quick things like what time we are meeting or where to find the courthouse but in general, texting is a poor way to communicate about a legal issue.

Communication can be hard. My client agreements contain my communication policy. I have a written communication policy because it helps set expectations, both for me and you.

Remember, good communication is not perfect communication. I will do my best to live up to my communication policy.

#### ■ Your Client File

You are entitled to all the legal documents in your case. Typically, as the case progresses, you will get each document from me as an attachment in an email or in hard copy. At the end of the case, you can ask me for a complete file which I would make available as a .zip file via a secure folder. Remember to keep your file confidential.

I cannot keep your file if you withhold payment. You can ask for your file at any time and I will give it to you whether or not you are paid up.

#### ■ Control Over Major Decisions

You have a right to control the major decisions in a case. An example of a major decision in a civil case is whether we accept a settlement offer. You decide whether you testify in a criminal case. You decide what the goals are. An example of a decision I control is related to whether we agree to a continue a deadline or hearing, or disclose a document in a response to a request, or how we schedule things.

#### ■ Settlement

For settlement, I am required to communicate all settlement offers to you. I may advise you to reject them, but remember that decision is up to you. I cannot settle a case without your express authority.

### ■ Conflict-Free Attorney

You have a right to an attorney without conflicts. That means that I cannot represent someone who has a conflict of interest with you. If you are driving a car and are struck by a semi-truck, I cannot represent both you and the trucking company, for example.

### ■ Competent

You have a right to a competent attorney. When I do something for you, I need to do it competently or get help so that it is done competently. I am good at a lot of things, but I am not good at everything. If something is outside of my skill set, I either need to level up or loop in another attorney for that project.

### ■ Fees

You have a right to understand your legal fee and to be charged a reasonable fee. I want to be paid for performance and my goal with this business is to make a premium when I do well for you, and less if we do not achieve all of your goals.

What constitutes a reasonable fee is a can of worms. There are ethical decisions all over the map. In fact, there is a Wyoming State Bar Committee for fee disputes so, if you had a dispute over a fee, you would go to that committee. I want to tell you right now that in the last 300 cases, I have not had any fee disputes with a client. We need to have the kind of relationship where, if you are worried about the fee, then we talk about it and work it out between us. That committee is the last step in a fee dispute, not the first.

### Fees (cont.)

In terms of understanding the fee, I am required to track expenses and costs that I want to be reimbursed for. I do not nickel and dime people over copying fees. So I do not even track my copy costs. The idea of charging you for postage to send you a routine letter is garbage. I do not do that either. If it is a package that my legal assistant is making a special trip to overnight via FedEx, I will probably charge you for that.

If I am going to incur an expense on your behalf, I will typically get your permission ahead of time in writing. For example, I will not hire a private investigator and expect you to pay for it unless you give me permission. Certain travel costs, mandatory filing fees, and other costs, I will incur those and expect to be reimbursed, as set out in our fee agreement.

**I will treat you fairly. I expect that you will value my expertise and skills and treat me fairly in return. If something does not feel right, it probably is not. Call or email me and we will figure it out.**







## **ABOUT THIS GUIDE**

Attorney Alex Freeburg explains what to do if you were injured in a Wyoming car accident. He explains how to investigate the claim, negotiate with an insurance company, and litigate the case if necessary.

Insurance companies use a handful of tired tricks to reduce the value of your claim and deny you fair compensation. Learn how to overcome their tactics and get fair compensation.

You will also learn rules of thumb to determine if you need an attorney, how your attorney is compensated, and your rights with your attorney.

## **REVIEWS FOR FREEBURG LAW LLC**

“Alex was phenomenal and very helpful for my case. He was responsive and promptly answered any questions that I had. I could not have asked for a better outcome and don’t have enough good things to say about Freeburg Law. Five stars.”

- M.V.

“Alex and company were always on the ball. They were compassionate, helpful, and reassuring. I obtained the best possible outcome in my case due to their efforts, and I really can’t say enough about their professionalism and efforts on my behalf. I wouldn’t hesitate to retain their services again, though I hope to never need to!”

- D.H.

