

You've been in an auto accident....now what?



YOUR SITUATION

You were in a car accident. 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 Colorado, over 600 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.

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.

■ **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

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 Colorado, 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 Colorado State Patrol or the county sheriff's department will 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 Colorado 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. We strongly advise our clients against talking to the other person’s insurance company without discussing it with us 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.

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

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.

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.

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

If you were hit by a semi-truck → Get an attorney.

If you suspect that the other driver was drunk, on their cell phone, racing, or otherwise being reckless



If you caused the accident and the other side was injured



Talk to your insurance company and they will get you a different attorney.

If you weren't actually injured, but want to fake an injury to make a few bucks



Don't call me, and don't call any other attorney and expect them to participate in your misdeeds.

Were you injured?

If no → You don't need an attorney.

If yes → How bad was the injury?

Bad Injury

Not a Bad Injury

You need an attorney. Full stop.

You might need an attorney. For example, let's say you were bruised in the accident, went to the ER, were medically cleared and went home. And your medical bills are less than \$3000. You probably don't need an attorney. If the insurance company is willing to cover your bills, pay for the vehicle damage, throw you a few bucks, AND you're happy with that result, that's great. You may not 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 us at **970-315-2365** or send us a message by visiting <http://kalamaya.law>.

ATTORNEY COMPENSATION

Our 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, we take the loss. If you are interested in an alternative fee arrangement, we will hear you out. 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 Colorado, most lawyers charge between 33% and 40% for a contingent fee case. At Kalamaya | Goscha, we start at 33% and step up to 40% if we have to file a lawsuit. On top of the legal fee, there are costs associated with every case. We 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



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Moving Mountains for Auto Accident Victims