McCormick & Murphy, P.C.
# Colorado Personal Injury Guide

## CONTENTS

### SECTION 1: EVALUATE YOUR CASE

- How to determine whether you have a viable personal injury case .................................... 7
- Understand the difference between negotiating an insurance claim and filing a personal injury lawsuit ................................................................. 11
- Understanding first party claims vs. third party claims ......................................................... 17

### SECTION 2: GATHER EVIDENCE

- The 5 steps to take after an accident .................................................................................. 20
- How police reports can impact insurance claims ................................................................. 23
- The statute of limitations in Colorado .................................................................................. 27

### SECTION 3: ESTABLISH LIABILITY

- Liability and personal injury law .......................................................................................... 31
- Understanding the 4 elements of negligence ....................................................................... 34
- The legal burden of proof in a personal injury lawsuit ......................................................... 39

### SECTION 4: CALCULATE YOUR DAMAGES

- Types of compensation for personal injuries ....................................................................... 43
- Soft tissue injuries vs. serious injuries .................................................................................. 48
- Factors that can limit your compensation ........................................................................... 52
- How to calculate pain and suffering .................................................................................... 56

### SECTION 5: NEGOTIATE A SETTLEMENT

- The insurance negotiation process ....................................................................................... 60
- 10 negotiation mistakes to avoid ......................................................................................... 65
- How to calculate lost income ................................................................................................ 69
- How to request medical records .......................................................................................... 73
- How to write an effective demand letter ............................................................................ 79
- How to reject an offer and counter ..................................................................................... 86
- How many counter-offers should I make? .......................................................................... 91
- How to identify/respond to bad faith ................................................................................... 94

### SECTION 6: ACCEPT OR REJECT THE OFFER

- Accepting a settlement offer ............................................................................................... 97
- Understanding liens .............................................................................................................. 101

### SECTION 7: HIRING A PERSONAL INJURY ATTORNEY

................................................................. 105
SECTION 1: EVALUATE YOUR CASE

How to determine whether you have a viable personal
injury case

It is important to understand that even if you were hurt very badly in
an accident, you may not have a valid personal injury lawsuit or a valid
personal injury claim, which is making a claim directly to an insurance
company without filing a lawsuit.

To determine whether you have a viable personal injury lawsuit or claim,
you should begin by asking yourself three basic questions:

- First, did you suffer a personal injury and not just property damage?
- Second, were your injuries caused by the negligence of another
  person or entity?
- Finally, do you have recoverable damages?

If the answer to all three questions is “yes,” you may be able to obtain
financial compensation for your injuries by bringing a personal injury lawsuit.

You should know that many different factors affect the outcome of a
personal injury lawsuit. While this page serves as a general guide as to whether
or not you have a valid personal injury lawsuit, you may need to consult with
an experienced personal injury lawyer to fully understand your legal rights and
remedies.

Did you suffer a personal injury?

To bring a personal injury lawsuit or claim, you must have suffered a
personal injury. A personal injury is an injury to your body, mind, or emotions.
In other words, a personal injury can be either physical or psychological. If
you broke your leg or sustained a concussion after slipping and falling in a
grocery store, you have suffered a personal injury. If you experience severe
anxiety, insomnia, or depression after a traumatic car accident, you have
suffered a personal injury.

A personal injury is different from property damage. If you were
involved in a minor fender bender that caused only minimal damage to your vehicle and you suffered no injuries to your body or psyche, you have not suffered a personal injury. In this scenario, an insurance company or a small claims court may provide you with a remedy. However, you do not have a legally recognized basis for a personal injury lawsuit.

**Were your injuries caused by the negligence of another person or entity?**

In order to have a viable personal injury lawsuit or claim, your personal injury or injuries must have been caused by the negligence of another person or entity (such as a business or government agency). Generally speaking, when a person or entity acts in a careless manner and causes injury to someone else, the careless person or entity will usually be legally responsible or (“liable”) for their injury or injuries and any other resulting harms under the legal principle of “negligence.” The law defines negligence as the failure to behave with the level of care that a reasonable person would have exercised under the same circumstances.

There are four (4) distinct elements (or legal components) to a negligence claim in a personal injury lawsuit.

In order to win a personal injury lawsuit or claim, the plaintiff (the injured person) must establish that the defendant (the person or entity responsible for their injuries) acted negligently by proving each of the following elements by a preponderance of the evidence:

- **Duty:** The defendant had a legal duty to behave in a certain way toward the plaintiff under the circumstances;
- **Breach:** The defendant breached that duty by acting or failing to act in a certain way toward the plaintiff;
- **Causation:** The actions (or inaction) of the defendant were the legal cause of the plaintiff’s injury; and
- **Damages:** The plaintiff was injured or otherwise harmed as a result of the actions or inaction of the defendant, and money damages can remedy these harms.

The following example may help you better understand the required elements of a negligence claim in a personal injury lawsuit.

**Example:**
Patty is a pedestrian who is crossing the street at a crosswalk. Dave is a driver who fails to stop at a stop sign and hits Patty in the crosswalk, injuring her severely. Patty experiences significant pain and suffering, and incurs medical bills after treating her injuries. Patty sues Dave, and wins her personal injury lawsuit because she proves that:

- Dave had a legal duty to drive with care and abide by traffic signs and signals;
- Dave breached that duty by failing to stop at the stop sign and striking Patty in the crosswalk;
- Dave’s failure to stop at the stop sign caused Patty’s injuries; and
- Patty was seriously injured as a result of Dave’s failure to stop at the stop sign, and money damages will remedy Patty’s injuries (pain and suffering) and other losses (her medical bills).

Do you have recoverable damages?

You must have suffered personal or financial harms that can be remedied by money damages. Damages are the legal term for a sum of money awarded to an injured person to compensate for his or her injuries and other losses.

If you can establish that another person or entity acted negligently, the court may award you, or an insurance company may agree to voluntarily pay you a sum of money that takes into account:

- Medical bills you incurred in treating your injuries;
- Physical pain, emotional suffering, and mental anguish caused by your injuries;
- Wages you lost because you could not work while you recovered from your injuries;
- Reduction in your overall earning capacity as a result of your injuries;
- Disability accommodations for your vehicle and home;
- Diminished quality of life; and
- Loss of companionship and support.

Some of these damages are economic, such as medical bills and lost wages. Others are noneconomic, such as pain and suffering and diminished quality of life. Economic damages are generally easy to calculate. Noneconomic damages are more difficult to calculate, and you may need to
consult with an experienced personal injury lawyer to make reasonable estimates.

One thing you should keep in mind when considering a personal injury lawsuit is whether you will actually be able to recover the damages awarded to you by a court. If you file a personal injury lawsuit after a dog attack against a dog owner who has no job or other assets (such as a home or car), you may not ultimately recover any money from the dog owner.

Filing a Personal Injury Lawsuit: What’s Next?

If you answered “yes” to each of the questions discussed above, you may have a valid personal injury lawsuit or claim. Because filing a personal injury lawsuit can have serious legal and financial consequences, and requires a thorough knowledge of the laws and legal system, it is best to consult with an experienced personal injury lawyer before considering doing so.
Understand the difference between negotiating an insurance claim and filing a personal injury lawsuit

Among other factors, which one is best depends on the nature of your accident and the severity of your injuries. This page provides some basic information about insurance claims and personal injury lawsuits so that you can better understand which one best applies to your situation.

Filing an Insurance Claim

If you were involved in an accident and were injured or suffered property damage (or both), you may be able to file an insurance claim to obtain financial compensation for your injuries and other losses. Generally, the claims process is quite simple. While every insurance company handles insurance claims for personal injuries differently, the process will look something like this:

- The injured person files a claim.
- The insurance company opens an investigation into your claim.
- The injured person writes a demand letter to the insurance company.
- The insurance company makes a decision about the injured person’s claim.
- The injured person and the insurance company may negotiate a settlement.
- The injured person accepts or rejects the settlement offer.

If you were injured in an accident, you must first notify your insurance company (or that of the at-fault party) that you were involved in an accident and suffered injuries. You should do so as quickly as possible so that the insurance company (or companies) involved can begin investigating your claim. Some insurance companies require claims to be filed within 24 to 48 hours of an accident. Ideally, you will have obtained contact information for the at-fault party’s insurance company at the scene of the accident. If not, most insurance companies have an 800 number or online form that injured people can use to file a claim.

When you file a personal injury insurance claim, you should be completely honest with the insurance company about what happened in your accident
and how badly you were hurt. Any intentional misrepresentations to an insurance company can result in serious legal consequences and can hurt your chances at obtaining a fair settlement.

Once the insurance company is notified of your accident, it will generate a claim number and assign your claim to a claims adjuster. The claims adjuster will open a claim and contact you to begin investigating your claim.

**How the Insurance Company Investigates Your Claim**

Before the insurance company can offer you a settlement, the claims adjuster must verify that the accident was caused by his or her “insured.” The claims adjuster needs proof that the insured party was negligent, and that your injuries are severe enough to qualify for a settlement. The claims adjuster will investigate the facts of your case. The investigation into your claim may include:

- Reviewing your medical records and any bills for medical treatments;
- Speaking with you and any witnesses to the accident about what occurred;
- Reviewing any police reports filed after the accident;
- Reviewing any photo or video evidence of the accident;
- Returning to the scene of the accident to take additional photos or videos;
- Looking over any damage to your personal property (such as your car) and estimating repair costs; and
- Evaluating any other evidence you or others provide.

During your conversations with the claims adjuster, you must be completely honest about what happened and support your case with evidence. The success of the settlement negotiation process generally depends on how well you can prove fault and how much evidence you have about your injuries, so it is best to be very prepared and organized whenever you speak to the claims adjuster.

Be aware that insurance adjusters are trained at what they do and we always recommend that you do not talk to the insurance adjuster of the driver who was at fault until you have consulted with a lawyer.

To obtain an insurance settlement that takes into account your injuries and other losses, you will need to convince the adjuster that:
- Their insured’s negligence was the cause of the accident and your injuries;
- Your injuries were real and required (or will require ongoing) medical attention;
- The cost of treating your injuries was (or will be) substantial;
- Any out-of-pocket expenses you incurred while treating your injuries (such as medications, crutches, or transportation to doctor appointments) were real and directly related to the accident;
- If you were unable to work because of your injuries, that your injuries were serious enough to prevent you from working;
- If you are asking for compensation for pain and suffering, that you actually experienced pain and discomfort following the accident.

You can write a letter to the insurance company known as a demand letter that discusses each of these points in greater detail. The claims adjuster will use this document as a framework for evaluating your claim.

**Sending a Demand Letter**

A demand letter is a letter that sets forth facts about your accident and injuries, and how much money you think you are entitled to receive based on these facts. The demand letter serves as a frame of reference for the claims adjuster, who will make you a settlement offer based on your demand and his or her investigation into your claims. You should not send a demand letter to the insurance company until you have neared the end of your treatment. That way, your demand letter can accurately reflect the total amount of your damages. What you set forth in the demand letter can be used against you at a later time, and so it is always recommend that you not send a demand letter until you have consulted with a lawyer.

You should not send a demand letter to the insurance company until you have neared the end of your treatment.

That way, your demand letter can accurately reflect the total amount of your damages. What you set forth in the demand letter can be used against you at a later time, and so we always recommend that you not send a demand letter until you have consulted with a lawyer.

After you have sent the claims adjuster your demand letter and the
Colorado Personal Injury Guide

insurance company concludes its investigation into your personal injury claim, the claims adjuster will make a decision about your personal injury claim. The decision may be to deny your claim, paying you nothing, or paying you the entire amount included in your settlement demand letter. Typically, the claims adjuster's initial settlement offer is somewhere in between.

Negotiating a Settlement

Once you receive a decision from the claims adjuster about your claim, you can begin negotiating a settlement with the claims adjuster. Whether you will be able to convince the insurance adjuster that you deserve more money than he or she initially offered depends on the strength of your evidence and the severity of your injuries.

Accepting or Rejecting the Insurance Company’s Offer

At the conclusion of the settlement negotiation process, you must decide whether to accept or reject the insurance company’s offer. Since determining whether a settlement offer is fair or not is a complicated process, it is always recommend that you consult with an experienced personal injury lawyer before accepting an offer from an insurance company. If you believe that the insurance company has offered you a fair settlement that takes into account the full value of your injuries and other losses, you may accept the offer.

Accepting a Settlement Offer

If you cannot negotiate a fair settlement offer with the insurance company, you may reject the insurance company’s settlement offer. At this point, you may need to consult with a personal injury lawyer about filing a personal injury lawsuit.

Filing a Personal Injury Lawsuit

If you cannot reach a settlement agreement with the claims adjuster, you may need to file a personal injury lawsuit. This may also be true if the total value of your injuries and other losses exceeds the policy limit of the insurance policy applicable to your claim. If you were involved in a very serious accident and sustained major injuries, filing a personal injury lawsuit may be the only way to obtain adequate compensation for your injuries. To learn more about the types of injuries that warrant hiring a lawyer.

Technically, you can file a personal injury lawsuit as soon as you are
Injured in an accident and at any point before the statute of limitations expires. But for most minor accidents, filing a lawsuit should be a last resort. It is typically recommended that you only consider filing a personal injury lawsuit if settlement negotiations have broken down and other methods of resolution – such as arbitration or mediation – have failed.

If you believe that you may need to file a lawsuit, you should contact an experienced personal injury lawyer right away. Filing a personal injury lawsuit can have serious legal and financial consequences, and you should never do so without the advice of a licensed attorney in your area.

By filing a personal injury lawsuit, you may be able to secure money damages that take into account:

- Medical bills you incurred in treating your injuries;
- Physical pain, emotional suffering, and mental anguish caused by your injuries;
- Wages you lost because you could not work while you recovered from your injuries;
- Reduction in your overall earning capacity as a result of your injuries;
- Disability accommodations for your vehicle and home;
- Diminished quality of life; and
- Loss of companionship and support.

It is important to understand that you will incur various expenses in filing a lawsuit. Generally, your personal injury lawyer will deduct these expenses from the damages awarded to you should you prevail in your lawsuit. These expenses might include:

- Filing fees for your complaint;
- The cost of having a sheriff or process server serve the defendant with your lawsuit;
- Court reporter costs for depositions and transcripts;
- Fees for experts who will testify at your trial;
- The cost of copying medical records, police reports, and witness statements; and
- Your lawyer’s contingency fee or rate as set forth in your representation agreement.
You should never file a lawsuit out of spite for the at-fault party or because you’re angry over the amount of money the insurance company offered you to settle your claim. You should make an objective, informed decision about whether a personal injury lawsuit is the appropriate choice for you based on the advice of a reputable, licensed personal injury lawyer.

**Injuries Serious Enough to Merit a Personal Injury Lawsuit**

There are certain injuries that are so serious that they usually merit filing a personal injury lawsuit if the claim cannot be settled with the insurance company. To fall into this category, your injuries usually must have caused considerable pain and suffering, and either be permanent, or significantly impair your ability to engage in normal, daily activities for an extended period of time.

Examples of these types of serious injuries include:

- Death,
- Dismemberment,
- Significant disfigurement or scarring,
- Bone fractures,
- Loss or significant limitation of a body organ, and
- Herniated discs or other types of injuries that have or will require serious and expensive surgery
- Any injury that prevents you from engaging in normal daily activities for an extended period of time (typically 90 or more days).

Regardless of the severity of your injuries, you should make the decision to file a personal injury lawsuit carefully.
Understanding first party claims vs. third party claims

There are two types of insurance claims: first party claims and third party claims. A first party insurance claim is one that you file with your own insurance company. A third party insurance claim is one that you file with the insurance company of another person or entity, such as a business. The type of claim you should file depends on who was at fault in your accident. If you were hurt in an accident, one of the first things you should do is file an insurance claim. An insurance claim is one way to pursue compensation for your injuries and other losses, such as medical bills, lost wages, and pain and suffering. The other is to file a personal injury lawsuit.

This page contains basic information about insurance claims, and it may not apply to you. It is not a substitute for consulting with an experienced personal injury lawyer. Only a licensed attorney in your area can give you legal advice about your situation.

Filing an Insurance Claim: First Party Claim, or Third Party Claim?

As discussed above, a first party insurance claim is one you file with your own insurance company, and a third party insurance claim is one you file with the insurance company of another person or company. Which type of insurance claim you should file largely depends the answer to the question: “Who was at fault in the accident that caused your injuries?”

Fault

If you caused the accident that led to your injuries, you should file a first party insurance claim with your insurer. For example, if you failed to stop at a stop sign and were injured when you hit another driver’s car, you should file a first party insurance claim with your auto insurance provider.

If your injuries were caused by the negligence of another person or entity, you should file a third party insurance claim with their insurance company. Most people and businesses that have liability insurance are covered in the event that their negligence causes someone to suffer a personal injury. For example, if you were hit by a car while crossing the street on foot (i.e., you were hurt in a pedestrian accident), you should file a third party insurance
Colorado Personal Injury Guide

claim with the driver’s insurance company. Similarly, if you were hurt in a slip-and-fall accident in a grocery store, you should file a third party insurance claim with the grocery store’s insurance provider.

You may need to open both a first party insurance claim with your own insurance company and a third party insurance claim with the other driver’s insurance company. An example would be where it is unclear whether the at-fault driver had adequate liability insurance coverage.

The Insurance Claims Process

Regardless of what type of accident you were involved in, you should report the incident to the appropriate insurance company as soon as possible. Many insurance companies require you to file a report within 24 hours of the incident. If you were not at fault for the accident, contact the insurance provider for the at-fault driver, business, or building owner. You will need to provide accurate information about the cause of the accident and the extent of your injuries.

The insurance company will assign a claim number to your claim and give it to someone known as a “claims adjuster.” The claims adjuster will open an investigation into your claim. At this point, the claims adjuster may ask you to make a recorded statement about the incident. It is usually best to talk to a lawyer before making a recorded statement about an accident. The insurance company may try to use your statement against you, so it is highly recommended that you have guidance from a personal injury attorney about what to say.

After the liability investigation and your medical treatment concludes, you may send a demand letter to the insurance company describing the accident, your injuries, and how much compensation you seek.

When the insurance company concludes its investigation into your claim, the insurance adjuster will do one of three things:

- Offer you the full sum of money you requested in your demand letter;
- Offer you less money than you requested in your demand letter; or
- Deny your claim in its entirety, offering you nothing.

Since writing a demand letter and negotiating with an insurance company is a complicated process, it is recommended you consult with an attorney before doing either one. When the insurance company concludes its evaluation of your claim, the insurance adjuster will do one of three things:
• Offer you the full sum of money you requested in your demand letter;
• Offer you less money than you requested in your demand letter; or
• Deny your claim in its entirety, offering you nothing.

If the claims adjuster did not offer you the full sum of money you requested in your demand letter, you may begin negotiating with the claims adjuster for a better settlement offer.

If you and the claims adjuster agree on a settlement that you feel properly accounts for the severity of your injuries and full financial losses, you can accept the settlement offer from the insurance company. Because accepting a settlement can have serious legal and financial consequences, you should speak to a lawyer before doing so.

If you cannot reach an agreement with the insurance company, the next step may be filing a personal injury lawsuit against the person or entity responsible for your injuries. Because filing a personal injury lawsuit can have serious legal and financial consequences, and requires a thorough knowledge of the laws and legal system, it is best to consult with a personal injury lawyer before doing so.
SECTION 2: GATHER EVIDENCE

The 5 Steps to Take After an Accident

If you were injured in an accident of any kind, you must take certain steps to help ensure that you receive adequate compensation for your injuries and other losses. Taking a proactive role in the days following an accident can make a huge difference in the outcome of your insurance claim or personal injury lawsuit. In order to strengthen your case, take the following steps as soon as possible after an accident.

1. Call the Police

After an accident, call the police right away. If you sustained serious injuries, dial 911. The police dispatcher will send emergency medical personnel to the scene of the accident who can help treat your injuries. If you were not seriously injured, call the non-emergency line for the appropriate police department (typically the police department for the city or county where the accident occurred).

Once police arrive to the scene of your accident, they will begin to investigate what happened. If you were in a car accident or other accident involving a motor vehicle, the police may issue traffic tickets to any at-fault parties. After the police leave the scene of your accident, they will file a police report about what happened.

2. Gather Information

Nobody expects to be injured in an accident, and you may be disoriented or confused immediately afterwards. If you are able to gather information at the scene of the accident without placing yourself or anyone else in physical danger, it may be helpful and useful to do so. Later, it may be difficult to remember the facts, names of people involved, and other important details.

Ask anyone who was involved in or witnessed the accident for his or her name, address, telephone number, and email address. Ask witnesses to write out a short, signed statement about what they saw take place. If you were in an accident involving a motor vehicle (such as a car accident, motorcycle accident, pedestrian accident, or trucking accident), take down the license plate and vehicle identification number (VIN) of all vehicles that played a role in the accident.
Before you leave the scene of an accident, take pictures of the location of the accident and vehicles if you have a smartphone or camera handy. Write down the time and date of the accident, including any conditions (like weather or road conditions) that were present. Make notes about anything that you think might be relevant and what you can recollect about the accident.

3. Seek Proper Medical Treatment

After an accident, you may be taken by paramedics to the emergency room for treatment. Be sure to give your health insurance information to the ambulance and emergency room as soon as you can. Before you leave the hospital, request copies of your admitting chart and any other medical records generated by your visit, including doctors’ notes, x-rays, CAT scans, and MRIs. This information can be very important to later treating healthcare providers and to you when you open your insurance claim or bring a personal injury lawsuit.

If you did not require emergency medical treatment immediately following your accident, follow up with your primary care provider as soon as possible. Adrenaline can mask the pain of an injury. If you wait too long before seeing a doctor after an accident, the insurance company may deny your claim.

You should only obtain medical treatment that is reasonably necessary. Insurance companies and courts may not recognize claims for experimental treatments or medical treatment that far exceeds the scope of your injuries. Avoid any disreputable pain clinics or care providers who claim to be personal injury specialists. Checking with your health insurance for authorized providers may be prudent and necessary.

4. Notify the Insurance Company

After you stabilize your injuries, you should notify your insurance company (if applicable) and that of the at-fault party of your intent to file a claim. As soon as possible, call the insurance companies or file an accident report online. Although it’s likely that the at-fault party already reported the accident (this is typically the case after a car accident), you must do the same.
Colorado Personal Injury Guide

In the event that your accident was already reported to the insurance company, the company will have assigned a claim number and given the claim to a claims adjuster. The company may assign a separate adjuster to handle the property damage and personal injury parts of your claim independently.

You should always follow up with the insurance company in a written letter sent to the insurance company by certified mail. Even if you have already received confirmation that you have filed a claim by phone or online, it’s always a good idea to follow up in writing.

5. Consult with a Personal Injury Lawyer

After you initiate your insurance claim, you should hear from the claims adjuster who is investigating your claim. At this point, the claims adjuster for the at-fault party may try to pressure you into settling your personal injury claims and giving a recorded statement about the accident. Settling your personal injury claims at this early date is usually not recommended. It is also important to understand that you are not required to give a recorded statement, and that the insurance company may use your statements against you. You should decline to give a recorded statement to an insurance company before speaking to an experienced personal injury lawyer.

If you are overwhelmed by the prospect of negotiating a settlement with an insurance company after an accident or are concerned that the insurance company may be engaging in bad-faith tactics, a licensed attorney in your area can help you. You should never file a personal injury lawsuit without first consulting with a personal injury lawyer.

After an accident, remember to:

- Gather as much information as possible,
- Notify your insurance company and that of the at-fault party,
- Try to calculate the value of your claim and write a demand letter, and
- Consult with a personal injury lawyer before making a recorded statement or considering filing a personal injury lawsuit.
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How Police Reports Can Impact Insurance Claims

If police were called to the scene of your accident, you should know how a police report can impact your insurance claim. Police officers are usually dispatched to the scene of an accident when:

- Participants or bystanders have been injured;
- The accident is blocking traffic or creating a safety risk;
- Any of the drivers involved are under the influence of drugs or alcohol; and/or
- Participants are being disruptive or fighting about what happened.

Because of limited police department resources, it is possible that police may not be dispatched to the scene of your accident if there were no injuries, or if weather conditions are severe. If that is the case, you should create your own unofficial accident report at the scene.

This page contains general information about how police reports can impact the outcome of a personal injury claim, which is a claim filed directly with an insurance company after an accident. This information may not apply to you. Only an experienced personal injury attorney can give you legal advice about your situation.

Accidents Involving Injuries

If you were involved in an accident and you or anyone is hurt, call 911 immediately. The dispatcher will ask you questions about what happened and how badly you and/or anyone else is hurt. Based on what you tell the 911 dispatcher, he or she will send police officers or paramedics (or both) to the scene.

The first thing police officers do when they arrive at an accident scene is make sure all participants are moved to safety. Next, they will determine who needs medical attention. Depending on the severity of any injuries, they may radio additional paramedics to the scene for assistance. Then, the officers will secure the scene of the accident, setting out road flares and cordoning off the area if needed.

Assessing the Accident Scene
Colorado Personal Injury Guide

The police officers will most likely assess the scene of your accident. Police officers receive special training in how to investigate accidents and determine their cause. Typically, police officers do not create an official police report at the scene of the accident. They may take notes or use a worksheet, then write up their official report based on that.

At the scene of your accident, police may gather the following information:

- The date, time, and location of the accident;
- The name and contact information of everyone involved, including witnesses;
- Descriptions of any injuries that occurred as a result of the accident;
- Descriptions of any vehicles involved in the accident, including license plate numbers and vehicle identification numbers;
- Details about the accident and any potential causes;
- Accounts from participants and eyewitnesses;
- Conditions present at the scene of the accident; and
- The nature and extent of any damage to personal or public property.

In addition to this information, police officers may want to take photographs of the accident scene. If you were involved in a traffic accident, police may conduct field sobriety tests if they believe that alcohol or drugs may have influenced one or more of the drivers. If necessary, they may make arrests for DUI. Depending on their assessment of the accident scene, police officers may issue one or more tickets.

Once the scene of the accident is cleared, the police may want to conduct additional fact gathering. Officers may drive to the hospital to interview participants and to check up on anyone who sustained more serious injuries. Once any additional follow-up is complete, the officers will return to the police station and begin writing their official accident report.

You should obtain a copy of the police report as soon as it’s available. You may have to pay a small fee. Usually, police reports are self-explanatory. But some information, such as roadway and weather conditions, may be listed as code numbers. You may need to ask the police department about what the codes mean.

The police report may or may not state who the police believe was at fault in your accident. It is important to understand that even if the police report assigns fault to a specific person, this does not necessarily mean that this
individual will be found liable for your injuries in a personal injury lawsuit or by the insurance company evaluating your personal injury claim.

The Police Report and Your Insurance Claim

Once the insurance company opens an investigation into your claim, the claims adjuster may ask you to provide a copy of the police report. Some claims adjusters will obtain the police report directly from the police department. Regardless, you should keep a copy of the police report on hand. You may want to include a copy of the police report with your demand letter, or show it to a personal injury lawyer if you are considering filing a personal injury lawsuit.

Even if the police report clearly shows who was at fault in your accident, the claims adjuster still has to investigate your claim. Claims adjusters know that police officers make mistakes and sometimes overlook key evidence at the scene of an accident. Occasionally, claims adjusters uncover something a responding police officer missed. But in most cases, the police accident report is the most persuasive document for determining fault and claims adjusters accept the report as the most accurate assessment of the accident.

Police reports carry a lot of weight in personal injury claims made to insurance companies. In the event that a claims adjuster disagrees with the police officer’s assessment of fault and your case ends up in court, there is a strong chance that the jury will rely on the officer’s opinion. Because police reports can be so persuasive, you should contact an experienced personal injury lawyer right away if you disagree with an assessment of fault contained in a police accident report.

If Police Don’t Assign Fault in the Accident Report

The police accident report may not include a statement about who is at fault. You may still be able to convince the claims adjuster that his or her insured caused your accident. You will need to gather some evidence that either contradicts the police officer’s assessment, or supplements and clarifies it. You can gather additional evidence by talking to witnesses about what they saw, reviewing photographs of the accident scene, or consulting with professionals like doctors, engineers or auto mechanics. If you are having a hard time establishing fault, an experienced personal injury lawyer can
conduct discovery into who or what caused your accident.
The Statute of Limitations in Colorado

If you were seriously injured and believe that you might have a viable personal injury lawsuit, you must pay careful attention to the applicable statute of limitations. The statute of limitations is a state law that imposes strict time limits on plaintiffs who file personal injury lawsuits in court. If you do not file your personal injury lawsuit before the time period set forth in the statute of limitations relevant to your case expires, the court will not hear your case regardless of how strong it is.

In Colorado, the amount of time you have to file a personal injury lawsuit depends on how you were injured. If you were injured in a motor vehicle accident, you generally have three years (3 years) from the date of your accident to file a personal injury lawsuit.

If you were injured in any other type of accident (such as a slip-and-fall accident or dog attack), you generally have two years (2 years) from the date of your accident to file a personal injury lawsuit. There are some very important exceptions to these general rules, but they are narrow and you should not count on them applying in your case. These exceptions are discussed more fully below.

If you are unsure of when the statute of limitations expires for your lawsuit, you should consult with an experienced personal injury lawyer immediately.

What is the Statute of Limitations?

The statute of limitations is best understood as a filing deadline for your personal injury lawsuit. If you do not file your personal injury lawsuit before the statute of limitations expires, your lawsuit will almost certainly be dismissed. This is true regardless of how legally sound or compelling your lawsuit is. In most personal injury lawsuits, the statute of limitations begins to run (or “toll”) on the day you were injured – in other words, the date of your accident. As explained below, there are only a few limited exceptions to this general rule.

The Standard Statute of Limitations in Colorado Personal Injury Lawsuits

27
The standard statute of limitations that applies to a personal injury lawsuit in Colorado depends on what type of accident caused the injury that is the basis for the lawsuit. If you are unsure what category your accident falls into, contact an experienced personal injury lawyer right away.

**Accidents Involving Motor Vehicles**

For accidents involving motor vehicles (including car accidents, truck accidents, and motorcycle accidents), you must file your lawsuit within three years (3 years) of the date of the accident. This rule is set forth in Colorado Revised Statutes 13-80-101(1)(i).

**All Other Accidents**

For all other types of injury-causing accidents (such as dog attacks, slip-and-fall accidents, or premises liability accidents), you must file your lawsuit within two years (2 years) of the date of the accident. This rule is set forth in Colorado Revised Statutes 13-80-102(1)(a).

**Statutes of Limitations in Other States**

Each state has its own statute of limitations for personal injury lawsuits. Depending on the state, the statute of limitations for a personal injury lawsuit may be as short as one year (1 year) to as long as six years (6 years). To check the statute of limitations for a personal injury lawsuit in another state,

**The “Discovery of Harm” Exception to the Statute of Limitations**

Colorado recognizes the “discovery of harm” exception to the standard statute of limitations in personal injury cases. The “discovery of harm” rule extends the deadline to file a personal injury lawsuit in situations where an injured person had no knowledge of either:

- The injury itself; or
- The fact that the defendant’s actions may have caused the injury.

In these situations, the statute of limitations does not begin to run until the injured person initially discovers, or should have reasonably discovered, their injury or the nature of their injury.
McCormick & Murphy, P.C.

An example of the “discovery of harm” exception to the standard statute of limitations is useful here.

Patty purchased a frying pan from a department in 2008 and uses it to cook meals for several years. In 2010, she developed a rare form of cancer. In 2012, a scientific study revealed a link between a material contained in the frying pan and the rare form of cancer Patty contracted. The court allows Patty to sue the manufacturer in a products liability suit in 2013 despite the fact that two years had passed from the date of her injury, because Patty did not discover the exact nature of the harm she suffered until the scientific study was released.

It is important to understand that a reasonableness standard applies to the “discovery of harm” exception to the standard statute of limitations. This is one of the reasons why the discovery of harm rule rarely applies in personal injury lawsuits involving accidents. Courts generally expect people who are involved in serious accidents to visit a doctor in order to determine whether they were hurt. In most cases, doctors can identify whether an injury occurred in an accident and will recommend an appropriate course of treatment. If a doctor has told you that you were injured in an accident, the statute of limitations has probably started to run.

Other Exceptions to the Standard Statute of Limitations

Depending on the facts of your case, there may be other methods by which you can extend the standard statute of limitations. If you were a minor – that is, under the age of 18 – at the time of your accident, the statute of limitations may be extended in your favor. The same may be true if you were disabled or mentally ill at the time of your accident.

Further examples are, if you were injured as a result of the actions of a public entity, such as the State of Colorado or a city, or their employees, there are specific written notices that must be provided to specific departments within those public entities within 182 days of being injured. If you were injured by the federal government or one of its employees, then different rules and notices apply.

The exceptions to the general rules to the statutes of limitations can result in you losing your personal injury claim and it is always highly recommended that you consult with an attorney regarding the applicable
Colorado Personal Injury Guide

statute of limitations and possible exceptions immediately.

Exceptions to the standard statute of limitations are narrow and you should never count on them applying in your case. If you believe that you have a valid personal injury lawsuit but are concerned that the statute of limitations may have expired, you should contact a personal injury lawyer right away to make sure that you will not be prevented from filing a lawsuit.
SECTION 3: ESTABLISH LIABILITY

Liability and Personal Injury Law

In order to secure compensation for injuries you suffered in an accident, you must establish liability; that another person or entity (such as a business or government agency) is liable for the harms you suffered. The term “liable” means legally responsible or obligated. Liability for personal injuries is premised on a legal concept called negligence. “Negligence” is the legal term for carelessness, and consists of four distinct elements:

1. Duty: A person or entity must have had a legal duty to behave in a certain way toward the injured person under the circumstances;
2. Breach: The person or entity must have breached that duty by acting or failing to act in a certain way toward the injured person;
3. Causation: The actions (or inaction) of the person or entity must have been the legal cause of the injured person’s injuries; and
4. Damages: The injured person must have actually been injured or otherwise harmed as a result of the actions or inaction of the person or entity, and money damages can remedy these harms.

Showing Negligence vs. Proving Negligence

How you establish liability for your injuries, and the degree of certainty to which you must do so, depends on whether you are filing a personal injury claim with an insurance company or filing a personal injury lawsuit against the person or entity you believe is responsible for your accident.

If you make a personal injury insurance claim with an insurance company, you must show the adjuster that his or her insured’s negligence was the cause, or at least a partial cause, of your injuries. You do this by sending the insurance company copies of evidence such as medical records, medical bills, the police accident report, and witness statements. The claims adjuster presumes these documents are truthful. In other words, they’re considered to be self-evident. Once you convince the insurance company that their insured was negligent and that this negligence caused your injuries, you will have succeeded in showing negligence. There is no specific formula or evidentiary
Colorado Personal Injury Guide

threshold that you must meet.

Showing negligence for the purposes of settling a personal injury claim is usually much easier than proving that another person or entity is liable for your injuries in court, which requires you to prove negligence by a preponderance of the evidence. This legal burden of proof only applies in a formal personal injury lawsuit. A complex set of rules and guidelines govern which types of evidence may be introduced during trial and how evidence must be presented. Because understanding these rules requires special skill and training, you should never file a personal injury lawsuit without the guidance of an experienced personal injury attorney.

Liability Basics

If you were injured in an accident, you should keep the following information in mind.

If it is very obvious that another person or entity’s negligence caused your injuries:

- The insurance company will be less likely to oppose your settlement demand;
- It will be easier to secure a fair insurance settlement that fully accounts for your injuries and other losses; and
- You may not need to hire an attorney and file a personal injury lawsuit.

If it is not clear whether another person or entity’s negligence caused your injuries:

- The insurance company will be more likely to deny your claim;
- It will be more difficult to secure a fair insurance settlement that fully accounts for your injuries and other losses; and
- You will probably need to hire an attorney and file a personal injury lawsuit.

This page contains basic information about establishing liability for the purposes of personal injury insurance claims and lawsuits. It may not apply to you, and is not a substitute for consulting with an experienced personal injury lawyer. Only a licensed attorney in your area can give you legal advice about your situation.
McCormick & Murphy, P.C.
Understanding the 4 Elements of Negligence

The basis of both personal injury insurance claims and personal injury lawsuits is a legal concept known as negligence. Before you begin negotiating your personal injury insurance claim with a claims adjuster or consider filing a personal injury lawsuit with the assistance of an experienced personal injury lawyer, you should understand what the four distinct elements of negligence are and how they relate to one another.

This page contains basic information about negligence. It may not apply to you and is not a substitute for consulting with an experienced personal injury lawyer. Only a licensed attorney in your area can give you legal advice about your situation.

The definition of negligence is:

The failure to do an act which a reasonably careful person would do, or the doing of an act which a reasonably careful person would not do, under the same or similar circumstances to protect oneself or others from bodily injury, death, property damage.

Typically, negligent conduct involves an action, such hitting a pedestrian in an intersection or rear-ending another driver’s vehicle. Negligent conduct may involve inaction – that is, a failure to act. For example, a lifeguard who fails to rescue someone who is drowning in the pool he or she oversees may be liable for negligence. Similarly, a business owner may be liable for negligently failing to repair a hazardous condition on his or her premises that injures a customer.

The Elements of Negligence

There are four distinct elements of negligence. An “element” is an essential component of a legal claim. If you cannot establish each of the four elements of negligence, you will not be able to secure compensation for your injuries. This is true regardless of whether you are filing a personal injury insurance claim or a lawsuit.

Duty of Care

The first element of negligence is known as the “duty of care.” A duty of care arises when the law recognizes a relationship between two parties, and due to this relationship, one party has a legal obligation to act in a certain
manner toward the other. Here are some examples of situations where a duty of care exists:

**Example:** All drivers have a duty to exercise care toward other drivers, cyclists, and pedestrians who share the roadways. They are required to abide by traffic signals and laws and must refrain from causing unreasonable danger to others.

**Example:** Business owners have a duty to take reasonable care to keep their premises safe for customers. Generally, business owners must regularly inspect their property for unsafe conditions and either warn customers of their existence or remedy them within a reasonable time frame.

**Example:** Manufacturers of products, including pharmaceutical drugs and medical devices, must ensure that their products do not cause unreasonable danger to consumers. When a product is inherently dangerous, manufacturers must adequately warn consumers of the risks involved with using the product.

**Example:** Doctors and other medical care providers have a duty to treat their patients in a medically appropriate manner. In some situations, they must warn their patients of the risks involved with a given course of treatment.

**Breach**

The second element of negligence is a breach of the duty of care. A person or entity (such as a business or government agency) breaches the duty of care by failing to exercise reasonable care in fulfilling the duty. Here are some examples of scenarios in which a breach of the duty of care has occurred:

**Example:** A driver speeds down a residential street on a weekday afternoon, hitting three children crossing the street on their way home from a nearby school.

**Example:** A truck driver does not allow adequate stopping distance when approaching an intersection, striking a minivan that was stopped at the light.

**Example:** A dog owner who knows of her dog’s aggressive tendencies towards small children brings her dog to a tee-ball game, where the dog
attacks a child.

**Example:** A home goods manufacturer uses lead paint to coat a vase, selling it to consumers in the United States.

**Example:** A surgeon removes the wrong kidney from a patient, leaving the patient with no functioning kidneys.

**Causation**

The third element of negligence is causation. The breach of the duty of care must be the legal cause of the harms suffered by the injured person. There are two distinct but closely related components of legal causation: actual cause and proximate cause. Actual cause exists when but for the breach of the duty of care, the injured person would not have suffered an injury. Proximate cause exists when the type and extent of the injured person’s injuries were reasonably related to the breach of the duty of care.

Here are some examples of situations where legal cause exists:

**Example:** While merging onto a highway, a truck driver hits a motorcyclist. The motorcyclist breaks his neck, suffering paralysis. Had the truck driver not hit the motorcyclist, he would not have broken his neck. The injuries suffered by the motorcyclist are reasonably related to the truck driver’s failure to exercise reasonable care while merging onto the highway.

**Example:** A driver strikes a pedestrian in a parking lot, causing the pedestrian to suffer a broken leg and severe bruising at the site of impact. But for the driver striking the pedestrian, the pedestrian would not have been hurt. The pedestrian’s broken leg and bruising are reasonably related to the driver’s failure to exercise reasonable care while driving in the parking lot.

**Example:** The manager of a grocery store watches a store employee spill cooking oil on the tile floor in the condiments aisle. Neither the manager nor any of her employees clean up the spill in a timely manner. An elderly customer slips on the spilled oil, breaking her hip. But for the failure of the grocery store manager and her employees, the elderly customer would not have slipped on the floor. A broken hip is reasonably related to their breach of the duty of care.

**Damages**

The fourth element of negligence is damages. The injured person
must have suffered an injury that can be remedied by money damages, which is the legal term for monetary compensation. Here are some situations in which the damages element of negligence is satisfied:

Example: The driver of a sport utility vehicle, in the morning rush hour traffic, turns left at intersection, striking a motorcyclist. He requires surgery, spends months in a cast, and misses work. Money can compensate the motorcyclist for his medical expenses, lost earnings, the pain and suffering he endured, and loss of quality of life.

Example: The manager of a hardware store displays hammers for sale on a flimsy shelf above the cash register. The shelf collapses, sending hammers flying into the air. One of the hammers strikes a customer on the head, causing him to suffer a concussion. The customer misses several weeks of work, experiences migraines, and receives a bill from the hospital for $2,000 dollars for a CAT scan. Money damages can compensate the customer for his injury, lost wages, ongoing medical problems, and the hospital bill.

It is important to understand that there are many factors that may limit compensation for your injuries (or prevent you from being compensated at all). To understand some of these factors, schedule a consultation with a personal injury lawyer.

As you can see, the four elements of negligence are closely related to each other. If you were injured in an accident and you believe that you can establish each of the four elements of negligence, you may be able to successfully negotiate a personal injury claim with the at-fault party’s insurance company.

Understanding how each of the elements of negligence are defined will help you clearly present your case to the claims adjuster.

If negotiations with the insurance company break down, or you have any questions about your legal rights or responsibilities, you should speak to an experienced personal injury lawyer immediately. The information on this page is not a substitute for the guidance of a reputable attorney, and there are many exceptions to these general rules. Only a licensed attorney in your area can give you legal advice about your situation.
The Legal Burden of Proof in a Personal Injury Lawsuit

If you are considering filing a personal injury lawsuit, you should be familiar with a legal concept known as the burden of proof. The burden of proof is the threshold that a party seeking to prove a fact in court must reach in order to have that fact legally established. Parties to a lawsuit (the plaintiff and the defendant) prove facts in court by presenting evidence, such as witness testimony and documents like medical records and expense receipts. There are different burdens of proof (sometimes called “standards of proof”) for different types of cases.

Most people are familiar with the burden of proof applied in criminal cases. In a criminal case, the prosecution must prove the defendant’s guilt beyond a reasonable doubt. In other words, the prosecutor must establish that there is no reasonable conclusion to reach other than that the defendant is guilty of the crime charged. This burden of proof is very high. Fortunately for injured people, it does not apply in personal injury lawsuits.

The burden of proof applied to most civil cases, including personal injury lawsuits, is much lower and is not as challenging to satisfy. In a personal injury lawsuit, the plaintiff (or his or her lawyer) must prove his or her case by a preponderance of the evidence. Proving a proposition by a preponderance of the evidence requires demonstrating that the proposition is more likely true than not true. If you bring a personal injury lawsuit, you or your lawyer must prove that the events in your version of the case “more likely than not” occurred the way you claim they did.

Understanding the Preponderance of Evidence Standard

The concept of preponderance of the evidence can be visualized as a scale representing the burden of proof. At the beginning of the trial, the scale is empty and rests in the middle. After the trial, the totality of the evidence presented at trial by the plaintiff rests on one side of the scale. On the other side of the scale is the totality of the evidence presented at trial by the defendant. If the scale tips ever so slightly to the plaintiff’s side, the plaintiff will win the case. If the scale tips ever so slightly to the defendant’s side, the plaintiff will lose the case.

There is no specific formula for determining whether the plaintiff in a personal injury lawsuit has met his or her burden of proof. Nevertheless,
many personal injury lawyers will tell jurors that their client must win at trial if they have proved their positions by as little as 51 percent likelihood of probability (or likelihood of truth). Generally, anything from 51 to 100 percent likelihood of probability (or likelihood of truth) constitutes a preponderance of the evidence. If a jury in a personal injury case believes that there is a 51 to 100 percent chance that the defendant was negligent, the plaintiff has met his or her burden of proof and will prevail. The judge or jury will then determine the amount of money damages to which the plaintiff is entitled.

Preponderance of the Evidence in Personal Injury Lawsuits

Most personal injury lawsuits involve the legal concept known as negligence. In order to win a personal injury lawsuit, you must establish each of the four elements of negligence by a preponderance of the evidence. There are four elements of negligence: that the defendant owed you (the plaintiff) a duty; that the defendant breached that duty; that the breach caused your injuries and any other losses; and that money damages will compensate you for your injuries and any other losses. If you cannot prove that each of the following elements more likely occurred, you cannot win your personal injury lawsuit in court.

Duty of Care

Generally, you must first prove that the defendant owed you a duty to exercise reasonable care and caution with respect to your personal safety. Typically, the duty of care is obvious and it is not difficult to establish that a duty of care existed by a preponderance of the evidence. For example, there is little question that anyone who operates a motor vehicle must do so with caution in order to ensure the safety of others on the road. Similarly, property owners are generally understood to have a duty to keep visitors to their property safe and free from unreasonable harm.

Breach of Duty

You must next prove that the defendant breached the duty of care. Generally, this means that you must prove by a preponderance of the evidence that the defendant failed to act the way a reasonably careful person or entity would have acted in the same situation. Sometimes, it is very easy to prove that a defendant breached the duty of care. For example, someone who drives drunk and causes a car accident has obviously breached his or her duty to operate his or her vehicle safely and keep other people on the road free from unreasonable harm.
In other cases, it may be much more difficult to prove that the defendant breached the duty of care by a preponderance of the evidence. For example, expert witnesses in a personal injury case arising from a slip-and-fall accident in a grocery store may disagree about whether or not a reasonable store employee would have been able to identify the slick surface that caused the fall and clean it up in enough time to prevent the accident. But remember, the preponderance of the evidence standard is relatively low and you can present other evidence, such as eyewitness testimony and photographs of the accident scene. In this scenario, you would only need to prove that a reasonable person would have more likely than not been able to identify the slick surface in the store and clean it up in time to prevent your accident.

Causation

Next, you must prove that the defendant’s breach of duty was the legal cause (or at least a partial cause) of your injury. That is, you must prove that but for the defendant’s conduct, your injuries would not have occurred. In many cases, causation is obvious. If the defendant drove over your foot in a parking lot and you suffered broken bones, then it is clear that but for the defendant’s careless driving, you would still have a healthy foot. In other cases, it may be more difficult to prove causation. For example, if you have a preexisting back problem, you may have a more difficult time that being rear-ended by the defendant’s vehicle caused your current back pain.

Damages

Finally, you must prove that you suffered injuries or other losses that can be remedied by money damages. Generally, proof of injury is made through photographic and demonstrative evidence, medical records, and testimony of your medical providers. The amount of money damages that you seek must also be supported by evidence. Examples of evidence that might support the amount of money damages you seek include medical treatment records, medical bills, and payroll information from your employer to establish lost income. You may also testify about the pain and suffering you experienced after your accident or an overall reduction in the quality of your life.

Winning a Personal Injury Lawsuit
Even though the preponderance of the evidence standard applied to personal injury cases is lower than that in criminal cases, arguing a personal injury lawsuit in court requires special skill and training. Rules of evidence and civil procedure are complicated, and must also be understood in light of appellate cases that have been decided by appellate courts over the years. These rules and guidelines are best understood by experienced personal injury lawyers. Before you consider filing a personal injury lawsuit, you should consult with a personal injury attorney in your area to discuss your legal rights and remedies. You should not file a complaint (lawsuit) in civil court before you fully understand the implications of doing so.

This page contains general information about proving that a defendant acted negligently and may not apply to you. Only a licensed personal injury lawyer can give you legal advice about your situation.
SECTION 4: CALCULATE YOUR DAMAGES

Types of Compensation for Personal Injuries

If you were hurt in an accident, you may be wondering whether you are entitled to financial compensation for your injuries. There are two methods by which you can seek money damages for your injuries and other losses, such as lost wages and out-of-pocket expenses. One is to file a personal injury claim with an insurance company. The other is to file a personal injury lawsuit against the person or entity (such as a company or government agency) that you believe is responsible for your accident.

The financial and personal harms you suffered as a result of your accident are known as compensatory damages. There are two types of compensatory damages: special damages and general damages. These damages are designed to return you to the position you were in prior to your accident. This is sometimes referred to as making the victim of an injury “whole.”

The better you understand how accident victims are compensated for their injuries, the more likely you are to secure an insurance settlement that fully accounts for the harms you suffered as a result of your accident. If you have questions about securing compensation for your injuries, contact an experienced personal injury lawyer right away.

Special Damages

The term special damages refers to losses that are directly related to your accident and any injuries you suffered. These damages, which are sometimes referred to simply as “specials,” are typically easy to document and calculate. There are four categories of special damages:

- Medical expenses,
- Out-of-pocket expenses,
- Lost income, and
- Property damage.

Medical Expenses
Your medical expenses include the costs of all medical treatment you received up to this point as a result of the accident, and any you will require in the future. These costs start to accumulate immediately after your accident, and include both current-day and future expenses (if applicable). You should carefully document all medical costs by keeping records of bills from all of your treatment providers. Basically, your medical expenses include all bills in any way related to your treatment and recovery following your accident. If you will require extensive medical care in the future as a result of your injuries, it is best to consult with an experienced personal injury lawyer who can help you calculate your future medical expenses.

Out-of-Pocket Expenses

Your out-of-pocket expenses include any other costs related to your accident and injuries, such as the costs of prescription medications, travel to and from visits to your doctors, medical aids like crutches and slings, and payment for a rental car if you needed one. Basically, out-of-pocket expenses are any costs you incurred that you ordinarily would not have had the accident never occurred. You should keep receipts for all purchases related to your injury and treatment. If applicable, you may need to estimate future out-of-pocket expenses when writing your demand letter.

Lost Income

Damages for lost income includes any wages or other earnings that you lost as a result of your accident and injuries. Lost income includes all wages you lost starting on the date of the accident, any present-day lost wages, and any wages you will lose in the future. If you are unable to work, you should ask your employer for a letter that details your normal rate of pay, how many hours you were unable to work, and the total amount of compensation you lost by not being able to work. You should also ask your doctor for a letter detailing why you are unable to work and when he or she thinks you may be able to return to work in the future.

For some people, calculating wages lost as a result of an accident can be very difficult. Independent contractors, business owners, and part-time or seasonal workers often struggle to determine exactly how much income they have lost as a result of their accident. If you need help calculating lost income, contact a personal injury lawyer right away. You should also consult with a lawyer if your ability to earn money in the future will be impaired as a result of permanent physical disability.
Property Damage

Property damage includes any damage to your personal property due to the accident. If you were involved in a car accident, property damage would include the costs of any repairs to your vehicle. If your vehicle was totaled, the amount of property damage you suffered would be equivalent to the fair market value of your vehicle on the date of your accident. Property damage also includes the cost of replacing other personal property that was damaged or destroyed in the accident, such as your clothing, cell phone, jewelry, or other items. Gather receipts for the items that were damaged or make cost estimates for each damaged item.

How to Prove Special Damages

You can establish proof of special damages by gathering bills, receipts, or any other documentation that shows the costs you incurred as a result of your accident. To calculate the total amount of your special damages, simply add up all of the costs of the damages you incurred in each of the categories discussed above. You should include this total amount in your demand letter to the insurance company.

General Damages

The other type of compensatory damages is general damages. These damages are not as easy to calculate as special damages. You can’t assess the value of your general damages simply by adding up bills and receipts. Because the value of damages is subjective and open to interpretation, you may help from an experienced personal injury lawyer to understand how much money you may be entitled to.

The most common types of general damages for personal injuries are:

- Pain and suffering,
- Emotional distress,
- Loss of enjoyment of life

Pain and Suffering

Compensation for pain and suffering accounts for any actual physical
pain and severe discomfort you endured after the accident. The amount of financial compensation you may be entitled to for pain and suffering depends on the type of your injury or injuries, and the duration of your recovery period. The more physical pain you experienced after the accident and the longer your recovery will take, the higher the compensation.

**Emotional Distress**

Compensation for emotional distress accounts for any psychological distress, mental anguish, and emotional disturbance caused by the accident and your injuries. Bad accidents often cause anxiety, depression, insomnia, fear, shock, flashbacks, and nightmares. If you are experiencing these symptoms after an accident, discuss this with your doctor. You may need to visit a psychologist or a psychiatrist. A mental health professional can help you cope with these symptoms. A letter and/or medical record from your doctor, psychologist, psychiatrist, therapist, or counselor can help substantiate the seriousness of your emotional distress.

**Loss of Enjoyment**

Compensation for loss of enjoyment accounts for any reduction in your quality of life due to the accident. This includes an inability to engage in hobbies, daily exercise, time with friends, and other recreational pursuits. You may need to write an account of your lifestyle prior to the accident, then detail how it is changed as a result of your accident and injuries. You should use strong, emotional language and give a realistic account of how your life has been negatively impacted to convey your loss to the claims adjuster.

**Loss of Consortium**

Compensation for loss of consortium accounts for any loss of physical intimacy or sexual companionship with a spouse, significant other, or long-term partner caused by your injuries. Loss of consortium may include present and future sexual disability, as well as the emotional pain of divorce if your injuries caused the relationship to dissolve. Recovering compensation for loss of consortium usually requires medical proof of sexual disability. Negotiating this issue with a claims adjuster can be uncomfortable, as insurance companies may require you to provide a written statement from your spouse or partner detailing intimate details about your relationship.

**Proving General Damages**
Establishing that you are entitled to general damages is much more difficult than proving special damages. You cannot simply add up receipts and bills to calculate these categories of damages, as they are subjective. The most common method of calculating general damages is known as the “multiple method,” which is when you multiply your total amount of special damages by a factor between one (1) and five (5). The factor you use depends on the severity of your injuries.

In addition, you can visit your the office of the county clerk in your county. Some of the files for personal injury lawsuits, including jury awards, are public records and can be viewed for free. You should try to look for cases with similar fact patterns to yours. The jury award will break down each category of damages, giving you a better idea of the amount of general damages you should seek.

The more research you do, the higher your chances at securing general damages. If you have questions about general damages, or the insurance company has denied your request for general damages, you should contact an experienced personal injury lawyer right away. An attorney can help you understand how much your injuries other losses are worth.

This page contains basic information about damages in personal injury claims. It is not a substitute for consulting with an experienced personal injury lawyer, and some information may not apply to you. Only a licensed attorney in your area can give you legal advice about your situation. Because filing a personal injury lawsuit requires special knowledge and training, you should never do so without the guidance of a lawyer.
Soft Tissue Injuries vs. Serious Injuries

If you were hurt in an accident and can establish that your injuries were caused by the negligence of another person or entity, you probably have a solid personal injury claim. But having a solid claim does not guarantee you a large settlement from the insurance company of the at-fault party. The amount of money you ultimately receive depends on what type of injuries you sustained in your accident.

If you suffered soft-tissue injuries in your accident (such as whiplash or a minor strain), the insurance company may not be willing to settle your claim for much more than your total amount of special (or economic) damages. If you sustained more serious injuries (such as broken bones, herniated discs, or organ damage, for example), you may be able to secure a much larger settlement that accounts for the pain and suffering and permanent injuries you experienced.

This page discusses the differences between soft-tissue injuries and serious injuries for the purposes of negotiating a personal injury settlement with an insurance company. It may not apply to you, and is not a substitute for consulting with an experienced personal injury lawyer. Only a licensed attorney in your area can give you legal advice about your situation.

Personal Injury Damages

Damages are the legal term for money awarded to compensate an injured person for the harms they suffered following a traumatic injury caused by someone else. If you file a personal injury claim, your settlement may include damages that take into account the following types of harms and/or losses:

- Medical bills you incurred in treating your injuries;
- Physical pain, emotional suffering, and mental anguish caused by your injuries;
- Wages you lost because you could not work while you recovered from your injuries;
- Reduction in your overall earning capacity as a result of your injuries;
- Disability accommodations for your vehicle and home;
- Diminished quality of life; and
- Loss of companionship and support.
In order to recover the highest possible settlement, you should be realistic about how much your personal injury claim is worth. This does not mean that you should settle with the insurance company for less than your claim is worth. It means that you should avoid thinking that your claim is worth much more than it is, or mistakenly undervaluing your claim in your demand letter and settlement negotiations.

You should not waste your time trying to convince the claims adjuster that you are entitled to five (5) times the amount of your special damages if you only sustained a sprained ankle and minor swelling in your accident. The insurance company will not take you seriously if you significantly overvalue your claim. Instead, you should enter settlement negotiations with a strong sense of how much your claim is worth and ample support for your settlement demand. One way to get a sense of the value of your claim is to categorize your injuries as either soft-tissue injuries or serious injuries.

**Soft-Tissue Injuries**

In general, soft-tissue injuries include injuries to your muscles, tendons, or ligaments. Abrasions and contusions fall into this category of injuries, as do minor sprains, minor burns, and herniated disks that do not require surgery. You may experience mild to moderate pain and discomfort as a result of symptoms like swelling and bruising. Some soft-tissue injuries, especially herniated disks or bulging vertebrae, can cause extreme pain.

The amount of your personal injury settlement depends on the amount of actual pain you experienced and the evidence you have to support your settlement demand. The more evidence of medical treatment and other losses you have, the higher your settlement is likely to be. As a general rule, you should not expect to receive more than three (3) times the amount of your special damages for pain and suffering if you sustained only soft-tissue injuries.

**Serious Injuries**

Serious injuries, sometimes called “hard” injuries, can range from broken bones to traumatic brain injuries. If you suffered broken bones, a traumatic brain injury, permanent scarring organ damage, personal-injury-
attorney-colorado severe lacerations or burns, or injuries that required surgery or extended hospitalization, you are more likely to secure a large settlement from the at-fault party’s insurance company. You may be able to convince the claims adjuster that your pain and suffering is worth between three (3) and five (5) times your special damages.

Even if your injuries are significant, you must convince the claims adjuster that you deserve a large settlement. Remember to back up everything you ask for in your demand letter with evidence, which may include:

- Police accident reports and witness statements;
- Medical records and letters from your medical and mental health care providers;
- Bills and receipts for medical treatment and out-of-pocket expenditures;
- A recovery journal that describes your pain and how your injuries negatively impacted your life after the accident; and
- Pay stubs and/or a letter from your employer discussing your inability to work and the amount of wages you lost as a result of your accident.

**Every Personal Injury Claim is Unique**

Because no two injuries are exactly alike, it’s impossible to assign a precise settlement value to a personal injury claim. You must prove that you deserve the amount of money damages you’re demanding. If you support your settlement demand with medical records and other credible evidence, you are more likely to get a higher settlement offer from the insurance company.

When calculating your settlement demand, keep the following questions in mind:

- Did you suffer soft-tissue or serious injuries?
- Is it obvious that the other party is liable for your injuries?
- How much are your special damages worth?
- How high of a pain and suffering multiplier should you use?

If you are unsure about how much your personal injury claim is worth, contact a personal injury lawyer before sending a demand letter. You can hurt your chances at securing a fair settlement by undervaluing or overvaluing your personal injury claim.
When to Contact a Personal Injury Lawyer

While it is possible to settle some personal injury claims own your own, it is best to consult with a personal injury lawyer after an accident. Most reputable personal injury lawyers offer potential clients free initial consultations, and your chances of receiving a fair settlement for your personal injury claim greatly increases if you are represented by a lawyer. You have nothing to lose by asking for help from a licensed attorney in your area.

You should always consult with a personal injury attorney if you have suffered a very serious injury, such as a traumatic brain injury or loss of a limb. In the event of a very serious injury, representing yourself in negotiations with an insurance company is not in your best interests. Mistakes made during the settlement negotiation process can have serious financial and legal consequences, and may jeopardize your legal rights.
Factors That Can Limit Your Compensation

If you were seriously injured in an accident, you are probably wondering how much your injuries are worth. Regardless of whether you make a claim with an insurance company or file a personal injury lawsuit, the amount of money you ultimately receive for your injuries and other losses may be limited by a number of factors. This is true even if you were hurt very badly in your accident and experienced significant pain and suffering.

Calculating the value of your personal injury claims after an accident is far more complicated than adding up your medical bills and lost wages, then tacking on an arbitrary amount for pain and suffering. Factors affecting your insurance settlement or damages award include, but are not limited to:

- Proof of liability;
- The place where your accident occurred (also known as “venue”);
- Whether any medical treatments you received were “reasonable and necessary”;
- Whether your injuries are permanent;
- Whether you will require medical treatment in the future;
- Whether you have any scarring;
- Whether you have lost time from work and/or will lose time in the future;
- Your level of comparative fault; and
- Insurance policy limits.

If you are concerned about how your personal injury award may be reduced by any of the factors discussed below, you should consult with a personal injury lawyer in your area. These factors may or may not apply to your case. Only a licensed attorney can give you legal advice about your situation.

Questions of Liability

Before you can receive monetary compensation for your injuries and other losses, you must establish that another person or entity (such as a business or government agency) is legally responsible or (“liable”) for what happened to you. Typically, this requires proving that another person or entity was negligent. If you cannot convince an insurance adjuster that their insured was negligent, you will not be compensated for your injuries and other losses. Similarly, if you cannot prove that the person against whom you brought a
personal injury lawsuit (the “defendant”) was negligent, you will not be awarded money damages by a court.

If you are pursuing an insurance claim, once you prove to the at-fault party’s insurance company that their insured’s negligence was the cause of your injuries, you have overcome the first hurdle in securing a favorable settlement. In court, you or your personal injury lawyer must prove that the defendant was negligent.

Venue

The location where the accident happened may also limit the amount of compensation you receive for your injuries and other lawsuits. In some cities and counties, verdicts for personal injury lawsuits are much higher than in others. Typically, out-of-court settlements will reflect the average jury awards in the area where your injury occurred.

If you hire a personal injury lawyer to represent you in a personal injury lawsuit, he or she will research jury verdicts in previous cases with fact patterns similar to your own. This will help your attorney get a better understanding of what your case is worth and the amount of money damages to request on your behalf.

Comparative Fault

Your compensation may be reduced if you were partially responsible (or “at fault”) for your injuries and other losses. This is generally the case if you live in a comparative fault state. In comparative fault states, liability for an accident can be shared by the at-fault party and the injured person. Insurance adjusters and courts will allocate a percentage of fault for an accident to each party. Then, the injured person’s compensation will be reduced by the percentage of fault assigned to him or her.

An example of how comparative fault works after a car accident is useful here.

Example: Patty was stopped at a stop sign when her car was struck from behind by David. She was injured in the collision, and made a settlement demand of $10,000 to David’s insurance company.
Colorado Personal Injury Guide

Typically, a driver who rear-ends a car at a stop sign would be 100 percent (100%) liable for the accident. But in this case, the insurance adjuster concluded from a police report about the accident that the brake lights on Patty’s car weren’t working properly. The insurance adjuster blames a portion of the collision on Patty. The insurance adjuster decides that Patty was 10 percent (10%) at fault for the accident, and that David was 90 percent (90%) at fault. Instead of offering Patty $10,000, she only offers her $9,000.

It is important to understand that you do not need to accept an insurance adjuster’s allocation of fault or a reduced settlement offer. If you believe that an insurance adjuster has unfairly assigned liability to you in making a settlement offer, you should speak to a personal injury lawyer about your options.

If you file a personal injury lawsuit, the jury may make a similar allocation of fault for your accident. In states that adhere to a rule known as modified comparative negligence, including Colorado, you may not recover damages for your injuries and other losses if the jury determines that you were 50 percent (50%) or more liable for the accident.

“Reasonable and Necessary” Medical Costs

When negotiating an insurance settlement with an insurance company, you must remember that claims adjusters will not pay for unnecessary medical costs. They will only agree to pay for “reasonable and necessary” medical costs for treating your injuries.

As an example, if you sustained soft-tissue injuries in a car accident that typically cost around $3,000 to treat but instead ran up chiropractic bills of $5,000, an insurance adjuster may only agree to pay you $3,000. In this scenario, you would be responsible for paying the $2,000 balance. This is one reason why it can be helpful to consult with a personal injury lawyer following an accident about how to proceed with your medical treatment. That an insurance company will not pay all of your bills does not mean that the bills are in fact not reasonable and necessary. It does mean that in order to recover those bills, filing a personal injury lawsuit may be necessary.

You should only receive medical treatment from reputable physicians and care facilities. Try to avoid doctors and clinics that claim to be “personal injury specialists.” It is possible for some providers to run up exorbitant medical bills, hoping to get paid as much as they can when your insurance claim settles or you win your personal injury lawsuit. Alternative medicine or procedures that are considered by the medical field to be experimental are
usually red flags for insurance companies, and they often deny paying for such treatment.

**Policy Limits**

If you are seeking compensation through an insurance company, your settlement amount may be limited by the policy limits of the at-fault party. If your injuries and other losses surpass the at-fault party’s policy limits, the insurance company may offer you the full amount allowed by the policy. This is also known as “tendering policy limits.”

If you believe that you deserve more compensation than the at-fault’s insurance policy allows, your only option to obtain the remainder of your damages is to file a personal injury lawsuit against the at-fault party. Hopefully, the at-fault party will have some assets of value that can compensate you for your injuries and other losses.

**You May Need a Personal Injury Lawyer**

Negotiating a fair settlement with an insurance company after an accident can be difficult. If you are concerned that you may not be able to obtain a fair settlement for your injuries and other losses on your own, you should consult with a personal injury lawyer right away.

The information on this page contains general information about negotiating an insurance settlement and securing a personal injury verdict. It may not apply to you. Only a licensed attorney can give you legal advice about your situation.
How to Calculate Pain and Suffering

If you were hurt badly in an accident, you may be entitled to compensation for pain and suffering, as well as emotional distress. These damages are types of general damages, which are designed to compensate you for:

- Actual physical pain and discomfort, whether temporary or permanent;
- Emotional and psychological issues such as depression, anxiety, shock, memory loss, insomnia, and other emotional disorders;
- The effect on you that physical limitations or disabilities have which prevent you from engaging in the lifestyle you enjoyed before the accident;
- Any other emotional or psychological trauma you endured or will endure as a result of your accident.

Before you can calculate your pain and suffering demand, you must know how much your special damages (or “specials”) are worth. Special damages include medical expenses, out-of-pocket expenses, lost wages, and property damage. Totaling the amount of your special damages is usually a straightforward task: you simply add up all of your bills, receipts, and lost income.

Once you have arrived at a figure that accounts for all of your special damages, you can examine what juries are awarding people in your area with the kinds of injuries and economic damages you experienced. Included in this analysis will be:

- The type of pain and discomfort you experienced;
- The severity and duration of the pain and discomfort you experienced; and
- How much evidence you have of the impact the pain and suffering on your life.

Because the analysis of the value of your claim is complicated, you should consider consulting with a personal injury attorney. You should not assume that the claims adjuster will approve your demand without credible and persuasive evidence of the negative impact your pain and suffering has had on the quality of your life. Here are some general guidelines to keep in mind when calculating your pain and suffering demand.
Duration of Pain and Suffering

If your pain and suffering was limited to a brief period of time between the date you were injured and the completion of treatment, your pain and suffering demand should be lower. If your pain and suffering will continue into the future, or you are permanently disabled as a result of your injury, your pain and suffering demand should be much higher.

Type of Injury

Typically, soft tissue injuries such as whiplash, bruising, and minor sprains warrant a pain and suffering demand that is one-and-a-half (1.5) to three (3) times the amount of your special damages. More serious injuries like broken bones, burns, or herniated disks warrant a pain and suffering demand that is between three (3) and five (5) times the amount of your special damages. If you experienced a very serious injury such as brain damage or the loss of a limb, you may be entitled to a pain and suffering award that is greater than five (5) times your special damages. Cases involving these types of very serious injuries almost always require attorney representation.

Evidence of Pain and Suffering

The more evidence you have of your pain and suffering and how it has impacted your life, the greater your demand should be. Many people have found that keeping documentation of their recovery process helps remind them of details they are asked to recall during the settlement process. Discuss any pain you experience and how it has interfered with your everyday life. Be open about your experiences, even if some of the information you include is personal.

If you are experiencing psychological trauma or other mental health issues after an accident, you should see a psychologist or psychiatrist right away. Ask for a letter from your mental health care provider that assesses how your accident and injuries have impacted your psychological state. Give the claims adjuster as much credible evidence of your emotional state as possible.

Reasons to Increase Your Pain and Suffering Demand

If you experienced any of the following conditions after an accident, you should consider increasing your pain and suffering demand:
• After your accident, your injuries caused you to experience significant depression, anxiety, or insomnia;
• Your injuries prevent you from engaging with your family like you used to before your accident; or
• Your injuries require ongoing treatment that will interrupt your daily life well into the future.

The better prepared you are to convince the claims adjuster of the depth of your pain and suffering, the higher the insurance company’s settlement offer will be. Be realistic and honest in calculating your pain and suffering demand and negotiating a settlement. If you fabricate or exaggerate your experiences, you will damage your credibility and ultimately harm your case. You should never lie to an insurance company, as doing so can result in civil and criminal penalties.

IMPORTANT WARNING!

The area of personal injury law is complicated. There are many statutes and appellate laws that govern personal injury claims and a layperson is taking a big risk by handling their own claim. There are many things that can happen through the course of a claim that could prevent you from recovering damages, or that expose you to personal liability. There is no way to point all of these out, but here are two that are extremely important to be aware of:

• If you have been in an automobile accident and you have Underinsured Motorist coverage through your own insurance company, then before you settle with the at fault drivers insurance you must first obtain written consent to do so from your own automobile insurance carrier. This protects your insurer’s possible subrogation rights. If you do not obtain this consent your own automobile insurance carrier could deny your claim to them for underinsured motorist benefits.

• If any of your medical bills have been paid by private health insurance, Medicare or Medicaid, then those entities have a right to be paid back for the bills they have paid. This is called subrogation. This is a complicated area of the law, and it is not recommended that you attempt to resolve these financial obligations without the guidance of an attorney.
Example of Pain and Suffering Demand

Dan is injured in a serious car accident. He suffers broken bones in his left arm. Because he must spend several weeks in a cast and sling, he is unable to perform his job and misses two months of work. He experiences moderate levels of pain during his recovery period, which ultimately lasts three months. During this period, he is unable to engage in his favorite hobby (golf), and has trouble sleeping due to the discomfort associated with being in a cast. After three months, Dan recovers fully from his injuries and his life returns to normal.

Dan decides to use the multiple method to calculate his pain and suffering demand. The total amount of his special damages (including a hospital visit, the costs of prescription medications and a sling, and lost wages) is $15,000. Dan has kept a recovery diary, and determines that his injuries interfered with his daily life for a three-month period. He missed work and had trouble sleeping. He experienced moderate pain. He multiplies his special damages by a factor of one-and-a-half (1.5), and demands $22,500 for pain and suffering. After a series of negotiations with the insurance company, Dan agrees to accept $20,000 for his personal injury claim.
The Insurance Negotiation Process

If you file a personal injury claim with an insurance company after an accident, you must be prepared to negotiate a settlement with the claims adjuster. Negotiating a settlement is part of the personal injury claims process, which begins when you report your injury to the insurance company and file a claim. If you decide to accept the insurance company’s settlement offer, the personal injury claims process will end at that point. In the alternative, you may reject the insurance company’s offer and decide with help from a personal injury lawyer that filing a personal injury lawsuit is necessary.

This page provides basic information about the personal injury insurance settlement negotiation process. It may not apply to you, and is not a substitute for consulting with an experienced personal injury lawyer.

Only a licensed attorney in your area can give you legal advice about your situation. Although it may be possible to secure a favorable insurance settlement on your own, hiring a personal injury lawyer offers you the best chance at receiving the maximum amount of compensation for your injuries and other losses after an accident.

The Personal Injury Claim Process

The personal injury claim process begins when you report your injury and initiate a claim with the at-fault party’s insurance company (or with your own insurance company in the event of a first party claim, such as when the at fault driver did not have insurance or had inadequate insurance), and ends when you decide to accept or reject the final settlement offer from the insurance company’s claims adjuster. It is helpful to think of negotiation as part of the entire personal injury claim process. At each step, you should be advocating for the highest possible settlement. The claims adjuster will be trying to diminish your claim in an effort to pay you as little as possible.

You should become familiar with the basic negotiation steps discussed below. The more familiar you are with the personal injury claim process, the better prepared you will be to negotiate a settlement that fully accounts for your injuries and other losses.

Steps to Negotiating a Personal Injury Settlement
Although all insurance companies handle personal injury claims differently, the settlement negotiation process will look something like this.

You file a personal injury claim with the insurance company.

The first step in your personal injury claim is notifying the at-fault party’s insurance company about your accident and injuries. You do this by filing a claim with the insurance company. Most insurance companies allow you to file a claim over the phone or by filling out an online form. You should file a claim as soon as possible after an accident, as many insurance companies require you to do so within 24 hours after an accident. Filing a claim effectively begins the settlement negotiation process.

You receive a reservation of rights letter from the insurance company.

In response to filing a personal injury claim with the at-fault party’s insurance company, you will receive a “reservation of rights” letter from the insurance company. The reservation of rights letter will indicate that the insurance company plans to investigate your claim and will discuss it with you, but by doing so they are not admitting to any liability for your injuries on behalf of their insured (the at-fault party). It is important to fully understand the implications of the reservation of rights letter. If you have questions about the letter, you should contact the insurance company or a qualified personal injury lawyer.

You send a demand letter to the insurance company.

As soon as you are sufficiently healed from your injuries, you can send a demand letter to the at-fault party’s insurance company. Your demand letter should lay out the basic facts of what happened in your accident and how badly you were hurt. It should also itemize your damages, including medical bills, out-of-pocket expenses, and lost income. These damages are known as your “special damages” (or “specials”).

Once you have calculated the total amount of your special damages, you will multiply this amount by a number between two and five to reflect your pain and suffering. This figure is otherwise known as your “general damages.” The combined amount of your special damages and general damages will be your total settlement demand.
The claims adjuster will respond to your demand letter.

After you send a demand letter to the at-fault party’s insurance company, you will receive a response from the claims adjuster. The claims adjuster may call you on the phone to discuss his or her initial offer, or send you a written letter containing an initial settlement offer. At this point, the real negotiations begin.

The claims adjuster will try to convince you that your claim is worth much less than your total settlement demand. The claims adjuster may try to say that your special damages are far too high for the type of accident you were involved in. He or she may try to pressure you into accepting a low offer right away by claiming it is a one-time offer. You may be told that your settlement demand exceeds his or her “authority,” which refers to the maximum amount the claims adjuster’s supervisor will allow your claim to settle for.

Do not be alarmed by a low settlement offer. You should never accept a settlement offer that does not fairly account for your injuries and other losses. By making a lowball offer, the claims adjuster is testing you to see if you are impatient enough to accept the initial offer. The claims adjuster wants to see if you really understand how the personal injury claim settlement process works, and just how far you will go secure compensation for your injuries.

In some rare cases, the claims adjuster will make a fair initial settlement offer. But typically, the next step in the negotiation process is to reject the claims adjuster’s initial offer and make a counteroffer.

You reject the claims adjuster’s initial offer and make a counteroffer.

If the claims adjuster did not make a fair initial offer, you should reject the offer and make a counteroffer. You do this by writing a letter to the claims adjuster stating that you cannot accept his or her offer. Tell him or her why you do not agree with the initial offer. Reiterate how badly you were injured, and remind the claims adjuster that your medical treatment was absolutely necessary.

In making a counteroffer, you should reduce your initial settlement demand, but not by too much. This will show that you are willing to compromise, moving the settlement negotiations ahead.
You and the claims adjuster continue to negotiate

Once you have made a counteroffer, negotiations will resume. The claims adjuster may not respond to your counteroffer right away. You must be patient and wait until the claims adjuster makes another offer. If you call the claims adjuster before he or she makes another offer, you will ultimately harm your chances at receiving a fair settlement.

The negotiation process might involve several more offers and counteroffers between you and the claims adjuster. You must continue to defend your position, pointing at every opportunity to the reliable evidence of your injuries and other losses that you included in your demand letter. Hopefully, you and the claims adjuster will arrive at a settlement figure that fairly reflects the severity of your injuries.

You accept or reject the final settlement offer.

If you and the claims adjuster have not yet reached a settlement agreement, the claims adjuster may make a final settlement offer. At this point, you must decide whether the settlement offer is acceptable. If you believe that the claims adjuster’s final settlement offer is acceptable, there are certain steps you must take in order to accept the offer. To learn more about how to accept a settlement offer, visit:

Accepting a Settlement Offer

If the claims adjuster’s final settlement offer does not fully account for your injuries and other losses, you may need to consider filing a personal injury lawsuit. Because filing a personal injury lawsuit requires special skill and training, as well as a thorough knowledge of the law and legal system, you should not do so without the assistance of a qualified personal injury lawyer.

Settlement Negotiation Tips

In order to negotiate the best possible settlement, you must:

- BE PREPARED. You should be as prepared for the personal injury claim process as possible. Familiarize yourself with the steps involved in negotiating a settlement, and gather as much credible evidence of your injuries and other losses as possible. Being prepared will help
you remain confident, calm, and collected throughout the settlement negotiation process.

- **BE PATIENT.** Do not jump at the first settlement offer that comes your way. You must stay patient throughout the entire settlement negotiation process. Impatient personal injury claimants often settle their claims for much less than they are actually worth. Securing the maximum possible settlement is worth the wait.

- **BE PERSISTENT.** Do not allow settlement negotiations to come to a standstill. You must be persistent in moving your claim forward. While you should never rush the settlement process, be sure to respond to requests from the claims adjuster as quickly as possible. Be diligent about following up with the claims adjuster if necessary.

In addition to these tips, there are certain negotiation mistakes you should avoid when negotiating a personal injury settlement.
10 Negotiation Mistakes to Avoid

Negotiating a personal injury claim with an insurance company is a delicate process. If you make a mistake during the negotiation process with the claims adjuster, you can cause irreversible damage to your claim. This is one of the many reasons working with a personal injury lawyer offers accident victims the best chance at securing a fair settlement.

When discussing your personal injury claim with a claims adjuster or any other insurance company representative, keep these insurance settlement negotiation tips in mind.

Do not agree to give a recorded statement.

Unless you have a personal injury lawyer present to advise you, you should not agree to give the at-fault party’s insurance company a recorded statement. Insurance companies train their adjusters in interview taking, and the questions may be framed in a way to elicit a statement from you that may not be in your best interests.

Be honest with the insurance company.

Always be honest when talking to and providing information to the insurance company. There are legal requirements that you be honest in your dealing with insurance companies and visa versa.

Do not hand over your medical records too early in the negotiation process.

You should not sign any medical releases until you are nearing the end of your treatment. The claims adjuster does not need that information at the start of his or her investigation. Your medical condition may change over time, and you should give the claims adjuster the most complete and accurate picture of your medical condition possible. Once your treatment is almost complete, you can sign the medical releases necessary to obtain copies of your medical records. Then, you can calculate your special damages and pain and suffering demand with greater accuracy. This will help you write an effective demand letter.
Do not discuss any preexisting injuries.

You should never discuss any preexisting injuries with the claims adjuster. If you admit that you had an injury prior to your accident, the claims adjuster may deny your claims or offer you a lower settlement by finding that your latest injury is merely an exacerbation of your previous one. Only a doctor can evaluate how your injuries relate to one another. Leave this to the experts.

Do not exaggerate your injuries.

Do not exaggerate the nature of your injuries. As you can imagine, claims adjusters hear all kinds of stories from personal injury claimants. They can usually tell when someone is exaggerating the extent of their injuries. Allow the truth to speak for itself. The claims adjuster will be much more likely to trust you and ultimately agree to your settlement demand.

Do not let your guard down.

Claims adjusters are trained to engage personal injury claimants in informal discussions. Sometimes, claims adjusters do this so that you'll let your guard down and they can draw damaging admissions from you. You should be polite to the claims adjuster, but not deferential. Stay on your guard at all times.

Do not think you have to answer every question.

When discussing your personal injury claim, you do not have to answer every question the claims adjuster asks. It is much better to decline to answer a question that you don’t know the answer to than to give the claims adjuster inaccurate information. What may seem like a simple mistake can come back to haunt you, or even destroy your personal injury claim. If you need help responding to questions from the claims adjuster, contact an experienced personal injury lawyer right away.

Do not use loaded terms.

There are certain terms you should avoid using when discussing your personal injury claim with the claims adjuster. One of these is “whiplash,” which is a red-flag word for most claims adjusters. Although whiplash can be very painful and many people suffer whiplash after car accidents, your claims adjuster may think that you were not actually hurt in your accident and are grasping at straws. Do not discuss whiplash with the claims adjuster until
you have been diagnosed by a medical professional.

In your initial discussions with the claims adjuster, you should also avoid using legal terms like “negligence” or “reckless.” These terms have technical definitions that you may not fully understand. For now, stick to the facts of what happened in your accident. Do not editorialize or make conclusions. Save this language for your demand letter, which is the document that lays out your case in persuasive language.

**Do not give the claims adjuster unnecessary personal information.**

You are under no obligation to give the claims adjuster your social security number, and you should consult with a personal injury attorney before you do so. Typically, the claims adjuster does not need to know your social security number to settle your personal injury claim. They will need to know that Medicare and Medicaid do not have any claims related to your personal injury claim. (A letter from Medicare and from Medicaid stating this is usually sufficient).

In addition, you should avoid giving the claims adjuster names or contact information for family members, friends, or colleagues who were not involved in the accident (witnesses to the accident, of course, are fair game). The claims adjuster does not need contact information for non-witnesses to settle your personal injury claim, and may try to speak with these individuals to determine whether you are trustworthy. Remember, you can refuse to answer a claims adjuster’s questions and decline to give him or her information. An attorney can help you understand which requests for information are valid.

**Do not assume your claim will settle.**

You should never assume that your personal injury claim will settle. Claims adjusters deny personal injury claims for a variety of reasons, some valid and others not (learn more about bad faith insurance tactics here). If settlement negotiations break down and you cannot secure a fair settlement, you may need to file a personal injury lawsuit. You may have to repeat anything you say to the claims adjuster on a witness stand, in front of a jury. You should approach your claim as if you may ultimately have to file a personal injury lawsuit.
A Personal Injury Lawyer Can Help

If you have been hurt in an accident, hiring an experienced personal injury lawyer offers you the best chance of securing compensation for your injuries. An attorney can guide you through the settlement negotiation process and can help you determine whether filing a personal injury lawsuit is right for you.
McCormick & Murphy, P.C.

How to Calculate Lost Income

If you were seriously injured in an accident, you may be unable to return to work. This can take a devastating toll on your personal finances. If your injuries were caused by the negligence of another person or entity (such as a business or government agency), you have a right to be compensated for the income you lost while recovering from your injuries.

There are two ways to recover money damages for lost income after an accident: one is to file a personal injury claim with the at-fault party’s insurance company. The other is to file a personal injury lawsuit against the at-fault party in court.

This page provides basic information about calculating lost income for the purposes of negotiating a personal injury settlement with an insurance company. It may not apply to you, and is not a substitute for consulting with an experienced personal injury lawyer. Only a licensed attorney in your area can give you legal advice about your situation.

The Difference Between Lost Wages and Lost Compensation

In addition to lost wages, you may be entitled to lost compensation in your personal injury settlement. It is important for you to understand the difference between lost wages and lost compensation, so that you do not undervalue your personal injury claim while negotiating a settlement with the insurance company.

The term lost income refers to both lost wages and lost compensation. Lost wages is the amount of money your employer pays you for your work, which typically comes in the form of a company check or direct deposit to your bank account. Most people are paid by their employers weekly, bi-weekly, or monthly. Lost compensation is any other financial benefits of your employment, plus your earning capacity. For the purposes of a personal injury claim, lost compensation may include any sick or vacation days you used while recovering from your injury, pay bonuses you would have earned, and any other perks of employment you did not receive during your recovery period.

Other types of employment compensation may include:
SICK DAYS: If you used any of the sick days you had accumulated to recover from your injury, you have a right to be reimbursed for the monetary value of those days. You should not have to use valuable sick days to recover from an injury caused by the negligence of another person or entity. You will no longer have those sick days if you need to stay home to recover from another ailment, such as a cold or food poisoning. Each sick day you used is equivalent to losing a day’s wages.

VACATION DAYS: Like sick days, using a vacation day to recover from your injuries is equivalent to losing a day’s wages. When calculating lost income in your demand letter, be sure to add up any vacation days you used during your recovery period and multiply this figure by your daily wage.

PAY BONUSES: Many employers offer their employees pay bonuses based on job performance. For example, you may receive a bonus if you had the highest sales for the month. If you were in contention for a pay bonus, and your injuries prevented you from receiving the bonus, you can demand reimbursement for the amount of the bonus. It is important to understand that you must have actually been in contention for the bonus. You will have to show the insurance company that it was highly likely you would have received the bonus had you not been injured.

EMPLOYMENT PERKS AND BENEFITS: Many employees enjoy other perks and benefits of employment. Perhaps your employer takes you out to lunch every Friday, or you have access to the company’s vacation condo one weekend per year. If you missed out on any employee perks and benefits because of your injuries, you have the right to be compensated these losses.

Many personal injury claimants overlook these forms of lost compensation when negotiating a settlement with an insurance company. Typically, insurance companies refer to both lost wages and lost compensation as “lost income.” As long as you understand the difference between the two, you can include both in your demand letter. This can significantly increase the amount of your final personal injury settlement.

Proof of Lost Income

Without adequate proof of lost income, the insurance company will not be willing to offer you compensation for lost wages and lost compensation. You will need to provide evidence that any time you spent
away from work was justified based on the severity of your injuries and the course of treatment recommended by your doctor. There are two key pieces of evidence you need to gather in order to secure compensation for lost income: a prescription taking you off of work, and a letter from your employer detailing the amount of wages and compensation you lost as a result of your injuries. You can also include past paychecks or W-2’s to establish the amount of your lost wages.

**Letter from Your Employer**

The insurance company will also require legitimate proof of the income and compensation you lost as a result of your injuries. You should ask your employer for confirmation of lost wages and compensation in the form of a written letter signed by your manager. The letter from your employer should discuss:

- The total amount of work you missed as a result of your injuries;
- Your hourly pay or salary at the time you were injured;
- The number of hours you normally worked during each pay period, including the average amount of overtime you worked;
- The amount of vacation and sick days you used while recovering; and
- Any additional compensation you would have received during your recovery period (such as bonuses, promotions, and perks).

**How to Calculate Lost Income if You Are Self-Employed**

If you are self-employed, you may have a more difficult time gathering proof of lost income. It is important for you to understand that you are entitled to recover compensation for lost income just like all other types of employees. But claims adjusters often treat lost income claims from self-employed people with suspicion.

If your business is not very complicated, you should be able to calculate your lost income using your tax returns for the past several years. If your business has been relatively steady, you can average your tax returns from the past two or three years and use this as a basis for calculating lost income. If your business has been growing steadily, you can include the average rate of growth in your lost income calculation.
Colorado Personal Injury Guide

If your business is more complicated, you may need to hire an accountant or personal injury lawyer to help you calculate your lost income. An experienced personal injury lawyer will be familiar with how to calculate lost income for self-employed people, and may work with a forensic accountant to get a better idea of how much income you would have earned had you not been injured.

Other Things to Keep in Mind When Calculating Lost Income

There are a few other things you should keep in mind when calculating lost income. The first is to tell the truth about your salary and compensation. Do not “pad” your income in an effort to obtain a higher settlement. If you lie to an insurance company, you may suffer serious legal consequence.

You should also remember that lost income is part of your special damages. When you calculate your settlement demand, you will use a multiple of your special damages to arrive at this figure. The more reliable proof you have of your lost income, the higher your final settlement will be.
How to Request Medical Records

The success of your personal injury claim depends on how much reliable documentation you can provide about your injuries and other losses. Your medical records are crucial to the outcome of your personal injury claim. The insurance company will rely heavily on your medical records when evaluating your claim and making a settlement offer. It is important to understand that your medical records will be closely scrutinized by the claims adjuster and other insurance company representatives. Without a solid proof of your injuries and associated costs for your settlement demand, you will have no foundation upon which to negotiate a favorable settlement.

While you are being treated for your injuries after an accident, you should ask for medical records from every treating physician and medical care provider. Even if you included up-to-date medical records in your demand letter, you may be asked by a claims adjuster to provide additional medical records. In addition, you might be asked to undergo what is known as an “independent medical examination.”

This page will offer some basic information on dealing with these types of requests from insurance companies. It may not apply to you, and is not a substitute for consulting with an experienced personal injury lawyer. Only a licensed attorney in your area can give you legal advice about your situation.

It is important to note that the insurance adjuster may ask you to sign a release so that he or she can get your medical records directly. This release may be overly broad in scope and duration, giving the insurance adjuster the opportunity to fish and explore your entire life’s medical history. The release should specifically identify the medical provider, the medical conditions of issue, and the time period of records sought, otherwise the insurance adjuster can use the Release to get any of your medical records, even those that are not related to your injuries. It is almost never advisable to do this.

Privacy Laws Applicable to Medical Records

You should know that certain state and federal laws govern how you and other parties can access your medical records. If you have questions about how these laws apply to you, contact a qualified personal injury attorney right
The Health Insurance Portability and Accountability Act of 1996 (commonly referred to as “HIPAA”) provides protection for your personal health information. HIPAA guarantees certain privacy protections with respect to your PHI, and limits who can access and receive your private medical information. It also guarantees you the right to obtain copies of your medical records.

In addition to protecting your right to privacy, HIPAA establishes a framework for states to regulate how you can access your medical records. These regulations may include:

- Fees for processing and copying your medical records;
- The amount of time medical providers have to respond to requests for records;
- How and where you can review your medical records (for example, only in your doctor’s office); and
- Other reasonable restrictions on access to your medical records.

Each state has different regulations regarding access to medical records.

One of the most important provisions of HIPAA protects individuals against the unauthorized release of private medical information. You should know that you will no longer be protected from this provision if you sign a “Release of Information” form. When you file a personal injury claim with an insurance company, the insurance company will require you to sign a release. You should make sure that the release only applies to your current injuries that you sustained in your accident. You should never give an insurance company access to your entire medical history. The insurance company may try to use information about past medical issues to avoid making a fair settlement offer.

**Limitations on Access to Medical Records**

Your rights to access medical records may be limited. HIPAA permits doctors to withhold certain information from their patients, including:

- Personal notes made by your doctor about your visit intended to be his or her work product. This might include your doctor’s personal impressions, messages to other doctors or medical staff in his or her office, and notes that are not directly related to your medical treatment.
Information that you told your doctor not to disclose.

• Information regarding the treatment of a minor that your doctor believes should not be disclosed.

• Information your doctor believes may cause substantial harm to you or others.

• Information your doctor believes may cause unnecessary harm to the public.

• Information your doctor obtained from your other doctors. You may have to request this information directly from your other doctors.

Requesting a Copy of Your Medical Records

Do not be intimidated by the laws governing private health information. Requesting a copy of your medical records is usually quite simple. Most health care providers, including doctors’ offices and hospitals, have forms available specifically for this purpose. If not, you can use the sample letter below to make your requests. You should substitute your own information where applicable.

Most care providers require that requests for medical records be made in writing and by you personally. If you are represented by an attorney, your attorney can request your medical records on your behalf. If you are physically or mentally incapacitated, a valid power of attorney may be sufficient to allow another person to request your medical records.

When you make a request for medical records to support your personal injury claim, you must request the full extent of your medical records from every healthcare provider you have seen in the course of your medical treatment. You should obtain every record related to your injuries, your medical treatment, and the cost of your medical treatment.

Sample letter for requesting medical records:

McCormick & Murphy, P.C.
DATE

Your name
Your mailing address
Your phone number
Your email address

Name of medical provider
Mailing address of medical provider

ATTN: Medical Records Department

RE: Your full name
Your date of birth
Your social security number
Your patient ID number (if applicable)
The date(s) of your treatment
The reason for your treatment

To whom it may concern:

I am making a formal request for the release to me of copies of my complete medical records in your possession. This request is being made pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and applicable Department of Health and Human Services (HHS) regulations. These regulations designate the process of requesting my medical records, and my intention is to fully comply with them.

I am requesting any and all medical records associated with my treatment beginning on [DATE YOUR TREATMENT BEGAN] to [DATE YOUR TREATMENT ENDED or PRESENT]. They should include, but not be limited to:

- Admitting charts and notes about my admission;
- My medical history;
- Notes from treating physicians and nurses;
- Medical narratives;
- Diagnoses and prognoses;
- Any test results and reasons for tests ordered;
- Notes about consultations and/or referrals; and
- All other information related in any way to my treatment.

I understand that you may charge a reasonable fee for the assembly, copying, and mailing of these medical records. I can pay the cost now or when you complete the process of releasing my
medical records to me.

Please mail the requested records to me at the address listed above. While I understand that you may require some time to assemble and release my medical records, I expect that you will have them ready within the 30-day period allowed by HIPAA.

If you have any questions, or if the information contained in this letter is unclear in any way, please do not hesitate to contact me.

Sincerely,

[YOUR SIGNATURE]
[YOUR NAME, PRINTED]

If you have any questions about requesting your medical records, or a medical care provider has denied your request for medical records, contact an experienced personal injury lawyer right away.

When a Claims Adjuster Requests an Independent Medical Examination

Sometimes, you and the claims adjuster may disagree about the severity of your injuries. These disagreements usually arise when a personal injury claimant seeks compensation for long-term or permanent injuries that the adjuster does not believe are as serious as the claimant suggests. If you and the claims adjuster cannot reach an agreement about the severity of your injuries during settlement negotiations, the claims adjuster may ask whether you are willing to be examined by a doctor selected by the insurance company, who can provide a second medical opinion about your injuries.

These medical examinations are referred to as “independent medical examinations” by insurance company representatives. Also known as an IME, these types of examinations are anything but independent. The insurance company chooses the doctor who will conduct the investigation, and pays the doctor for his or her services. Many of the doctors who are chosen by insurance companies to conduct IMEs have longstanding relationships with the insurance company and almost never find anything seriously wrong with the insurance claimant.

As you can imagine, submitting to an independent medical examination is usually a bad idea. The good news is that you can typically
refuse to submit to an IME, unless you are making a claim with your own automobile insurance policy. Many automobile insurance policies require insureds to undergo these types of examinations. If a claims adjuster asks you if you are willing to submit to an IME, politely decline the request.

It is important to understand that the results of an independent medical examination can be legally kept from you. If you submit to an IME, the insurance company usually reserves the right to deny you access to records pertaining to the examination. If this happens to you, a personal injury lawyer may be able to conduct discovery into these records, but only after filing a personal injury lawsuit.

Bad Faith Insurance Tactics

If you believe that an insurance company is making unnecessary, burdensome, or invasive requests for medical records or information, contact an experienced lawyer right away. The insurance company may be engaged in bad faith insurance tactics, which may give you the right to sue the insurance company.

Seeking Help from a Personal Injury Lawyer

If you have questions or concerns about obtaining copies of your medical records, a personal injury lawyer can help you understand your rights.
How to Write an Effective Demand Letter

If you are pursuing compensation for your injuries from an insurance company, the demand letter is a crucial step in securing a fair settlement. A demand letter summarizes your claim and states how much money you seek for your injuries and any other harms you suffered as a result of your accident, such as property damage and lost wages. A well-written demand letter can limit how much leeway the claims adjuster has to object to the amount of your settlement demand.

You should not send a demand letter to the insurance company until you are near the end of your treatment, or your doctors inform you that your condition is sufficiently stable. If you send your demand letter too early, you may not fully account for the total costs of your medical treatment. You should have as clear a picture of your medical condition and necessary treatment as possible before calculating your settlement demand.

This page contains basic information about how to write an effective demand letter to an insurance company. It is not a substitute for consulting with a personal injury lawyer. Only a licensed attorney in your area can give you legal advice about your situation.

The Elements of an Effective Demand Letter

There are several key elements of an effective demand letter. Your demand letter should include:

- A clear statement of the facts surrounding your accident;
- A summary of why the insured is liable for your injuries and any other losses;
- A detailed list of any injuries you suffered and the medical expenses you incurred as a result;
- A list of any out-of-pocket expenses (such as copayments and medications);
- A total amount of wages you lost as a result of your inability to work (if applicable);
- A statement describing any ongoing pain and suffering and/or emotional distress;
Colorado Personal Injury Guide

- Copies of any documents you have to support your claim, such as notes from your doctors or a letter from your employer stating that you missed work; and
- Your settlement demand amount.

Your Letter Should Include a Disclaimer

Your demand letter should begin with the phrase: “FOR SETTLEMENT PURPOSES ONLY.” If you later decide to file a personal injury lawsuit, this will help prevent the at-fault party from trying to introduce the letter as evidence at your trial.

Writing the Demand Letter

In all of your correspondence with the insurance company, you should be courteous and professional. Your demand letter should be free from errors and easy to understand. If your letter is especially long, you may want to include putting it in a three-ring binder and using tabs to separate each supporting document. You can call these “exhibits.” For example, Exhibit A could be the police report about your accident, Exhibit B could be a bill from the emergency room, and Exhibit C could be a letter from your employer confirming your inability to work.

You should include the following information in your demand letter in this order:

The Heading

- Include your name, address, and contact information at the top of the letter.
- Include the name of the insurance company, the name of your claims adjuster and his or her formal title, and the insurance company’s street address.
- Date the letter with the month, day, and year you will mail the letter.
- Write “FOR SETTLEMENT PURPOSES ONLY” before the body of the letter.
- Include a “Re:” line with the claim number assigned to your claim and any other identifying information. This is very important: if you do not include the claim number here, the insurance company may not process your claim properly.

The Body of the Demand Letter
The introduction section of your demand letter should let the claims adjuster know that you are now ready to engage in earnest settlement negotiations.

The background section of your demand letter provides a factual overview of the accident and lays the foundation for proving that the insured was negligent.

The liability section of your demand letter clearly establishes that the insured was negligent and therefore liable for your injuries and other losses. You may reference witness statements, the police report, and traffic tickets (if applicable) in this section.

The injuries section of your demand letter describes your injuries in detail and the medical treatment required to treat them. You should be very explicit about the full extent of the physical pain and mental anguish you endured from the time of the accident and throughout your course of medical treatment.

The damages section of your demand letter lists the exact amount of compensation you expect to receive for:

1. Any past and future medical expenses necessary to treat your injuries;
2. Any out-of-pocket expenses you incurred as a result of your injuries;
3. Any wages you lost due to your inability to work following the accident;
4. Any past or future pain and suffering (emotional distress, mental anguish, and loss of enjoyment); and
5. Any damage to your personal property (if applicable).

The conclusion thanks the claims adjuster for his or her assistance and outlines your expected time frame for a response.

If you are concerned about the legal and financial implications of sending a demand letter to an insurance company, you should contact an experienced personal injury lawyer right away. An attorney may be able to help you secure adequate compensation for your injuries and other losses.

**Demand Letter Example**

The following letter is an example of a demand letter sent to an insurance company after an accident. It may not apply to your situation, and
DEMAND LETTER: FOR SETTLEMENT PURPOSES ONLY
Re: Claim Number B-1865J2,
Insured: Amy C. Jones, DOB 08/17/1976
Claimant: Stephen A. Brown, DOB 09/13/1982
Date of Accident: January 25, 2014

Dear Ms. Smith:

On January 25, 2014, I was severely injured when your insured, Amy C. Jones, failed to stop at a red traffic light and violently struck my car while I was driving through an intersection with a clearly green traffic light.

My doctors have advised me that my medical condition is now stable. Although I am still experiencing significant pain and suffering, I am ready to bring this matter to a conclusion. In order to facilitate settlement of my claim, I have compiled the following information for your review. I have also included supporting documentation, attached to this letter as Exhibits A-D.

Background
On January 25, 2014, at approximately 7:45 a.m., I was driving my 2010 Toyota Prius westbound on Mountain View Avenue in Denver, Colorado. At all times, I was paying careful attention to the road, traffic lights, and other vehicles in my line of sight. There were no severe weather conditions or other unusual road conditions present. I was wearing my seatbelt.
As I approached the intersection of Mountain View Handle Your Own Personal Injury Claim Avenue and Main Street, I could see that the traffic light was clearly green and in my favor. As I passed through the light, suddenly and without warning, your insured Amy C. Jones violently struck the front left half of my Toyota. The primary point of impact was the front left door adjacent to the driver’s seat. The severe force of the impact sent my car careening through the intersection. It only came to a stop when it struck a lamp pole at the northwest corner of the intersection. My vehicle needed repairs costing over $12,335 and was deemed a total loss. For more information about the accident, see Exhibit A (the police report) and Exhibit B (photographs of the vehicles and accident scene).

**Liability of Your Insured**

Your insured, Amy C. Jones, is clearly liable for my injuries and other losses. The police report (Exhibit A) and statements made by witnesses (Exhibit C) confirm that your insured failed to stop at a red light and hit my car as I was driving through the intersection on a green light. When questioned by police at the scene of the accident, your insured admitted to being distracted by a phone call at the time of the accident.

Police Officer Dominic McCarthy issued your insured a traffic citation for failing to stop at the red light. Your insured’s negligent actions were the direct and proximate cause of the accident and my resulting injuries.

As a result of the serious accident caused by Amy C. Jones, I have incurred the following injuries, expenses and losses:

**Injuries**

The force of the sudden impact and the severity of the accident caused me to sustain the following injuries:

- Fractured my left elbow;
- Tore tendons in both shoulders;
- Lacerated my forehead and upper left arm;
- Experienced severe whiplash at the time of impact;
- Herniated my disk at the C-3 level; and
- Caused deep bruising along the left side of my body.

Emergency personnel did not respond to the scene of the accident for more than 15 minutes. During that time, I was bleeding profusely from my forehead and was experiencing severe pain all over my body. When emergency personnel finally arrived to the accident scene, I was
immediately transported to the emergency room at Saint Thomas Hospital in Denver.

At the hospital, I received 15 stitches on my forehead and underwent a series of examinations and tests. These tests included a magnetic resonance imaging examination (“MRI”), X-rays, a computer axial tomography scan (CAT scan), and blood tests. I was informed that I had fractured my left elbow, and doctors applied a full-arm cast to my left arm. I was also informed that I had sustained a herniated disk at the C-3 level and tore tendons in both shoulders, both of which would require ongoing chiropractic care. I was told to regularly ice the severe bruises along the left side of my body. For more information about my injuries, see Exhibit D (my medical records and associated expenses).

Since the date of the collision, I have undergone months of painful treatment and physical therapy. I have incurred significant out-of-pocket expenses for prescription medications. My physicians and chiropractor instructed me not to work. As a result, I have lost several thousand dollars in income from my job as a regional manager at Barry’s Sporting Goods. I have not been cleared to return to work and do not know when I will be able to do so.

My recovery period has been long and extremely painful. It has disrupted my daily life and relationships since the date of the accident. Due to the significant pain I have experienced, I have had trouble sleeping and can no longer attend family gatherings or my son’s sporting events. My inability to earn income has strain my marriage and negatively impacted my relationship with my children.

Liability of Your Insured
Your insured, Amy C. Jones, is clearly liable for my injuries and other losses. The police report (Exhibit A) and statements made by witnesses (Exhibit C) confirm that your insured failed to stop at a red light and hit my car as I was driving through the intersection on a green light. When questioned by police at the scene of the accident, your insured admitted to being distracted by a phone call at the time of the accident.

Police Officer Dominic McCarthy issued your insured a traffic citation for failing to stop at the red light. Your insured’s negligent actions were the direct and proximate cause of the accident and my resulting injuries.

As a result of the serious accident caused by Amy C. Jones, I have incurred the following expenses and losses:

**Damages**

Special damages:
- Ambulance ride to hospital $750.00
- Emergency room treatment $4,500.00
- Total non-emergency medical treatment to-date $3,875.50
Future medical treatment required $9,500.00
Chiropractic treatment $850.00
Prescription medications $425.00
Lost wages $8,750.00
TOTAL SPECIAL DAMAGES: $28,650.50

General damages:
Emotional distress $5,000
Loss of consortium $5,000
Pain and suffering $79,951.50
TOTAL GENERAL DAMAGES $89,951.50
TOTAL PERSONAL INJURY DEMAND: $108,650.50

I hereby demand $118,602.00 to account for my injuries and other losses that were directly and proximately caused by the negligence of your insured, Amy C. Jones. I expect to receive a reply to this demand letter no later than 21 days from the date of the postmark.

Thank you for your time in considering my claim. Please do not hesitate to contact me for additional information or with any questions you may have.

Sincerely,
Stephen A. Brown

ATTACHMENTS: Exhibit A, Police Report
Exhibit B, Photographs of accident scene
Exhibit C, Witness statements
Exhibit D, Medical records and receipts
How to Reject an Offer and Counter

If you are negotiating a personal injury claim with an insurance company, there are a few things you should understand about rejecting an initial settlement offer and making a counteroffer. There is no specific time frame for receiving a settlement offer from a claims adjuster – some personal injury claimants receive a settlement offer very early on in the settlement negotiation process, and others must wait several weeks. You cannot reject a settlement offer until one is made, so the timing for your rejection and counteroffer depends entirely on how long the insurance company takes to evaluate your personal injury claim.

In between opening an investigation into your personal injury claim and making an initial settlement offer, the claims adjuster may have interviewed witnesses, studied police reports, reviewed your medical records, and read your demand letter. In some cases, he or she may have visited the scene of your accident. Once the claims adjuster has finished investigating your claim, he or she will make an initial settlement offer. Typically, the claims adjuster will call you to let you know how much the insurance company thinks your claim is worth. The claims adjuster will also send you an offer letter in the mail. The claims adjuster will only make a settlement offer after he or she is confident about who is liable for your injuries and the amount of damages the insurance company thinks you should receive.

The “Authority” of a Claims Adjuster

When making an initial settlement offer, the claims adjuster will tell you the dollar amount he or she thinks your personal injury claim is worth. During settlement negotiations, you may hear a reference to a second dollar amount known as the “authority” of the claims adjuster. This number represents the highest dollar amount for which the claims adjuster’s supervisors will allow your personal injury claim to settle.

Most claims adjusters will never tell you how much his or her “authority” actually is. If you hear a claims adjuster refer to his or her “authority” during settlement negotiations, he or she is probably trying to convince you that this is the best offer you can possibly get. You can be almost certain that this is not the real amount, and that the claims adjuster is bluffing. Floating an “authority” amount is a tactic used by some claims adjusters to get you to settle for less than your claim is worth.
Don’t Let Your Personal Injury Claim Stall

Many personal injury claimants make the mistake of allowing settlement negotiations to stall. By holding on to your settlement money, the insurance company is essentially earning interest on the compensation to which you are entitled. You need to take a proactive role in bringing your claim to a close and securing a favorable settlement offer.

Even though you cannot make a counteroffer until you receive an initial settlement offer from the claims adjuster, you should call the claims adjuster regularly until he or she makes an offer. If you receive a verbal settlement offer over the phone, be sure to ask the claims adjuster to put the offer in writing and send it to you via certified mail. You need to know exactly how the claims adjuster has arrived at his or her initial settlement figure, so that you can address each point in your counteroffer.

The Initial Settlement Offer

Do not be surprised if the initial settlement offer is a low figure. There are many reasons why you might receive a “lowball” offer. The claims adjuster may have concluded that you are partially at fault for your injuries, or that your injuries were not serious enough to justify the amount of damages you included in your demand letter. She may also have concerns about your pain and suffering demand.

Consider this a test from the claims adjuster. The insurance company has nothing to lose and everything to gain by making you a lowball settlement offers. Many people are struggling financially after an accident and are desperate to jump at the first settlement offer that comes their way. Even though it may be difficult to pass up a settlement offer, you should not accept the initial offer unless it is fair. How to evaluate and deal with a fair settlement offer is discussed at the conclusion of this article.

Do not panic over a low settlement offer. Remember, the insurance company is running a business and must maintain its profits. The claims adjuster does not expect you to accept the first offer, but rather hopes that you will. Naive personal injury claimants accept lowball offers all the time.

As soon as you receive the initial settlement offer in writing, carefully evaluate the stated reasons for the low settlement amount. You should
respond to each of the points made by the claims adjuster in a written letter that includes a counteroffer. In this letter, you will reassert your position (this is the same position you carefully described in your demand letter). Focus on the extreme pain and suffering you endured. Never personally attack the claims adjuster. Be professional yet firm in explaining why you deserve more money for your injuries and other losses.

** Rejecting a Settlement Offer and Making a Counteroffer **

In order to reject the initial settlement from the insurance company, you should send a letter to the claims adjuster that:

- States you do not find the initial settlement offer acceptable;
- Lists the reasons why you deserve a higher settlement offer; and
- Includes a demand for a higher settlement offer.

By doing so, you will have rejected the insurance company’s initial settlement offer and made a counteroffer. The amount of your counteroffer should be slightly lower than the one you included in your demand letter. That way, the insurance company will know you are willing to reach a compromise. Be careful not to reduce your settlement demand by too much. If you do, the claims adjuster may immediately accept your settlement offer and refuse to negotiate further.

The following sample letter serves as a template for a letter rejecting an initial settlement offer and making a counteroffer. You should include your personal information where applicable. Remember, this is only a template. You may need to refute specific points that the claims adjuster makes in his or her written settlement offer. If you have any questions about making a counteroffer, you should contact an experienced personal injury lawyer right away.

**Sample Counteroffer to an Insurance Company**

*Date of letter*
*Your full name*
*Your mailing address*
*Your phone number*
*Your email address*

*Name of claims adjuster*
*Name of insurance company*
*Address for insurance company*
Re: Claim number
Name of insured
Date of your injury/accident

Dear Mr. or Ms. [name of claims adjuster],

I received your letter dated [date of written settlement offer]. I have reviewed your letter very carefully, including your settlement offer. Unfortunately, I cannot accept your offer for the reasons discussed below.

I politely request that you revisit the facts of the [traffic, dangerous premises, or workplace] accident that occurred on [date of accident] and caused me to suffer serious injuries. The [police report, incident report, or other evidence] clearly indicates that your insured was at fault for the accident. In addition, the [police report or incident report] clearly reflects the [police officer’s or store manager’s] determination that your insured was at fault for the accident. Your insured was issued a citation for [speeding, failure to yield, etc.]. At all times, I was [driving or walking] safely when your insured [collided with my car, caused me to slip on standing water, etc.].

As a direct and proximate cause of the [traffic, dangerous premises, or workplace] accident, I was severely injured. As a result of my injuries, I required medical attention and treatment, as is clearly and accurately detailed in my medical records. I sent a copy of my medical records to you on [date of your demand letter], and they are in your possession. I have suffered extreme pain as a result of your insured’s negligence. Because of my pain, I have not been able to engage in basic daily activities, including spending time with my family. My recovery has significantly interfered with my relationships with my [husband or wife, children, etc.], and these relationships mean more to me than anything.

As I discussed in detail in my letter to you dated [date of demand letter], my injuries and damages were real. My initial demand amount was fair and accurate based on the severity of my injuries and the associated losses, including lost wages, that I incurred. You have presented no evidence that refutes the evidence I submitted with my [date of demand letter] letter.

In an effort to amicably settle this matter, I am willing to reduce my settlement demand to $ [dollar amount]. I would prefer not to litigate this claim, and it would be much better for us to settle this matter fairly and promptly.

If you have any questions about my personal injury claim or if any of the above is not clear,
Fair Settlement Offers

Although it is very rare, insurance companies occasionally make initial settlement offers that are fair. As such, you should never blindly reject an initial settlement offer. You must measure the insurance company’s initial offer against the facts of your claim and the total amount of your damages, and evaluate whether or not the claims adjuster has made you a fair offer. If you are unsure about whether the insurance company’s initial settlement offer is fair, a personal injury lawyer can help you evaluate the offer.

If you do not accept a fair offer and demand more money in your counteroffer, you may suffer serious legal and financial consequences if your case winds up in court. If your personal injury case goes to trial and the jury awards you an amount equal to or below the insurance company’s original settlement offer, courts in some states will require you to pay the defendant’s attorney’s fees and court costs. You should be realistic about the insurance company’s initial offer, and accept the offer if you determine that it is fair.

Bad Faith Insurance Practices

Sometimes, an insurance company’s refusal to settle a personal injury claim for a fair amount constitutes bad faith insurance practices. If this is the case, you may have a cause of action against the insurance company. You should contact a lawyer with experience litigating bad faith insurance claims right away.
How Many Counter-Offers Should I Make?

You just rejected the insurance company’s initial settlement offer and submitted your first counter-offer. Congratulations! You have just triggered a potentially lengthy negotiation process which means you are one step closer to getting settlement offer you deserve. There will be a lot of back and forth between you and the insurance company. If you are wondering how many counter-offers you should make, the answer is – it depends.

The number of counter-offers you choose to submit depends on the details of your case and the insurance company. There is no fixed in stone number of counter-offers that you have to submit. Every claim and insurance company is different. Thus, the number of counter-offers made varies from claim to claim. You could very well end up with a reasonable settlement offer after one counter-offer.

But you will most likely go through more than one counter-offer in order to receive a fair amount. By submitting more than one counter-offer, you are essentially prolonging the negotiation process. Negotiations can last weeks, a few months or more.

Is it a Reasonable Offer?

After you make your counter-offer, you will receive another offer from the insurance adjuster. The adjuster may take some time getting back to you with another offer. Be patient. You do not want to harm your chances of getting a fair offer by constantly calling the adjuster before he or she has had the chance to calculate a new offer. Once the adjuster has made an offer, you can either accept, reject, or make another counter-offer. In order to make your decision, you must determine if the offer is reasonable.

A reasonable, fair offer will cover medical costs, damage to your vehicle, and other losses related to the accident, such as towing. You should also factor in future costs such as: long term care required for your injuries and future lost wages. Although, you may not know the exact amount of future costs, you should have an estimated range based on past receipts. Your medical bills and other related receipts will help you come up with a reasonable figure that you can compare with the insurance adjuster’s settlement offer.
Emotional Points

Do not be afraid to include emotional points during your counter-offers. Emotional factors such as: the accident causing you pain and suffering, your inability to engage in your favorite activities like sports or painting, or the negative impact your injuries have on your spouse and children should all be included in determining a fair offer. Although, it is difficult to put a dollar amount on these emotional points, it is not unheard of to use them during negotiations to get a reasonable offer.

Know Your Insurance Policy Coverage

Additionally, you should be mindful of your insurance policy coverage when you are in the midst of negotiations and making counter-offers. Your counter-offers should not be higher than the amount your insurance policy is willing to cover, even if your medical bills are higher than the coverage limit. Bear in mind your insurance policy coverage when you are determining whether the adjuster’s offer is fair.

Ideally, you and the adjuster can submit multiple counter-offers until both you and the insurance company come to an agreement on a fair settlement offer. However, once an insurance adjuster comes back with a final offer, you cannot make another counter-offer. A final offer from the adjuster usually indicates that he or she is no longer willing to negotiate. This does not mean you have to accept the final offer, you can choose to litigate.

Is this the Insurance Company’s Final Offer?

To determine whether this is indeed the final offer, you should directly ask the adjuster. If it is the final offer, you must make a decision to either accept or reject the final offer. Do not reject the offer simply because you want more money. Reject it because it is not within the range of the reasonable amount you have set. Additionally, you should ask for an explanation behind the amount given by the adjuster. These explanation may help you in your decision to accept or reject the final offer. Are these explanations reasonable? Do they justify the amount that was offered? If you do choose to reject the final offer, you have the option to litigate and have the court decide your settlement offer.

Before choosing to litigate, you should consider the following:

- The court can either reward you more or less than the adjuster’s final
offer
• The duration of the litigation
• The cost of going to court
• The court will not hear anything about the negotiation process or the final amount given by the insurance adjuster

Know Your State’s Statute of Limitations

The statute of limitations is a deadline for you to file your personal injury lawsuit. If you do not file a lawsuit before the statute of limitations expires, you essential give up your right to file a lawsuit regarding that claim. This means that if you reject the insurance adjuster’s final offer and missed the deadline to file your lawsuit, you will not be able to recover any damages nor relief despite how convincing your lawsuit is. The statute of limitations varies from state to state. In Colorado, the statute of limitations regarding personal injuries depends on the type of accident that occurred. If the accident involved motor vehicles, you must file lawsuit within three years of the date of the accident. For all other accidents, the statute of limitations to file a lawsuit is two years of the date of the accident. The statute of limitations may be extended if the injured party is not aware of the injury. Hence, the statute of limitation will not start until the injured party is reasonably aware of his or her injuries.
How to Identify/Respond to Bad Faith

While investigating personal injury claims and negotiating settlements, insurance companies and their representatives are required by law to act in good faith toward policyholders and third-party claimants. The term good faith generally describes honest and fair dealing. This means that insurance companies must refrain from engaging in unfair dealing or fraud.

If an insurance company acts in bad faith toward its own insured, the insured may have the right to file a lawsuit against the insurance company. This type of lawsuit is separate and distinct from a personal injury lawsuit, which is filed directly against a party at fault for an injury-causing accident. Because filing a bad faith lawsuit against an insurance company requires special skill and training, as well as a thorough knowledge of the laws and legal system, you should never file a bad faith insurance lawsuit without assistance from a qualified lawyer.

Many different types of unfair insurance company tactics may constitute bad faith. This page provides basic information about bad faith insurance practices and how to respond to them. If you believe that an insurance company has acted in bad faith with respect to your personal injury claim, contact a lawyer with experience litigating bad faith insurance claims right away.

Examples of Bad Faith Insurance Practices

As discussed above, bad faith is broadly defined as dishonest or unfair dealing. Examples of bad faith practices by insurance companies in the context of personal injury claims include, but are not limited to:

- Denying payment for a valid claim without a reasonable basis;
- Discounting payment for a valid claim without a reasonable basis;
- Making a settlement offer that is unconscionably low and unsupported by the factual record;
- Delaying payment for a valid claim without a reasonable basis;
- Failing to affirm or deny coverage of claims within a reasonable time frame;
- Ignoring telephone calls, letters, and emails about a valid claim;
- Using rude, threatening, abusive, or intimidating tactics;
- Failing to conduct proper, prompt, and thorough investigations into a valid claim;
Making overly burdensome requests for documentation in support of a valid claim;

- Refusing to give a basis for a settlement offer or claim denial; and

- Misrepresenting the law or policy language.

You should be aware of these tactics and keep them in mind when dealing with the claims adjuster and other insurance company representatives. Understanding what tactics constitute bad faith can help you deal with bad faith insurance tactics more effectively.

**How to Deal With Bad Faith Insurance Tactics**

The best way to deal with bad faith insurance tactics is to carefully document all of your interactions with the claims adjuster. While you are negotiating your claim, you should keep a journal of any correspondence you have with the insurance company, whether over the phone, by mail, or online. If you believe the claims adjuster has acted in bad faith, write down a detailed description of his or her actions and the date on which they occurred.

You should also ask the claims adjuster to provide written documentation stating the reasons for his or her actions. If the claims adjuster refuses to comply with your request for documentation, you should send the insurance company a letter via certified mail, return receipt requested.

In your letter, note the date of your conversation with the claims adjuster and inform the insurance company that you believe the claims adjuster has acted in bad faith. Be sure to state which actions you believe were taken in bad faith, and note the claims adjuster’s failure to comply with your previous demand for documentation. Your letter will send a clear message to the insurance company that you will not tolerate inappropriate (and illegal) negotiation tactics. You will also have created evidence of bad faith in the event you and your lawyer decide filing a bad faith lawsuit against the insurance company is necessary.

The more detailed your notes about your interactions with the insurance company are, the more likely you are to prevail in a bad faith lawsuit against the insurance company. If you believe the insurance company has acted in bad faith, call an experienced bad faith insurance lawyer right away. Many personal injury lawyers have experience litigating bad faith claims.
against insurance companies.

**Filing a Report With a State Insurance Board**

If you believe that an insurance company has acted in bad faith with respect to your personal injury claim, you can also file a report with the insurance board in your state. Every state has an insurance board, although the official name of the board varies from state to state. You can find the contact information for your state’s insurance board here:

**State Insurance Boards**

Each state insurance board has a procedure for reporting insurance companies for bad faith practices. Once you file a report, the state insurance board will begin an investigation into your complaint. If the state insurance board finds evidence of bad faith, the state will notify the insurance company and may fine the insurance company if it does not remedy the problem.

It is important to understand that the state insurance board cannot require an insurance company to pay or settle specific claims. In order to secure compensation for the harm the insurance company has caused you by acting in bad faith, you may need to hire a lawyer to represent you in a bad faith insurance lawsuit against the insurance company.
SECTION 6: ACCEPT OR REJECT THE OFFER

Accepting a Settlement Offer

IMPORTANT WARNING! The area of personal injury law is complicated. There are many statutes and appellate laws that govern personal injury claims and a layperson is taking a big risk by handling their own claim. There are many things that can happen through the course of a claim that could prevent you from recovering damages, or that expose you to personal liability. There is no way to point all of these out, but here are two that are extremely important to be aware of:

1. If you have been in an automobile accident and you have Underinsured Motorist coverage through your own insurance company, then before you settle with the at fault drivers insurance you must first obtain written consent to do so from your own automobile insurance carrier. This protects your insurer’s possible subrogation rights. If you do not obtain this consent your own automobile insurance carrier could deny your claim to them for underinsured motorist benefits.

2. If any of your medical bills have been paid by private health insurance, Medicare or Medicaid, then those entities have a right to be paid back for the bills they have paid. This is called subrogation. This is a complicated area, and it is not recommended that you attempt to resolve these obligations without the guidance of an attorney.

If you and the claims adjuster agree on a settlement amount for your personal injury claim, you are just a few steps away from finalizing your claim and receiving compensation for your injuries. Before the insurance company can send you a check in the amount of the final settlement offer, you should:

- Send a letter to the insurance company confirming the settlement amount;
- Make sure you fully understand the terms of the release form sent to you by the insurance company (it is always advisable that a lawyer review the release before you sign it); and
- Sign the release form and return it to the insurance company.
Colorado Personal Injury Guide

This page provides basic information about how to accept a settlement offer from an insurance company. It may not apply to you, and is not a substitute for consulting with an experienced personal injury lawyer. Only a licensed attorney in your area can give you legal advice about your situation.

Sending a Confirmation of Settlement Letter

Typically, the claims adjuster will make a verbal offer to settle your personal injury claim over the phone. If you and the claims adjuster have verbally agreed to a settlement amount, you need to send a letter to the insurance company confirming the amount you agreed upon. This type of letter is known as a “confirmation of settlement letter.”

If you decide to send a confirmation letter you should do so promptly. Make a copy of the confirmation of settlement letter for your records.

The insurance company may send you a similar confirmation of settlement letter. Be sure that the insurance company’s letter accurately reflect the final settlement amount you and the claims adjuster agreed to over the phone. If you have questions about discrepancies between your confirmation of settlement letter and that of the insurance company, call the claims adjuster right away.

Below is a sample confirmation of settlement letter to an insurance company. Be sure to include your personal information where applicable.

Sample Confirmation of Settlement Letter

Date of letter

Name of claims adjuster
Insurance company name
Insurance company address

Re: Your name and date of birth
Name of insured party
Claim number
Date of accident or injury
McCormick & Murphy, P.C.

Dear [CLAIMS ADJUSTER],

Pursuant to our phone conversation on [DATE], please accept this letter as confirmation that we have agreed to settle my claim referenced above, in full, for the amount of [AMOUNT OF FINAL SETTLEMENT OFFER].

Please mail the insurance company’s check in the amount of [AMOUNT OF FINAL SETTLEMENT OFFER] and release to me at the following address:

Your street address
Your city, state, ZIP

If you have any questions, please do not hesitate to contact me.

Sincerely,
Your signature
Your name, printed

Understanding the Release Form

Within a week or two, you should receive a release form from the insurance company. Some insurance companies send your settlement check with the release form, and require you to sign and return the form before you cash your check. Most insurance companies do not send your settlement check until you sign the release form and return it to the insurance company.

Either way, you must read the release form very carefully before signing and returning it to the insurance company. It is important to understand what you are signing, as signing the release form and depositing your settlement check can have serious legal and financial consequences. It is always recommended that you have a personal injury lawyer review the release form. You should make copies of the signed release form for your records, as well as the settlement check when it arrives.

The exact wording of your release form you receive may vary, but typically the release form will require that you acknowledge that no further payments will ever be made, even if your physical condition worsens or you require future medical treatment. The release forms will also require that you acknowledge that there are no medical or other liens, and if there are, that you will indemnify and/or hold the insurance company harmless from any such
The release form will also typically provide that by signing the release form, you will waive all rights to file another legal claim (including a personal injury lawsuit) against the at-fault party (or the insurance company based) on this accident. You are agreeing that the money you receive from the insurance settlement satisfies this claim and any other legal claims you might want to bring at a later time.

Signing the release form may not prevent you from pursuing a legal claim against other available sources, such as another at-fault driver or a government entity that was partially responsible for your injuries, or your own insurance company for underinsured motorist benefits.

Because signing a release form and accepting a settlement offer can have serious legal consequences (including waiving your right to sue the at-fault party), you should want to consult with an experienced personal injury lawyer before doing so. Many injured people are quick to accept a settlement offer without realizing that they are relinquishing certain rights. A personal injury lawyer can help you understand any other options (such as filing a personal injury lawsuit) you may have.

**Sign and Return the Release Form**

If you are absolutely certain that you understand the terms of the release form and all of the potential consequences, then you may sign the release form and return it to the insurance company. Be sure to make a copy of the release form for your records. If the insurance company sent your settlement check with the release form, you can now endorse and deposit the check. If the insurance company did not send your settlement check with the release form, it should arrive within 14 days of the date you returned the settlement release to the claims adjuster.
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Understanding Liens

If you are about to settle your personal injury claim, or have just settled it, you need to know whether any other people or entities (known as “lien holders”) are entitled to a portion of your settlement. A lien is a legal right acquired in someone’s property by a creditor. Generally, liens stay in effect until the underlying obligation is satisfied.

There are many potential lien holders for personal injury claims. They may include:

- Health care providers, including doctors, clinics, and hospitals;
- Medicaid, Medicare, the military, or the Veteran’s Administration;
- Workers’ compensation insurance; or
- Health and auto insurance companies.

Who Can Put a Lien on a Personal Injury Settlement?

Typically, liens against personal injury settlements arise when someone is injured and doesn’t have the money to pay for necessary treatment. If you were hurt in an accident and could not afford the medical services you needed at the time, you probably have a duty to repay your healthcare provider(s). There may be one or more liens against your personal injury settlement proceeds.

The laws and regulations governing how a lien must be “perfected,” or legitimized, by a lien holder vary by state. However, federal and state law generally support liens against personal injury settlements and your duty to pay (or “satisfy”) them. Some lien holders must advise you of their intent to reclaim money from your personal injury, and some do not. Determining if there are liens or subrogation claims against your settlement proceeds and how to resolve them is very complicated and we recommend that you not attempt to do so without the help of an experienced personal injury attorney.

Health Care Providers

Health care providers, such as doctors, clinics, and hospitals, can legitimize their liens by:
• Having you sign a letter of protection or lien before administering treatment, or
• Exercising their lien rights under state law.

Sometimes, health care providers do both. A lien is a signed agreement stating that you will pay the health care provider from your personal injury claim settlement proceeds. If you fail to pay the health care provider from your personal injury settlement proceeds, the health care provider may possibly sue you.

**Medicaid, Medicare, and Veteran Benefits**

If Medicaid or Medicare paid for your medical treatment after an accident, they likely have a lien against your personal injury settlement proceeds. These types of liens are governed by federal statutory law, found at 14 U.S.C. § 1395y.

The process for reimbursing Medicaid and Medicare for medical treatment is called “subrogation.” It is administered by the Centers for Medicare and Medicaid Services (or “CMS”). It is important to understand that if you have a CMS lien against your settlement proceeds; it will take precedence over all other liens. You do not have to repay CMS unless they ask you to. However, they have a six-year statute of limitations period for reimbursement.

It may be several months (or even more than a year) before you receive a notice to reimburse CMS. If Medicaid or Medicare paid for any portion of your medical treatment after an accident, you should set aside money from your settlement so you can repay CMS in full in the event they send a notice of reimbursement.

If you received Veterans Administration (or “VA”) benefits from the federal government, the VA may have a lien against your personal injury settlement proceeds. Like Medicaid and Medicare liens, a lien from the VA will take precedence over all other liens. VA liens are governed by federal statutory law, found at 38 U.S.C. § 1729.

CMS (Medicaid and Medicare) and VA liens are sometimes referred to as “super liens.” This is because they take precedence over all other liens. If you do not repay these liens, you will be subject to strict penalties under federal law. The penalties can be as severe as requiring you to pay back twice the original amount of the lien.
If you are concerned about your financial obligations to the federal government as a result of receiving medical treatment after an accident, you should contact an experienced personal injury lawyer right away.

**Workers’ Compensation Insurance**

If you were injured in a workplace accident, you normally do not have to reimburse your employer’s workers’ compensation insurance company. There is an exception, however, if you file a personal injury claim against anyone other than your employer. If you secure compensation from a third party (someone other than your employer), you may need to reimburse your employer’s workers’ compensation insurance company for any medical treatment the insurance company paid for.

**Private Insurance Providers**

Your private health insurance provider may have placed a lien on your personal injury settlement proceeds. If your health insurance provider paid for all (or a portion) of your medical bills prior to you settling your personal injury claim, you will probably have to reimburse your insurance company from your settlement proceeds.

Although health insurance policies differ by company and plan, your insurance company likely has the right to recover the amount of money they paid for your medical treatment from your personal injury settlement proceeds. Health insurance companies do not want you to “double dip” (that is, get paid twice for the same treatment). There is probably a clause in your health insurance policy stating that your health insurance provider can place a lien on your personal injury settlement.

Your auto insurance policy likely has a similar clause, providing that is entitled to place a lien on your personal injury settlement if it paid for your medical treatment or other expenses after an accident. You should review your auto insurance policy carefully for language concerning how and when it can establish a lien on your personal injury settlement proceeds.

**PIP and UIM Coverage**

In the past, insurance companies could not establish liens on personal
injury settlement proceeds when their insured purchased a separate policy rider for Personal Injury Protection ("PIP") or Uninsured/Underinsured Motorist (UIM) coverage. Now, many states have passed laws that allow insurance companies to assert liens against personal injury settlements for amounts paid out under these types of policy riders. If you have a PIP or UIM rider, you should review your policy carefully for language about whether the insurance company can assert a lien against your personal injury settlement proceeds.

**How Long Are Private Liens Valid?**

As discussed above, the federal government has up to six years to pursue a lien against your personal injury settlement proceeds. Most private insurance companies (including private health insurance providers, auto insurance providers, and workers’ compensation insurance providers) do not have this long to pursue a lien. The laws of individual states govern how long liens remain valid. If you haven’t heard from a private lien holder within one year of the date of your personal injury settlement, there’s a good chance they have waived their claim against your settlement proceeds.

Before you spend the entirety of your personal injury settlement, you should check with an experienced personal injury lawyer to make sure that any private lienholders no longer have a right to claim a portion of your settlement proceeds.
Do You Need to Hire an Attorney?

Even if you have suffered what seem to be only minor injuries, it is still a good idea to consult with a personal injury attorney. If you have suffered serious injuries it is critical to consult with a personal injury attorney. Because filing a personal injury lawsuit requires specialized skill and training, as well as a thorough knowledge of the legal system, you should never file a personal injury lawsuit without a lawyer.

There are certain types of accidents and injuries that almost always require an attorney. In these cases, hiring a personal injury lawyer will be worth the fees you must pay him or her to represent you. This is because in some situations, only a qualified personal injury lawyer can obtain the compensation you deserve for your injuries and other losses.

This chapter discusses some of the scenarios that almost certainly require the assistance of an experienced lawyer. Even if your case does not fall within any of the following categories, you have nothing to lose by consulting with licensed attorneys in your area. Most reputable personal injury lawyers offer all potential clients a free and confidential consultation about their case.

How to Know When You Need a Lawyer

You may need to hire a lawyer to represent you because you suffered serious injuries, or the legal rules implicated by your personal injury claim are highly complex. Sometimes, the insurance company refuses to settle in good faith. If you were involved in any of the following types of accidents or suffered very serious injuries, you should contact an experienced personal injury lawyer in your area right away.

1. You Suffered Long-Term or Permanently Disabling Injuries

If you sustained serious injuries in an accident that will require long-
term care or left you with permanent disabilities, you should hire a personal injury lawyer immediately. Only an experienced lawyer can calculate how much your injuries are worth. Moreover, figuring out how your injuries will impact your earning capacity over time can be difficult and generally requires expert assistance. To get the most out of your personal injury claim or lawsuit, you need a lawyer who can pursue all available forms of compensation for your injuries and other losses.

2. You Suffered Severe Injuries

The amount of compensation you ultimately receive for your injuries largely depends on how severe your injuries are. Insurance companies measure the severity of your injuries by the type of injuries you sustained, the amount of your medical bills you incurred, and the length of your recovery time. As the amount of your potential compensation increases, the more likely you are to reach the policy limits of the at-fault party’s insurance policy. If this is the case, the insurance company may only be able to pay you a fraction of what you deserve. In these types of cases, you should hire a personal injury lawyer to make sure you receive the total amount of compensation to which you are entitled.

3. There Are Multiple Parties Involved or Liability Is Not Clear

If you were involved in an accident where multiple parties may be liable for your injuries, you should contact a lawyer. When multiple parties are involved in an accident, insurance companies can be very complicated. Because several people may have been injured, there may not be as much settlement money to go around. You could also be the subject of insurance claims from the other parties, ultimately having your settlement offer decreased or reduced to nothing because of your proportional fault for the accident.

You should always contact an attorney if you have been injured in an accident and may be partially at-fault for the accident. An attorney can help protect you against counterclaims and cross-claims by the other parties who were involved in the accident.

4. The Insurance Company Refuses to Pay or Engages in Bad Faith Tactics

Sometimes, insurance companies simply refuse to make a fair settlement offer or refuse to make any settlement offer at all. If you are unable to secure a fair settlement offer from the at-fault party’s insurance company on your own, or negotiations with the insurance company have broken down,
you should contact a personal injury lawyer right away.

There is also a chance that the insurance company is engaged in bad faith insurance tactics. In that case, you will need assistance from a lawyer who has experience litigating bad faith insurance claims.

How to Hire a Personal Injury Lawyer

If you were involved in any of the scenarios discussed above, you should contact a reputable attorney right away. Hiring a personal injury lawyer is a very important decision. Your lawyer will represent your interests in settlement negotiations with the at-fault party’s insurance company, and will do so in court should you and your attorney decide that filing a personal injury lawsuit is necessary. You should make sure that your attorney is someone you trust and feel comfortable working with.
After a serious accident, you may need to hire an experienced personal injury lawyer to represent your interests in negotiations with the at-fault party’s insurance company. If you cannot secure a fair insurance settlement or negotiations break down, you and your personal injury lawyer may decide that filing a personal injury lawsuit is necessary. Hiring a qualified attorney is an important decision, and you should make sure that your attorney is someone you can trust. Here are some of the most commonly asked questions about hiring a personal injury lawyer.

**Do I really need a personal injury attorney?**

If you were involved in a minor accident and did not suffer serious injuries, it may be possible for you to negotiate a fair settlement with the at-fault party’s insurance company on your own. If you were involved in a more serious accident or settlement negotiations with the insurance company break down, you probably need to hire a personal injury lawyer to represent your interests. There are some cases that almost always require representation by a qualified personal injury attorney.

You should know that you have nothing to lose by consulting with a personal injury lawyer in your area. Most personal injury lawyers offer all potential clients a free, no-obligation consultation. A reputable attorney will give you a realistic assessment of your legal options and tell you whether or not legal representation is recommended based on the facts of your case.

Hiring a personal injury attorney offers you the best chance of securing an insurance settlement that fully accounts for your injuries and other losses after an accident. Because filing a personal injury lawsuit requires special skill and training, as well as a thorough understanding of the legal system, you should never file a personal injury lawsuit without a lawyer.

**What does a personal injury lawyer do?**

A personal injury lawyer is an attorney who specializes in helping injured people recover compensation for their injuries after an accident. Personal injury attorneys can represent you in negotiations with the at-fault party’s insurance company. If you and your lawyer determine that filing a personal injury lawsuit is necessary, your lawyer will represent you in court should your case not settle prior to trial.
A personal injury lawyer will gather facts about what happened in your accident to determine how much compensation you are entitled to receive.

Your lawyer can write a personal injury demand letter to an insurance company and engage in settlement negotiations with the claims adjuster. If you decide to file a personal injury lawsuit, your lawyer will prepare the paperwork necessary to initiate the lawsuit in the appropriate court.

Your lawyer may try to engage the other party and his or her attorney in settlement negotiations in an effort to avoid going to trial, which can be costly. If your case does not settle prior to trial, your lawyer will argue your case in court. If you prevail in your lawsuit, your lawyer can help you recover the judgment and deal with any liens you may have incurred.

**How much does a personal injury lawyer cost?**

Most personal injury lawyers represent clients on a contingency fee basis. A contingency fee (or contingent fee) is a payment arrangement in which the client pays no fee if his or her claim is unsuccessful. If your claim is successful, you will pay your lawyer an agreed-upon percentage of your judgment or settlement amount.

**How long does it take to resolve a personal injury case?**

Because so many different factors influence how long it takes to settle or resolve a personal injury claim, it is not possible to give an exact estimate of how long your case will take from start to finish. Most personal injury lawyers will not begin to engage in serious settlement negotiations with the at-fault party until you have sufficiently recovered from all of your injuries. If a lawyer acts too prematurely, you may not be able to recover compensation for unforeseen health complications or other losses.

The speed at which the insurance company investigates and ultimately resolves your claim will play an important role in how long it takes to resolve your case. The more evidence you provide to the insurance company about your accident and injuries, the easier it will be for the insurance company to offer you a fair settlement within a reasonable time frame. If an insurance company has unreasonably delayed making a decision about your claim, it may be engaging in bad faith insurance tactics.
If you and your personal injury lawyer decide that filing a personal injury lawsuit is necessary, it could take several months or more than a year to resolve your case. Among many other factors, the time it takes to bring a personal injury lawsuit to settlement or trial depends on how clear it is that the other party was negligent, whether the other party is willing to settle before trial, how much discovery is needed, and how busy the court or judge is.

An experienced personal injury lawyer should be able to give you a rough estimate of how soon your personal injury claim may be resolved. Be wary of any lawyer who makes guarantees about resolving your case within a short period of time, such as a month. Even the most experienced lawyers can’t always predict how long it will take to resolve a claim.

**How should I find the right personal injury lawyer for me?**

Hiring a personal injury lawyer is an important decision. Your attorney is someone with whom you will work very closely, so you should make sure you are comfortable with this person before signing a representation agreement. Today, most people find their personal injury lawyers by searching online or asking for a referral from someone they know. You can easily search for attorneys in your area using Google or Avvo.com.

Do not be afraid to ask potential attorneys for references from past clients. You should also be sure that your attorney has brought cases similar to yours to trial before.
Questions to Ask Your Personal Injury Lawyer

Securing compensation for your injuries and other losses after a serious accident can be very difficult. You may need to hire an experienced personal injury lawyer to represent your interests in settlement negotiations with an insurance company. You should never file a personal injury lawsuit without first consulting with an attorney. Before you hire a personal injury attorney, there are some very important questions that you should ask.

Your lawyer is someone with whom you will work very closely. You should feel comfortable with this person, and consider him or her a trusted advisor. Interview at least two (2) attorneys before making a decision about who you want to represent you. Here are some questions you should want to ask potential personal injury lawyers:

What are your fees?

Most personal injury lawyers work on a contingency fee basis. This means that you will not have to pay a fee unless you recover money damages in your lawsuit.

If you recover money damages, your personal injury lawyer will take a percentage of the award, typically between 25 percent (25%) and 40 percent (40%).

It is important to understand the qualifications of the attorney you hire. While an attorney may say he or she will only charge you a 25% contingency fee, he or she may not be qualified to handle your personal injury lawsuit.

If I lose, will I be responsible for any case-related costs?

Some personal injury lawyers charge for any case-related costs they advance in addition to the contingency fee. Ask your lawyer who will be responsible for these costs (also known as “out-of-pocket” costs) in the event that your personal injury lawsuit is unsuccessful.

Have you tried any personal injury cases similar to mine to juries
before?

Never assume that a personal injury lawyer has handled a case similar to yours before. Ask every potential lawyer about his or her experience and results. If you were injured in a slip-and-fall accident, you may not want to hire a personal injury attorney who has only worked on car accident lawsuits. Similarly, you probably would not want to hire a lawyer who primarily works on workers compensation cases to represent you in your auto collision case.

How much time can you devote to my case?

Many lawyers take on too many cases at once and will sit on your case while they sign up additional clients. Ask potential personal injury lawyers about how much time they have to devote to your case right now. Stress that it is important to you to get the ball rolling on your lawsuit right away. Ask when your case will be filed.

Typically, how long does it take to resolve a case like mine?

Ask personal injury attorneys about how long it usually takes to resolve a case like yours. Many factors can influence how long it takes to resolve a case, but potential lawyers should be able to give you a rough estimate. Be sure that your lawyer is committed to resolving your case as quickly as possible under the circumstances.

Will my case go to trial? What is your success rate at trial?

Be wary of any lawyers who tell you early on that your case is going to settle. Your personal injury lawyer should expect every case to go to trial and prepare as if your case will be tried before a jury. That way, you can enter settlement negotiations with the defendant armed with as much evidence as possible. This will help ensure that you receive the fairest settlement possible. If your case ultimately goes to trial, you want to make sure that your personal injury attorney has won cases before a jury.

What is my case worth?

Personal injury lawyers should have a good idea of what your case is worth. At the very least, an attorney should be able to provide a spectrum and explain how various factors such as discovery, liability, and preexisting medical issues might impact a settlement offer or verdict. Do your research and use your best judgment in evaluating a potential lawyer's claims. Be wary of personal injury lawyers who make estimates that seem completely
unrealistic.

Who will handle my case?

Ask who at the firm will handle the various aspects your case. Some personal injury firms like to float senior partners in front of potential clients who are never seen again once the representation agreement is signed. Ask who will be your contact and who you can expect to speak with when you have questions about your case. Ask whether less experienced associates will be handling your case and if so, who is responsible for supervising them.

What is my role in the lawsuit?

Before hiring a personal injury lawyer, make sure you understand your role in the lawsuit and what will be expected of you. Some people want to be very involved in their case, attending depositions and other meetings. Will your lawyer allow this? Some lawyers do not. Many clients want to let their lawyers handle the case and remain on the sidelines. Make sure that you and your personal injury lawyer are on the same page about what your relationship will look like.

Can I speak to a past client?

Don’t hesitate to ask a potential personal injury lawyer for references. Hopefully, the attorney will be able to provide you with contact information for at least one satisfied former client. You should never rely on website copy or promotional materials alone – these may have been heavily edited.

Choosing a personal injury lawyer is an important decision. Be sure to make an informed one. Weighing your options carefully will offer you the best chance of a satisfying and beneficial relationship with your personal injury attorney.

About the Law Firm of McCormick & Murphy, P.C.
McCormick & Murphy, P.C., was formed by Kirk R. McCormick and James “Jay” Murphy in 1995. Since 1990, Mr. McCormick and Mr. Murphy have practiced in the areas of personal injury and insurance bad faith. They have more than 40 years combined legal practice experience, specialized knowledge, and a wealth of accomplishments. They have been admitted to practice in the Colorado state and federal courts, as well as other courts in the United States at various times.

McCormick & Murphy understand the challenges that their clients and their families face following a personal injury. They are dedicated to helping their clients and their families navigate through the frustrating legal process with personal care and attention, so they can move forward with their lives and recovery. McCormick & Murphy help injured clients and their families seek the relief they deserve in cases involving:

- Serious Injuries and wrongful death
- Car Accidents
- Trucking Accidents
- Motorcycle Accidents
- Drunk Driving Accidents
- Animal Attacks and Dog Bites
- Vehicle Defects
- Product Liability
- Premises Liability
- Burn Injuries
- Defective Products Injuries
- Nursing Home Neglect Injuries
- Insurance Company Bad Faith/Denial of Benefits/Breach of Contract

McCormick & Murphy handle most personal injury claims on a contingent fee basis. Attorney fees are paid if and when a recovery is made for the client. If there is no recovery through settlement or judgment, there is no fee. Our main office is located near I-25 and Cimmaron in Colorado Springs. If you cannot come to us, we can come to you.
McCormick & Murphy, P.C.
Mr. McCormick began his legal career as a prosecutor in Des Moines, Iowa, following his graduation from Drake University Law School. After moving to Colorado Springs in 1986, Mr. McCormick handled multi-million dollar commercial lawsuits for Colorado Interstate Gas Company, and later became a partner in the largest law firm in the state that focused its practice on representing insurance companies.

Since 1995, when he and Mr. Murphy formed the law firm of McCormick & Murphy P.C., Mr. McCormick has focused his practice on representing seriously injured Coloradans who have been injured in accidents, which includes automobile and motorcycle accidents, defective products and premises liability.

One of Mr. McCormick’s focus of his practice is representing Coloradans who have been injured as a result of the bad faith denial of claims by insurance companies. He is an experienced trial attorney and one of the finest Colorado personal injury attorneys, who has successfully handled hundreds of personal injury cases, opposing many of the nation’s leading insurance companies and corporations.

**Education:**
Mr. McCormick graduated Drake University Law School in Des Moines, Iowa. He obtained his Bachelor of the Arts from Grand View College in 1981.

**Licensure:**
- Iowa Bar (1984 / Inactive)
- Colorado Bar (1987)

**Admitted to practice:**
Mr. McCormick is licensed and admitted to practice in all Federal and State trial courts located in the State of Colorado, and has at various times been
McCormick & Murphy, P.C.

admitted to practice, and has handled lawsuits in Federal Court in Kansas, Oklahoma, and Texas.

Experience:
Following law school, Mr. McCormick was licensed to practice law in Iowa, where he worked for 2 1/2 years prosecuting major felonies. After moving to Colorado Springs in 1986, he worked as a litigation attorney for Colorado Interstate Gas Company, where he was responsible for defending the company in multi-million dollar commercial lawsuits. He later became a partner in the Denver based law firm of Hall & Evans, which at the time was the largest law firm in the state focusing on the representation of insurance companies. Over the years, Mr. McCormick has tried dozens of cases to juries.

Professional Membership:
Mr. McCormick is a member of the El Paso County Bar Association, the Colorado Trial Lawyers Association, and the Christian Legal Society.
James Murphy, Esq.

Mr. Murphy has been a licensed attorney since 1989. Originally from northern California, Mr. Murphy worked as a law clerk for the Colorado Court of Appeals in Denver, and moved to Colorado Springs in 1990. He has practiced personal injury law since 1990. Between 1990 and 1995, Mr. Murphy worked as a litigation defense attorney representing individuals, insurance companies and large corporations.

Since forming the law firm of McCormick & Murphy, P.C. with Mr. McCormick in 1995, he has focused his practice on representing injured Coloradans. He is an experienced trial attorney and one of the premier Colorado personal injury attorneys who has successfully handled hundreds of injury cases.

Mr. Murphy represents people with serious injury and death claims. His practice is focused on helping people injured by automobile and truck accidents, dangerous conditions on property, and insurance company bad faith.

**Education:**
Mr. Murphy attended law school at Santa Clara University School of Law in California. Prior to that, Mr. Murphy attended U.C. Davis and Santa Clara University in California where he obtained his Bachelor of Science degree in Commerce (Accounting) from Santa Clara in 1984.

**Licensure:**
Mr. Murphy is licensed to practice in all Federal and State trial courts located in the State of Colorado.

**Admitted to Practice:**
- Colorado Bar (1990)
- California Bar (1989)*
- Colorado CPA (1990)*
- California CPA (1988)*
*license inactive or no longer maintained

**Experience:**
Prior to attending law school, Mr. Murphy worked two years for a national CPA firm and became a Certified Public Accountant. After graduating from law school, Mr. Murphy spent a year working at the Colorado Court of Appeals and then 5 years as a civil litigation attorney working with two large Colorado insurance defense law firms.

**Professional Membership:**
Mr. Murphy is a member of the Colorado Bar Association, the American Association for Justice (formerly ATLA), and the El Paso County Bar Association. He is also a member of the Colorado Trial Lawyers Association, and has served this organization as a member of the Board of Directors.

**Awards:**