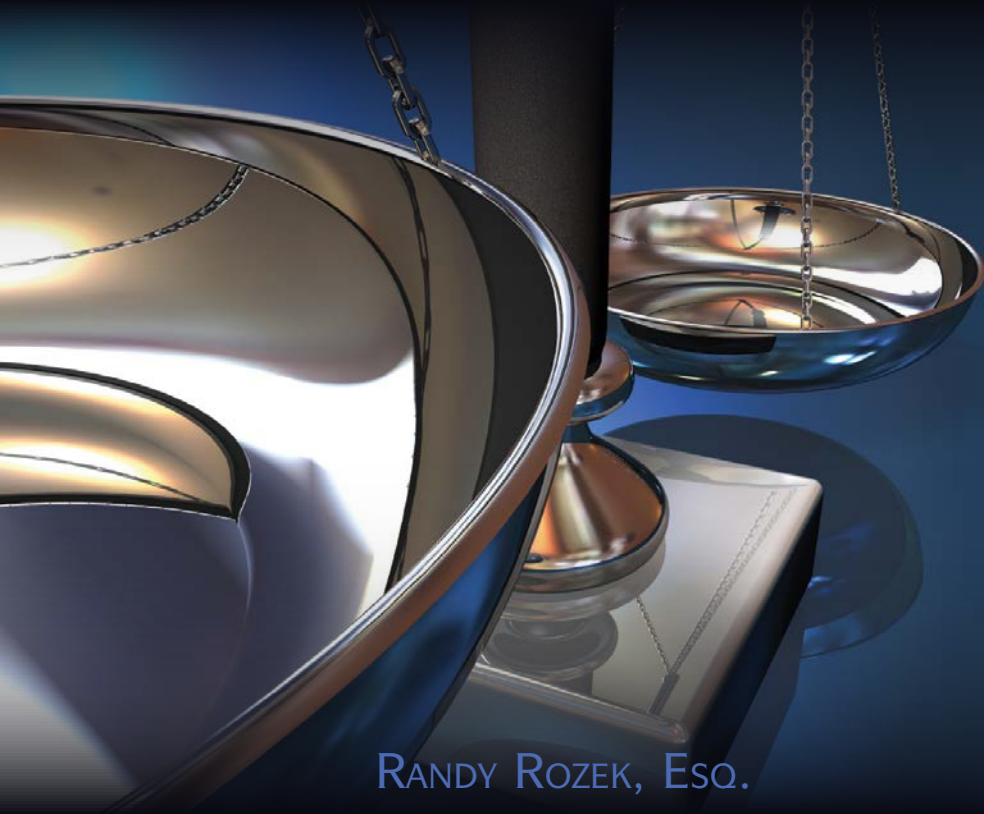


A Consumer's Guide:

# Auto Accidents in Wisconsin



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ATTORNEY AT LAW

**ROZEK**   
LAW OFFICES, S.C.



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Second Edition

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Printed in the United States of America.

ISBN-10: 0-9798525-2-8

ISBN-13: 978-0-9798525-2-7

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## Introduction

We have all seen the television advertisements, *“If you’ve been injured in an automobile wreck, call me”* or *“My lawyer got me \$200,000 and I wasn’t even really injured!”* With these advertisements, how can the typical consumer distinguish a reputable law firm from a less than reputable law firm, especially when it comes to a serious, disabling injury.

The central goal of this book is to assist the automobile crash survivor or their loved ones, in the search for the right attorney for their particular case. Although we cannot guarantee success in this endeavor, the purpose of this book is to educate the reader about how to select – and just as importantly – deselect certain lawyers through an informed decision-making process.

This book begins by explaining the elements of a Personal Injury case, then answers frequently asked questions following an automobile accident and finally introduces you to common defense arguments insurance companies make in an attempt to pay less money to injury victims. This book provides information about what should be done following an injury or accident and identifies common mistakes that can hurt your case. The book explains why it is critical that you hire the right lawyer for your automobile accident case from the beginning.

This book is not meant to provide legal advice. Instead, the goal is to educate you about personal injury claims in general and provide information that may help you avoid making mistakes that could hurt your case. This book

cannot be considered a substitute for the sound legal advice of an experienced, licensed Wisconsin personal injury lawyer.

If, after you read this book, you have questions or you need more information, please feel free to call for specific legal advice and counsel.

## ***Why Was This Book Written?***

When I began representing personal injury victims (known in the insurance industry as claimants), it became immediately obvious that claimants were at a huge disadvantage if they were not represented by a lawyer. A 1999 study by the Insurance Resource Council revealed that claimants represented by lawyers received settlements three times larger than unrepresented claimants with similar injuries.

Many injury victims do not understand the adversarial relationship between an injured person and insurance company. In general, the less an insurance company pays for a claim, the higher their profit margin. Multiply this by hundreds or thousands of claims per month and you will begin to see an insurance company's benefits in paying less for each claim. If an insurance company's objective is to pay as little as possible, and a claimant's goal is to obtain fair and reasonable compensation for injuries, then it should be clear that the two parties are not aligned. My hope is that in educating claimants about the personal injury process, more claimants will be able to make informed decisions about their case.

In speaking with friends, family members, and clients, it became quite apparent that the average consumer does not understand personal injury lawyer advertisements, contracts, fee structures, and the proper steps to take in making an informed decision in hiring a lawyer for their personal injury case.

In researching the book, I decided to start by looking in the Yellow Pages and analyzing the ads. I was disappointed. Then I started paying attention to the personal injury lawyer television ads. I became frustrated. The underlying theme of the vast majority of lawyer ads consisted simply of a generic slogan with very little actual substance. Some ads had a little more substance, such as listing their membership to certain legal organizations. However, even these ads failed to explain the significance of these organizations and why it might benefit the consumer. Some ads were downright misleading.

There clearly was a disconnect between the majority of lawyer ads and what was really important to an injured person in choosing a lawyer. What was even more clear was that this disconnect was the fault of the lawyers running the ads, NOT the injured person viewing the ads. I was not able to find any ads that actually educated the injured person about lawyers or the legal process.

*What do the slogans below actually mean?*

- “No Fee Unless You Win”
- “Free Consultation”
- “Home and Hospital Visits”
- “Serious Injuries”



- *“24 Hour Availability”*
- *“One Call... That’s All!”*
- *“Don’t Drop the Ball. Make the Call!”*
- *“Don’t Settle For Less”*
- *“Full Service Law Firm”*
- *“We’ll Fight For You”*
- *“AV-Rated”*
- *“Wisconsin Super Lawyers”*
- *“Rated Best Lawyers”*
- *“50 Years Combined Experience”*
- *“\$20 Million Verdict”*
- *“Extensive Experience”*

Once I overcame my initial disappointment in lawyer ads, I reflected. The majority of the public has a negative view of lawyers in general. The public attitude towards personal injury lawyers is even worse. Then I considered the fact that, fortunately, the majority of the public actually has no need to contact a lawyer, let alone a personal injury lawyer. Therefore, for many people, the only contact they have is what they see on TV or in other advertisements. This explains much of the negativity, especially for personal injury lawyers. If personal injury lawyers would realize this and take pride in the fact that they are actually in the business of helping people – and advertise with this in mind, then perhaps public perception of personal injury lawyers would improve. As a result, perhaps the truly injured would be able to access the service they deserve.

## *About the Author*

Wisconsin attorney Randy Rozek has devoted his professional career to representing individuals harmed by the negligent or intentional conduct of others. Randy has successfully taken on many large corporations and insurance companies throughout the United States. Attorney Rozek has his own office, ROZEK LAW OFFICES, S.C. in Milwaukee and Madison, Wisconsin.



# ***4 Elements Of Every Personal Injury Case***

## ***1. Duty***

In general, duty refers to the reasonable amount of care a person should use in a particular circumstance. For example, in the case of an automobile accident, all drivers are required to obey the Rules of the Road. These Rules of the Road are contained in the Wisconsin Statutes and are clearly explained in a State of Wisconsin, Department of Transportation booklet, which is reviewed and taught in driver's education classes.

## ***2. Breach***

Once a duty on the part of an individual is established, it must be shown that someone breached that duty. In the automobile accident example, the duty is that drivers must stop for a red light; the breach of the duty is the act of not stopping for the red light..

## ***3. Proximate Cause***

Proximate cause simply means that the injuries are caused by the breach of the duty. Lawyers use a variety of means to prove proximate cause. Most commonly, a medical doctor testifies that the injuries and medical bills are due to the injuries sustained from the accident, i.e. they are Proximately Caused by the accident.

## ***4. Damages***

Damages refer to an individual's harms and losses from an injury. Damages for serious personal injury cases can include the following:

- Past Medical Bills
- Past Wage Losses
- Past Pain, Suffering, Disfigurement and Disability
- Future Medical Bills
- Future Wage Losses
- Future Pain, Suffering, Disfigurement and Disability



Frequ

Asked



## ***Common Questions Following your Auto Accident (Frequently Asked Questions)***

***Question: Do I have a case?***

***Answer:*** The success of a case will depend on the specific facts and laws involved. Generally, if you can show all of the elements on the prior page (Duty, Breach, Proximate Cause and Damages) then you have a valid personal injury claim. If you think you have a claim and want some feedback, you can send me an email directly at [info@rozeklaw.com](mailto:info@rozeklaw.com).

***Question: How much is my case worth?***

***Answer:*** There is no magic formula or process by which an attorney can predict with certainty the amount of money a person is entitled to receive, especially where damages are awarded for subjective elements called 'pain and suffering' and 'loss of enjoyment of life.' However, our office will usually have a pretty good idea of a reasonable settlement range after your medical condition has stabilized. We rely on such factors as the extent and permanency of your injuries, the type and duration of your medical treatment, the cost of your medical bills, the anticipated cost of any future medical

treatment, the effect your injuries have had on your life and work, prior jury verdicts and/or arbitration awards received for similar injuries and my experience. Ultimately, the value of any given case is determined by the jury's verdict after a trial on the merits is held.

*Question: How much do you charge?*

*Answer:* Our fee is contingent on the outcome of your case. That is, if a recovery is obtained for you, our fee is a percentage (usually one-third) of the amount collected. No attorney fees will be paid if there is no recovery. Our office will also advance all costs necessary to pursue your claim so you will not have to pay any money up front. Costs are then paid out of the recovery at the conclusion of your case.

*Question: What if I wasn't injured but I sustained damage to my car or other personal property?*

*Answer:* As a personal injury law office, we only accept cases where the individual has sustained injury. This is because our fee is a percentage of the recovery obtained on behalf of the injured claimant. Most property damage claims cannot be pursued economically by an attorney where he or she is forced to charge you an hourly rate, which is often at least \$150 per hour. Most insurance companies are reasonable when it comes to settling property damage claims which means you probably can settle your property damage claim by yourself. See page 15 for "About Your Property Damage Claim."

*Question: I'm confused about the different types of coverage listed on my automobile insurance policy -- what exactly is BI, UM UIM and MedPay coverage?*

*Answer:* BI stands for "bodily injury." This type of coverage will pay claims for injury you negligently cause to another as a result of the use of your vehicle. Wisconsin law does not require mandatory liability insurance, however, if one does obtain insurance coverage,



then the law requires that the bodily injury policy limits are at least \$25,000. UM stands for “*uninsured motorist*” coverage, which is also required for all liability policies. This provides coverage for you if someone without insurance causes injury to you. UIM is “*under-insured motorist*” coverage. If you are injured by a negligent driver who does not have enough liability insurance to fully compensate you for your injuries, then you may make a claim with your own insurance carrier if you have UIM coverage. When you make a UM or UIM claim, your insurance carrier “*stands in the shoes*” of the negligent driver and is permitted to assert all defenses that this driver may have had against you (e.g., comparative fault, excessive medical treatment, etc.). “MP” or “MedPay” coverage is Medical Payment Coverage which provides you with a certain amount of coverage to pay medical bills due to the accident.

*Question: What happens if I was injured in a collision caused by an uninsured driver?*

*Answer:* You may have a claim for UM benefits under your own policy. If you make a UM claim, your own carrier has the right to use all defenses that the other driver may have had against you. A UM claim essentially creates an adversarial relationship between you and your own insurance carrier. Thus, it may be wise to retain experienced counsel when asserting a UM claim. As can be expected, your own carrier will NOT be looking out for your interests (even though you are its own insured!). Instead, your carrier will be looking for ways to pay out as little money as possible. In the event you do not have UM coverage, you may have no other practical means of obtaining compensation for your injuries. This is why you should always carry UM coverage, preferably with limits of at least \$100,000.

### *Disclaimer*

After all, what lawyer mailing would be complete without a “*disclaimer*”? This booklet is not meant to constitute legal advice. You may use this booklet for guidance in navigating your way through the complex process of insurance claims following an auto accident. However, no attorney-client relationship is created until you formally retain my office and the content of this booklet is not meant to constitute legal advice.

### *Question: Can I settle my case on my own without an attorney?*

*Answer:* If most people could settle claims on their own for fair value, we wouldn't need lawyers. Lawyers are necessary because there is no formula for determining the value of a given claim. Representing a person's rights is complex -- to do it successfully takes formal training, experience and some hard-earned intuition. Think about it, insurance companies make a lot of money settling claims for far less than what they are worth. If you don't settle claims for a living, how are you to know whether the insurance company's offer is fair and reasonable? Without representation by an experienced, reputable personal injury attorney, a person can seriously damage the value of his or her case. However, some claims do not require the assistance of an attorney. Each case is different and depends on its own set of facts. If we believe we can't recover a higher settlement than the insurance company's last offer, or that the attorney fee will leave little money left over for you, we usually will decline to take the case and advise you to settle on your own. We always decline to accept a case if the client is likely to recover as much money without the assistance of an attorney.

### *Question: I'm not the type of person to sue someone. Is that what I'm doing if I hire you?*

*Answer:* No. A Claim is *NOT* a Lawsuit. Initially, we are simply bringing a Claim against the at fault driver's insurance company (or your insurance company if the at-fault driver was uninsured). Our



office will attempt to settle your Claim prior to filing a Lawsuit. Once your medical condition has been fully addressed by your doctor, our office prepares a settlement demand package and we submit it to the insurance company. The insurance company then makes an offer and I attempt to negotiate and obtain their highest offer. Once I am comfortable that I have obtained their top offer, YOU will decide whether to accept this offer or proceed to the next step, which is suing the insurance company. The ultimate decision to settle the case at the Claims stage or to file a Lawsuit is YOUR decision. I will advise you along the way and tell you whether I think we would be better off filing a Lawsuit, but the final decision will ultimately be yours.

*Question: If I hire your office, how long will it take to settle my case?*

*Answer:* The only honest answer is “*It depends.*” Many attorneys advertise that they will get you a “quick settlement” or “*fast cash,*” but not all cases can or should be settled quickly. Your medical condition really dictates when we can proceed to the settlement stage of your case. Unless there is a limited amount of insurance available, your lawyer is doing you a disservice if they attempt to settle your case before your medical condition has stabilized. Our office fully develops and documents *ALL* of your damages in order to get you a full recovery for *ALL* of your harms and losses from the accident.







## ***About Your Property Damage Claim***

Under Wisconsin law, if your vehicle has been damaged due to someone else's negligence, you are entitled to compensation for your losses. The amount of compensation will depend on the value of the property and the extent of the damage.

### ***Repairable Automobiles - You are entitled to the following:***

- 1.** The Cost of Repair of the Vehicle - whether or not you actually decide to have the vehicle repaired.
- 2.** The Loss of Use of the Vehicle - the will compensate you for the cost of a reasonably comparable rental vehicle while you are unable to use your vehicle for any period of time from the time of the crash to the time the vehicle is repaired.
- 3.** The Diminished Value of the Vehicle - sometimes when vehicles sustain damage and are repaired, their resale value drops. You are entitled to the loss in value of the vehicle after the repair.

*Non-Repairable or Totaled Vehicles -  
You are entitled to the following:*

1. The Fair Market Value of the Vehicle - this is usually referred to as the “Blue Book” value, which can be obtained at *kbb.com*. Technically, this is just one indicator of the fair market value of the vehicle, which is really just the amount for which the vehicle could be sold. Usually, if the cost to repair the vehicle is 70% of the fair market value of the vehicle, the insurance company will consider it Totaled or a “Total Loss.”
2. The Loss of Use of the Vehicle - this will compensate you for the cost of a reasonably comparable rental vehicle while you are unable to use your vehicle for any period of time from the time of the crash to the time you get the insurance companies total loss payment.

**WARNING!**

When settling your property damage claim, be sure not to sign a general release, releasing the personal injury portion of the claim. Read the release carefully!





# MISTAKES

## ***10 Common Mistakes That Can Ruin Your Personal Injury Case***

The following list is considered to be 10 common mistakes that can ruin your personal injury case. This list is based upon years of experience witnessing such mistakes, as well as conversations with lawyers and judges.

### ***1. Hiring the Wrong Lawyer From the Beginning.***

Sure their TV ads tout their trial experience and claim they handle “*Serious Personal Injuries*,” but they may actually have little or no trial experience. If this is the case, then you can assume the insurance company knows this too. In Wisconsin, it is very difficult to fire your personal injury lawyer and then find another lawyer to represent you. This is because Wisconsin law awards the contingent fee to the first lawyer. The second lawyer is compensated on an hourly basis. See page 29, “*The Importance of Choosing the Right Personal Injury Attorney in Wisconsin.*”

## 2. *Signing a Release Too Early.*

Insurance companies often attempt to convince an injured person to sign a release early on, settling their personal injury case as quickly as possible after an accident. A quick settlement almost always equals less compensation for the injured person. *Do not settle your case unless you are sure that your injuries have resolved and you will have no problems in the future.*

Usually doctors are not able to assess a permanent medical condition until a year to 18 months post-accident. A quick settlement prevents an injured person from making a claim for permanent injury.

## 3. *Giving a Recorded Statement to the Insurance Company.*

One of the first things an insurance adjuster will attempt to do following an accident is obtain a recorded statement from everyone involved in the accident. Insurance adjusters receive training for asking questions that will elicit responses in their favor. The most common tactic used by insurance adjusters is to attempt to show that your actions or inactions somehow caused or contributed to the accident. If an insurance adjuster has requested that you give a recorded statement, ask yourself *"How will a recorded statement benefit my case?"* The answer is usually *"It will not."* **ALWAYS** speak to an attorney for advice before consenting to a recorded statement.

## 4. *Not Seeing a Doctor After an Accident.*

In any personal injury case, the injured party has the burden of proving their injury to the jury. This is mainly done through testimony from doctors. If you try to tough it out and wait for your symptoms to resolve *BEFORE* seeing a doctor, then you have just created a very difficult personal injury case to win.

If you go into court 2 years after an accident and are claiming a permanent injury, but you didn't see a doctor for the first 2 months following your accident, a jury would be suspect of any claim of permanent injury. As much as many of us hate going to the doctor, the failure of an injured person to timely see their doctor can ruin their case.

### ***“Full and Final Release” ...Not Always***

There are sometimes ways to get around certain releases. The standard language in most insurance company releases provide that the injured person is releasing the insurance company from “all known and unknown injuries” arising from the accident. I once represented a woman that settled her case for \$3,500 only three weeks after her accident. She signed a release that had the standard language preventing her from making claims for “all known and unknown injuries.” Later she developed a very painful medical condition known as RSD due to the accident, but it was diagnosed until after she had signed the release. We sued the insurance company, arguing that she and the insurance company executed the release based upon a mutual mistake, i.e. the undiagnosed condition. We were able to settle her case shortly before trial for \$400,000. The settlement likely would have taken place much earlier and possibly for a greater amount had she not signed a prior release.

*If you feel you may have settled your case too early, feel free to call me to determine if there is any way it can be reopened.*

5. ***Immediately Going to a Doctor or Referred by a Lawyer.***  
Some personal injury firms that have “*high volume*” practices send most of their clients to a select group of doctors or chiropractors. Although these lawyers know the doctors or chiropractors well, the insurance companies will also know them well. At **ROZEK LAW OFFICES**, we usually recommend that injury victims first see their primary care physicians



and attempt to obtain proper treatment or appropriate referrals. Primary care physicians can be very powerful witnesses because they have known the injury victims before and after the injury; therefore, they know how the accident has changed their patient's physical condition and quality of life. Sometimes our clients' treating doctors refuse to get involved in the lawsuit. In those situations it may be necessary to send the client to a doctor willing to get involved in the case.

#### **6. *Not Taking Photographs***

A picture is worth a thousand words. Photographs of any visible injuries, such as bruising and cuts can be invaluable in a personal injury case. Oftentimes, the medical records do not accurately and effectively describe the true nature of the visible injuries. These visible injuries also usually clear up within a few days or weeks, so it is critical that you obtain photographs before it is too late. Also, the property damage to your vehicle should be photographed before the car is repaired or salvaged.

#### **7. *Minimizing Your Injuries.***

Oftentimes, injury victims are reluctant to complain of their pain, hoping that it will get better. Insurance adjusters are trained to ask questions in a manner that encourages injury victims to minimize their injuries. Doctors can also be reluctant to explore the full extent of the injuries if there is a possibility of becoming a witness in a personal injury case. If you are in pain you must be honest and forthright about your complaints.

#### **8. *Exaggerating Your Injuries.***

One of the most common defenses in any personal injury case is that the injured party was experiencing more pain than they should have experienced, considering the nature of the injury. The defense will imply that the injured person is exaggerating their symptoms in an attempt to get more money. Jurors can be very receptive to this argument, especially in cases where there are claimed injuries that cannot be seen, e.g. mild traumatic brain injuries, whiplash injuries, etc. If there is any



documentation that could suggest exaggeration of symptoms, then you can bet that the insurance company will make it a central part of their case.

In describing your symptoms to your doctor, the defense doctor, your lawyer, the other side's lawyer at your deposition, and your friends, be as descriptive and accurate as possible, but ***NEVER EXAGGERATE***. Although one of the most important qualities of a good doctor is the ability to listen, some doctors are not good at it. Most people have experienced the doctor that seems to have already decided on the course of treatment prior to entering the examination room. This behavior can lead an injured person to attempt to get the doctor's attention by exaggerating. Don't do it. Read page 23, entitled "*5 Ways To Get Your Doctor's Attention About Your Injuries.*"

#### ***9. Not Being Completely Honest About Your Activities.***

In today's world, it is quite common for insurance companies to investigate the background of injury victims. Insurance companies routinely hire private investigators to conduct videotaped surveillance of injury victims. If you tell the insurance adjuster or your doctor that you are unable to do a specific activity due to your injuries, and there is a videotape of you actually doing that specific activity after their accident, then you can forget about your personal injury claim. You have lost all credibility with the insurance adjuster and you will have a difficult time convincing a jury that your injury is really as severe as you are claiming. Worse yet, Wisconsin law does not always require the disclosure of this type of video surveillance until the time of trial. Many of my clients have been videotaped by the insurance company, but fortunately the videotapes confirmed their complaints, which increased the value of their case.

## ***Special Warning Regarding Social Networking Sites***

Insurance companies are now routinely conducting online searches of injury victims. If you have not done so, then I suggest you “google” yourself immediately. You may be surprised by the results.

Many online social networking sites (e.g. FaceBook, MySpace, LinkedIn, etc.) will allow you to control the content visible to the public. Be careful what you write on your pages. If a lawsuit is required to be filed in your case, the insurance company lawyer will likely make a demand for all of your social networking data. I have successfully objected to such requests as being unreasonable, however, depending on the particular judge it could be discoverable by the other side and used as evidence.

### ***10. Not Being Honest About Prior Health Problems.***

The most common example of failing to disclose all pertinent facts is when clients fail to tell their doctor or their lawyer that they have had prior accidents or injuries to similar body parts. If the doctor is not aware of this prior problem from the beginning and it is sprung on them from the insurance company or their lawyer, then they inevitably change their opinion. Wisconsin has a very favorable jury instruction on aggravation of a pre-existing medical condition. However, if the injury victim’s lawyer is not aware of this prior injury at the outset, then proper case strategies cannot be implemented.



## 5 Ways To Get Your Doctor's Attention

### 1. *Always try to use the word "new."*

*"...following the accident, I have a constant new pain..."* A description of new pain since the accident, will usually lead the doctor to only one conclusion. The accident caused the new pain.

### 2. *Pinpoint the location.*

*"...at the base of my skull..."* The more precise you can be, the easier it will be for your doctor to make a diagnosis. Describing the exact location can also let your doctor know if it is time to refer to you a specialist.

### 3. *Use strong adjectives.*

*"....a stabbing pain..."* The use of strong adjectives by a patient usually ends up in the medical records, which can be of great assistance later on.

### 4. *Rate your pain.*

*"...maybe a 6 out of 10..."* This provides the doctor with some idea as to the severity of your pain. Later it can be used to determine improvement with treatment, i.e. a decrease in pain from a 9 to a 5 would show improvement.

5. *Tell your doctor things you cannot do.*

If you “*can’t lift your child*” or you “*can’t concentrate at work*,” this informs your doctor that your injuries are affecting your life or your work.





## ***40 Arguments Insurance Companies Use to Diminish your Claim***

Aggressive insurance companies will try many tactics to reduce the amount of money they will have to pay out on your claim. Rozek Law Offices has been able to overcome many insurance company arguments in the past. One of the keys to our success is that we have enough experience to recognize these arguments early on and work to overcome them throughout the case.

1. You were more at fault in causing the accident; therefore, you are not entitled to recover anything.
2. You were partially at fault in causing the accident; therefore, your damages should be reduced by a substantial percentage.
3. Your injuries were caused by something other than the accident in question.
4. You were not seriously injured in the accident.
5. You were seriously injured in the accident, but you should have gotten better sooner.
6. Your medical records show that your injuries pre-existed the accident.

- 7.** You exaggerated your symptoms to your doctor.
- 8.** You saw the doctor for too long.
- 9.** You didn't take an ambulance to the emergency room immediately after the accident; therefore, you were not seriously hurt.
- 10.** You have pain now that you didn't have at the emergency room; therefore, any current pain complaints are not related to the accident.
- 11.** You now claim injuries that you did not complain of in your recorded statement taken shortly after the incident.
- 12.** You failed to tell your doctor about past injuries to similar areas of your body.
- 13.** You missed doctor or therapy appointments; therefore, you not really hurt.
- 14.** You have a lawyer that never goes to trial; therefore, we know we can pay you less to make your case go away.
- 15.** You waited too long to see a doctor after the incident.
- 16.** You have a history of past injury claims.
- 17.** You were referred to your current doctor by a lawyer.
- 18.** You had a subsequent accident that caused your injuries
- 19.** You did not miss any time from work; therefore, you could not have been seriously injured.
- 20.** Your doctor did not provide you with a written work excuse; therefore, you should have gone back to work immediately after the incident.
- 21.** You had a poor work history prior to the incident; therefore, you likely would have missed work anyway.
- 22.** Your prior tax returns do not match the claims you are now making about lost income.
- 23.** You failed to file tax returns in the past.
- 24.** The statute of limitations has expired (usually three years in Wisconsin).

25. You have no visible signs of injury.
26. You did not give a recorded statement to us; therefore, we cannot fully evaluate your case.
27. You did not notice the other car until impact or immediately before impact; therefore, you were inattentive and at fault.
28. You told the police or your doctor that the other car hit you from behind was going 50 m.p.h.; however, since most people could not have known the speed of someone behind them...you must be lying.
29. You were speeding; therefore, you must be at fault in causing the accident.
30. You stopped too fast in traffic, causing the other driver to rear-end you.
31. You were not wearing a seatbelt; therefore, you caused your own injuries. Note: Wisconsin law limits comparative negligence for failing to wear a seatbelt to 15%.
32. This type of car accident could not have caused the specific injuries you are claiming.
33. There was little damage to your vehicle; therefore, you could not have been too seriously hurt.
34. No police came to the scene; therefore, you could not have been seriously hurt.
35. No one else in your vehicle was injured; therefore, you should not have been injured.
36. There were no independent witnesses to the collision; therefore, it is our driver's word against yours and our driver is not making a claim for injuries so he/she must be more credible.
37. You should have been able to avoid the collision.
38. Your ability to drive was impaired by alcohol, drugs, and/or medication.
39. Our driver lost control due to invisible "black ice" which created a sudden emergency situation for which he/she is not responsible.

- 40.** You were on a cell phone at the time; therefore, the collision was your fault.

There are many other arguments in addition to those listed above. Insurance companies and their lawyers can get very creative in their defense of an injury claim. Most people find that an experienced personal injury lawyer is necessary to anticipate and overcome these arguments.





# Attorney at Law

## ***The Importance of Choosing the Right Personal Injury Attorney In Wisconsin***

Wisconsin is different than most other states in that it is very difficult to fire your lawyer and hire a new lawyer in a contingent fee case. While a client does have a right to fire their attorney at any time for any reason, as a practical matter, in a contingent fee case, it may be more difficult finding a new attorney than the client originally expected.

In most states, if a client hires *Lawyer A* but later fires *Lawyer A* and hires *Lawyer B*, then *Lawyer A* gets an hourly rate for the time they spent on the case prior to their firing. *Lawyer B* is entitled to the amount of the contingent fee minus the amount paid to *Lawyer A*. ***IN WISCONSIN, THE OPPOSITE IS TRUE.*** Lawyer A gets the contingent fee, minus a reasonable hourly fee for the amount of time that a reasonable attorney would have spent in bringing the case to conclusion.

Wisconsin law considers Contingent Fee Retainer Agreements to be contracts. Therefore, the principles of contract law apply to such agreements. A preliminary step is analyzing the contract to determine whether it is valid and not unreasonable. A 25%-40% contingent fee amount would likely be held valid; however, a 50% contingent fee could be ruled excessive.



If the contract is determined to be valid, then in order to dissolve a valid contract, one of the parties to the contract must show that the other party “breached” the contract. In the context of a contingency fee retainer agreement, this means that a client must show that the lawyer is being discharged for “*fault*” or “*cause*” or the lawyer will be paid the full contingency fee minus an hourly rate paid to the second lawyer to conclude the case, even if that second lawyer had a Contingent Fee Retainer Agreement with the client.

*“Cause” for firing an attorney is a high standard. “Cause” has been defined as a “standard of conduct that is below that required of attorneys as a matter of law.”<sup>1</sup>*

The Wisconsin rule for dealing with situations, where the first lawyer is fired was established in the 1950’s in the case of *Tonn v. Reuter*. Then, in 1999, in the case of *Action Law, S.C. v. Habush, Habush, Davis, & Rottier, S.C.*, the Court of Appeals decided a case where the original law firm, Habush, sued to collect their contingent fee on a case where the client had fired Habush and hired a subsequent law firm, Action Law, S.C., out of Madison, to conclude the case. Action Law claimed that the Habush firm did very little work on the file and therefore should only be paid an hourly rate for their actual work on the file. Habush’s position was that it made no difference how much time they spent on the client’s

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<sup>1</sup> *McBride v. Wausau Ins. Cos.*, 176 Wis.2d 382, 388, 500 N.W.2d 387 (Ct.App.1993).  
*Action Law, S.C. v. Habush, Habush, Davis, & Rottier, S.C.*, 209 Wis.2d 85, 562 N.W.2d 928 (Wis.App. 1997) and *Action Law, S.C. v. Habush, Habush, Davis, & Rottier, S.C.*, 224 Wis.2d 938, 592 N.W.2d 319 (Wis.App. 1999).

case, they were the first attorney on the file, and therefore, they were entitled to the full contingent fee minus the reasonable value of services provided by the second lawyer, Action Law. The Court of Appeals, in two unpublished decisions agreed with Habush. Action Law was entitled to an hourly fee for the amount of time spent resolving the claim once Habush was fired and Action Law was hired. Action Law also argued that because Habush had only valued the case at \$100,000, and Action Law obtained a final settlement of \$240,000, that Habush should not benefit from the work of Action Law in increasing the cases value. The Court of Appeals also rejected this argument, ruling in favor of Habush.

What does all of this mean to contingent fee clients in Wisconsin? It means that clients that initially hire the wrong attorney will have a very difficult time finding a second lawyer to take over their case. Therefore, it is essential that personal injury clients hire the right lawyer from the beginning of their case.





CONTACT  
US



## ***5 Things You Should Do After Every Automobile Collision***

### ***1. Identify Everyone at the Scene.***

It is absolutely critical that you attempt to obtain as much information possible about all of the people at the scene of the collision. This includes the drivers, passengers and witnesses. This is perhaps the most common mistake made by accident victims as well as police officers. Name, address, phone number, license plate number, make/model of vehicle, date of birth, etc. All of this information could help track down witnesses if it later becomes necessary.

### ***2. Obtain Medical Treatment.***

If you are in pain, it is critical that you obtain medical treatment in order to document *ALL* of your injuries. Another one of the most common mistakes following an accident is failing to see a doctor. Many people think that their pain will go away on its' own, but weeks or months later, they still have the pain. Without medical treatment, there is no way to prove their ongoing pain is related to the automobile accident. We always recommend our clients see their primary care physician, at least initially. Many injuries require the involvement

of medical specialists, such as neurologists, psychiatrists, etc. Ideally, the primary care physician will identify this and make the necessary referrals. At ROZEK LAW OFFICES, we have been fortunate enough to work with some of the best physicians in throughout Wisconsin. If necessary, we will arrange for doctor visits with competent, caring physicians.

**3. *Report the Accident to Your Insurance Company.***

Call your automobile liability insurance company and provide them with the details of the collision. Any delay in reporting the accident could result in a denial of your insurance coverage. Depending on your coverage and the coverage of the other driver, you may be entitled to medical payment coverage, uninsured motorist coverage and/or underinsured motorist coverage. *DO NOT PROVIDE ANY INSURANCE COMPANY WITH A RECORDED STATEMENT PRIOR TO SPEAKING WITH A LAWYER.*

**4. *Take photographs.***

If you have a camera or camera-phone, by all means use it. You should take your own photographs even if the police are taking photographs. You should attempt to photograph and all of the following: the scene; the property damage to your vehicle; the property damage to the other vehicle, if possible; the inside and out of the vehicles; license plates; skid marks; and, perhaps most importantly, visible injuries to all persons involved in the accident.

**5. *Call an Experienced, Reputable Personal Injury Lawyer.***

Most personal injury lawyers offer free initial telephone consultations. Many knowledgeable lawyers also offer free written materials that can assist you in deciding how to proceed with your case, or whether you even need a lawyer to represent you.





## ***Randall Rozek Recognized as a Top Wisconsin Personal Injury Lawyer***

ROZEK LAW OFFICES is routinely referred personal injury cases from other lawyers that trust and recognize Attorney Rozek as one of the few personal injury attorneys in Wisconsin that will fight for his clients and get them the results they deserve. Many doctors and medical professionals throughout Wisconsin also refer their patients to Attorney Rozek because they know he understands the complex medical issues that are frequently involved in proving their case.

ROZEK LAW OFFICES also receives referrals from friends and family members of current and former clients.

One of the main advantages in hiring ROZEK LAW OFFICES over other, larger personal injury law firms is that the clients know Attorney Rozek, the owner of the firm, will be handling their case from start to finish. Clients are comfortable knowing their case will not be assigned to a different attorney at different stages of the personal injury process.

Attorney Rozek has also been recognized and has received excellent ratings from many attorney ranking services. For more specific information about one such service, check out his profile on

Avvo.com. You will find articles, attorney recommendations and client reviews. You can also find more information about Attorney Rozek by viewing his online by viewing his online Avvo profile at <http://www.avvo.com/attorneys/53211-wi-randall-rozek-1530984.html>

**RozekLaw.com:** The main website for ROZEK LAW OFFICES, S.C. providing consumer-oriented information on many different types of accidents and many different types of injuries.

**WisconsinTruckAccidentLawBlog.com:** Attorney Rozek’s blog providing information regarding semi-truck and bus accident information.

**InjuryClaimsBook.com:** Information page for Attorney Rozek’s book, *“A Consumer’s Guide: Personal Injury Claims in Wisconsin.”*

Lawyer-Ads.com: Information page for Attorney Rozek’s book, *“A Consumer’s Guide: Choosing a Personal Injury Lawyer in Wisconsin.”* information about one such service, check out his profile on **Avvo.com**. You will find articles, attorney recommendations and client reviews.



Overall Client Rating	
<div>★★★★★</div> <div>5.0 out of 5.0</div>	
Communication Ability . . . . .	5.0
Responsiveness . . . . .	5.0
Quality of Service. . . . .	5.0
Value for Money. . . . .	5.0

Overall Rating	
<div>★★★★★</div> <div>Excellent</div>	
Trustworthy . . . . .	5.0
Responsive . . . . .	5.0
Knowledge . . . . .	5.0
Kept Me Informed . . . . .	5.0





## ***Randall L. Rozek, Attorney at Law Resumé***

### ***Professional Experience***

ROZEK LAW OFFICES, S.C.,  
Owner/Founder - Milwaukee, Wisconsin.  
2004 to present.

Representing personal injury victims throughout Wisconsin.

DANIEL P. KONDOS, S.C. LAW OFFICES -  
Associate Attorney -  
Milwaukee, Wisconsin.

1998 - 2004. Successfully represented hundreds of personal injury  
clients throughout  
Wisconsin and Illinois, from initial intake through trial.

JOHNSON LAW OFFICE  
Associate Attorney - Wisconsin.  
1997-1998.

Successfully represented personal injury victims, worker's  
compensation claimants and social security disability applicants.

## *Admittance*

- Supreme Court for the State of Wisconsin,  
Admitted to practice law in Wisconsin State Courts.
- United States District Court for the Western District  
of Wisconsin , Madison, Wisconsin.
- United States District Court for the Eastern District  
of Wisconsin, Milwaukee, Wisconsin.
- United States Court of Appeals, 7th Circuit.

## *Education*

- 1996 Juris Doctor of Law Degree  
University of Wisconsin Law School, Madison, Wisconsin.
- 1993 Bachelor of Science Degree  
Majors: Philosophy & Political Science.  
University of Wisconsin - La Crosse, La Crosse, Wisconsin.

## *Professional Associations*

- Million Dollar Advocates Forum
- American Association for Justice
- Interstate Trucking Litigation Group
- Traumatic Brain Injury Litigation Group
- Complex Regional Pain Syndrome/Reflex Sympathetic  
Dystrophy Litigation Group
- Nursing Home Negligence Litigation Group
- Bicycle Litigation Group
- Motor Vehicle, Highway and Premises Liability Section
- Brain Injury Association of America
- North American Brain Injury Society
- National Spinal Cord Injury Association
- Wisconsin Association for Justice - WAJ
- State Bar of Wisconsin
- Melvin Belli Society



## ***Recent Settlements and Jury Verdicts***

- ***\$9,500,000***  
Moderate Traumatic Brain Injury – Orthopedic Injuries –  
Automobile Defect Case – Airbag Failure to Deploy
- ***\$1,235,000***  
Mild Traumatic Brain Injury – Construction Site Accident
- ***\$1,100,000***  
Severe Traumatic Brain Injury – Auto Accident –  
Injured by Texting Driver
- ***\$1,000,000***  
Mild Traumatic Brain Injury – Soft-Tissue Injuries –  
Automobile Accident
- ***\$700,000***  
Dump Truck Accident – Severe Traumatic Brain Injury
- ***\$685,000***  
Mild Traumatic Brain Injury – Whiplash Neck Injury –  
Semi-Truck Accident

- ***\$485,000***  
Mild Traumatic Brain Injury – Premises Liability / Slip and Fall Accident
- ***\$450,000***  
Mild Traumatic Brain Injury – Semi-Truck Accident
- ***\$400,000***  
Broken Legs – Medical Transport Accident
- ***\$400,000***  
CPRS/RSD – Automobile Accident – Re-Opened Prior Settlement
- ***\$300,000***  
Spinal Cord Injury – Motorcycle Accident
- ***\$295,000***  
Nursing Home Neglect – Wrongful Death – Bed Sores
- ***\$260,000***  
Post-Traumatic Migraines – Car Accident
- ***\$250,000***  
Nursing Home Neglect – Wrongful Death – Bed Sores
- ***\$205,000***  
Whiplash Neck Injury – Orthopedic Injury – Car Accident
- ***\$200,000***  
Post-Traumatic Migraines – Premises Liability
- ***\$197,000***  
Back Injury – Truck Accident
- ***\$195,000***  
Whiplash Neck Injury – Back Injury – Car Accident
- ***\$135,000***  
Back Injury – Car Accident

- ***\$120,000***  
Broken Leg – Premises Liability
- ***\$115,000***  
Post-Traumatic Migraines – Semi-Truck Accident
- ***\$112,500***  
Nursing Home Negligence – Bed Sores
- ***\$105,000***  
Whiplash Neck Injury – Car Accident
- ***\$100,000***  
Nursing Home Negligence – Bed Sores
- ***\$100,000***  
Whiplash Neck Injury – Car Accident

Each case is different and past results are not meant to guarantee similar results in future cases.







## About the Author

Attorney Randy Rozek has devoted his professional career to representing individuals who were harmed by the negligent or intentional conduct of others. Randy has successfully taken on large corporations and insurance companies throughout the United States on behalf of those who were wronged. Randy manages and runs his own office, Rozek Law Offices, S.C., with offices in Milwaukee and Madison, Wisconsin. Randy routinely lectures to other attorneys throughout the United States and he devotes a substantial amount of time to various advocacy groups.

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