

How to Get Compensation from a BUI Accident

If you were injured in a boating accident, then you can sue the boat operator who caused the injury. For example, the operator may have hit your own boat, or you may have been in the boat with the operator who was intoxicated. Either way,...

Part 1 of 3:

Documenting Your Case



Get medical treatment. You should seek immediate medical treatment for any injury. If you can't drive yourself to a hospital, then call emergency services. After you are stabilized, you can begin planning your case.

1. Remember to hold onto copies of your medical records. These documents help prove the extent of your injuries.
2. Also follow the proposed medical treatment.^[1] If you don't, then the boat operator could claim that you aggravated your injuries by not following doctor's orders.

2.



Document the damage to your property. You can be reimbursed for any damage caused to your property.^[2] For example, you might have been in a boat when the other person rammed you. You need to document the damage to your boat.

1. Take photographs of damage to your property. This will help show the extent of the damage.
2. Get an estimate for repairs. If your boat was damaged, take it to a shop and ask for a detailed estimate of how much it would cost to fix the boat. If you already have had the boat fixed before trial, then hold onto the itemized receipt of what work was done.

3.



Identify witnesses. At trial, you will need to prove that the defendant's conduct caused your injury. This generally will mean that you need to show that the boat operator was reckless or careless ('negligent'). You should get the names of people who saw the boat operator cause the accident.

1. Witnesses are often identified in police reports, so you should get a copy of the report filed on the incident.^[3] See Obtain a Police Report for tips on how to get yours.

4.



Photograph the scene of the incident. The boat might have hit something in the water, like a buoy or a coral reef. In that situation, take pictures of what you hit.

1. You might also take pictures of the water, although this can be less helpful if the conditions on the day you take photographs are not the same as the conditions the day of the accident.

5.



Write down your memories. You were also a witness to the accident, so you should write down your memories as soon as possible — the day of, if you are able. Document what the other person did and what you did. Try to remember important details, such as how you were exactly injured.

1. Be honest in your assessment. It is important not to exaggerate, which reduces your credibility.
2. For example, writing 'The other boat was flying over the water' is less credible than writing 'The boat was going faster than we were.'

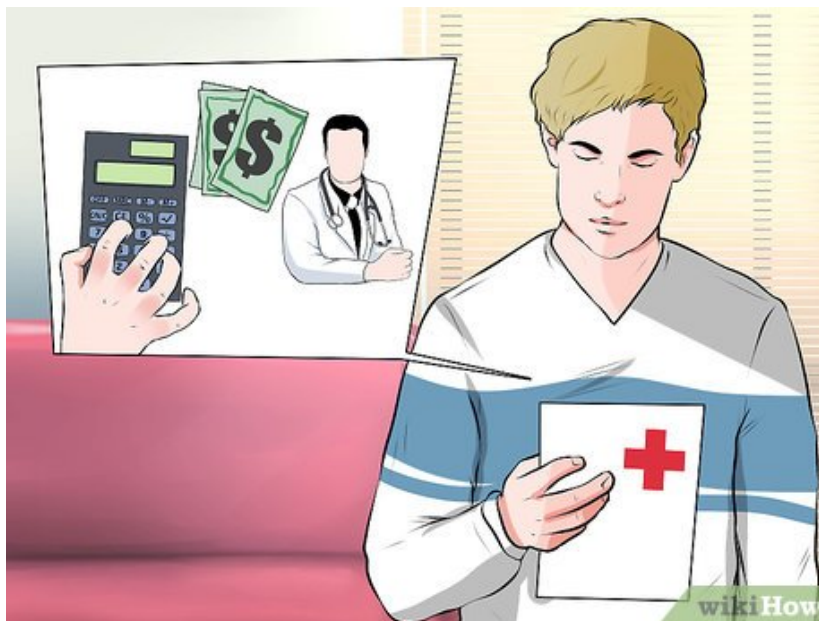
6.



Document your lost income. You can be compensated for any lost work as a result of your injuries.^[4] If you are permanently disabled, then you can be compensated for income you expected to earn in the future. You should gather the following documents, which will help show how much income you have lost:

1. W-2 forms
2. Pay stubs
3. Tax returns
4. Proof of self-employed income

7.



Hold onto all medical bills. You can be compensated for any money spent treating your injuries. For this reason, you should put all medical bills in a big folder so that you don't lose them. You can be reimbursed for the following:^[5]

1. Rehabilitation costs
2. Doctor and hospital fees

3. Prescription medication
4. Costs of a therapist

8.



Take photos of your injuries. Another way to document your injuries is to take color photographs. At least a year or more could pass before your trial starts, so it is a good idea to document your physical injuries thoroughly using photographs.^[6]

1. Make sure to take pictures from many different angles. Also take some pictures close up so that you can see the injury in detail.

9.



Keep a pain journal. You can also get compensation for your pain and suffering.^[7] These injuries can be harder to prove; however, one thing you can do is keep a 'pain journal.' In your journal, you write down daily where you feel the pain and its intensity.

1. Also note how the pain has influenced your life. If you have trouble sleeping, or if you can't move as well as you used to, then note those facts as well. If your pain is causing you to miss out on

experiences, like going out with friends, make sure you record that.

10.



Hire an attorney. At a minimum, you should meet with an attorney to discuss whether you have a strong case. You can find a personal injury attorney by looking in the phone book or by searching online. If you can't get any leads that way, then contact your local or state bar association and ask for a referral.

1. Schedule a consultation and ask how much the attorney charges for your consultation.
2. You should also discuss how much it would cost to hire the attorney to handle the entire case. Although you can certainly represent yourself, your chances of getting compensation are much higher if you have an attorney represent you. If someone died, and you are bringing a wrongful death claim, then you certainly need an attorney.^[8]
3. Discuss whether the attorney works 'on contingency.' Under this agreement, the attorney doesn't charge any fees. Instead, they take a percentage of any amount you win at trial or get in a settlement. They usually get 33 – 40% of the amount.^[9] Contingency fee agreements can make an attorney affordable; however, the attorney may not represent you unless you have significant physical injuries.

11.



Estimate how much your injury is worth. You should gather all of your medical bills and proof of lost income. Add them together. Then multiply this amount by a number between one and five for any pain and suffering you have experienced (one if you have experienced little or no pain, five for an extreme amount). The more extreme the pain and suffering, the more compensation you can get.^[10]

1. You also might be able to get 'punitive' damages because the boat operator was drunk. This amount of money is awarded to punish the defendant. Punitive damages are available in many states for DUI cases, so they may be available in BUI cases as well.^[11]

Part 2 of 3:

Negotiating a Settlement

1.



Identify who to negotiate with. Often, the person who operated the boat also owns the boat; however, you might have been injured by a boat operator who does not own the boat. Depending on your state law, the boat owner may be responsible for your injuries, not the boat operator.^[12]

1. Ask the boat owner and operator (if different people) for their insurance information.^[13]
2. If the person does not have insurance, you can still negotiate with them for a settlement. The process is generally the same.



Write a demand letter to the insurer. You might want to negotiate a settlement. Settling a dispute is usually faster, cheaper, and less stressful than a lawsuit. You can begin the settlement process by writing a letter to the boat owner's insurer. The demand letter should include the following:^[14]

1. A summary of the incident. Provide the 'who, what, where, when, and how.'
2. A claim that the defendant is at fault. Be sure to mention that the defendant was operating the boat with a blood alcohol content above the legal limit.
3. A description of your injuries and the treatment you have received. Go into moderate detail. Also mention any painkillers you received.
4. The total amount you have spent on medical treatment.
5. A demand for compensation. Remember, you are beginning negotiations. Accordingly, you should demand double the amount you think your injury is worth. For example, if your injuries are worth \$40,000, then demand \$80,000.
6. A threat to sue in court if you can't reach a resolution.

3.



Mail the letter. Mail the letter certified mail, return receipt requested so that you know when it is received. Remember to keep a copy for your records.

4.



Receive a counteroffer. The insurer should send you a letter in return, which should contain a counter-offer. Don't be surprised if the counter-offer is extremely low. For example, you might have demanded \$80,000 but the insurer will counter with \$20,000.

1. You should avoid firing off an angry letter or picking up the phone and yelling at the insurer.^[15] Instead, put the letter aside and come back to it a day later.

5.



Attempt to negotiate. You should respond to any low counter offer by explaining in more detail your pain and suffering injuries and dropping the amount of your demand only a little.^[16] Ideally, you and the insurer will then go back and forth, each moving closer to what the other side proposes.

1. Unfortunately, you will likely not get very far in negotiations before litigation. Most insurance companies use software to determine their offer and will most likely not veer too far away from that first offer. They probably will not be willing to negotiate much, as pre-litigation they don't have much flexibility. You may have better luck negotiating after the discovery is complete, as much more information will be revealed during this time.
2. Remember that negotiation is voluntary. If the insurer cannot give you the amount that you feel you deserve, then you can break off negotiations.

6.



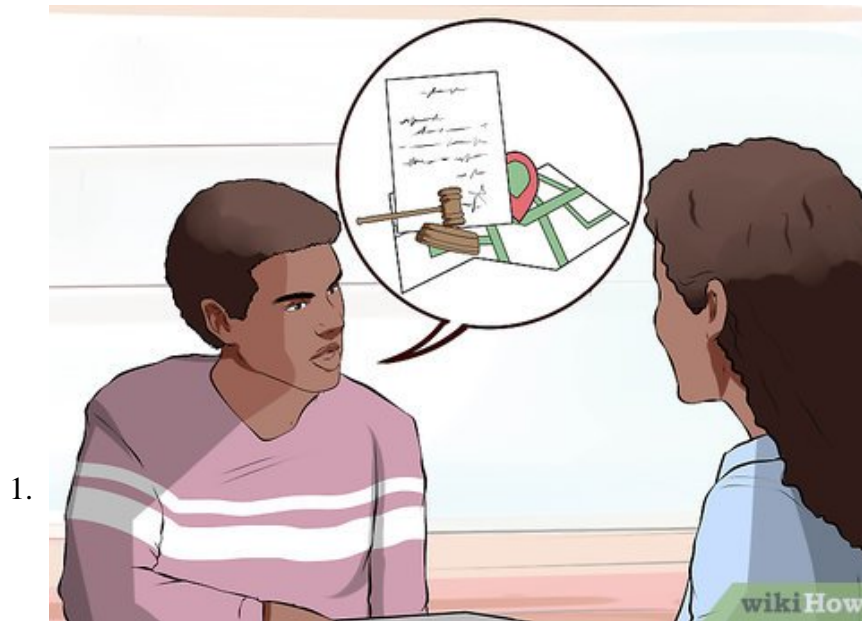
Draft a settlement agreement. You should formalize any agreement in a settlement agreement signed by both parties. This will be the contract between the parties. As the person bringing the lawsuit, you

probably have to give the boat operator a 'release' from future lawsuits based on your injuries.^[17]

1. If you negotiated without a lawyer, then take a draft of your settlement agreement to a lawyer and ask them to review it. You want to make sure you aren't signing away important rights in your agreement.

Part 3 of 3:

Winning a Lawsuit



Find the correct court to sue in. You can't sue the boat operator anywhere. Instead, you can generally sue them in the county where they live or in the county where the accident happened. You may have other options — for example, if the boat operator does business in your area, you might be able to sue there. Talk to an attorney about where you can sue.

1. You should also think about suing in small claims court, especially if your injuries weren't severe. Small claims courts are set up so that people can represent themselves without a lawyer.
2. Small claims courts have maximums you can sue for, which differ depending on the state. For example, in Tennessee, the maximum is \$25,000. In Rhode Island, by contrast, the maximum is \$2,500.^[18]

2.



Create a complaint. You start a lawsuit by filing a complaint with the court. This document identifies you as the 'plaintiff' (the person bringing the lawsuit) and the boat operator/owner as the 'defendant' (the person sued). The complaint also includes background information on the dispute and makes your demand for money compensation.^[19]

1. Many courts have printed forms you can fill in. You should check with the court clerk. Small claims courts in particular have these forms.^{[20][21]}
2. If no form is available, then you will need to find a sample and use it as a guide.^[22] Of course, if you hire a lawyer, then they should do everything for you, including drafting and filing a complaint.

3.



File the complaint with the court. When you finish the complaint, make several copies. You will want one for your records; you also might need to file several copies with the court. Take your copies and the original to the court clerk. Ask to file.^[23]

1. The clerk should stamp your copies with the filing date.

4.



Pay a filing fee. You probably have to pay a fee to file your lawsuit. The amount will differ by court, so call ahead and ask for the amount and the acceptable methods of payment. Don't assume a court accepts cash, personal checks, or credit cards.

1. If you can't afford the fee, ask the court clerk if a fee waiver is available. You typically will have to fill out a form and report your monthly income and living expenses.

5.



Notify the defendant of the lawsuit. You need to give the defendant notice that you are suing them. This notice consists of two things—a copy of your complaint and a 'summons,' which is a document you can get from the court clerk.^[24] You then need to arrange for service to be made. You can't serve the papers yourself.

1. Generally, you can have someone 18 or older make hand delivery on the defendant. For example, you could ask a neighbor to deliver it. You might also be able to pay a professional process server to make hand delivery.

2. In some counties, you can pay the sheriff or constable a small fee to make delivery for you. Ask the court clerk.



Read the defendant's response. The defendant has a set amount of time in which to respond to your lawsuit. Typically, they will file an 'answer.' In this document, the defendant responds to each allegation you made in your complaint, either admitting, denying, or claiming insufficient knowledge to admit or deny.^[25]

1. The defendant can also raise 'affirmative defenses.' In a BUI accident, there probably won't be many defenses the defendant can raise; however, if you took too long to bring a lawsuit, then the defendant could argue you violated the statute of limitations. Generally, you have two years to bring the lawsuit, though this length of time will differ by state.
2. If you have a lawyer, they will receive the defendant's response. Always ask your lawyer for copies of any document in your case so that you can keep up with what is going on.



Engage in pre-trial fact-finding. This fact-finding phase is called 'discovery,' and it is a major part of any lawsuit in the U.S. During discovery, you and the defendant swap information so that there are no surprises at trial. The following are different discovery techniques you can use:^[26]

1. Requests for Production of Documents. You can get a copy of any document, or inspect any object, if you think it would be helpful to your case. For example, you might want to inspect the boat that injured you.
2. Requests for Admission. You can state facts and ask the defendant to admit or deny them. For example, you could ask the defendant to admit that they drank beer while on the boat.
3. Interrogatories. These are written questions the defendant answers under oath. For example, you could use an interrogatory to ask the defendant what witnesses they intend to call at trial.
4. Depositions. In a deposition, you can ask a witness questions in person, which they answer under oath. A court reporter takes down the questions and answers. Depositions are a good way to feel out what a witness knows. For example, someone might have been on the water when the accident occurred. You can ask questions in a deposition to find out what they saw.



Re-enter negotiations. After discovery ends, you may enter into negotiations again. It is very unlikely that the case will settle before discovery is complete, so now is the time when you can go back and forth with the insurance company or other party, describing your hardships in greater detail and lowering your demand slightly.

1. Consider using a mediator for this process. A mediator is an objective third party who will sit down with both parties and try to help guide them toward a mutually agreed upon settlement.^[27]
2. Mediation is more informal and much quicker and less expensive than a trial. In addition, anything that is said in these sessions is private, whereas everything said in court is available to the public.^[28]
3. The cost for mediation is split between parties. It is a voluntary process, so both sides must agree to take part.^[29]
4. Mediation is a particularly good idea if you want to try and remain on good terms with the other person, because it allows both people to speak freely about their feelings and discuss practical solutions.^[30]

9.



Identify your witnesses. Go through all of your papers and identify who you want to testify on your own behalf. Remember that a witness can only testify as to what they know personally. A witness can't testify to gossip or second-hand information.^[31] Helpful witnesses typically include:

1. Anyone who witnessed the accident.
2. The police officer who investigated the accident.
3. Your doctor or therapist, who can testify about your injuries.
4. Family and friends, who can testify to changes in your mood or lifestyle as a result of your injuries.

10.



Make exhibits. You can use a document as an exhibit and introduce it into evidence at trial. You will also have to give the defendant a copy of all of your exhibits. Make multiple copies — one for you, one for the court, and one for the defendant.

1. You can turn a document into an exhibit by placing an exhibit sticker in a corner of the document. If you have a picture, then you can put the sticker on the back.

2. You can get stickers from an office supply store or from the court clerk.

11.



Defend against a summary of judgement motion. There is a possibility that the defendant will file a summary of judgement motion before you get to trial. This may be done if you have more than one claim and the defendant wants to try to eliminate one of those claims. A summary of judgement motion is filed when one party feels that both parties are in agreement about the most important facts and that the law is on their side.^[32]

1. You will have a certain amount of time to respond with an opposition to motion for summary judgement. You will need to submit evidence that either proves the defendant's arguments about the law are incorrect or evidence that the facts aren't as straight-forward as the defendant says and that a trial is necessary to determine the truth.^[33]

12.



Got to trial. If you didn't settle your lawsuit, then you will need to go to trial. Personal injury trials tend to follow the same sequence. The common parts of a personal injury trial include:^[34]

1. Jury selection. Either you or the defendant might want a jury. If you want a jury, then you should definitely have a lawyer represent you. Jury selection is a process of elimination. The judge questions a panel of potential jurors, and you can ask the judge to dismiss any juror that is biased.
2. Opening statements. These provide the jurors with a roadmap of what the evidence will be.
3. Presentation of your witnesses. You will present witnesses and evidence first. You will probably also have to testify on your behalf.
4. Cross-examination of the defense witnesses. The defendant gets to put on a case after you. You can cross-examine the defense witnesses.
5. Closing arguments. Each side sums up the evidence and explains how it supports their case.
6. Jury verdict. The judge will read the jury its instructions and then allow them to retire for deliberations. In many states, juries no longer have to be unanimous in personal injury lawsuits. Instead, you might win if nine or 10 out of 12 jurors agree with you.



Enforce your court judgment. Winning at trial is only half the battle. You also need to enforce your judgment. Hopefully, the defendant will pay up or make plans to pay you in monthly installments; however, the defendant might resist paying you. You typically will only have to worry about this if the defendant is not insured or the award exceeds their insurance. In that case, you can do the following:

1. Garnish the defendant's wages. You can file for garnishment with the court, which will then send notice to the defendant's employer to withhold a percentage of the defendant's salary each pay period.^[35]
2. Put liens on the defendant's property. You might also be able to get a judgment lien put on the defendant's home or another property. If the defendant wants to sell the property, then he or she needs to pay you first.
3. Get the defendant's licenses suspended. In some states, you can also get a defendant's professional licenses suspended. You might also be able to get a driver's license suspended. The threat of suspension often induces a defendant to pay up.
4. See [Collect a Court Ordered Judgment](#) for more information.

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