

## **What To Do If You Are In A Car Wreck in Oklahoma**

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**This webbook is for you if you were hurt in an car wreck/MVA, motorcycle wreck, or trucking accident, or it a loved one who was injured or killed.**

Getting into a car wreck can be very traumatic. Knowing what to do at the time, and even later (after police and medical help leave the scene) can help you get through the experience with as little physical and emotional pain as possible.

### **I. At the Scene**

#### **Protect yourself and others and render first aid**

The first thing you should do if you are in a wreck is look around. Did your car come to rest in a reasonably safe spot? Does anyone appear to be injured (in your vehicle or in any other vehicles)? Your first concern should be for immediate life safety.

- If you are stopped in the middle of an interstate highway system, you may need to move the car (if it is drivable and if it can be safely moved).
- You should also render any necessary first aid.
- IF AT ALL POSSIBLE DON'T MOVE ANYBODY WHO MAY HAVE HEAD OR SPINAL INJURIES. CHECK FOR, AND USE PRESSURE TO STOP, ANY MAJOR BLEEDING
- Put our flares or reflective triangles or lights if you have them. If there is smoke or fire or if you smell gasoline be sure to move everyone away to a safe distance.

Once you have assessed the above and moved to safety if needed and stopped any major bleeding, call 911 and tell the operator that there has been an accident. If you have someone with you, one of you can call 911 while the other assesses the above safety concerns.

Most insurance companies prefer that their insureds leave the vehicles where they came to rest until law enforcement arrives. That can be hard to do when you are confident no one is hurt and you see traffic come to a stop around your vehicle.

I confess, I have moved my own vehicle onto the shoulder or into a parking lot rather than leaving it in a place where it impedes traffic. That is not preferable, but it is not the end of the world either. If you do think you need to move your car, try to get some pictures of all the vehicles involved before any are moved—IF YOU CAN SAFELY DO SO. Try to get pictures showing the damage to the vehicles, but also some wider view photos showing as much of the scene of the wreck as you can.

If there is any chance of any significant injuries, ask the 911 dispatcher to send medical assistance—EMTs or ambulance as needed.

### **Be Careful What you Say**

Be careful what you say at the scene:

- Don't apologize for causing the wreck or take on blame.
- There are many factors that go into determining who was at fault for a wreck so don't to hastily agree that you were at fault.
- Remember that anything you say can end up on a police report, ambulance or fire "run sheet," or in a medical record.

Things that you say can be used against you even if it turns out that you really were not to blame. For instance, I have seen some really strange information make its way into ambulance "run sheets" (for some reason, some ambulance personnel seem to think it is their duty to prevent injured people from being compensated by the at fault party. This may be a matter of training (or lack of training), but do be careful what you say to fire, ambulance, and EMT personnel. There really is not reason to talk to them about "fault."

My experience with police officers has been that their reports tend to be less biased and more matter-of-fact than the ambulance run reports. They often do not include enough detail, but that is probably better than having the police go out of their way to torpedo an injury claim.

Still, beware that the police can typically only testify about (1) what they saw (or measured, photographed, etc.) and (2) what they heard. But they cannot testify who they think was at fault (unless they happen to also be a trained accident reconstructionist).

If you tell the police or others that you were at fault, that can be pretty damning evidence against you—even if you were wrong. Tell the responding officers what happened—what you saw and what you and the other vehicle did, but, as noted above, don't take on the blame for the incident and always keep your descriptions to the point and brief.

### **Exchange Information and Gather Evidence at the Scene**

Once you are sure it is safe to exit your vehicle and that all wounded are stabilized, you can show your insurance verification card and driver's license to the other driver (or drivers if a multicar wreck).

Take down the following information from the other drivers:

- Name

- Address
- Telephone number
- Insurance information
- Ask to see their insurance card and driver's license. Take photos of these documents if possible. At minimum be sure to get their name, address, and driver's license number, and the name and policy number for their insurance.
- Write down, or even better, get a picture of their car tag (license plate)
- Gather names and telephone numbers for all witnesses.

We all know where the license plate is, but many people don't know that you can see the VIN for any car by looking through the bottom right (driver's) side of the windshield. The VIN is stamped on a metal plate attached to the dash, where it can be seen from the outside.

- Try to get a photo of the VIN plate for all involved vehicles.

Also make sure that the responding officers get the names and contact numbers of all witnesses for their incident report as well. They do not always do a good job of that if left to do that on their own. Politely, but firmly request that gather contact information from, and interview all witnesses.

Police are very busy people. For instance, I understand that the Oklahoma City Police Department, like many others around the country these days) is badly understaffed. Because of that, they do not always have the time to conduct a thorough accident investigation. That means it may be up to you or a friend of family member to take pictures at the scene and of the vehicles at the scene.

- Get some closeups of the damage
- But also get some wider shots showing the full scene
- Photograph skid marks and other damage in the path before the vehicles came to rest
- Get shots of useful landmarks so that an investigator can find the exact location later if needed.

In addition to insurance information, be sure to write down the exact location as well as all identifying information you can get regarding the other vehicles.

Note weather conditions as well as what you heard and observed about possible injuries to others.

Once you can leave the scene be sure to call and report the incident to your insurance company. Tell them what happened but keep it brief. **Again, don't accept fault—at this point.**

### **Get Immediate Medical Care**

Don't refuse medical care or transport if there is any chance that you may be injured. Common car, motorcycle, or truck accident injuries include:

- Aggravation of previous injuries
- Lacerations
- Broken bones
- Spine or orthopedic injury
- Herniated discs
- Muscle strains
- Concussion
- Traumatic brain injury (TBI)
- Death

Car wreck injuries can be disabling and even life threatening so don't be afraid (or embarrassed) to be checked out by a medical professional.

Also, it is not uncommon for injuries to appear several days or up to a week or more after a car wreck.

In fact, many people say that they "never felt better" right after a wreck. Then a week or so later, they begin to feel like they "have been run over.". This is the effect of shock. Once the shock wears off, your body may begin to feel the experience of being battered within your vehicle. For this reason it is best never to state at the scene that you are not hurt (it is okay to say "I feel okay as of now").

## **II. In the Immediate Aftermath**

### **Get Good Follow Up Care**

Arrange for any necessary follow-up or ongoing medical care. If possible try to get treated by a regular doctor—or talk to an attorney right away and ask for a physician recommendation.

Many emergency room doctors refer auto accident victims to the local “accident care clinic.” Some of those clinics run up very high bills on marginally helpful treatment protocols.

Those big bills at an accident clinic can actually make it harder to resolve your claim.

It can be difficult to get your regular doctor to treat you sometimes because many still believe the untruth that they cannot bill your health insurance for “accident treatment.”

I have never seen a health insurance policy that says that. Sometimes (but not often) a word from your attorney can get your regular doctor to agree to treat your accident injuries.

In addition to accepting your health insurance, your doctor has the option of filing a lien against your insurance recovery (don’t worry these are not general liens and they do not “attach” to your home or other assets).

Wherever you get your medical treatment, be sure all of your doctors know that your injuries were caused by the collision so that your medical records reflect that fact.

Too many times I have obtained a client’s medical records only to find that there is no mention of the wreck. That can damage your chances at recovering what you deserve.

Finally, regarding your medical treatment, be sure to attend all of your appointments and do what your doctors tell you to do. It never helps your claim if your medical records say you were “noncompliant” or that you were a “no show” for half of your scheduled appointments.

### **Keep an Injury Journal**

Make a journal to record any injuries and progress or regress with healing.

Keep track of:

- How you feel each day
- How your injuries are affecting your daily life (for instance are there now things you can no longer do, or can no longer do as well or as long—record those things)
- Keep a record of your pain level—Many people use the common 1 to 10 scale. **Don’t exaggerate, but also don’t minimize.**

Consider everything you write down (or say) about the incident from the perspective of someone else reading or hearing it. If you would think it was dramatic coming from your child or a friend, then perhaps you are overdramatizing. You just need a record of your injuries and how they affect you. You are not trying to win an Oscar.

At the same time, be totally honest in your journal—about your injuries. Talk about how they affect your daily routine. This is not the place to put on a brave face. It is a place to record the effect of the wreck on your mind and body.

Here is the tricky thing about your injury journal: The journal is not admissible at trial to help you but it can be used against you.

- YES, THE ABOVE IS CORRECT: YOUR JOURNAL CAN BE ADMISSIBLE EVIDENCE AGAINST YOU. EXPECT THE OTHER SIDE TO READ IT. USE IT TO RECORD INFORMATION ABOUT YOUR INJURIES AND TREATMENT BUT NOT AS A “CONFESSION BOOTH.”

Given that the journal is not admissible for you but can be used against you, why do I recommend it? In my experience people quickly forget the effect of their injuries—once the pain subsides and they feel better. But ultimately all a jury can do to compensate a car wreck victim is to award money damages. And the more detail you can provide to the jury about your injuries and exactly how they changed your daily routine, the more likely they jury is to fully compensate you.

So, keep an injury journal, but limit it to describing your injuries, what your medical providers did and prescribed for treatment, and how all of that made you feel both physically and emotionally. But again, be brutally truthful and do not exaggerate.

Why do I tell you not to exaggerate? Because juries do not like injury “plaintiff’s” who claim that a moderate wreck with moderate injuries “destroyed their life” (I kid you not, I once had a client who even claimed they had to put their cat down due to their rather mild car wreck injuries).

### **Do Not Lie about the Wreck, Your Injuries, Prior Injuries (or anything else)**

Never tell a lie about the wreck, about your injuries, about prior related injuries or anything else related to your claim or lawsuit—not to your attorney, but also not to the police, the insurance companies, or anyone else.

Why do I tell you to be brutally honest? Because juries, like good honest people, hate liars. If you are caught in a lie, you will lose the jury at that point. And insurance company lawyers are really good at catching liars and making them look really bad.

Another point to keep in mind about “lies,” is that most people lie (or shade the truth) in a lawsuit because they are afraid that if the truth comes out it will hurt their lawsuit. Your attorney can effectively deal with just about every problem as long as you do not lie about it. If you lie, that will come into evidence if there is a trial and you will not be believed about anything. Your claim will be worth pennies on the dollar if you lie. Don’t do it.

The most common lie people tell after a car wreck is that they have never had a problem with the injured body part before the wreck.

I cannot count the number of clients I have represented over the years who claimed when they came to see me that they had no prior injuries.

We do our best to obtain prior medical records, but if the client does not tell us about the prior injury or tell us about the medical provider who treated that injury, there is no way for us to find the records—but rest assured those are the cases where the insurance company lawyers somehow manage to stumble onto the truth about a prior injury or surgery, or other medical intervention.

It seems like this problem comes up particularly often with back injuries. Someone gets hurt in a wreck that aggravates a healed—or partially healed—back injury, but they claim they never had back pain before the wreck. Too often it turns out that was not true and that they had either complained of back pain before (which shows up in a medical record) or they have even had significant treatment for prior back injuries. If you remember such an injury, tell your attorney about it, and admit to it when (or really “if”) the other side takes your deposition.

Your attorney can deal with the prior injuries. You are still entitled to recover for any additional injury and/or any aggravation of a prior injury.

Often the prior injury would not have reduced your recovery at all—and in some cases the prior injury can even increase your recovery (because then the defendant “took” away what little functionality you still had). But if you lie about the prior injury (or forget it and the other side finds it), then you lose credibility. And nothing devalues your claim as quickly as you losing your credibility as a witness and a party.

### **III. If You Were Injured**

#### **Get a Free Consultation with an Experienced Oklahoma Personal Injury Attorney**

If you were hurt in the wreck be sure to contact a good Oklahoma personal injury lawyer. Nearly all will give you a free consultation where they can hear your story and decide who they think was at fault and whether you have a claim that should be pursued.

#### **Come to the Meeting Prepared**

Be prepared for your meeting with the attorney by gathering all of your own automobile insurance or other related policies. You may have coverage such as uninsured motorists coverage or medical payments coverage that will pay for some of your damages.

In addition to bringing in your insurance policies to your attorney consultation:

- Bring your medical bills and records if possible
- the injury journal we talked about above.
- Also bring in any records from your health insurance, Medicaid, or Medicare showing payments on your medical bills.
- Finally, bring the photographs you took at the scene as well as the information you gathered about location, weather, witnesses, and the like.

### **Be the Kind of Client an Attorney Wants to Represent—We do not Have to Take Your Case**

Expect to spend about an hour in the attorney consultation. You may meet with the attorney directly or you may meet with a non-attorney “intake specialist.”

Be respectful and polite during the attorney consultation. He or she does not have to take your case.

Filing a claim and/or a lawsuit is a time consuming process for an attorney. They will only want to handle profitable cases. Yours may or may not fit their “profile.”

Also, attorneys are people—like everyone else, they prefer working for people they get along with. That is why it is important to be polite and respectful.

### **Be Brutally Honest at Your Attorney Consultation**

**BE ABSOLUTELY HONEST IN THE ATTORNEY CONSULTATION.**

If the attorney agreed to give you a free consultation that means he or she is interested in the case and will want to find creative ways to solve any problems that arise.

**BUT IF YOU WITHHOLD INFORMATION YOUR ATTORNEY CANNOT HELP YOU.**

Also, you have an absolute attorney-client privilege when talking to your attorney about your claim or case. Your attorney is not going to violate that and tell anyone else your “secrets.”

The above attorney-client privilege even applies if you don’t hire the attorney. They still will never disclose your secrets (unless it is to stop you from committing certain kinds of crime or in response to a court order).

- As noted above, preexisting injury is a common area people are tempted to withhold from their attorney. Don’t do that. That will come back to devastate your claim.

- Another area where people get concerned about telling the truth concerns things like criminal convictions. Most attorneys are not going to judge you for your criminal convictions. We are taught to look at such things from a “mathematical” perspective.
- Most convictions can be “excluded” from trial. That means the jury will never hear about the conviction—UNLESS YOU HAVE LIED ABOUT IT.
- If you lie to the other side about a criminal conviction, then the jury may well get to hear that you lied. That always hurts your case.

Tell your lawyer about any potential concerns and answer their questions fully and truthfully so they can figure out a way to deal with the concern.

Don't be embarrassed—we hear sensitive personal information every day. We are not judging you for your past or for your mistakes. We are just doing everything we can within the bounds of the law and our legal ethics to maximize the value of your claim.

### **Discuss Your Ability to Get and Pay for Medical Treatment**

Talk to your attorney about how you intend to get and pay for medical treatment. That can affect the case and how your attorney handles the case. Let him or her know if you have health insurance, Medicare or Medicaid that will pay, and discuss the pros and cons of paying with such insurance versus letting your doctors file medical liens against your ultimate recovery (medical liens only “attach” to insurance or other claim proceeds—they do not attach to your home or other property).

Your attorney cannot ethically pay your medical bills. But he or she may be able to place you with a doctor who will work with you to be paid out of your claim of lawsuit recovery.

### **Signing the Contract for Representation**

If you like the attorney and get a feel for his or her competency, and the attorney agrees to handle your claim, then he or she will have you sign a contract.

Most personal injury attorneys work on a “contingent fee basis.” That means they only get paid if they make a recovery for the client.

The attorney will also typically “front” all costs of the representation and be reimbursed for those costs if a recovery is made.

Expect an Oklahoma personal injury attorney to put you on a 33-50 contingent fee contract, depending on the difficulty of the case and whether or not they think your claim will have to be litigated (many attorneys use a graduated fee that increases if a lawsuit is filed and if certain stages of litigation are required). Even though that sounds like a lot, you are almost always

better off hiring an attorney and paying their fee rather than trying to fight the insurance company and its lawyers on your own.

My own journey from construction to law started with a house fire. Our insurance company did not pay the claim and we ultimately had to hire an attorney right before the statute of limitations would have run. He had our claim resolved about two weeks later for the amount the insurance company should have paid from the beginning. Even though we had to pay our attorney about \$25,000 out of that claim amount, that was much better than getting nothing on the claim.

Finally, an experienced personal injury attorney knows the insurance company tricks and how best to maximize your claim so that you—and he or she because of that “percentage fee contract”—gets the most out of your claim. Most often in my experience, people who hire an attorney get more out of their claim even after paying the contingent fee percentage than those who negotiate on their own with the insurance companies.

### **Take Your Attorney’s Advice**

Once you are under contract with an attorney, let them go to work for you. There is a reason it takes 7 years of school to become an attorney—there is a lot that goes into effective legal representation.

Let your attorney do his or her job; listen when they make a recommendation.

Don’t worry about your claim or second guess everything your attorney does.

Stay in communication when they need to talk to you. Let them know if you have a change of address or telephone number. But give them room and time to work.

On average it takes three to six months to resolve an uncontested claim from the point at which you reach “maximum medical improvement.”

- If your attorney has to file a lawsuit, expect that process to take eight months to a year or more.

### **Your Social Media Posts can Destroy Your Claim**

Be very careful what you say on social media. The other side will read your social media and may even subpoena your “private” posts. Many a case has been destroyed by a careless social media posting.

- Ideally, deactivate your social media accounts (but don’t delete them).

- If you can't bear to deactivate social media, then carefully consider every post. Know that the jury may be shown anything you post. Don't post videos of you playing ice hockey when you are claiming to have a herniated disc. Don't post photos of your drunken parties or post your angry rants. Those things do not make you look good to the jury that will be deciding your case.

### **Expect the Insurance Company to Check up on your Story**

Also beware that the insurance company may hire a private investigator to follow you around to see if you are really hurt.

- They may catch the one time you leaned over to awkwardly pick up a 50 pound bag of dog food. That will make it look like you are faking your injuries.

Until your claim is resolved, always expect that the insurance company is watching you.

## **IV. Kinds of Claims and Damages**

### **Damages for Injury to your Mind and Body**

If you're like most folks, you wonder what "damages" you might be entitled to. Personal injury, or "bodily injury" damages from a car wreck are divided into two categories: (1) economic losses, and (2) noneconomic losses.

Economic losses are losses that directly translate into money lost:

- Past and future medical bills
- Past and future lost wages
- Impairment of earning capacity because you cannot do the same work or make the same pay because of wreck-related injuries)

Noneconomic losses do not directly relate to money lost, but money damages are still the best—and only—means of compensation:

- Past and future pain and suffering
- Past and future emotional distress
- Permanent physical disability
- Scarring/disfigurement

In addition to the above, in some cases the injured person's family members may be entitled for damages for "loss of consortium." Those damages can include things like love, companionship, protection, household services, sexual relations, etc.

Also, recall from the discussion about UM—UM coverage pays (at least Oklahoma UM) all of the above categories of damage.

### **Damage to your Car**

Of course, if your car has been damaged or totaled, you are entitled to compensation for that as well.

- For a totaled vehicle, you should be paid “market value.”
- That roughly equates to what a willing buyer would pay a willing retail dealer for the vehicle in its pre-wreck condition.
- Look for similarly equipped models on AutoTrader, Craigslist, CarGuru, and ISeeCars.com

Most often it is not worth paying an attorney to handle the property damage portion of your claim—and mostly those claims are resolved within a few weeks.

But if you cannot get the property damage claim resolved, your attorney may be willing to handle that along with your bodily injury claim.

There can be some benefits to that because a property damage claim in Oklahoma is an “attorney fee claim.” That means that the prevailing party is also entitled to an attorney fee award if the claim is tried.

### **Valuing your Claim**

We often get asked how much a particular injury is “worth.” Unlike with workers compensation, regular personal injury claims like car wrecks and slip and falls are not controlled by damages “schedules.” The only true answer is that your claim is worth whatever your particular jury thinks it is worth. There is no limit to the factors that can go into this determination. For instance, the jury will consider factors such as:

- Whether there are any “aggravating factors” such as the at-fault driver being intoxicated or on their telephone
- The nature of the damage to the vehicles
- The nature and extent of any preexisting injuries (preexisting injuries sometimes limit damages, but can also be a factor that increases damages)
- Were the injuries particularly painful

- How much were the medical bills (and this can vary greatly depending on many factors for people with very similar injuries)
- The physical condition of the injured person before the wreck
- Whether there are any permanent physical or emotional effects on the injured person
- Whether any important witnesses have admissible criminal records
- Whether the jury likes the injured person or likes the at-fault driver, or even whether the jury likes the lawyers
- Whether the jury thinks people should or should not file lawsuits
- Any other factor, relevant or not, that people base decisions on

In addition to the above factors the jury will hear, your lawyer may advise you to accept a certain amount because that is all the insurance coverage that is available. That is because it is almost impossible to collect a judgment against an individual for more than their insurance coverage (this is a reason that it is so important that you purchase as much UM coverage as you can afford (see UM section, below).

#### **V. A Word About Statutes of Limitation**

Nearly every legal claim has a “statute of limitations” or similar law limiting the time period for enforcing a claim. If you do not file a lawsuit within that time frame your claim will be barred forever. Depending on the claim and on the particular defendant, that time limitation can be as short as one year for an Oklahoma personal injury claim. For that reason it is crucial that you never delay seeking consultation with an attorney about any claim.

#### **VI. Uninsured/Underinsured Motorists Insurance**

Most Oklahoma personal injury attorneys will tell you that Uninsured/Underinsured (or “UM” coverage) is the best coverage you can buy. If you do not already have uninsured motorists coverage, get as much as you can afford—it won’t help you with a past wreck, but it can help you with any future wrecks.

UM coverage is one area where Oklahoma is ahead of much of the country. We have fairly favorable UM laws.

UM coverage will pay you if another driver injures you and is either totally uninsured or does not have enough insurance to fully pay your damages.

Many Oklahoma drivers fall into that second category as “underinsured drivers,” so it is crucial that YOU PROTECT YOURSELF WITH UM COVERAGE.

Many insurance agents tell their clients that they do not need UM, especially if they have medical payments coverage or health insurance. That is terrible advice. UM pays so much more than just medical bills. UM pays all the categories of mind and body damages listed in that section above. This include past and future medical bills, but also past and future pain and suffering, lost income, disability, and all the rest. UM coverage is invaluable coverage.

UM is also “first-dollar” coverage. So once your damages exceed the at-fault driver’s policy limits, you can recover from your UM from the first dollar of your losses and damages without even needing to pursue a claim against the other driver and its insurance company (unless your damages also exceed your own UM coverage).

I recommend that all Oklahoma drivers purchase at least \$100,000 in UM coverage. To do that you will also have to carry that much in liability coverage as well. But UM coverage is so important and relatively inexpensive compared to what it provides when needed, that it is worth paying for extra liability coverage even if you don’t really need that so much..

### **VII. If You Were at Fault**

If someone makes a claim against you and from your free attorney consultation it was determined that you were likely at fault—then it is probably in your best interest to tell your insurance company to negotiate and pay the claim against you.

One of the benefits you when you buy car insurance (or homeowners, or other “liability” insurance) is a legal defense if a claim is made against you. Your insurance company owes you a duty to investigate and defend any claim made against you that *might* fall within the coverage under the policy. Your insurance then owes a duty to pay all valid claims.

As noted above, it is usually in your best interest to get the claim paid by your insurance company so that you can move on with your life. You do not generally benefit from insisting that you were not at fault and that your insurance should not pay claims against you. With most insurance companies, a claim is a claim. That means that once a claim is made against you, that counts for whatever it counts for regarding your coverage being renewed or your rates being increased. The amount paid out on the claim has little, if any affect, on those decisions.

For the above reasons, it is also not in your interests to insist that the other person could not have been injured (perhaps they were one of those who was in shock and did not appear to be injured at the scene).

### **Don’t Let Your Insurance Company Drag You Through Unnecessary Litigation**

Don’t get caught up in the insurance company’s game. They want to pay as little as possible on every claim even if that means dragging you into a two year court battle. If you know you were

at fault and that the other person's injury is legitimate, tell your insurance company to get the claim paid so that you do not end up in an unnecessary lawsuit.

### **Get a Free Attorney Consultation if there is Any Question About Who is at Fault**

Finally, regarding fault, ultimately "fault" is determined by the jury. But short of a jury trial, an experienced personal injury attorney is probably best able to help you decide who a jury will likely think is at fault (and whether you or anyone else has a valid claim for money damages).

Personal injury attorneys have to be good at determining who a jury will say is at fault because we handle these cases on that contingent fee basis. Since the attorney will have to pay case expenses and will only get paid if he or she makes a recovery for their injured client, they have good reason to as accurately as possible predict what a jury is likely to decide.

Always talk to a personal injury attorney if you were hurt, unless you are somehow 100% sure that you were 100% to blame. And to be sure, it will be the rare case where the injured person can be 100% sure that they were to blame.

### **VIII. Conclusion**

The above should give you a basic understanding of what to do and to expect if you or a loved one is in a car wreck. None of the above can replace an actual consultation with a personal injury attorney, though. So, whether with us, through our free consultation page, or with another firm, do yourself a favor and get a free consultation with an Oklahoma personal injury lawyer.

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