

Auto Accident Claims Secrets

10 Secrets the Insurance Companies Don't Want You to Know

Based on California law.

Written by a California licensed injury accident lawyer for Californians.

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10. You are a reserve

When you start your claim for injuries and/or property damage, the insurance adjuster is feeling you out so that he or she can decide how much the insurance company is going to eventually pay on your claims.

They review and use your statements, the types of injuries you claim, the type of medical treatment you received and will receive, the vehicle damages, along with any other information they glean, to establish a projected accounts payable entry called a “reserve”.

The insurance adjuster is often graded by the insurance company each year on how well he or she accurately sets reserves. An insurance adjuster that under-reserves cases will likely receive a poor performance review. An adjuster that over-reserves may be looked at as overpaying claims and can also receive a poor performance review.

So why is this important? You should not belittle or devalue your claim at the outset of your accident case because the insurance company adjuster may set a low reserve on your case and then eventually force you to receive that low amount so as not to make payment that exceeds the initial reserve he or she set. Insurance adjusters get judged on how well they reserve your accident case and this affects your case.

9. Size matters

Large insurers have branch claims offices in most metropolitan areas. Smaller insurers may not be able to afford offices in all these metros.

Large insurers typically use employees to handle claims operations. These workers are trained to be extremely loyal to the insurance company agenda of paying less on claims. Smaller insurers may use independent adjusting organizations or independent contractors to handle your claim. These “independents” may be charging the insurance company on a time and expense basis....they want your claim to take more time so they get paid more.

Large insurers typically have their own staff legal counsel that will handle your case if it goes to a lawsuit. Whereas, smaller insurance companies may have to hire local lawyers known as panel lawyers to handle your case.

So why does this matter? Smaller insurance companies have more incentive to pay claims dollars to you than hiring independent adjusters and independent lawyers. Larger insurance companies use their “economies of scale” to pay lower claims payouts because they have the resources to force you to file a lawsuit to receive a better claims payout. How the insurance company pays its workers has an affect on how your case will be handled.

8. But the adjuster was so nice

Injury adjusters are trained to build rapport at the outset of the case. They can be very friendly and good listeners. This makes you think that they will help you with your injury case. Property damage adjusters may be less friendly because the consequences to the insurance company are limited in comparison to injury cases. The property damage aspects of claims is less subjective.

Insurance companies want their insurance claims adjusters to build rapport while not promising anything. They want you to feel like they will handle your claim fairly. As a result of this good rapport, you may choose to delay going to the doctor. You may also delay in consulting with an attorney. This good rapport may lull you into a state of complacency.

If you eventually need medical treatment they will say they you waited too long and that it was not reasonable to start treatment weeks or a month after the accident. If you delay seeking legal counsel you may have said or done things that could reduce the true value of your case. You may notice that the insurance adjuster becomes less friendly over the course of your claim.

Many times, the insurance adjuster asks for your recorded statement once some rapport is established. Have you ever asked your friend for a recorded statement? No friend does that. Insurance adjusters are not your friends. Do not give recorded statements.

Bottom Line: Realize that the insurance adjuster has an agenda...that being to close your claim for the smallest sum that you will take. After all, friends feel weird asking friends for money. They want you to feel weird and take less.

7. There is a range

The vast majority of claims payments made on an auto accident have a settlement range. This means that there is a value the insurance company wants to pay you and then there is a maximum value an insurance company will pay you without having to be told to pay you. Never allow them to argue “Take it or leave it.”

For instance, let’s take a hypothetical vehicle total loss. You believe your vehicle is worth \$15,000. The insurance company tells you that it is worth \$11,579. You are upset with the low offer. The insurance company points to an independent report that shows comparable automobiles and argues the \$11,579 is fair. You check AutoTrader, Kelley Blue Book, Craigslist, etc. and you come up with a range of \$12,000-16,000 for comparable vehicles. You supply your reports to the insurance company and they add \$500 to their offer. Their range just went from the low of \$11,579 to a high of \$12,079. There is a range. They may not pay you \$15,000 unless you make them. You may have to sue or invoke the appraisal clause to do so. They know that that is work for you and they may stick to their low range.

Bottom Line: Ranges are affected by documentation and argument (discussion). You have to document, in writing, why the insurance company should change their range. If you still don’t agree with their range you will have to decide what your legal options are to make them pay more. This may include filing a lawsuit, demanding arbitration, or invoking an appraisal clause.

6. Payment authority varies

Insurance adjusters are not created equal. There is large variance amongst insurance adjusters when it comes to how much authority they have to pay your claim. Here are some general rules:

Property damage adjusters have very limited discretion to deviate from vehicle repair estimates, vehicle total loss payouts, and rental car payouts. Usually the least experienced adjusters are assigned a property damage claims desk. They may need supervisors to sign off on any deviations from standards set by the insurance claims department.

Bodily injury adjusters on non-lawyer-represented muscle sprain and strain cases generally have \$4,000-\$7,500 in payment authority. This amount varies with each insurance company. When you have a lawyer, many insurance companies move your claims file to a more experienced insurance adjuster who generally has more settlement authority perhaps \$7,500-\$12,500.

When you have a lawyer and your lawyer files the lawsuit, your case will likely be moved to a senior (litigation) adjuster's desk. These experienced adjusters have much higher levels of payment authority and often can influence claims management if there is a good reason to pay more on your case.

Bottom Line: The claims adjuster you are talking to may not have the power to get you paid fairly. You may need them to acquire supervisor authority to pay more or you may need to hire a lawyer.

5. Why is this taking so long?

Insurance companies will often tell you that they are “investigating” or that they are “pending receipt” of some records or information before they can act. They will also tell you that your claim as submitted is “not complete”, it is “missing information”, or you must provide some additional record or report before they can act. There may be some legitimacy to these statements but sometimes they are just stall tactics.

The Classic Game. First, they tell the injured person that they are investigating the claim and need to speak with witnesses, their insured, etc. before making a decision on the claim. If the injured person has no health insurance, he or she may choose to suffer without going to a doctor while waiting for the decision. After all, they can't afford the treatment. Second, after weeks or months go by the insurance company says they will “accept” the claim. The injured person then gets treatment. Finally, the injured person submits their medical bills and the insurance company denies the claim arguing that the injured person must not really be injured because they received no treatment for weeks or months after the accident. Nice, huh?

Overworked. Insurance adjusters often have 50+ cases, and sometimes more than 100, pending at any given time. They have fires to put out on certain files and they often look for any reason they can to take your request and push to the bottom of their stack so they can devote more time to those “rush” cases or the case that has their supervisor's attention. This is human nature.

No legal consequences. Insurance companies have been granted unrealistically long time deadlines from the insurance regulators. For instance, in California, insurers are allowed up to fifteen (15) days to respond to communications from claimants. They are given up to forty (40) days to review your demand package or proof of claim. As a result of these favorable laws, many claims departments are understaffed and the claims representatives have too many files.

4. Anybody but me, any reason not to pay

There is a theme the insurance companies use to defend cases. Somebody else is to blame...either the injured person himself/herself or some third party. The adjusters say “Everybody just wants to milk the system.” They treat you like a crook for making a legitimate claim.

The Insurance Adjuster’s Theme Song: If you were hurt it was your fault. If we are to blame we don’t owe the whole thing because someone else is also to blame. If you were injured, then you weren’t injured as bad as you are claiming. If you received medical treatment it was unnecessary or took too long. If the treatment was necessary, then the medical provider charged too much. Hence, we don’t have to pay anything (or as much as you are asking).

As with all things, a more rational approach is needed. Yes, there are crooks, shysters, and milkers out there...no doubt. However there are also a lot of really injured people getting treated poorly by insurance companies because insurers treat most claimants the same way as opposed to standing back and looking at the individual merits of each claim.

Bottom Line: Making a claim against an auto insurance company is hard work because you have to overcome this common mindset found in claims departments. Realize that when you have a claim against an insurance company you are not the friend of the insurance company...they will likely treat you good only if you don’t ask for more compensation....ask for more and you will likely get all of their defenses.

3. You want an explanation?

Insurance companies have no problem saying “No”, or “We will not pay”, or “We will only pay...”. Often times they don’t comply with the law when doing so.

Mandatory Language: In California, insurance companies have pre-formatted letters that state “If you believe all or part of your claim has been wrongfully denied or rejected, you may have the matter reviewed by the California Department of Insurance...” (emphasis added). This is the language the insurance regulators say that must be used when insurers deny or reject a claim.

Your Insurance Company. In California, insurance companies are required to explain in detail the denial of claims to their own insureds. This explanation must include a statement of all basis for rejecting or denying your claim, including relevant factual and legal bases for each reason given. They must cite specific statutes and laws they are relying on when making any such denial or rejection. Your insurance company owes you a detailed explanation.

The Other Party’s Insurance Company. In California, insurance companies are required to provide a letter advising the third party claimant of the denial or rejection. No explanation is required. The mandatory language must be used. Many insurers do not use this language when they have rejected part of a claim to a third party. For instance, you asked the at fault party’s insurance company to pay \$35 per day for a rental car and the insurance company only paid \$25. They are required to send the mandatory language...they probably won’t. You have the right to have the California Department of Insurance review unreasonably low claims offers.

2. You may be prosecuted

Make a misrepresentation of fact and you may have to answer for fraud. Insurance companies have a claims group known as the “Special Investigations Unit” or SIU for short. These departments are authorized and mandated by the California Department of Insurance. Their sole job is to detect and defend against fraudulent claims.

The law says that the insurer does not have to divulge if your claim is being investigated by this department. **In practice though, there are some insurance companies that allow their investigators to disclose themselves as “Special Investigators” so that they can strong arm insurance claimants into withdrawing or significantly reducing their legitimate claims.**

Let’s be clear, there are staged accidents and criminal rings that actively create fake insurance claims. These claims must be prosecuted and defended so that we all have more affordable insurance. Rogue SIU departments strong arm legitimate claimants to withdraw their claims or otherwise create a significantly reduced claims payment made by the insurer.

The definition of fraud is the material misrepresentation of fact, intended to deceive, and which deceives another party to his or her legal detriment. There is an old adage in the law...fraud is easy to allege and very hard to prove. Many claims are subjective in nature. Absent clear intent to deceive most insurers are forced to pay claims. Know this: **Everything you say matters.**

Bottom Line: If your claim is ever assigned to a special investigator you need to know that you are believed to be a candidate for prosecution. You need to speak to an insurance lawyer fast...like yesterday. The insurer could be just strong arming you to reduce your claim. You will need to “lawyer up” so that you can decide how best to proceed.

1. You don't have to take it

Insurance companies have “the power of the purse”. He who holds the money creates the rules. Insurers buy legislators to enact laws that favor themselves. They hire influential lawyers and law firms to petition the Supreme Court with “amicus curiae” briefs so that they can get rulings that favor themselves. They can easily tell you “no” or that they are only willing to pay X dollars. They have lawyers and claims staff that are ready and willing to defend any lawsuit you may bring. You are dealing with powerful corporate interests that are financially superior to you or any lawyer you can hire. That is the truth. So how can you win against such powerful financial corporations? Two things.

Request for Assistance: You have the right to file a Request for Assistance with the Department of Insurance if you believe that the insurance company is being unreasonable in the handling of your claim. Insurance companies hate having others tell them what to do. If they have done something wrong they can be fined. With respect to auto insurance claims alone, the California Department of Insurance reports demonstrate that there are hundreds of justified complaints each and every year. You should file a Request for Assistance if you believe that the insurance company is being unreasonable or has violated a law.

Lawyer Up: Auto accident lawyers generally work on a contingency fee. They receive a percentage of your recovery. Generally no recovery means no fee. Go see an auto accident lawyer, try to find one that worked for the insurance industry in a past life, and get some free advice on how to handle your case. Hire an auto accident lawyer if you are over your head and need help. Find a lawyer that is willing to take your case to trial. Yes...trial. You must be willing to allow a jury to decide your case. Insurance companies don't trust juries. If your claim is good they will most likely pay a fair sum on the courthouse steps. That is what it takes today to win your auto accident claim. It is work...plain and simple.

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