What Is My Injury Claim Worth?

How insurance companies evaluate your injury accident case

Based on California law.
Written by a California licensed injury accident lawyer for Californians.
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On scene emergency medical care

Many injury accident victims needlessly suffer pain and discomfort at the scene of an accident despite saying “No, I am fine.” Human nature causes everybody at an accident scene to focus on fixing the immediate problems. Injured persons are often times more concerned with damaged cars, vehicles blocking traffic, whether they need an officer to take a report, securing witnesses, etc. As a result of these immediate concerns they may not receive on scene medical care. They may say “I am not injured” when they really don’t know yet.

On scene medical care is a strong indicator of the extent of injury a person really sustained. Insurance company claims adjusters will look at the medical reports an pay special attention to whether there was a loss of consciousness, whether cervical constraints were applied, and whether any injections for pain were immediately provided. When these items are documented in the ambulance and/or emergency medical technician reports, there are strong arguments for increased pain, suffering, and inconvenience.

Insurance company claims adjusters are quick to point out when a person was walking around at the scene of an accident, not receiving treatment, and making no claim of injuries only later to claim injury. They often times say that the person was fine and later wanted “to make a claim.” They are sometimes right…but often times they are wrong.

Bottom Line: What happened at the injury accident scene will have a major impact on an insurance adjuster’s evaluation of your injury claim. If you failed to get treatment at the scene you will likely get a lower offer from an insurance claims adjuster.

Hospital and urgent care facilities

Failing to receive medical treatment fast after an injury accident will likely be interpreted by the insurance claims adjuster as a sign that you were “not that injured”. In thousands of negotiations with insurance claims adjusters over the years, I hear them use the words: “The claimant gapped in treatment”.

Gapping in treatment happens when a person fails to receive treatment within a resonable time after the accident or when a person fails to receive treatment consistently during their recovery period. As an example, if an accident happens on Wednesday July 1, 2015, and the injured person stays home (or went to Vegas on a preplanned vacation), and then receives his or her first medical treatment on Monday, July 6, 2015, the insurance company will view the injury as “less severe” and more likely a “created” injury claim.

Insurance company claims adjusters assume that if you are injured you will treat within a few days after an accident. The longer the gap the more suspicous they become. As a lawyer, I see countless people who have no insurance or who just hate medical facilities/doctors and they try to self treat. Many times there is a clear explanation why the person gapped in treatment and that the insurance company claims adjuster will just choose to evaluate the claim in the light most favorable to them…paying less on the claim.

Bottom Line: Get immediate hospital and urgent care treatment after an accident. You should be evaluated early and receive whatever pain medications or muscle relaxers that are needed to help you recover faster. Injuries should be treated consistently until fully resolved.

Did you receive care from your primary care physician?

If an injured person receives care only from a chiropractor, with no on-scene, hospital, or urgent care treatment, then the insurance claims adjuster will likely view the claim with raised eyebrows. The one thing that changes their opinion is if the person also receives care from their primary care physician.

As you might expect, many people receive very conservative care from the primary care physician/medical doctor. Insurance companies like medical doctors much more than they do chiropractors. They view the former as being beholden to the health insurance system (managed care) and the later as freelance businessmen and women. To a certain degree they are right, albeit for wrong reasons.

As an injury lawyer, I encourage my clients to receive concurrent treatment with both their primary care physicians and their chiropractors. Medical doctors can prescribe much needed muscle relaxers and pain killers, and those are sometimes helpful in conjunction with chiropractic therapies. I find it helpful when I have two doctors making the same findings on a given patient. It helps the injured person recover faster and legitimizes valid claims.

Bottom Line: If you failed to get treatment from your primary care physician and treated with only a chiropractor, you should expect that the insurance company claims adjuster will reduce the value of your injury claims settlement. Right or wrong this is how the view the claim.

Are there lien medical providers on your case?

Insurance companies believe that people build up claims. They believe that lawyers send accident claimants to medical providers that will overtreat and overbill the file. They believe this is especially true when a medical provider does not accept the insurance of the injured claimant when it is available. There is some truth to their argument.

If a medical provider can receive $50 per visit for treating an injured person when they bill health insurance or they can get $100 per visit when they bill an injury case on a lien basis, the medical provider, as a business person, wants to get the higher payment. Many take liens and not insurance on injury cases.

In reality, many injured people have no health insurance and they need medical treatment. If medical doctors and chiropractors take the risk of treating the uninsured, then they should be paid a higher rate for the risk of non-collectible accounts. Nonetheless, billing and treatment on lien files should be carefully scrutinized to make sure there is no abuse. Reasonable treatment with reasonable prices will prevail.

Bottom Line: If you have a medical provider or chiropractor that has a lien on your case, the insurance company adjuster will likely significantly reduce the value of that treatment believing that they will accept less than billed.

What diagnostic tests were performed?

An image is worth a thousand words, so the old saying goes. Does this apply to x-rays, MRIs, or CT Scans? Yes it does. Failure to get diagnostic tests performed is a sure sign to the claims adjuster that the medical provider did not think you were “that injured”.

Unfortuneately, medical providers will not likely do expensive diagnostic tests early on unless they think you were in a major rollover style accident. With regards to neck and back injuries, most health insurance companies will not pay for MRIs or CT scans performed in the first 60-90 days after an accident. They want the injured person to show signs of nerve impingment (numbness, tingling, or shooting pains) in the hands, arms, feet or legs before these expensive tests are performed.

Diagnostic tests are usually the best way for an injured person to rule out more serious injury. If you never receive diagnostic tests you could settle your case without knowing the full extent of your injuries. This is dangerous. If you do get the diagnostic tests when the medical records do not support a need for the tests, the insurance company will likely not pay for the test.

Injury accident lawyers, medical providers, and the injured, make tough decisions on whether or not diagnostic tests are needed and when.

Bottom Line: The claims adjuster you are talking will be looking for the x-ray, MRI or CT scan reports to see when you received diagnostic tests, and whether or not they were reasonable considering the facts of your accident.

What did the specialists say?

Many injury accident cases involve orthopedists, physical therapists, and neurologists. These specialists prepare reports that are highly valuable to an injury accident case. Their exams and observations tell a huge story to the insurance claims evaluator.

Orthopedists: When a person presents an injury to the skeletal system, an orthopedist can examine the patient and properly determine whether bones have been broken, ligaments or tendons torn, or whether there is just a sprain or strain injury. The examination can be very comprehensive and the specialists findings can really affect your injury case.

Physical Therapists. Many times a primary care physician and orthopedist will send a patient to physical therapy for usually 6 to 12 visits and then have a re-evaluation of the patient after the therapy. The physical therapists documents lack of range of motion and strength. The goal is to increase both and decrease swelling and pain over time. The reports from the physical therapist will be looked at carefully by the insurance adjuster.

Neurologists. If you suffered post concussion syndrome, loss of consciousness, loss of concentration, blurred vision, and/or headaches, you may have seen or should have seen a neurologist. In my years of practice, I have seen many head injuries go untreated because the patient just assumed they would get better. Documenting and treating these symptoms early in a case is very important.

Bottom Line: Getting treatment with specialists early in a case will have a major impact on your recovery and the insurance companies evaluation of your injury accident case. Specialist reports and records are highly persuasive in injury accident evaluations. They can make or break a case.

What does an insurance company owe me?

So you have been injured by the negligent or wrongful conduct of another person. You are now ready to present an injury claim to the liability insurance company that represents that person. What do they owe you?

The wrongdoer's contract of liability insurance says that they insurance company must pay damages for bodily injury and property damage that arises from an accident. Damages is what you are entitled to when another person causes you physical or mental harm. The law in California states the jury must decide how much money will reasonably compensate the plaintiff for the harm suffered. The exact amount need not be proven but the jury is not allowed to speculate or guess when awarding damages.

Damages owed include economic damages and non-economic damages. Economic damages include verifiable monetary losses medical bills, lost earnings, future medical bills, future lost earnings, property damage and loss of use of property. Non-economic damages include pain, suffering, inconvenience, disfigurement, mental suffering, emotional distress, loss of society, companionship, loss of consortiyum, injury to reputation, and humiliation.

Bottom Line: Ecomonic damages must be verifiable. This means you must be able to document the amount claimed with some degree of reasonable certainty. These are your objective damages. The subjective damages are non-economic damages. You must quantify both. Lawyers have experience knowing what other cases settle for and can give you guidance as to what is fair.

List of economic damages to be claimed for personal injury

Medical expenses: $_____

Loss of earnings: $_____

Future medical expenses: $_____

Future lost earnings: $_____

Lost earnings capacity: $_____

Lost household services: $_____

Medical mileage: $_____

Bottom Line: The insurance company only owes reasonable charges for reasonable treatment. They will likely argue that not all of your treatment was reasonable in scope or in amount charged. They see everything as being negotiable.

Non-economic damages claimed for personal injury

Pain and suffering: $_____

Inconvenience: $_____

Mental suffering: $_____

Emotional distress: $_____

Loss of society/companionship: $_____

Loss of consortium: $_____

Humiliation/reputation: $_____

Bottom Line: There is no rule of thumb for an injury case. Some people say that non-economic damages should be 2 or 3 times medical bills. This is a bogus myth that should be forever banished. People are different, they live different lives and have different damages. Each case should be evaluated on its own unique set of facts. You may have valid reasons why you suffered more non-economic damages than the next person. If you can reasonably claim higher or different damages then you should.

Special situations

There are special situations that affect how injury claims are evaluated by insurance claims adjusters. This presentation can not go into all the unique circumstances that may arise but here are a few of the major issues:

Lack of Auto Liability Insurance: If you did not have valid liability insurance on your vehicle or motorcycle when you were involved in an auto accident you may not be entitled to non-economic damages. You should discuss the facts of your case with a lawyer.

Multiple Defendants: If your accident was caused by more than one person, company or public agency, you may have special rights to pursue economic damages against all of the defendants jointly and severally. This means that even if one defendant was only 1% responsible they may owe all of your economic damages. This type of case should be discussed with a lawyer.

Claims Against Health Care Providers: If your injury claim is against a health care provider there may be caps related to the non-economic damages that you claim. You should discuss the facts of your case with a lawyer.

Health Insurance Paid Medical Bills: In the last few years, the law changed to allow an injured person to only claim the amount of the medical bills paid by his or her health insurance and not the billed amount. This can have a huge impact on how economic damages are calculated in an injury accident case. It should not diminish the value of your non-economic damages.

Are you ready to negotiate and argue?

An injury claim is a negotiation that requires preparation, skill and special knowledge. Many people can handle their small injury accident cases without the assistance of a lawyer.

People hire injury accident lawyers because they offer a service and special skill set that injured persons usually do not possess nor do they care to possess. Injury lawyers usually settle and/or try 50 or more cases per year so they learn what is fair. They devour injury verdict and settlement sheets that explain injury values. These sheets are available at your local law library.

If you think you want to handle your own case I would highly encourage you to first talk to and receive a free consultation from an injury accident lawyer so that you can be apprised of any special or unique issues that may come up during your case. If you are a person who does not want to spend the time or effort needed to document your claims, and then argue and negotiate with an insurance company, then you will best be served by hiring an experienced lawyer.

In all negotations, it helps to know what is fair, and what the same insurance companies have paid in the past for the same type of injury claims. Experienced accident lawyers have this special knowledge. They also have the power to file a lawsuit if the insurance company is being unreasonable in how they negotiate your case.

Bottom Line: Insurance companies do not like having juries spend their money. Often times a lawsuit is the only thing that causes them concern because they know 12 people in a jury box will decide how much your check will be.

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