



Consumer Federation of America's

Guide to Navigating the Auto Claims' Maze: Getting the Settlement You Deserve

You've just been involved in a fender bender with another vehicle. Your car is damaged but drivable. Your neck and back are a little sore and you were not at fault for the accident. This scenario takes place countless times each day across the country. You're now faced with important decisions and many questions. Should I make a claim through my insurance company or should I try to make a claim through the other driver's insurance company? How am I going to get my car repaired? What if I need a rental car while mine is in the shop? Who is going to pay for my doctor bills if I have my sore neck and back checked out?

With the current financial markets making it difficult for insurance carriers to earn a good return on the premium dollars you pay, these companies have increased the pressure they place on their claims' departments to pay out less in claims' dollars and expenses than they are earning in premium payments. Regardless of whether you decide to file a claim with your company or the other driver's insurer, remember that the only way a claims' department accomplishes this goal of making an "underwriting profit" is to pay as little as they can on each and every claim. In other words, do not be surprised if the insurance company offers you less than you think you need to pay for effective repairs or thorough medical treatment. By carefully following the recommendations in this report, you will increase your chances of getting the insurance company to offer you a fair settlement.

See CFA's *Checklist for Getting the Settlement You Deserve* that incorporates the consumer advice in this report if you have an automobile accident and need to file a claim.

FILING A CLAIM WITH YOUR OWN INSURANCE COMPANY

The first step would be to review your policy to determine if you have coverage on the damaged vehicle. The type of coverage that would pay for the repair of your vehicle is called **Collision** insurance. This coverage usually requires you to pay for losses up to a certain dollar amount before your insurance kicks in, which is known as a monetary **Deductible**. You should also look for **Rental Reimbursement** coverage, as that will pay for a rental while your car is in the shop. Insurers usually set a daily and maximum cap on the amount they will pay for a rental car.

TIP: Your insurance policy is a legal contract between you and your insurer. Your insurer is obligated to meet the terms of the policy and you are obligated to cooperate (within reason) with the company.

Lastly, your medical bills would be covered under **Medical Payments** coverage and/or **Personal Injury Protection** (PIP), also known as no-fault coverage, depending upon the state in which you reside. It is important to understand that your medical coverage only pays for medical expenses (PIP may cover lost wages), not “pain and suffering.” Pain and suffering is the physical and mental distress someone might experience as the result of an injury. It can include scarring, temporary or permanent disabilities or limitations or a decreased life span.

The insurance policy and coverage you purchased from your insurance company is a legal contract. The insurance company is contractually obligated to you as outlined in the policy. You, as the **Policyholder** are also a party to the “contract” and have certain obligations. Your primary responsibility under your insurance policy is to cooperate (within reason) with your insurance company. That means providing it with the information it needs to complete its investigation and making your vehicle available to the company for a damage appraisal.

Reporting a Loss

This is the beginning point of any claim. You should report the loss to the insurer as soon as possible, as your insurer cannot begin the claims’ payment process until this occurs. In years past, you would have been required to report most claims to the local agent who sold you the policy. This has changed in recent years. Most major insurers now require you to call losses into a toll-free number or to enter the information on a web site. Major insurers have established

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large call centers to receive and record new claims 24 hours-a-day. Generally, these employees are paid hourly, follow scripts on the computer ask you a series of questions and fill in the fields on the screen as they go along. It is important to understand that they are not claims' adjusters and will not be able to provide you with much information other than on what are the next steps in the process. Before you hang up the phone, it is very important that you get the name of the adjuster who is being assigned your claim (if they have that information), your claim number, the phone number of the claim office(s) that will be handling your claim and when you can expect to hear back from someone.

Dealing with the Adjuster / Recorded Statements

The first time an adjuster contacts you, he or she will typically ask your permission to take a recorded statement. The statement generally consists of basic information about you, details about

the accident and details about the damage to your car and any injuries you have received. Once the adjuster takes a statement, he or she should provide you with detailed information about how the company will estimate the losses that it will cover and get your car repaired. Make sure that you determine if you are required to take your car somewhere to have it appraised for repair or if the insurance company is going to send an appraiser to meet with you and look at the car. Your insurance company may recommend (sometimes forcefully) that you take your car to a particular repair facility. That is because they have established a relationship with that facility that will likely save them money. If you are familiar with or have had a previous positive experience with the recommended facility and feel comfortable using it, fine. However, you are under no contractual obligation to use any particular facility.

TIP: It is your choice – not the insurer's – as to where your vehicle is repaired.

You should also review your rental coverage with the adjuster on this first call to determine exactly how you or the insurance company should make arrangements for a rental car once your car goes in the shop. It is very important to establish a clear understanding of the rental arrangement up-front, as this is a common source of misunderstanding.

Make sure that you also discuss any injury and medical treatment you may have received as a result of the accident. Insurance companies often assign additional adjusters to handle just the losses resulting from medical bills and injuries, so you may be required to deal with a second adjuster. Be sure to get that adjuster's name and contact information too, if it is available. This other adjuster may be located in another office, or even in another state.

When you speak with the adjuster who is handling your medical claim, he or she will probably send you some forms to complete. One form may ask questions about your injury and treatment. The other will be a medical authorization form so

that the insurance company can obtain your medical records and the bills associated with your accident. If you are pursuing a claim under your medical coverage, you are obligated to complete the forms and send them back. It is important that you do so promptly, because your insurance company cannot pay or reimburse you for medical costs until they confirm that these expenses are accident-related.

Getting the Insurance Company to Address Your Concerns

You have a right as a consumer to expect that if you cooperate (within reason) with the insurer, your claim will be handled quickly. The reality is that the insurer might not meet your expectations, or their own contractual obligations.

Problems can arise with the repair of your vehicle, the valuation of your vehicle if it is determined to be a total loss, reimbursement for a rental car or in getting your medical bills paid. Your first point of contact to resolve problems to your satisfaction should be with the adjuster assigned to your claim. However, if the adjuster refuses to assist you, becomes defensive, provides you with an unsatisfactory explanation or fails to return your calls quickly, then it is time to move on. It is critical that you document all of your efforts to get problems resolved. Keep a record of every call you make or receive, including who you speak with, when you talk to them, and what they tell you. The insurance adjuster is documenting their account of their conversations with you in their claims' software systems, so it is important that you do the same on a note pad or on your personal computer.

TIP: Aim higher up the company's "food chain" than the adjuster's supervisor if you want to get your problem resolved.

Most consumers are inclined to ask to speak to the adjuster's supervisor if they are not satisfied with an adjuster's response to their concerns. This approach is often unsuccessful. Supervisors

will frequently defend the adjuster's position, and hope that you will accept this explanation and go away. You should also be aware that most claim supervisors have little authority to make meaningful changes in how your claim is handled. Instead, you should

aim higher up the company's "food chain" if you want to get your problem resolved. At a minimum, you should determine who is in charge of the office in which the adjuster works. The title of that individual could range from "manager" to "director" to "regional vice president" of claims. Make contact with this supervisor and explain your situation, referring to your notes if necessary. The first thing this individual is likely to do is look at the adjuster's claim file on the computer to see what he or she

Tip: Document all of your efforts to get problems resolved. Keep a record of every call you make or receive, including who you spoke with, when you talked to them, and what they told you.

said about your claim and your conversations. That's why it is so important to document your account of the facts. Assuming that your concern is justified, supervisors at this level are often very interested in customer service and extremely motivated to resolve problems before they escalate. Insurance companies often categorize positions of this type as "bonus level." A component of the annual bonus given to these officers is based upon customer service.

If you tried working with the local office management to no avail or if you wish to skip that step, the best internal option is to contact the vice president or director of claims in the home office of the insurance company. You might be surprised how interested they are in receiving direct feedback from a consumer. It's an opportunity for them to learn

about the specific experience of their policyholders, resolve these concerns and to then determine if there is a broad problem that needs to be changed with the way the company does business. Keep in mind that most of the individuals at this level started out as adjusters many years ago, so they will have a "nuts and bolts" understanding of what you are discussing. As with regional

managers, they will likely look at the claim file to see what has been documented. The last thing a local or regional claims' office wants to receive is a call or email from the home office about a complaint. However, once they receive one, they know that they are being evaluated based on how they resolve the complaint. They will usually do what they can within reason to resolve the complaint as promptly as possible.

TIP: The last thing a local or regional claims' office wants is a call from the home office about a complaint. They are evaluated based on how they resolve the complaint, which means that they'll work hard to resolve the complaint as quickly as possible.

Another approach to getting your problem resolved is to contact the agent who sold you your policy. They made a commission on that sale and continue to earn money from your policy for each year that you renew it. This approach works best if you purchased your insurance coverage from an independent agent who represents several insurance companies. In contrast, a captive or company agent represents only one company and usually has very little influence when it comes to assisting you with a claims' problem. Independent agents often have clout because that they can -- and at times do -- move all of the business they have placed with one company to another. You should explain the claim problem you are having to your agent and ask that he or she assist you by contacting the company on your behalf. If for some reason, the agent refuses to help or tells you that they stay out of such matters, it is time to find a new agent. The agent will either contact the local claims' office if they have established a rapport with them or contact the insurance company marketing representative assigned to their agency. The marketing representative has an incentive to resolve the matter and keep the agent happy, as the representative does not want the agent to move his or her business to another

insurance company. The representative also does not want his or her insurance company to get a reputation for poor claims' service among agents.

If you have exhausted all efforts with the insurance carrier and the company has still not resolved the problem to your

satisfaction, you should file a complaint with your state insurance commissioner's office. Most state departments of insurance have websites that allow you to file an online complaint. If you prefer, you can also complete the complaint form they provide online and submit it to the commissioner's office by mail. This is not a quick process and it does not guarantee that you are going to get the complaint resolved in the way that you want, but it is another option that might help. Claims' offices don't like to receive complaints through state insurance departments, primarily because it creates a lot of paperwork and record keeping for the company. Most states do little more than forward the complaint to the insurer and then send the insurer's response back to the consumer. Few states actually order companies to pay a claim. However, at least, the state can get you answers to questions that the insurer may be reluctant to provide directly to you.

If you feel strongly that your insurance company has not met their obligations to you under the insurance policy, your final option is to retain an attorney. Breach of an insurance contract is known as "first party bad faith." In other words, the insurance company failed to meet its obligations under the terms of the insurance policy. There are attorneys who specialize in this type of litigation. Insurance companies take these types of lawsuits seriously, as they expose the company to potentially high losses, can cause investors to pull back because of lack of confidence and can become a public relations problem.

TIP: File a complaint with your state insurance department. While the department may not help resolve your complaint, they will pass it on to the insurer. Most companies treat these complaints seriously.

FILING A CLAIM WITH THE AT-FAULT INSURANCE

Although you may have sufficient coverage to pay for repairs under your own auto insurance policy, your first thought might be, "why should I go through my insurance company and risk being charged higher rates in the future when it was the other driver's fault"? That's a logical thought but, before you contact the other insurance company, you should understand the potential pitfalls of this approach.

Unlike with your insurance company, the other driver's insurance company is not contractually obligated to assist you. From the point-of-view of the other company, whether the driver it insures is legally liable for your damages and injuries is open to interpretation and has yet to be determined.

Reporting a Loss

You shouldn't wait for the other driver to report the claim to his or her insurance company. Individuals will sometimes delay or even purposely fail to report claims. It's obviously important to get the other driver's insurance information

at the time of the accident. If the police investigate and a report is completed, they will include insurance information in the report. If the police report indicates that the other driver failed to produce proof of insurance, then the best approach is to immediately report the claim to your insurance company and proceed with them.

When you speak with the loss reporting department at the other insurance company, you should expect to receive less information than you would from your company and few definitive answers to your questions. They will most likely inform you that they cannot make any commitments to you until the claim is properly investigated. This is one disadvantage to dealing with the other company. They will likely not tell you right away if they are going to pay for the repair, even if they agree to send someone out to look at the damages to your car. As recommended in dealing your own company, be sure to get the claim number from them, the name of the adjuster assigned to the claim (if known), contact information for this person, and so forth.

TIP: You shouldn't wait for the other driver to report the claim to his or her insurance company.

Dealing with the Adjuster / Recorded Statements

When the adjuster from the other driver's insurance company contacts you, they are probably going to ask permission to take a recorded statement from you. You are under no obligation to agree to a recorded statement with the other driver's company. CFA recommends that you decline. Insurers commonly transcribe recorded statements. They could then attempt to distort your statement and use your own words against you in an effort to reduce the amount they offer you for either your car repair or an injury. However, you should certainly cooperate within reason; explain what occurred, what are the damages to your vehicle and describe any injuries that you may have.

TIP: You are under no obligation to agree to a recorded statement with the other driver's company. CFA recommends that you decline if asked.

You will want to ask the adjuster if the company is accepting liability for the accident, which means that it will pay for your car's damages. If the adjuster delays or can't give you a straight answer, you will have to decide if you want to give them more time or to move on and file a claim with your insurance company. Assuming the other driver's insurance company agrees to pay for your damages, just as with

your own company, you are under no obligation to use any particular repair facility. If you need a rental car while yours is in the shop for repair, ask the adjuster to arrange for a “direct bill” with the rental car agency so that you don’t have to pay the agency and get reimbursed later by the insurer.

Filing an Injury Claim

If you are interested in pursuing a claim against the other driver for your injuries, be prepared for a lot of intrusive questions about your medical history. (You can limit this medical privacy invasion to some extent.) Some states are known as “no-fault” states. This means that your own insurance company will pay all medical bills related to the accident, whether the accident was your fault or not. In other states, the other driver’s insurer may be liable for both the medical bills and pain and suffering you experience as a result of the accident. Insurers and lawyers also refer to pain and suffering as “general damages”.

It is common for the other driver’s insurance adjuster to ask for your social security number. You are under no obligation to provide it to them. They will enter your social security number into a national database that insurance companies share to determine if you have made any previous injury claims. The other driver’s company will also ask you to sign a medical authorization form so that they can obtain all of your medical bills and records. You should understand that you are giving up control over your medical privacy if you sign that form. Although it will take more work on your part, CFA recommends that you obtain the medical bills and records related to your auto accident yourself and submit them to the other driver’s insurance company. This way you have an opportunity to remove your social security number wherever it is present as well as any medical information that is not relevant to the accident.

Once you submit medical information to the insurance company, they may either enter the details of your injury into an injury evaluation software program (the best known one is Colossus) or send your bills and records out to another company for medical review. Ask the adjuster if the company is planning to use a third-party evaluator or injury evaluation software. If the answer is “yes,” there is a good chance that the company will make a “low-ball” offer to pay for your injuries that is

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TIP: Obtain medical bills and records related to your auto accident yourself and submit them to the other driver’s insurance company. This allows you to remove your social security number and any non-relevant medical information.

less than what you will want or need to fully recover. Inform the adjuster that you will not give the company your permission to send your medical records to third parties for any reason, a request they may honor. This may prevent them from unjustifiably and secretly reducing the amount they offer to settle your claim. Insurance companies use third-party evaluation services to review medical bills and reports with the goal of reducing the amount that you are billed that they will pay for or eliminating bills from consideration entirely. The third party evaluation company provides a detailed report back to the insurance company which is rarely shared with the consumer.

Unfortunately, the company will likely refuse a request to refrain from using injury evaluation software at all. However, CFA recommends that you ask the company to provide you with a copy of the output report from this evaluation, sometimes referred to as a “consultation.” If the company is interested in dealing with you in an honest and open manner, they should honor this request.

It is critically important that you are very careful and take your time when negotiating a settlement for your injury. As part of any agreement, the other driver’s insurance company will require you to sign a release of all claims. This means that you will not be able to seek further reimbursement for your injuries from them in the future.

TIP: Do not agree to release all claims against the insurance company if you are still under treatment or your condition is unresolved.

Do not agree to or sign an agreement to release all claims if you are still under treatment or your condition is unresolved. You should also not agree to this restriction if you feel pressured by the adjuster to make a decision too quickly, or feel that the amount of reimbursement the adjuster is offering is not reasonable. You should, however, seek legal advice promptly in such circumstances. There are legal limits that vary by state that restrict the time you have to either settle your claim or file a lawsuit.

About the Author

Mark Romano: Prior to joining the CFA as Director of Insurance Claims Projects, Mr. Romano has over 28 years of extensive and executive level experience in insurance claims with several major national insurers. He is knowledgeable in both personal and commercial lines and is an injury evaluation software expert. He holds a B.S. in Risk Management & Insurance from Florida State University.

The Consumer Federation of America is an association of nearly 300 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education.