



Consumer Federation of America

CONSUMER ALERT!

***SOME AUTO INSURERS MAY BE UNDERPAYING BODILY INJURY CLAIMS;
CONSUMERS SHOULD CHALLENGE UNFAVORABLE OFFERS
GENERATED BY COMPUTER CLAIMS SYSTEMS***

Consumers who have suffered injury in automobile accidents should be aware that some insurers are using computerized systems to help determine the amount of the claim they will offer. These automated claims' systems could result in unfairly low claims' payments. Indeed, some insurers have adjusted ("tuned") their computer systems to generate claims' "savings", without adequately examining the validity of each claim that has been made.

It is very important that consumers who file automobile bodily injury claims with insurance companies take the following steps to make sure they are not paid less than they deserve: (1) ask if a computer was used in helping the insurer arrive at an offer of settlement; (2) if a computerized system was used, ask the insurer to provide the "range" of offers that were generated, from low to high, and (3) don't accept any offer that is less than the high end of the range. If the insurer is not willing to pay a claim on the high side, consumers should ask for a written explanation and consider filing a complaint with insurance regulators or seeking legal help, if the explanation is not completely satisfactory.

Background

Consumers should be very cautious when dealing with insurance companies about an automobile bodily injury (BI) claim. In the last decade, insurers have been using computerized systems that often produce a range of settlement offers. These systems, the most common of which is "Colossus", evaluate general damages for many BI claims, such as pain and suffering and anguish. They are not used, however, to estimate "special" damages, such as past or future bills related to losses and reductions in wages, or regarding liability-related questions (such as comparative negligence) or on related issues like the credibility of witnesses.

Here is how Colossus typically works. In adjusting a bodily injury claim, the adjuster sorts through medical records and determines which of the approximately 600 Colossus injury codes best reflect the bodily injuries sustained by the consumer. These codes are then entered into the Colossus software. Depending on the severity value accompanying the injury code and the dollar value that has been assigned by the insurance company for each severity value point, Colossus provides a dollar value range to the adjuster for general damages. Some insurers tune the programs so that the claims offers

that are made are “low-balled” to save costs, even though a higher offer may be justified for particular consumers. Further, adjusters sometimes receive incentives for settling claims at or near the range stipulated by Colossus.

Credible concerns about computerized claims’ systems have been raised in litigation against many of the largest insurers in the country, stating that these systems have been calibrated to systematically underpay claims. Large settlements regarding these concerns have been reached with a number of insurance companies. In at least one case, a jury granted a very large award against Farmers Insurance.

On July 18, 2007, CFA released a study regarding problems with Allstate’s use of Colossus:

CSC [the company that developed Colossus] sales literature touted Colossus as “the most powerful cost savings tool” and also suggested that, “the program will immediately reduce the size of bodily injury claims by up to 20 percent.” As reported in the book *From ‘Good Hands’ to Boxing Gloves*, “any insurer who buys a license to use Colossus is able to calibrate the amount of ‘savings’ it wants Colossus to generate. If Colossus does not generate sufficient ‘savings’ to meet the insurer’s needs or goals, the insurer simply goes back and ‘adjusts’ the benchmark values until Colossus produces the desired results.”

Programs like Colossus are designed to systematically reduce payments to policyholders without adequately examining the validity of each individual claim. The use of these programs appears to sever the promise of good faith that insurers owe to their policyholders. Any increase in profits that results from arbitrarily selected reductions in claims payments cannot be considered to be legitimate. The introduction of these systems could explain part of the decline in benefits that policyholders have been receiving as a percentage of premiums paid in recent years by Allstate and later, to a lesser degree, by the insurance industry. Most, but not all, major insurance companies are now using Colossus. In most cases the purchase of the system was made by insurers following the marketing efforts of CSC, which promise significant savings in claims costs.¹

Partly in response to concerns raised about Colossus by CFA and others, the National Association of Insurance Commissioners (NAIC) undertook a market conduct study of Allstate under the leadership of the Illinois Insurance Department. (Illinois is Allstate’s home state.) As a result of the examination, , Allstate signed an agreement on August 27, 2010 with 47 state insurance commissioners to change some of its practices related to Colossus. Among other requirements, the agreement compels Allstate to inform claimants that it uses Colossus to help calculate settlement offers, to reform how Colossus is tuned,

¹ “The ‘Good Hands’ Company or a Leader in Anti-Consumer Practices? Excessive Prices and Poor Claims Practices at the Allstate Corporation,” Consumer Federation of America, date, page 21, at http://www.consumerfed.org/elements/www.consumerfed.org/file/finance/Allstate_Report_07_18_07.pdf

and to use sources other than Colossus to make claims offers.² Although some of these changes represent improvements for Allstate policyholders, the agreement overall contains inadequate protections. The NAIC appears to have ignored available evidence that Allstate purposely and arbitrarily tried to reduce claims payments to create a “profit center”, under the guidance of the consulting firm McKinsey and Company. Worse, the report says that the NAIC “found no evidence of improprieties” in Allstate’s tuning of claims’ payouts³. The agreement also imposes all-encompassing restrictions on the distribution of the findings of the actual market conduct examination. Even the other states have to return the Allstate materials they uncovered during the examination to Illinois’ regulators to assure confidentiality. The NAIC has also not reached agreements with the many other insurers that use Colossus or similar products in bodily injury claims settlements to reform the process and require disclosure of the use of computerized claims’ systems to their policyholders.

Tips for Consumers when Settling BI claims with an Insurer

1. Find out if a computer program was used to evaluate your claim. When you are injured in an automobile accident, be aware that Colossus or some other computerized system may be used to calculate a significant part of the settlement offer you receive from the insurance company. You should ask your insurer if Colossus or any computer system has been used to calculate your settlement offer. If you are insured with Allstate, you should receive a letter if they used Colossus that says something like this:

“One of the tools that our claims personnel may have used in evaluating your claim is a computer program known as Colossus, licensed by Computer Sciences Corporation. Colossus uses a broad range of information about your injury, treatment, and prognosis to determine the severity of your injury. Based on this information, Colossus makes a recommendation as to the value of your injury. The Colossus recommendation is only one factor among many that our adjusters consider in reaching a decision as to the overall evaluation of the claim. It is their goal to reach that decision promptly, fairly, and based on an appropriate investigation of the facts and circumstances of your claim.”

² The Multi-State Market Conduct Regulatory Agreement can be viewed at:

http://www.consumerfed.org/pdfs/Allstate_MCE_Agreement_and_signatures.pdf. The letters required to be disclosed are found at Exhibit C, pages 15-23 of the Agreement. Additionally, the settlement requires: the auditing of and reporting to the states regarding how the settlement is implemented by Allstate; that claims manuals must be updated and made available to adjusters electronically; that no rule or policy can be established requiring adjusters to settle claims based solely on the use of Colossus, and that no incentives can be offered to adjusters to settle below the Colossus amounts. However, the agreement still requires adjusters to rely upon the range of claims generated by Colossus as the basis for negotiating with policyholders.

³ It is possible that Allstate had already acted to improve its use of Colossus before the examination began to address concerns about underpayments that had been raised in lawsuits and other consumer actions. If this is the case, however, NAIC should have noted this recent correction and not acted as if Allstate’s use of Colossus had not been problematic. For example, it is clear that the “Prospective Allstate Process for Colossus Tuning Analysis” found at Exhibit D of the Multi-State Market Conduct Regulatory Agreement is intended to fix the problems that the NAIC claims it did not find.

Allstate is required under the NAIC agreement to provide you with this information. Other insurance companies are not. Below is a list of some of the insurance companies that use these programs, which include Colossus, Claims IQ and Claims Outcome Advisor (COA). If your insurance company refuses to tell you whether it used a computerized system to make a claim offer, file a complaint with your state insurance department and ask that the department require other insurance companies that use computerized systems to disclose it in the same way that Allstate does.

Insurers that use Colossus:

AAA Mid-Atlantic, ACE INA, Allstate, American Family, American National, Atlantic Mutual, California State Auto, CNA, Grange, Great American, Hartford, HDI, Horace Mann, ICW, Motorists, Nationwide, Ohio Casualty, Safeco, State Auto, USAA, Utica, Westfield, White Mountain, Winterhur Swiss

Insurers that use IQ:

Allianz, Fireman's Fund, GEICO

Insurers that use COA:

Automobile Club of CA, Liberty Mutual, Progressive

2. Demand to see the range of results the computer generated. Typically Colossus and the other systems generate a range of results, including a "high" and a "low" offer. This is called a "consultation." For example, the Colossus range for a particular claim might be from \$8,000 (low) to \$10,000 (high). CFA's research indicates that even the high end of the range can often be too low, since the savings insurers sought were often measured from the high number. If any insurer, including Allstate, refuses to show you the range, file a complaint with your state insurance department. Just as you have a right to see the results of a medical test conducted by a physician, so should you have a right to see the results of a claims' assessment conducted by an insurance company.

3. Do not accept any offer less than the "high" end of the range and consider making a counter-offer that is above the high offer. Since the high offer can be set below what is fair, you should consider seeking more than the high end of the range. For Allstate, which is being required to reform the way that it tunes claims' offers, the high figure may be satisfactory in most cases.

4. If the insurer does not agree to settle at the high end of the range, consider filing a complaint with your state insurance commissioner and seeking legal help with your claim. Keep in mind that when your injury is caused by another vehicle, the insurer of that vehicle does not owe you a duty of good faith and may be more aggressive in trying to underpay you than your own insurer would be.