

## **HOW DO INSURANCE COMPANIES HANDLE AUTO ACCIDENT CLAIMS**

If you are injured in an automobile accident, you may decide to pursue a claim against the responsible party. Hopefully, that person will be insured, in which case, your claim will be defended by an insurance company. Before your case goes into litigation (where a lawsuit is filed), your claim will likely be negotiated by an insurance adjuster. The adjuster's goal is to pay as little money as possible on the case, assuming they are willing to accept liability for the claim. Once a lawsuit is filed, that same insurance adjuster will likely refer the case out to separate legal counsel, or depending on the insurance company, to in-house counsel. From that point forward, your case will be defended by the defense attorney hired by the insurance company, but the insurance company may still make many of the settlement decisions.

Regardless of the merits of your case, severity of injuries or skill of your attorney, your ultimate recovery will, in most cases, be limited to the insurance limits of your adverse driver and your own insurance (uninsured motorist coverage, or UIM). It's important to have an attorney investigate not only the available insurance proceeds, but potential med pay or PIP (personal injury protection) benefits that may provide coverage for medical expenses without the need to prove fault. In the end, your total recovery will be greater if you do not have to pay off your medical bills at the end of a case. However, keep in mind that if your accident occurred in the District of Columbia, your recovery of even partial PIP or Med Pay benefits may bar your recovery in a separate personal injury action, so be careful not to waive your legal rights by accepting payment of your medical bills through PIP or Med Pay.

If the person who hit you did not have insurance, you may have to file a claim against your own insurance company if you have uninsured or UIM coverage. Check with your insurance agent to find out if you have this coverage or call your insurance company.

Remember, it's the insurance coverage that you had in effect on the date of the accident that is relevant. Insurance coverage issues can be complicated, and there may be additional policies involved, which may allow stacking of insurance policies (among cars in the same household).

Not all insurance companies handle claims in the same way. Some insurance companies like Allstate, Nationwide, and State Farm tend to be more aggressive in defending cases and in negotiating settlements. Nationwide has grown from a small auto insurance company owned by its policy holders to one of the largest car insurance companies in the United States. It ranks fourth in market share behind GEICO, State Farm, and Allstate. Out of the various insurance companies that operate in the D.C. metro area, StateFarm, Nationwide and Allstate can be difficult to deal with, especially on cases involving minor impacts and soft tissue injuries (typically strains of the neck or back).

Over ten years ago, Allstate initiated the MIST program (Minor Impact Soft Tissue) in which they aggressively litigated and defended soft tissue cases that were associated with minor vehicle impacts. Soft tissue cases typically involve strain injuries to soft tissue structures like muscles and ligaments, which may not show up on x-ray. Insurance companies like Allstate had a fair amount of success in forcing such cases to trial and making such cases difficult to prosecute effectively, given the costs involved. For example, if you have \$3,000 in medical expenses it may not make sense to spend \$2,000 to \$4,000 to litigate a case all the way to trial. By the time you pay your attorney one-third of your recovery, your final recovery may not be worth the effort. Insurance companies know this fact and may low-ball you in an attempt to test your resolve in pursuing a claim. Hiring an attorney early on will put you in the best position to advance your case and settle it before litigation is even necessary.

## Tactics used by insurance companies

Not all insurance companies defend claims the same way, but many insurance companies use these or similar tactics to defeat your claim.

1. **Recorded Statement.** Many insurance companies will take recorded statements before you retain counsel. These statements are not taken for your benefit and can be used against you when you file your claim. Exercise your right to remain silent. However, you may have an obligation to provide certain information to an insurance company to collect medical or other benefits. This could include providing information on how the accident occurred and what injuries you suffered. Before you provide a statement, consult with an attorney.
2. **Quick settlements without an attorney.** Some insurance companies may discourage you from retaining counsel and suggest that such retention will simply delay settlement and result in one-third of the settlement going to your lawyer. While it is true that your settlement may be delayed and that your attorney will get a fee (which is typically calculated based on a one-third contingency agreement), this does not mean you are better off negotiating a settlement without an attorney. To the contrary, if the insurance company knows you are unrepresented and unfamiliar with process, they may lowball you and extract a settlement that is only a fraction of what would be paid if you had experienced legal counsel. Insurance companies may also offer you an initial amount in settlement before your treatment has concluded. Be wary about settling cases early on before your medical condition has stabilized.
3. **IME.** In legal vernacular, an IME refers to an independent medical exam. However, when an insurance company sends you to one of their doctors to examine you, they may select a doctor they use regularly and who has provided favorable opinion testimony in previous cases. For example, some insurance companies retain doctors who are on record testifying that no person requires treatment for a strain injury beyond 6 weeks, and treatment beyond that date was medically unnecessary. Before you agree to any examination by your insurance company, discuss this issue with an attorney.
4. **Sending a representative to the accident/preserving important evidence.** If the accident is severe, the insurance or trucking company may send someone to the scene or even hire an expert in accident reconstruction to support their defense theory. Also before a lawsuit is filed, a company may have no obligation or incentive to preserve certain evidence, like the damaged vehicle that may be totaled in wreck and sent to salvage yard. In serious accidents, do not delay consulting an attorney, even if it is just to obtain advise about protecting your rights and preserving evidence.
5. **Medical Release.** Some insurance companies ask you to sign broad sweeping medical releases allowing them to obtain medical records involving your lifetime medical history, or to contact your prior treating physicians for information. Do not provide such information until you have discussed this with an attorney. In some situations you may have to provide medical records to receive certain insurance benefits, but you don't want to allow the insurance carrier to discover every aspect of your medical history, which may or may not be relevant to your current injuries. Similarly, if you have a lost wage

claim do not provide a general release allowing the production of all your work related documents and wage information without first discussing this with an attorney.

During the first seven years of his legal career, Mr. Downey defended personal injury and malpractice claims for the Federal government and major insurance companies. He learned first-hand about the tactics used by insurance companies to defend these claims. If you have a potential personal injury claim, talk to Mr. Downey before giving any information to an insurance company. There is no charge for an initial consultation. Mr. Downey practices in the states of Virginia, Maryland, District of Columbia, West Virginia and New York.

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