

Presented:
UT Law CLE Car Crash Seminar

July 31, 2014
Austin, Texas

Negotiating with the Claims Handler “Help me, Help you”

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I. INTRODUCTION

The purpose of this paper is to assist you to maximize recovery for your client.

A lot has changed in my 30 years of practice. Gone are the days when a claims adjuster kept the checkbook and a release form in the trunk of their car when they met with the claimant, or his or her attorney. In fact, the term “claims adjuster” is becoming a thing of the past as claims “handler” seems to be more appropriate. Also gone are the days that you could just add up your “specials” (medical and wage losses) and multiply by two and a half or three times and settle the case.

In the current information age, everything is driven by data banks, computer models, metrics and committees. However, through all of these changes, I still believe that some basic tenets remain that will help you negotiate successfully with present day claims handlers in a fair, efficient and ultimately more beneficial way for your clients.

II. THE CLAIMS HANDLER

True of any form of advocacy, it is best to know and understand your audience. The person who will decide how much money to pay you and your client now has a vast amount of data available that was not previously accessible. They also have less independence, are subject to more scrutiny, have more reporting requirements and forms to fill out and frankly, usually have too much on their plates. Many “front line” adjusters have now become information gatherers more so than decision makers. Further, they must justify and document their decisions to pay money as they are subject to more reviews and audits. Knowing these basic principals, will help you provide the information necessary to negotiate a better settlement for your client.

III. FIRST CONTACT

Usually the first contact with the claims handler is in the form of a letter of representation. Like anything else, first impressions can be important. In this connection, several things should be kept in mind when drafting a letter of representation.

If possible, include something more than just the standard salutation and the demand that no one contact your client except through you. Include the most current information concerning your client’s current injuries and treatment. Request that the claims handler preserve any relevant evidence and direct the adjuster to instruct the insured to do so as well. It also never hurts to include the insured on the letter either as a second addressee or by carbon copying the insured. This approach insures that the insured is engaged and also

informed of your request to preserve evidence. This simple request and proffer of information, in addition to how to contact you, can convey a note that you are serious about the file, have done some homework and are on top of the process.

The next contact with the claims handler is usually in the form of a phone call. Many times the adjuster is not familiar with you and this gives you an opportunity to “break the ice” in a professional and informative way. Most importantly, I believe that being cordial and respectful will get you off to a better start with the claims handler than bowing up and acting tougher than you need to at this point of the process. For the most part, the claims handlers are most impressed by an attorney that can provide them with the information that they need to evaluate the case. Being pleasant and informative can go a long way to establishing a rapport with the adjuster that can lead to an early and more lucrative resolution of the case. It is simple human nature that most people are more responsive to someone who is nice to them than someone who is not. Unless you just have a great case, adjusters (yes, adjusters are people too) are usually more receptive to persons they like than those they do not. Sugar, rather than spice, is a better approach at this early juncture with the adjuster. Remember, you can always reverse course and file suit if necessary. Even if the adjuster is not receptive or is downright rude, being pleasant and professional cannot hurt and may serve to disarm the adjuster to some degree.

IV. FEED INFORMATION- “HELP ME, HELP YOU”

As mentioned above, most claims handlers are information gatherers for the carrier. The ultimate decision may be made by either a manager, supervisor, claims committee or even a computer program. In this connection, the exchange of information is vital to the process. The exchange between Tom Cruise and Cuba Gooding in the movie *Jerry Maguire* comes to mind. At the risk of dating myself, Tom Cruise (Jerry) tells his client Cuba Gooding, that he needs Cuba Gooding’s character to “help him” by doing his part so that Cruise can negotiate a better deal for him. Cruise essentially tells Gooding “help me, help you.” The adjuster works the same way. The more information you can provide to help them, the more potentially they can help you. The quicker and more completely you get your client’s information on medical treatment, injuries and economic losses to the adjuster, the quicker and more efficiently you can negotiate a settlement. You have access to the information the adjuster needs to document the file and support the settlement payment. It is up to you to provide it.

V. INITIAL NEGOTIATION

To borrow another used axiom, it is always best to negotiate from the position of strength. In this instance, evaluate the strengths of your case early. It is also very important to gather all the necessary information that you know the claims handler will need to set a reserve for the claim and request authority to negotiate with you.

The reserve function of the company or insurance carrier cannot be overly emphasized. As a defense attorney, I know first hand that insurance carriers need to set reserves early and they need to set them as accurately as possible. Therefore, it is incumbent upon you as the attorney to gather the information that they will need on medical expenses, medical

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First appeared as part of the conference materials for the
2014 The Car Crash Seminar session
"Negotiating with the Insurance Adjuster"