

The Motor Vehicle Accident - Answers to Frequently Asked Questions

The purpose of this article is to educate accident victims to their rights and duties when making their claims, so that the insurance company will not be able to take advantage of them by attempting to make a “settlement” of all claims before they obtain an attorney to represent them.

The Accident Victim's Rights and Duties

The vast majority of motor vehicle accidents produce three (3) types of claims for which the victim has a right of recovery against the at-fault driver or his insurance company if he has insurance. These are the Property Damage Claim (for vehicles and personal property), the Liability Claim (for personal injury) and the Medical Payments Coverage Claim (for medical expenses).

The Property Damage Claim and the Liability Injury Claim must be made within three (3) years of the accident to avoid Statute of Limitations problems in the State of North Carolina. The Medical Payments Coverage Claim must be made within one (1) year of the accident to be considered for payment.

The Property Damage Claim Overview

The Property Damage claim comprises the total dollar value of your loss resulting from the damage to your motor vehicle. By way of illustration, the typical claim includes the following elements for which you should receive compensation.

These elements include:

Either the expense to repair the vehicle or its "fair market value" if totaled (damage exceeds 75% of the pre-accident cash value);

The expense for a rental car if your vehicle is not drivable which is known as "loss of use" (whether or not you actually rent a vehicle);

The expense to replace any detached personal property which was in the vehicle (trunk or seat, etc.) or attached to the vehicle and damaged in the accident (boat or trailer, etc.);

The expense to replace any damaged personal property such as glasses; and

The depreciation in market value to your vehicle due to the accident.

The Property Damage Claim Details

When your vehicle is drivable, take it to a reputable body shop or dealer to get an estimate of the repair cost. Point out to them any mechanical problems you notice which did not exist prior to the accident to ensure an accurate estimate of the damage caused by it. Then get the parts ordered and send the at-fault driver's insurance company your estimate and demand a rental car.

It is customary to expect the insurance company to do "their" own estimate of damage to your vehicle caused by the accident. Do not be shocked when "their" estimate is significantly less to repair your vehicle than the reputable body shop or dealer. The good news is that the reputable body shop or dealer will honor the insurance company's estimate or work to get the estimate to the appropriate figure to fix your vehicle. Also, do not be surprised when the insurance company informs you that "they will not pay for a rental car during the time it takes to order the parts to fix your vehicle" if it is banged-up, although drivable.

When your vehicle is not drivable, notify the insurance company of the location of your vehicle immediately, and ask for a rental car. Do not be surprised when your request for a rental car is delayed or "put off" as they will inform you that "they have to do their investigation of the accident to determine who is at fault" before authorizing it. Finally, if your vehicle is not drivable due to a minor issue such as taillight, check with the reputable body shop or dealer to see if they can fix this so you can drive your vehicle until the parts arrive at the shop. This is part of your duty to mitigate damages as discussed below.

If you do not receive a rental car after contacting the insurance company for the at-fault driver, you are still entitled to receive the "loss of use" value of a rental car from the date of the accident until a "reasonable" time for the repairs to be completed, but this is only after the insurance company completes their investigation and determines that you were not at fault. The amount of the "loss of use" typically is about \$25.00/day to \$50.00/day depending on the type of vehicle you drive.

Your duty during "the insurance company's investigation" is to mitigate (minimize) any "loss of use" expenses by taking appropriate measures to get your vehicle to a reputable body shop or dealer as soon as practical following the accident. If you do not do this the insurance company will not have to pay the total rental car bill.

It is important to note that you do not have to receive a rental car to be entitled to claim "loss of use" damages as part of your accident claim settlement. The usual scenario is the situation when an accident victim has another vehicle which he can use for his transportation needs. Even though he uses his other vehicle, he can and should still make a claim for the "loss of use" value of his damage vehicle. A "loss of use" claim must be made within 30 days of your settlement of your property damage claim under the North Carolina Administrative Code or your claim will not be honored.

A vehicle is considered "totaled" under the North Carolina Administrative Code (NCAC) when the damage exceeds 75% of the pre-accident actual cash value. In the event your vehicle is "totaled" in an accident, you are entitled to receive as compensation the "fair market value" of your vehicle as of the date of the loss, together with any sales tax (3%) and the cost of license tags as set forth by the North Carolina Division of Motor Vehicles.

The most difficult element of damages of a property damage claim where the vehicle is totaled is determining its "fair market value." This can be determined by obtaining at least two (2) "Dealer Quotes" for the same make and model of vehicle, with the same equipment, mileage and condition. Also, "fair market value" can be determined from various published manuals, such as Black Book, NADA Book, etc. Finally, the internet has several databases concerning the value of vehicle which will assist you in determining a vehicle's "fair market value." The caveat here is that regional and local market conditions must be factored into the final number. See: 11 NCAC 4.0418 and N.C.G.S. Section 58-63-15 for further detail.

Sometimes an insurance company will let you keep a "totaled" vehicle. The insurance company will assign a "salvage value" to it and deduct this amount from the amount owed to you. Be aware that there may be storage fees and towing charges associated with the salvage, which you must pay to obtain it, three (3) days after the insurance company notifies the owner and storage facility that it will no longer pay these charges.

Finally, when your vehicle is "totaled" you may be able to get a refund on various expenses and payment you have made including the following: "gap insurance", to cover the difference paid for a vehicle and the balance owed on it when totaled; "credit life insurance", for the unused premium paid before the vehicle is paid off; "extended warranty", for the unused premium paid after the vehicle is totaled through the end of the contract; "property taxes", for the portion of the year you are without the vehicle; and "automobile insurance", for the unused portion of the premium.

The second most difficult element of damage to determine in a property damage claim is the "depreciation" in market value associated with the accident. Statutory disclosure requirements make the sale of a damaged vehicle more difficult for the accident victim and reduce its value.

In North Carolina, it is a misdemeanor for anyone to transfer title to a motor vehicle, which has been involved in a collision without written disclosure to the transferee (buyer) for a vehicle up to five (5) years old, when the cost to repair said vehicle exceeds 25% of its fair market retail value. See N.C.G.S. Section 20-71.4

To document your depreciation claim, submit three (3) "Dealer Quotes" for the same make and model of vehicle, with the same equipment, mileage and condition. You must do this within 30 days of your settlement of your Property damage claim under the North Carolina Administrative Code or your claim will not be honored.

The Property Damage Pitfalls and General Advice

Insurance companies are not your "friends" and they are not your "buddies!" An Insurance company's mission is to make money for its shareholders by taking in more money than it spends on claims. An insurance company's nature is to operate by taking in premiums to make money, but by fighting tooth and nail when confronted with paying out claims such as yours.

An insurance company must do this as its ability to raise premium rates to make money is limited to that allowed by the State of North Carolina. So the only thing an Insurance company can do to make money for its shareholders is control its costs, i.e., paying out as little money as possible to accident victims such as you.

To this end horror stories are created where accident victims are duped or fooled by their dealings with insurance adjusters who fail to tell them about the elements of a property damage claim as outlined above, such as "loss of use", "fair market value", "depreciation" and "mitigation", or their liability (personal injury) claim (see liability claim article) as well. Also, the insurance adjusters are under no obligation to explain to you the time limits on claims under the North Carolina Administrative Code, or under the North Carolina Statute of Limitations on property damage claims (which is 3 years) when they "negotiate" with you.

Moreover, insurance adjusters may attempt to trick an accident victim by sending him a "check" which he believes is for his property damage claim, only to find out after he cashes it that the insurance company has been "released" from further responsibility for payment of any and all claims, as that check stated paid in "Full Settlement" or for "all claims"! This scenario generally happens when a check comes to the accident victim, which is slightly larger than he expected for the property damage issues discussed with the insurance adjuster.

To this end, in the event you attempt to settle a property damage claim without an attorney, make sure the "check" for property damage and the "release" from further claims is only limited to the property damage aspect of your motor vehicle accident case, and that you have addressed all the issues presented above in this article.

The pitfalls noted above are due to the unequal knowledge of the parties. The insurance adjuster knows the game. The accident victim does not. The complexity of this area of law and the "pitfalls" noted above are reasons in and of themselves for you to contact The Reed Noble Law Firm, PLLC about your claim. Getting an experienced attorney puts you in a position of equal knowledge with the insurance company so that all your claims will be made and pursued.

The Liability Claim Overview

The Liability Claim comprises the total dollar value of your personal injuries and financial losses resulting from the motor vehicle accident. By way of illustration, the typical liability claim includes the following elements for which you should receive compensation. These elements include:

- a. Medical bills (past, present and future);
- b. Lost wages (income and future income);
- c. Permanent injury (whole person or to a body part);
- d. Disability;
- e. Disfigurement;
- f. Scarring;
- g. Loss of consortium;

h. Any other expense which flows from and is necessitated by the injuries associated with the motor vehicle accident, e.g. life care plans and mileage; and

i. Pain and suffering.

The Personal Injury Claim Details

When you have been injured in a motor vehicle accident, go to the doctor immediately to document your claim. If you do not go to the doctor, you are not considered "injured" by the insurance company, and thus, will not receive much of a settlement from them.

Notify the insurance company for the at-fault driver immediately so that they can start their "investigation." This will shorten the time before they will "accept" liability, or "deny" liability for the accident. If they "accept" liability, this means that they will pay something to you for claims of loss due to the accident. This does not mean that they will offer what is a "fair or reasonable" settlement. If they "deny" liability, this means that they will not voluntarily pay you anything for your injuries and losses sustained in the accident.

Many times the insurance company's adjuster will want you to give a "recorded" statement about how the accident happened and the nature and extent of your injuries. This places the accident victim in a precarious situation due to the possibility that he may say something, which could be construed as contributing to the fault for the accident. Should the accident victim "misspeak", the liability claim and the property damage claim will evaporate. An attorney would prepare the accident victim for the "recorded statement" trap.

A less obvious, but equally precarious situation take place when the accident victim is asked to "meet with the insurance adjuster in person" to discuss his case. The unsuspecting accident victim agrees, and the adjuster starts to "do an estimate on his car." The worried, but through accident victim makes sure the insurance adjuster "sees all" the damages done to his vehicle. In fact the helpful accident victim actually "points out" the damage, say, to the wheel well, or a bumper. The insurance adjuster notes these issues, but puts in his report that "the accident victim did not have any problem bending down and pointing out the damage to his vehicle." This has the direct effect of contradicting a medical report discussing the nature and extent of the accident victim's back injuries.

As a by-product of learning that the insurance adjuster for the at-fault driver "will have to do his investigation of the accident to determine who is at fault" before he will pay your claim, many people become reluctant to go to the doctor since they have no assurance that their bills will be paid by the insurance company. This is a basic trick of the insurance company, i.e., to use the insecurity of the uninformed accident victim, knowing that he may delay needed treatment, to avoid being stuck with large medical bills. This has the practical effect to minimize the accident victim's claim. It minimizes it due to the perception that "you" are not injured if "you" do not go to the doctor. It also minimizes it due to the delay in treatment, which opens the door to another insurance company legal defense, "intervening causes" of the medical problem the accident victim claims is related to the accident, and is now disputed by the insurance company.

Another trick used by many insurance companies who claim to be "on your side," a "good neighbor" or "there for you" is to immediately offer you a small settlement upon notification that you are making a claim against the at-fault driver they represent. Should you accept this "settlement," you may never find out the true nature and extent of your injuries. Equally important, is that you have forever released and discharged the at-fault driver and his insurance company from any further obligation to you as a result of the accident.

The Personal Injury Pitfalls and General Advice

North Carolina is a "contributory negligence" state. This means that if you are "deemed" even 1% at-fault with regard to the accident, you are not entitled to any damages whatsoever, even if the other party is 99% at-fault.

The "initial contact" with the insurance company is fraught with perils for the unsuspecting and unrepresented accident victim. The "investigation delay in accepting liability," the "recorded statement," the "in person meeting" and the "offer of settlement" are all perilous areas for the uninformed accident victim. Each of these phases of the liability claim are minefields which are used by the insurance company to find that 1% of fault, needed to bar your recovery for personal injury and property damages in North Carolina.

With this in mind, do not meet "in person" with the insurance adjuster. If you are unrepresented, have your spouse point out any damage to your vehicle which might not be readily seen if he wants to do an "estimate of the damage." If possible, let your spouse speak about the general nature of your injuries so that you are not "locked" into a fact position, when you do not really know the medical details.

If you are unrepresented and feel you must give a "recorded statement" "to get the case moving," review the "accident report" and see what the investigation officer found during his investigation. Do not contradict the officer's findings if they are conclusive that the other party to the accident was at-fault. Moreover, let the adjuster know your injuries only generally, say, "my neck and back hurt" and "I have daily headaches." Then advise him that you will send him your medical records and bills once you receive them. Do not get into detail about anything, whether it is distances between vehicles, or the exact type of treatment your medical doctor or chiropractor is prescribing for your medical condition. You do not know this information so do not try to be "helpful" as it can only lock you into a bad factual situation. Again, it should be apparent that an attorney could protect your right to recovery by preparing you for this "recorded statement."

While North Carolina is in the minority of states who use this doctrine of "contributory negligence" in accident cases, it is the one reason every injured person needs an experienced attorney, who has the same knowledge of the law, to confront the insurance company on your behalf.

The Medical Payments Claim Overview

Medical payments coverage provides for the payment of medical expenses necessitated by motor vehicle injuries, up to the limits of the policy, without regard to "fault". It is not mandatory coverage

but is known as "contract coverage", or voluntary coverage under "coverage c" in the standard personal automobile policy. The typical claim involves the following scenarios for which you should receive compensation. These include:

- a. injuries to persons in the covered vehicle,
- b. injuries to persons on the covered vehicle, and
- c. injuries to persons as a pedestrian.

The Medical Payments Claim Details

Medical Payments coverage is usually available in the following amounts:

- a. \$500.00
- b. \$...1,000.00
- c. \$...2,000.00
- d. \$...5,000.00
- e. \$.10,000.00
- f. .\$.25,000.00
- g. \$.50,000.00
- h. \$100,000.00

The Medical Payments Claim Pitfalls and General Advice

As "fault" is not a hurdle for payment, medical payments claims are particularly valuable when a driver is deemed to be "at fault" in an accident. This is true because "at fault" drivers will not receive compensation from the other party's insurance company for their injuries as discussed on this website in the Liability Claim article. Therefore, this may be the only source for paying medical charges incurred for treatment related to this accident. Also, making a claim for its benefits will not increase your liability insurance policy rates (only the rate for the medical payments coverage may increase slightly). The reason for this is that medical payments coverage is not "fault based" as is liability coverage.

While most medical payments coverage claim arise from the normal use of motor vehicles, not all do. Since a person with medical payment coverage on the applicable insurance policy is covered for injuries "on" a motor vehicle, he would be covered, say, if he ran into the car and was injured while chasing a Frisbee.

He would also be covered if he was struck and injured as a pedestrian while walking down the road, or crossing the street. This is one reason why we say at The Reed Noble Law Firm, PLLC, that "medical payments coverage is the best thing since sliced bread."

Another reason that "medical payments coverage is the best thing since sliced bread", is that if the other party to the motor vehicle accident is "at fault", you still may be able to make your insurance company, or the insurance company for the owner or driver of the vehicle you were in pay your medical bills! The beauty is that there are two sources of funds to pay your medical bills. The Liability claim against the "at fault" driver's insurance company must pay your medical bills associated with the accident. The Medical Payments Coverage claim will also pay your medical bills associated with the accident. So, if the doctor treating you only gets paid once, what happens to the rest of the money from the medical payments coverage claim? It goes to you tax free!

As with any and all insurance claims, expect the insurance company to attempt to deny or reduce the value of your claim. I have personally seen one client who thought he was "in good hands" receive a denial letter when making his \$100,000.00 medical payments coverage claim. After threat of a lawsuit, and the proper documentation, it was paid in full. There were no attorney fees charged to help this client. The Reed Noble Law Firm, PLLC does not charge a fee to assist personal injury clients with their medical payments coverage claims.

A pitfall of the Medical Payments coverage claim is that you must notify the insurance company for the owner or driver of the motor vehicle you were "in", when the accident took place within one (1) year to make the claim under the insurance contract. You may also need to notify your own motor vehicle insurance company, or that of a family member within (1) year to make any potential supplemental medical payment coverage claims.

Make sure that you have all your medical records and medical bills associate with these records when making a medical payments coverage claim. Insurance companies will not consider paying it without the proper documentation.

Also, make sure that any treating physicians note in your medical records that the medical treatment and charges were "necessitated by the accident" and their medical fees are "fair and reasonable for the treatment provided".

Finally, the documentation required to make these claims successfully, is another good reason to have The Reed Noble Law Firm, PLLC, make these claims for you. The other obvious reason is that we do not charge to handle these claims when we represent you on your liability claim against the "at fault" driver.