



# 11 THINGS THE INSURANCE COMPANY DOESN'T WANT YOU TO KNOW ABOUT YOUR PERSONAL INJURY CASE

1. The claims adjuster does not care whether you get a fair settlement.
2. The longer it takes, the more money the insurance company pockets.
3. You don't have to give a recorded interview or provide a written statement.
4. The insurance company's assessment of liability (fault) is not binding.
5. The insurance company is "eavesdropping" on your conversations with your healthcare providers, looking for evidence to use against you.
6. Don't worry too much about surveillance by the insurance company.
7. The first offer is rarely the last.
8. The insurance company can spend as much money defending against your claim as it takes to settle your claim.
9. Social media has cratered many cases and will do the same to yours if you are not careful.
10. An "independent" medical examination is not independent at all.
11. The claims adjuster might ignore you, but he won't ignore an attorney.

## 1. THE CLAIMS ADJUSTER DOES NOT CARE WHETHER YOU GET A FAIR SETTLEMENT.

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If you've never had to argue your claim with an insurance adjuster, count your blessings. Insurance adjusters are trained to deny claims, offer minimal settlements, and save the insurance company as much money as possible. It is not their job to ensure you get a fair settlement.

**The takeaway:** The claims adjuster is an employee of the insurance company. Regardless of what he or she says, the adjuster is not looking out for your best interests. That is your job.

## 2. THE LONGER IT TAKES, THE MORE MONEY THE INSURANCE COMPANY POKETS.

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Are you wondering why your claim is taking so long to resolve? Often, the answer is "the float." Insurance companies will never admit it, but they profit from extending the life of your claim. Let's look at an example: Imagine an insurance company collects \$1,000 in insurance premiums in a given year. That money is kept in an interest-bearing account. If that money is not used (i.e., not paid out in settlements), it grows - essentially earning interest upon interest. Now take that \$1,000 and multiply it by hundreds, or even thousands, of premium payments each year. The amounts are astronomical. The reality is that every day the insurance company does not pay your claim, it earns money through interest payments on your premiums.

**The takeaway:** Don't expect a quick settlement. If you want your claim resolved, you will need to push it: Stay in regular contact with the adjuster; send updated medical bills/records; make a settlement demand; and contact a lawyer if your claim continues to drag.

## 3. YOU DON'T HAVE TO GIVE A RECORDED INTERVIEW OR PROVIDE A WRITTEN STATEMENT.

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At the beginning of investigating a personal injury claim, most insurance companies will obtain recorded interviews of all witnesses and parties involved in the accident. An adjuster or representative from the defendant's insurance company will call you; advise you that the call is being recorded (or ask your permission to record the conversation); and then ask very pointed questions about the facts of the case. What the adjuster will not tell you is that (a) this recording (and written transcript of the recording) can later be used to deny your claim or lower any settlement offer; and (b) you can say, "No."

An example will be helpful: Jill sustains injuries to her neck and back immediately after an accident. The next day, she reports these injuries to the insurance company and agrees to participate in a recorded interview. Several weeks go by and she complains of throbbing knee pain that radiates to her foot. An MRI reveals a torn meniscus. Jill eventually undergoes arthroscopic surgery to repair the tear in her knee. Prior to the accident, she had never experienced knee pain. When presented with the claim for the knee surgery, the insurance company balks, pointing to the initial transcript and arguing, "After the accident, she never complained about knee pain. Something else must have happened to cause those injuries."

**The takeaway:** Do not consent to a recorded interview or provide a written statement to the insurance company; nothing good will come of it. The smarter option is to decline to participate in the interview. Tell the adjuster that

A hand with a ring and dark nail polish holds a white pen over a calculator. In the background, there is a blue-tinted image of an invoice and some papers. The text is overlaid on the right side of the image.

*The insurance company's assessment of liability is important because it impacts the value of your settlement offer.*

your attorney has advised you not to give any statements without your attorney being present. Then, if your case progresses to litigation, your personal injury attorney will coordinate with the defendant's attorney to take your deposition, where you will answer questions under oath, with your attorney present to protect your rights.

#### 4. THE INSURANCE COMPANY'S ASSESSMENT OF LIABILITY (FAULT) IS NOT BINDING.

Just because the insurance company tells you they are evaluating your claim at 50% doesn't necessarily mean you are 50% at fault. "Shared responsibility" refers to the percentages of fault that the insurance company attributes to the different drivers involved in a motor vehicle accident. Sometimes the percentages are easy to calculate – e.g., when one driver rear-ends another driver who is completely stopped for traffic at a red light. In other cases, determining liability (fault) is much more complicated. Let's say, for example, that you are involved in an accident in which you and the other driver collide in the middle of an intersection. An insurance company might evaluate the liability of both drivers at 50%, but what if there's more to the story? Consider these factors, any one of which may tip the scales in your favor:

- A police officer waved you through the intersection;
- You drive through this intersection every day, while the other driver is unfamiliar with the area and was using GPS;
- Construction in the area blocked the other driver's field of vision;
- The other driver was under the influence of drugs or alcohol;
- The other driver did not have his headlights on at night.

The insurance company's assessment of liability is important because it impacts the value of your settlement offer. The lower the percentage of fault attributed to you, the higher the potential value of your claim in the eyes of the insurance adjuster; as that number approaches 50%, the value of your case decreases significantly. In a few jurisdictions, you might not be able to get any compensation if you are found to be partly at fault.

**The takeaway:** If you are dissatisfied with the evaluation of liability by the insurance company, make sure the adjuster has all the relevant information. If that does not change the evaluation, consider contacting a personal injury attorney who can help you gather additional relevant evidence and present your strongest claim.

## 5. THE INSURANCE COMPANY IS “EAVESDROPPING” ON YOUR CONVERSATIONS WITH YOUR HEALTHCARE PROVIDERS, LOOKING FOR EVIDENCE TO USE AGAINST YOU.

The insurance company will obtain all of your medical records related to the injury (and, possibly, records not related to the injury), and will scrutinize those records with a fine-toothed comb. Ambulance call reports, ER records, diagnostic tests, hospital/surgical records, treatment records, nurses’ notes, front-office notes regarding appointment cancellations – all will be fair game. Anything you say (or don’t say) during the course of your treatment following an injury accident may be used to reduce the value of your claim. Even simple answers to routine questions can complicate your claim with the insurance company, if you aren’t careful. For instance, let’s say you go to a pain management specialist. At your first visit, the intake normally will include questions about:

- Pre-existing injuries;
- Prior health conditions;
- Your level of pain (on a pain scale of 1-10); and
- A brief description of how the accident happened.

If you fail to disclose a prior slip and fall accident that resulted in a similar injury, the insurance company will use your silence to discredit the medical report and undermine your credibility. Don’t make the mistake of assuming that the insurance adjuster or defense counsel won’t uncover the prior accident/injury. They will.

**The takeaway:** Be honest and forthcoming about your injuries with your healthcare providers, even if you think it might hurt your claim with the insurance company. In our example above, a better approach would be to disclose the injury and emphasize that it has been months or years since you felt pain in that area of your body, and you have not had treatment for months or years related to that prior injury. In this way, the prior injury is both disclosed and minimized. Maintaining your credibility with the insurance company is critical; if you lose it, the value of your claim is substantially diminished.

## 6. DON’T WORRY TOO MUCH ABOUT SURVEILLANCE BY THE INSURANCE COMPANY.

Though an insurance company can initiate surveillance on an injury claimant, this is not done as much as you might think. Surveillance is expensive. Investigators usually are paid to produce recordings on specific dates. So, what often happens is the investigator sits outside the injured party’s house all day on the specified date and gets a video of the injured party hobbling out to the mailbox or getting in and out of their car. That’s it. It’s mostly garbage to the adjuster.

**The takeaway:** Without a specific and credible lead, surveillance generally is not worth the time or money to the insurance company.





*The insurance company expects a negotiation, so don't be too quick to settle. As some time passes and your treatment continues, the reserve and settlement offers are likely to increase.*

## 7. THE FIRST OFFER IS RARELY THE LAST.

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After an accident, insurance companies assess what happened and evaluate the claims of injuries. Upon receiving medical verification of your claim, a "reserve" is set. The reserve is the amount of money the insurance company thinks it needs to settle your case – the maximum amount the insurance company wants to pay out. Whatever that amount is, the insurance company's first offer will be significantly lower. Consider this example: Joe is involved in a motor vehicle accident, in which his shoulder is injured, requiring surgery. The adjuster sets the reserve at \$60,000. When Joe calls to discuss settlement, the adjuster offers \$12,000 to cover his medical bills and settle the claim. Joe (who is unaware of the reserve) thinks this is a fair offer, so he accepts. The insurance adjuster ends the call and does a happy-dance down the hall to his supervisor's office to report that he just saved the insurance company \$48,000 that it had set aside to pay Joe's claim.

**The takeaway:** The insurance company expects a negotiation, so don't be too quick to settle. As some time passes and your treatment continues, the reserve and settlement offers are likely to increase. In fact, some personal injury attorneys will wait to settle until the eve of trial or even during the trial, because they know that most insurance companies' settlement offers will be the highest at that point.

## 8. THE INSURANCE COMPANY CAN SPEND AS MUCH MONEY DEFENDING AGAINST YOUR CLAIM AS IT TAKES TO SETTLE YOUR CLAIM.

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This may not make logical sense, but the reality is this: Let's say you were injured in a minor accident and you are seeking \$10,000 in damages. If the insurance company has any doubt about your claim – about the cause, nature, or severity of your alleged injuries – it can spend \$10,000 (or more) to verify whether that settlement is reasonable.

These costs can include obtaining your medical records, hiring defense counsel to analyze your records, conducting depositions, and even having you appear for a private, "independent" medical examination.

**The takeaway:** Do not expect the insurance company to just take you at your word about your injuries and write a check, simply because it's a relatively low-dollar claim. These billion-dollar-behemoths often have no incentive to settle your claim quickly (remember the float?), and will expect you to prove your claim first.

9. Social media has cratered many cases and will do the same to yours if you are not careful.

When you file a claim, the insurance adjuster and/or defense attorney can – and will – simply type your name into Facebook or Instagram and uncover a wealth of information about you, including your recent vacations, your employment history, and the identity of your friends and relatives (all of whom may have posted photographs or videos of you on their public profiles). All of this information has the potential to damage your claim and reduce your settlement, or in some cases, lead to the complete dismissal of your claim. Consider these real-life examples of personal injury claimants caught posting damaging photos on social media:

- Plaintiff who claimed difficulty walking and running posted videos from a dance class (where she was the instructor!);
- Married-couple-plaintiffs posted photographs from their honeymoon to Jamaica, which included snorkeling and surfing;
- Plaintiff who claimed a knee injury posted race times from a recent 5k;
- Plaintiff complaining he could not socialize posted pictures of alcohol and illicit drug use at clubs and house parties;
- Plaintiff with neck and back complaints posted photographs of himself performing "the worm" at a wedding.

Even Snapchat accounts are potentially susceptible to court orders, releasing information stored on private data networks and cloud drives.

The best course of action is to avoid social media for the duration of your insurance claim or lawsuit; for most people, though, that is unrealistic. The next best option is to make all your social media accounts "private," so that your posts are visible only to the people you choose, and then to properly vet any new "friend" requests. Do not accept a "friend" request from anyone you don't know.

**The takeaway:** Assume that the insurance company will see everything you post on social media (even if your accounts are private), and moderate your online activity accordingly. Anything posted on social media could be considered a legal "admission against interest" and used to impeach your claims of injury and undermine your credibility.

## 10. AN "INDEPENDENT" MEDICAL EXAMINATION IS NOT INDEPENDENT AT ALL.

During the course of your claim, the insurance company may exercise its right to have you appear before a doctor of the insurance company's choosing for an independent medical examination ("IME"). In actuality, this is more of a "medical-legal" examination than an independent medical evaluation. These doctors are hired exclusively by the insurance company to perform dozens of examinations every week and prepare written reports. What their reports fail to show is how long (or short) these examinations are – in some cases as short as 10 minutes or less. In one New York case, a



*Before you meet with an independent medical examiner, you should consult with an attorney. The independent medical examination results can be devastating to your case.*

doctor testified to performing an IME and was impeached by a recording showing that the entire “examination” only took 1 minute and 56 seconds! The reality is that these doctors are far from “independent.” Often, they make the same pro-defense findings in case after case:

- Plaintiff's injuries are pre-existing;
- Plaintiff's injuries are degenerative;
- Plaintiff's injuries are not causally related to the subject accident;
- Plaintiff's injuries are all fully resolved.

**The takeaway:** Before you meet with an independent medical examiner, you should consult with an attorney. The IME results can be devastating to your case. Depending upon the report, your claim could be severely diminished or denied outright. An experienced personal injury attorney can counsel you about what you should say at these examinations (as little as possible); how to answer questions posed by the examiner; and whether you should be accompanied by your attorney, or a friend/advisor, or even an independent watchdog service.

## 11. THE CLAIMS ADJUSTER MIGHT IGNORE YOU, BUT WON'T IGNORE AN ATTORNEY.

If you file a claim on your own, you may not hear back right away from the adjuster; in fact, you may not hear anything for weeks or months at a time. On your own, you are easy to ignore; when you have an attorney on your side, you command attention.

Personal injury attorneys who have regular dealings with insurance companies have a solid understanding of the industry and know how to deal with insurance adjusters. While you are obtaining treatment for your injuries, your attorney can initiate settlement negotiations with the adjuster and make sure the adjuster has up-to-date information

relevant to your claim. If negotiations break down and your lawyer files suit, things start to get "real" for the insurance company. A lawsuit raises the specter of:

- A verdict in excess of the insurance policy;
- Negative publicity;
- The creation of a public record of the jury award and the injuries claimed.
- Suffice it to say, once an attorney gets involved, insurance adjusters tend to be keener to resolve the matter.

**The takeaway:** You don't have to enlist the help of a personal injury attorney to resolve your claim with the insurance company, but your chances of obtaining a fair settlement in a timely manner improve when you do.