

Filing an Auto Claim with Another's Insurance Company

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Note: This information was developed to provide consumers with general information and guidance about insurance coverages and laws. It is not intended to provide a formal, definitive description or interpretation of Department policy. For specific Department policy on any issue, regulated entities (insurance industry) and interested parties should contact the Department.

After an auto accident, one of the first things you may have to do is file an insurance claim for damages. Even if another driver caused the damage, you have the option to file the claim with either your own insurance company if you have the appropriate coverages (a "**first-party**" claim) or the other driver's insurance company (a "**third-party**" claim).

Insurance laws differ with regard to first and third party claims, so it is important that you understand your rights and duties in both cases. In a first party claim, you have a direct contract that requires your insurance company to fulfill all the conditions stated in your policy. In a third party claim, you do not have a direct contract with the insurance company and their primary obligation is to their own policyholder.

This fact sheet discusses your rights and duties when you file a **third-party claim** with another driver's insurance company. For information on first-party claims, see our fact sheet on "Filing an Auto Claim with Your Own Insurance Company."

How Much Insurance Must the Other Driver Have?

Illinois law ([625 ILCS 5/7-203](#)) requires most motorists to carry bodily injury and property damage liability insurance to help pay for damages they cause in an auto accident.

The **minimum** amounts drivers are required to carry are 20/40/15: \$20,000 per person and \$40,000 per accident for bodily injury liability and \$15,000 for property damage liability.

What Happens after I File a Claim?

The other driver's insurance company will investigate the claim and will offer a settlement if they determine their insured is legally responsible for your injuries or damages.

In most cases, the insurance company will not settle your claim until you sign a "release for damages." A release means you agree that the amount offered is the only amount you will ever receive from the other driver and the insurance company. Be sure you are ready to accept a final amount before you cash the check or sign the release.

In some cases, you and the insurance company may readily agree on the amount of property damage, but you may not be ready to settle the bodily injury claim because of ongoing medical bills. An insurance company **may not** refuse to pay your agreed-upon property damage claim because the bodily injury claim is still outstanding.

Who Decides Who is At Fault and How Much They Owe?

Illinois has a "comparative negligence" law ([735 ILCS 5/2-1116](#)) which means that more than one person can be at fault in an accident. Under this law, you can generally collect damages if you are 50.00% or less at fault for the accident. The settlement can then be reduced by your percentage of fault.

For example, if the other driver is 80% at-fault and you are 20% at fault, you can collect for your damages because you were less than 50% at fault. However, the other driver's insurance company might only offer to pay for 80% of your damages.

How Quickly Must the Insurance Company Respond to Me ?

Illinois insurance laws ([215 ILCS 5/143.23a](#)) require a company to provide forms necessary to present a claim within 15 working days of a request.

Additionally, [Part 919.80\(b\)\(3\)](#) of the Illinois Administrative Code requires an insurer to provide a reasonable written explanation of the delay for any property damage liability claim unresolved in excess of 60 days from the date it was reported to the company.

What Kind of Information Must I Provide?

There is no law that sets forth the information you must provide. However, the insurance company will need to determine: whether their insured is legally responsible for the accident and to what extent; the amount of your damages or bodily injury; and whether your damages or injuries are directly related to the accident. Therefore, it is in your best interest to provide as much information as possible to substantiate your claim. In addition, if you fail to cooperate fully, the company could deny your claim altogether.

How Many Repair Estimates Must I Submit?

The other insurance company may ask for several estimates. There is no law that states how many estimates you must submit or that limits the number the company may ask for.

May I Choose My Own Repair Shop?

Yes. You are not required to use a repair shop suggested by the insurance company. However, if your repair shop charges more than the company's suggested shop, you may have to pay the difference.

Can the Insurance Company Deduct for Things Like Unrepaired Damage or Rust?

Yes. The insurance company may deduct an unlimited amount from the value if your vehicle has old, unrepaired collision damages. They may also deduct an additional amount up to \$500.00 for wear and tear, missing parts and rust. The company must itemize and specify the dollar amounts of those deductions.

Do I Have to Accept Replacement Crash Parts?

No. Although insurance companies aren't required to use original equipment manufacturer (OEM) replacement parts, such as GM or Ford, you have the final choice of which parts will be used to fix your vehicle. However, if the company wants to use non-OEM parts and you request more expensive OEM parts, you may have to pay the difference.

My Vehicle is a Total Loss. May I Keep It Anyway?

To minimize auto "chop shop" crime, Illinois law ([625 ILCS 5/3-117.1](#)) lets you keep a totaled vehicle only if it is nine years old or older. In that case, the insurance company may, but is not required, to let you keep your vehicle. If you have a newer vehicle, you must give the vehicle and clear title to the insurance company before the claim can be settled.

May I Rent a Car?

Illinois insurance regulations ([Administrative Code, Title 50, Subchapter 1 – Section 919.80](#)) require an at-fault driver's insurance company to reimburse you for the cost of a rental vehicle in proportion to their liability. The most the company must reimburse you for is the period of time it would normally take to repair your vehicle, or until they make you a settlement offer for your vehicle's damage.

This regulation does not specify the type of rental vehicle. If your damaged vehicle is a specialty vehicle, the company does not have to pay for a rental of the same type. If the company offers to pay a flat amount (for example, \$20 per day), the company must tell you where you can rent a vehicle for that amount.

What about Personal Property that was in My Vehicle?

The property damage liability portion of the other driver's policy will most likely cover damages to personal property in your vehicle.

What about My Conversion Van or Specialty Equipment?

The property damage liability portion of the other driver's policy will most likely cover your vehicle's specialty equipment such as conversion van equipment, car phones, stereo systems, etc.

What about the Damaged Child Safety Seat in My Vehicle?

Effective June 2, 2000, Illinois law ([215 ILCS 5/143.32](#)) requires that insurance for private passenger automobiles must include coverage for the replacement of child safety seats if those seats were in use at the time of the accident.

Do I Have to Pay a Deductible?

When you file a claim with another driver's insurance company, you do not have to pay a deductible.

What if the Insurance Company Denies My Claim or I Disagree with Their Settlement Offer?

If the other driver's insurance company denies your claim or you disagree with their offer, there is no appraisal requirement. Your only recourse is to:

- make a claim under your own policy if you have the appropriate coverages;
- file suit against the at-fault driver in small claims court, if your damages fall within the county's limits for small claims suits; or
- seek other appropriate legal counsel.

Only a judge or jury can ultimately decide who was at fault in an accident or how much another person owes you for your damages.

Must I Conclude My Claim within a Certain Time Frame?

Yes. You must either accept a final settlement offer, or file a lawsuit, within the time periods required by the appropriate statutes of limitations:

- **For bodily injury claims:**
 - Within 2 years from the date of the accident; or

- Within 2 years from the date of your 18th birthday if you were under age 18 when the accident occurred.
- **For property damage claims:**
 - Within 5 years from the date of the accident, regardless of your age at the time the accident occurred.
- **For bodily injury or property damage caused by an accident with a government entity:**
 - Within the appropriate time period imposed by the statute of limitation for that particular entity of government.

If you fail to accept a final settlement offer or file a suit before the statute of limitations ends, you may jeopardize your right to receive any settlement at all.

For More Information

Call our Consumer Assistance Hotline toll free at (866) 445-5364 or visit us on our website at <http://insurance.illinois.gov>