

A close-up, high-resolution photograph of a woman's eye. The eye is light-colored with a dark pupil and is looking directly at the viewer. A single, large tear is visible on the lower eyelid, dripping down. The skin around the eye is smooth and has a warm, orange-brown tone.

American Bar Association

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It's No Joke

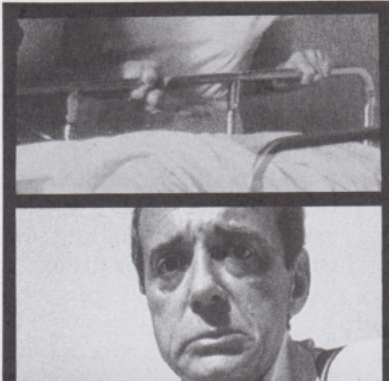
The prevention and legal
treatment of
sexual harassment

American Bar Association

The Brief

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Understanding Insurance Adjusters

John Doe

John Doe is the pseudonym of an insurance adjuster who wishes to remain on good terms with the insurance industry.

Negotiating and settling a case with an insurance company can be a time-consuming and mysterious process. Why do some companies consistently settle at higher values than others when the cases are similar? Why do some companies push for settlements at year-end, raising the offers that they have not budged from for six months? Why does an adjuster seem eager to settle one day, then refuse to return your phone calls the next? This article will give you insights into the mysterious internal workings of a claims office and suggest ways to deal with adjusters and their managers.

Claim settlement not a science

Insurance companies do not have a secret formula locked up in their corporate vaults that reveals the exact worth of bodily injury claims. What they do have is a great deal of collective experience among the adjusters, managers, and defense attorneys, but past performance is no guarantee of future awards. Pain and suffering are not quantifiable items—especially given unpredictable juries and the rising value of verdicts. And just as you remember the high ranges, the insurance company remembers the lows.

When you are negotiating a case with an adjuster, remember that you know your client better than your opponent does. What are your client's strengths and weaknesses that will influence a jury's decision? How does your client look and act? Is he or she believable? The adjuster usually does not know these important intangibles and will base the valuation primarily on historical precedent, making your client a statistic, not a real person. Knowledge is power; this is especially so in negotiations.

Quotas

Adjusters usually have quotas to meet. These quotas vary between companies. Often they are based

on *closure ratios*, calculated by dividing the number of incoming cases by the number of closed cases. Closures can refer to new cases or to the adjuster's pending files. If a monthly system is used, adjusters are held accountable for achieving a 100% closure ratio; in other words, they must close the same number of cases as they receive. Most likely, the closures will come from older cases. Adjusters on a quota system face both internal and external pressure to settle cases, so the end of a month may bring higher offers if they are below quota.

Alternatively, the adjuster's performance might be based on *severity*. Simply put, severity refers to the average payout on claims. This percentage is watched closely; claim values usually rise in a consistent fashion, and adjusters may be tempted to make a high settlement to get rid of a case. They are not working on a percentage basis, so occasional high settlements do not affect their pay. However, if an adjuster's severity average is consistently high, his or her performance may be subject to review. Knowing a company's quota system can help you understand the adjuster's position and assess its weaknesses.

Financial goals

Many companies have quarterly and year-end financial goals to meet. Settling cases can actually improve a company's balance sheet, even if the company pays out more than it anticipated. Insurance companies are required to set aside *reserves*, estimated payouts for unsettled cases, to ensure that the company has enough funds on hand to pay all outstanding claims. They represent an educated guess of a claim's value. Usually they are set on the basis of what the adjuster considers a high-end settlement. Insurance companies can get into trouble by underreserving cases, so most would rather have claim values overestimated. (On more quantifiable claims, like property damage, the reserves may be set automatically by computer.) Also, the adjuster looks better if he or she settles the case below the reserved amount.

Anticipated defense costs are reserved separately.

These are not set until litigation is begun. The adjuster may tell you that he or she does not consider defense fees when evaluating the claim, but often this is not true. Defense costs are a major expense of claims departments, and the threat of formal proceedings or their actual initiation may spur the adjuster to raise the offer. Once reserved funds are set aside, they become a liability on the balance sheet. When the case is settled, any reserved funds over the cost of the payout are freed and become assets again. Thus if a case is reserved at \$50,000 and the settlement is for \$40,000, the asset side of the balance sheet increases by \$10,000.

Because of this the company may be anxious, especially at year-end, to settle a case for an amount higher than actually anticipated but still below the reserve amount. Many of your clients may want to settle around this time, so it can be a particularly productive period.

Adjusters are stressed

An adjuster's job is very stressful. Many companies have tight accountability guidelines and very close contact between management and the front-line adjusters. When this is combined with the very nature of the job—repeated contact with injured claimants who do not trust them because they are from “the insurance company,” and the constant interpersonal conflict that is endemic to negotiation—the result often is a stressed person. Some claimants and plaintiffs' attorneys see adjusters as the epitome of evil, when in fact they usually are nice people who happen to work as claims adjusters.

Forcing unnecessary conflicts with adjusters is a sure way to make both of your jobs more difficult. You are both professional negotiators, and you should try to keep your negotiations at a professional level. Adjusters may sometimes be unreasonable, but the same can be said for plaintiffs' attorneys. Don't get a reputation for being unreasonable; that often provokes an adjuster to consign your file automatically to the twilight zone when he or she hears that you are handling the case.

It does help to be friendly. Get to know the adjusters, especially if you find yourself dealing with specific individuals often. Having good rapport with adjusters can ease your job and help your settlement values. You might want to consider discussing the case (or a group of cases, if you have more than one with an adjuster) over lunch. While many insurance companies discourage such gifts as free lunches, many adjusters feel that they are a perk of the job. These informal meetings can teach you a lot about the mysterious innards of the insurance company.

The management-control structure

Try to determine which companies employ a tight management-control structure. These companies are identified by how many times an adjuster tells you, “I'll have to ask my manager for authorization.” This may be a result of the adjuster being new and the company not trusting him or her with a high authorization, but usually it indicates tight reins. If it happens often, try to build rapport with the adjuster's manager. Then if a case is really stuck, you might be able to work something out with the manager. One word of advice, though: Don't go over the adjuster's head on every case. Reserve this strategy for important cases that are not moving.

Usually a manager is a former adjuster, which makes it even more important to build rapport with current adjusters. If they later rise to management, you have already established a relationship.

Don't underestimate adjusters

Don't underestimate adjusters because they are “just adjusters.” Many are very experienced, bright people. Because of the volume of cases they see, they may be aware of intangibles that you are not familiar with. Some of them easily could step into a personal injury practice. They might not have gone to law school (although it is more and more common), but they know the real facts that aren't taught in the classroom.

Keep a file

Keep a file on the information you gather on the insurance companies you deal with regularly. You might even want to log individual cards for adjusters and their managers. This strategy is more practical if your practice is in a smaller city, where you are more likely to have repeat dealings.

Adjusters, like everybody else, respond favorably to hearing their names and an expression of interest in their lives. Try to determine whether the company is on a quota system, and if so, what kind it is. Does the adjuster seem to have much authority, or is he or she always checking with the manager? Statements like “How's the closure ratio doing?” or “Let's do something about your low severity” can really break the ice before negotiations begin. Is the adjuster willing to discuss the case over lunch with you? Also, note whether the company tends to be eager at year-end to settle claims. If it is, it might be worthwhile to hold until December claims due to settle in the fall. Since most of your cases will settle short of litigation, knowledge of the workings of a claims office and its adjusters can help bring about the results that you and your clients are seeking: higher settlements.