Letter 2

Dear ,

I hope the materials I sent you [last week] answered your most pressing questions about pursuing a personal injury claim. I’m writing today to send you information about the insurance industry that every personal injury claimant needs to know.

The sad truth is that insurance companies regularly take advantage of people who are not represented by lawyers. Insurance companies are in business to make money for their stockholders. The less they pay to claimants like you, the higher their profits.

To help you educate yourself, I have attached two Special Reports:

1. **How Insurance Companies Work**
2. **Common Claims Adjuster Ploys and Dirty Tricks**.

If you have any thoughts of representing yourself, don’t say a word to the adjuster until you’ve read these Reports. They will open your eyes to the dangers you face. For example, you will learn how seeming innocent requests from adjusters to give a statement or sign medical authorization forms are calculated to get you to damage your own case.

I encourage you to hire a lawyer to handle your case, even if you don’t choose me. Insurance companies have little incentive to settle promptly and fairly with unrepresented claimants. They make a profit by delaying payment for as long as possible and settling for as little as possible. An insurance company will rarely offer you what your case is worth without a lawyer’s help.

Please call me if you have any questions about these Special Reports or about your case. I’ll be happy to meet with you for a no-cost, no-obligation consultation during which I will evaluate your case, answer all of your questions, and explain your rights. Without an assessment from a personal injury attorney, you can’t know what your case is worth. You’ll be at the mercy of the insurance company.

I send you best wishes for your continued recovery.

**How Insurance Companies Work**

Prepared By:

**[Attorney]**

**[Contact information]**

1. Introduction
2. Basic Insurance Company Activities
3. Business Model of Large National Insurance Carrier
4. Claims Department Hierarchy
5. How the Claims Department Works
6. How the Insurance Company’s Business Model Affects You
7. To Sum Up . . .

# Introduction

If you have been involved in an injury accident, you may want to deal directly with the insurance company and resolve the matter on your own. This is your prerogative; no rule or law requires you to have an attorney negotiate your claim. In my experience, however, most people find dealing with the insurance adjuster to be an exasperating, time-consuming, and fruitless endeavor. I field several calls a month from frustrated individuals who want to know, “Why?”

“Why does the settlement process have to be so difficult? “

“Why is the insurance company being so blatantly unreasonable?”

“Why is the adjuster dragging his feet?”

To answer these questions, you need to understand how insurance companies work.

You still may decide to handle your claim on your own. If so, the information provided below will give you an edge in dealing with the adjuster and leave you better prepared to face the inevitable frustrations of the claims process. Forewarned is forearmed. If, however, at any time during the claims process, you would like to consult with an experienced personal injury attorney, please contact me. You can always reach me at ###-#### or by email (\_\_\_@\_\_\_).

# Basic Insurance Company Activities

The work of an insurance company involves five distinct activities:

1. **Actuarial**. An “actuary” is a specially trained mathematician. It is the actuary’s job to calculate policy premiums based on risk factors and actual claims experience.
2. **Underwriting**. Underwriters evaluate risk and decide whether that risk ought to be insured.
3. **Marketing**. Marketing is the job of the insurance “agent,” who sells the company’s insurance policies for the established premium.
4. **Investing**. Insurance companies are in business to make money. When the company makes money, it is invested to generate greater profit.
5. **Claims**. The claims department is responsible for processing and paying claims on insured events.

The first four activities are income-generating activities. Paying claims, however, is an income-draining activity. Every claim paid is money lost for the insurance company. Consequently, insurers are always looking for ways to turn the claims department into a profit center or, at the very least, to minimize their losses.

# Business Model of Large National Insurance Carrier

Most large, national insurance carriers operate with a military-style hierarchy, in which any decision of any consequence must be reported upon and approved up the chain of command. “Local” offices report to “regional” offices. Regional offices report to the “home” office. This rigid reporting structure can be frustrating for claimants because of the delays often generated by this type of bureaucracy.

# Claims Department Hierarchy

Following an injury accident, your attorney will be dealing with the claims department. Although there may be slight differences from carrier to carrier, in general, the claims department will be structured as follows:

**Claims Manager**

The local office of a large, national insurance carrier is usually run by a claims manager – a long-term, loyal employee who is responsible for overseeing settlements, general claims practices, and lawsuits. The claims manager typically wields significant power in small-to-medium-sized cases.

**Claims Supervisors**

Claims supervisors typically are responsible for supervising a dozen or more claims adjusters. The claims supervisors report directly to the claims manager. They are the “middle management” of the claims department.

**Claims Adjusters**

At the bottom of the claims department hierarchy are the claims adjusters. Adjusters are responsible for the day-to-day handling of claims. The adjuster’s job is to negotiate settlements and close files, and to do so as efficiently and cheaply as possible. An adjuster in the local office of a large national carrier is likely to be responsible for 100-200 claims files at a time. This heavy workload means that most adjusters are able to devote just a few minutes per week to the average claim.

# How the Claims Department Works

**Step 1: Claims Supervisor Sets Initial Reserve**

Upon receiving a notice of claim, a claims supervisor will assign the claim to an adjuster and set the initial “reserve” on the claim. The “reserve” is the amount of money the insurance company sets aside (or “reserves”) for paying a claim; it represents the total estimated cost of the claim to the insurance company.

In almost every case, the initial reserve is nothing more than a guess, based on very little information. When a claim first comes in, the supervisor generally is presented with a standardized form (called an ACORD form) that provides the insured’s name and contact information; a brief description of the accident; and a brief description of the injuries involved. Based on this barebones information, the supervisor will set the reserve.

The reserve is important because it serves as a ceiling on the value of your claim. Once it is firmly established (usually within 6 months of the filing of a claim), it is very difficult to get the carrier to raise that ceiling.

**Step 2: Claims Adjuster Investigates and Reports to Supervisor**

The adjuster’s preliminary investigation will focus on three factors:

* Coverage – What type of coverage is involved? Are the events that led to the claim covered by the insured’s policy? Are there grounds to deny coverage?
* Liability – Who is at fault?
* Damages – What is the nature and extent of your injuries?

As part of his investigation, the adjuster will:

* Interview the parties involved (e.g., the drivers of the vehicles involved in the accident), to get each person’s version of the facts. If possible, the adjuster also will interview known witnesses to the accident. These interviews usually are conducted by phone, but may be conducted in person.
* Obtain and review official records, including the police report and any reports filed with the Department of Motor Vehicles, if these documents exist.
* Obtain and review your medical records, including medical bills, related to the incident. The adjuster either will ask you to provide these records or will ask you to sign a medical records authorization, allowing the adjuster to obtain these records directly from your medical providers.
* Visit the scene of the accident to take photos, prepare diagrams, and make notes of his observations.
* Enlist an appraiser to evaluate the damage to both vehicles and the repair estimates.

The adjuster will prepare a report of his preliminary investigation. This report typically is due to the claims supervisor within 15 days of receiving notice of the claim.

***Caution: The adjuster is not your friend***

Before you hire an attorney, the adjuster may ask permission to record his interview with you or ask you to give a recorded statement. Don’t do it. Remember that the adjuster’s job is to settle your claim for as little as possible; if you give a recorded statement, the adjuster will parse that statement, looking for ways to use your words against you. Likewise, do not sign a medical authorization. Even though it might sound like a generous offer by the adjuster – just sign the form and the adjuster will do all the work in gathering your medical records – it is not that simple. The language of medical authorizations can be very broad. You do not want to inadvertently allow the insurance company to go on a fishing expedition through your entire medical history. Allow your attorney to gather your medical records and present them to the adjuster.

**Step 3: Supervisor Adjusts Reserve**

In light of the new information contained in the adjuster’s report, the supervisor will adjust the reserve.

The reserve will be evaluated every time the supervisor picks up the file. The last thing an adjuster or claims supervisor wants to do is to carry a $10,000 reserve for a year, and then suddenly have to raise the reserve to $100,000. It is embarrassing for an adjuster to have to file a report containing such a large and unanticipated bump in the reserve. That type of report demands a great deal of explaining and triggers intense scrutiny from the adjuster’s superiors.

**Step 4: Investigate, Report, Reset Reserves**

After submitting his initial report, the adjuster then will have an additional 60-90 days, depending on the seriousness of the claim, to investigate further and gather more information. During this time, the adjuster may conduct follow-up interviews or interview witnesses who previously were unavailable. He will be particularly interested in your medical condition and treatment, and will closely monitor your progress toward recovery. The adjuster then will submit a second, more extensive, report to the claims supervisor. Based on this additional information, the supervisor will review and reset the reserve on the claim.

**Step 5: Negotiate a Settlement**

Negotiations will now begin in earnest. The adjuster will be the point person for the insurer in the negotiations, but his ability to settle the claim will be limited by the authority granted to him by the claims supervisor or claims manager. Generally, this authority is meted out in small increments of not more than a few thousand dollars at a time. Thus, if the adjuster has authority to settle a claim for $20,000, he cannot agree to a $25,000 settlement without justifying the increase and obtaining authority from a supervisor or manager. If the value of the claim exceeds the claims manager’s authority, he will have to seek approval up the chain of command, from the regional office or home office.

# How the Insurance Company’s Business Model Affects You

Now that you understand how insurance companies operate, let’s return to our original questions:

**Why is the settlement process so difficult?**

The rigid hierarchical structure of most large national insurance carriers demands that every decision be reported upon and approved, up and down the chain of command, before any real action can be taken. Inevitably, this type of bureaucracy delays the processing of a claim, and both frustrates and infuriates most claimants.

**Why is the insurance company being so blatantly unreasonable?**

An insurance company is a for-profit business. The company leaders want all phases of the business – including the claims department – to turn a profit.

**Why is the adjuster dragging his feet?**

The claims adjuster works for the insurance company, not for you; therefore, you and the adjuster are working at cross-purposes. Your goal is to maximize your settlement. The adjuster’s goal, on the other hand, is to minimize your settlement, in order to protect his employer’s best interests and, by extension, his own. The more cases the adjuster resolves at or below the stated authority, the better his performance evaluations and the greater his reward in terms of raises, bonuses, promotions and other employment-related benefits.

Moreover, unless you are willing to accept the adjuster’s first (and lowest) offer, there may be little benefit to the adjuster in settling early. Any delay allows the adjuster more time to gather information about the claim, your injuries, your treatment and your prognosis. Because a settlement delayed is money in the insurer’s pocket, the adjuster may use a number of techniques to stall you and test your resolve. The adjuster is hoping to delay payment long enough to uncover information harmful to your case (e.g., a preexisting injury or a history of accident claims) or to wear you down to the point that you are willing to agree to a lower settlement just to have the matter over and done with.

# To Sum Up . . .

1. Large national insurance carriers are for-profit businesses that operate with a military-style hierarchy.
2. In the local office of a national insurance carrier, the claims adjusters report to a claims supervisor who, in turn, reports to the claims manager.
3. The claims adjuster works for the insurance company, not for you.
4. An adjuster’s performance is evaluated according to how efficiently and inexpensively he settles claims.
5. The “reserve” is the amount the insurance company has earmarked for payment of a claim. Once the reserve on a claim is firmly established, it is a difficult and time-consuming process to get the insurance company to raise that ceiling.
6. Every time the claims file gets picked up, it’s the adjuster’s or supervisor’s job to make sure the reserves are in order. The more information you and your personal injury attorney provide to the adjuster, the more often he will be forced to review your file and adjust the reserve.
7. The adjuster generally will be in no hurry to settle your claim. The essence of stonewalling is to drag out an insurance claim for a period of months or even years before paying a reasonable settlement. The adjuster will use any number of negotiating “tactics” to delay payment and test your resolve.
8. Having a personal injury attorney on your side levels the playing field. Your personal injury attorney will recognize the adjuster’s tactics for what they are, and work to negotiate a fair and reasonable settlement on your behalf.

**Common Claims Adjuster Ploys**

**and Dirty Tricks**

Prepared by

**[Attorney]**

**[Contact Information]**

**I. Preliminary Matters**

1. **“I’d like to take your statement.”**
2. **“If you sign this medical release form, I will do all the work in gathering the medical records needed to evaluate your claim.”**

**II. Stonewalling Tactics**

1. **Losing your claim in the company bureaucracy**
2. **Making repeated demands for information**
3. **Sending you from one adjuster to another**
4. **Choosing to ignore you**
5. **“I’m still investigating your claim.”**
6. **“I’ve misplaced your file.”**
7. **“I have to get settlement authority.”**
8. **“I expect to have an offer for you very soon.”**

**III. Lowball Offers**

1. **I’ve consulted an attorney . . . .**
2. **I’ve consulted an expert . . . .**
3. **My supervisor says . . . .**
4. **We are keeping a lid on premiums.**
5. **I’m betting you’ll take this.**
6. **As a matter of policy, we don’t pay for . . . .**

Insurance claims adjusters use a number of “techniques,” ploys and dirty tricks to delay payment of your claim and get you to settle for less than your claim is worth. Here are some of the more common ones to watch for:

**I. Preliminary Matters**

These first two items sound innocent enough – like nothing more than simple housekeeping matters. They can, though, be traps for the unwary.

1. **“I’d like to take your statement.”**

On its face, this may seem like a reasonable request. After all, it is the adjuster’s job to investigate your claim. However, one of the most used and abused tactics of insurance claims adjusters is to take your statement before you are represented by an attorney and to write it up in a way that benefits the insurance company. The interview process is inherently unfair: the interviewer (the adjuster) is biased; the questions will be tailored to suit the adjuster’s interests; and your answers will be interpreted and recorded in the light most favorable to the insurance company. Here is an example.

A husband and wife were riding a tandem bike in a rural camping area. A pickup truck took a tight turn on a corner at an intersection and struck them, forcing them and their bike into a ditch. Both the wife and the husband received moderate to serious injuries with medical bills of several thousand dollars.

Within one week after the incident, an adjuster for the truck driver went to the couple’s home to obtain statements from each of them. They were still recovering from the incident and the insurance adjuster did not make it crystal clear which party she actually represented in the case. More importantly, the insurance adjuster did not inform the couple that the statements could be used against them later in the claim.

The case did not settle and the couple eventually filed a lawsuit. During the husband’s deposition, he stated that he was about two or three feet from the side of the road. The defense lawyer pulled out the signed statement and pointed to a sentence that read: “I am not exactly sure how far we were from the side of the road before the collision occurred.” The husband said he remembered telling the adjuster that he believed he was approximately two or three feet from the side of the road. When the adjuster asked if he was exactly sure, he replied that he was not exactly sure. The adjuster simply wrote down that the husband was not sure how close he was to the side of the road before the impact.

1. **“If you sign this medical release form, I will do all the work in gathering the medical records needed to evaluate your claim.”**

Don’t be fooled. This is not as innocuous as it sounds, and you should be cautious about signing any type of medical authorization form. Often, these forms are very broadly drafted, allowing the adjuster to go on a fishing expedition through your entire medical history, looking for evidence that might be used to undermine your claim.

**II. Stonewalling Tactics**

Insurance companies often have little incentive to make quick payouts on personal injury claims. Delayed payouts benefit the insurance company, which earns most of its profits by investing the money it receives as premiums. So, typically, the longer the insurance company can hold on to its money before paying off a claim, the more money the insurance company can earn. For this reason, insurance company claims adjusters often employ a number of delaying tactics. As an added bonus for the insurance company, these tactics leave many claimants feeling so weary and/or frustrated and/or desperate, that they settle their claim for less than it is worth.

The sections below describe some common ways in which the adjuster might try to stonewall you:

1. **Losing your claim in the company bureaucracy**

The adjuster will tell you that your claim has to go to “committee” or to the “home office” for review. This statement may be entirely false, but it puts a bureaucratic barrier between you and the adjuster, and serves to delay payment of your claim.

1. **Making repeated demands for information**

Rather than ask you to provide all the usual information and documentation necessary to settle your claim at one time, some adjusters will request this information on a piecemeal basis. Other adjusters will just keep asking for information, regardless of how much you have provided. If you submit a doctor bill, the adjuster will ask for a copy of the doctor’s report. If you submit a hospital bill, the adjuster will want a complete copy of the hospital records. With both of these techniques, the adjuster will tell you that he cannot settle your claim until he receives this or that crucial piece of information and, thereby, drag the settlement process out over a period of months.

1. **Sending you from one adjuster to another**

Whether by default (because of a high turnover rate among adjusters) or by deliberate design, many insurance companies bounce claims from one adjuster to another. Your claim inevitably will be delayed while the new adjuster “gets up to speed” on your file.

1. **Choosing to ignore you**

Some adjusters will put their head in the sand and simply ignore you. They won’t answer the phone, and won’t respond to voice messages, emails, or written letters. This stonewalling technique may not work for long, but it tends to be effective and exceedingly frustrating for claimants.

1. **“I’m still investigating your claim.”**

The adjuster will put you off with a simple, “My investigation is ongoing.” How long the investigation goes on may depend on how long you are willing to wait.

1. **“I’ve misplaced your file.”**

If the adjuster works in a busy claims office, this might, in fact, be true. The problem is, you can’t know for sure. Regardless, your claim is not moving forward.

1. **“I have to get settlement authority.”**

In the world of insurance company bureaucracy, every adjuster has to get settlement authority from someone higher up on the chain of command. However, if the adjuster repeatedly falls back on this excuse, he is probably just stalling.

1. **“I expect to have an offer for you very soon.”**

One of the more frustrating and unfair techniques used by claims adjusters is to dangle the carrot of an imminent settlement offer, hoping you will continue to wait. If the adjuster has not made a settlement offer after a month or two, but says something along the lines of, “I just have to get the file back from my supervisor,” you may start to wonder if this is true or if you are being stalled.

**III. Lowball Offers**

Imagine this: You have endured the delays caused by the adjuster’s deliberate stonewalling and, finally, the adjuster has made a settlement offer. It is low. So low, in fact, that it is plainly unreasonable and personally insulting. Here are six arguments the adjuster might make to justify this shameless lowball offer:

1. **I’ve consulted an attorney . . . .**

The adjuster may get a personal injury attorney to write an opinion letter stating that your claim is worth very little. However, the attorney’s opinion is based solely on information provided by the adjuster, who shares only the facts he wants the attorney to know.

1. **I’ve consulted an expert . . . .**

The adjuster may shop around for an “expert” who will opine that you were not injured or not injured as badly as you claim, or that, for some other reason, your claim is not worth much. As with the attorney’s opinion, the expert’s report will be based on the limited information provided by the adjuster.

1. **My supervisor says . . . .**

The adjuster might tell you, “My supervisor says I don’t have the authority to go any higher.” That may be true, but it also may be true that the supervisor capped the value of your claim at a low amount based on information provided by the adjuster, even though the adjuster knows your claim is worth more.

1. **We are keeping a lid on premiums.**

The adjuster may tell you that your settlement must be kept down in order to keep premiums from going up.

1. **I’m betting you’ll take this.**

## The lowball offer may be based on certain assumptions the adjuster has made about you and your claim. The adjuster likely won’t tell you these things, but you might be lowballed if:

* You are self-employed or a small business owner or a busy professional. The adjuster might assume that your work time is too valuable to be spent dealing with a personal injury claim, so you will take his offer just to be done with the matter.
* You are dealing with a personal hardship – e.g., a chronic illness or unemployment. The adjuster will assume you need money and will take what you can get.
* You have some affiliation or personal characteristic a jury might not like. If the adjuster thinks a jury will award you a small amount, then the adjuster can afford to lowball you.

1. **As a matter of policy, we don’t pay for . . . .**

The adjuster might tell you, “It’s company policy. We don’t pay for \_\_\_\_\_\_ [e.g., lost wages, or transportation costs, or childcare expenses, etc.]. Often, even if the adjuster says a particular loss is not covered, it should be. If such a policy exists, it likely is a direct violation of good faith claims practices.