

How to Handle Your Own Claim

**Car, Truck or Motorcycle
Damage in Georgia**



MILLAR & MIXON, LLC
INJURY ATTORNEYS

How to Start Your Car, Truck or Motorcycle Damage Claim; Your “Property Damage Claim”

We recommend consulting with an attorney before making contact with any insurance company, even if you are not hurt, because he or she may have advice for you about how to talk to the insurance company about your crash.

If you are in a car, truck, or motorcycle accident, what are your options?

- 1) You may make a claim with the at-fault driver’s insurance company
 - 2) You may file a claim with your own motor vehicle insurance company
- ◇ **Was the accident your fault?** If so, contact your own insurance company and explain what happened.
 - ◇ **Was the accident someone else’s fault?** If so, contact the at-fault driver’s insurance company AND contact your insurance company as well. Failing to contact your own insurance company could result in a denial of coverage if the at-fault driver’s insurance does not pay for some reason, such as it was cancelled before the crash happened.

If it is not clear who was at fault, it may be best to make your claim with your own insurance company until fault is determined.

Should I use my insurance company, or the other driver's insurance?

If the accident was not your fault, you may have a choice.

- ◇ **Going through your own insurance company** may be faster because you may not have to wait for an investigation to be completed. But going through your own company may result in you having to pay a deductible, which you may later be reimbursed for. Also, if you do not have rental car coverage, or if you only have a limited number of rental car days allowed under your insurance policy, you could end up being responsible for the extra days.
- ◇ **Going through the at-fault driver's insurer** may take longer because the adjuster may have to review the police report or interview witnesses. But, the at-fault driver's insurance company is required to provide you with a rental car, reimbursement for a rental car, or a per-day reimbursement for the loss of use of your vehicle while your car is repaired or until it has made you a reasonable offer for your totaled car or truck.

What if the At-fault Driver does not Have Insurance?

- ◇ You may be entitled to file a claim under your own motor vehicle insurance policy.

What if the Accident Was my fault, but I Don't Have Collision Insurance?

- ◇ You may be out of luck. If you do not have collision coverage and you caused the damage, you will be responsible for the repair or total loss of your own vehicle.
- ◇ If you owe money on your motor vehicle, you are still required to pay off the loan. This remains true even if the car, truck or motorcycle is damaged beyond repair.

How Does my Deductible Work?

- ◇ If you have collision coverage, you may make a claim with your own motor vehicle insurance carrier. In some cases, this may be faster than going through the at-fault driver's insurance company.
- ◇ If you make the claim through your own insurer, you may have to pay a deductible.
- ◇ You may be re-paid the deductible from the at-fault driver's insurance company.

What Happens Next?

- ◇ **Can your car or truck can be driven?** If so, the insurance company may ask you to take the vehicle to a repair shop.
- ◇ **Is your car or truck not drivable?** You can have the towing company tow it to a place of your own choosing, such as a towing/salvage yard, to your home, or to a body shop that you choose.
- ◇ You should take pictures of the damage to your vehicle as soon as possible.
- ◇ If the vehicle is repairable, you are entitled to have it repaired at a shop of your choosing.
- ◇ You may take your vehicle to your own body shop.
- ◇ If your vehicle has been taken to a towing yard, you should remove all of the personal belongings you want to keep.
- ◇ Make sure to keep up with the name of the towing yard, any estimates or time frames set with towing yards or others. You don't want to incur charges you could've avoided or come back to find your car has been auctioned off.

You have a duty to mitigate; what does this mean?

If your vehicle is towed or stored in a wrecking yard, you will have storage fees and a towing charge that may become your responsibility once the insurance company tells you how long the vehicle can remain there.

If you leave the vehicle in the storage yard longer than approved by the insurance company, you may have to pay the charges yourself.

In some cases, if you leave your car or truck in the storage yard, more than 30 days without paying, your vehicle could be auctioned off.

You May be Entitled to a Rental car:

- ◇ **If the accident was not your fault, the at-fault driver's insurance company must provide you with a rental car,** reimbursement for a rental car, or a per-day reimbursement for the loss of use of your vehicle until your car is repaired or until you have been paid for the total loss.
- ◇ **If the accident was your fault, do you have rental coverage?** If so, your insurance company must pay for a rental car until the repairs are done or you have been paid for the vehicle.
- ◇ **If your car is drivable,** the insurance company may not have to pay for a rental car until the repairs have been approved and your vehicle has been put into the body shop for repairs.
- ◇ **If your car, truck or motorcycle is not drivable, you are entitled to a rental car,** reimbursement for a rental car, or a per-day reimbursement for the loss of use of your vehicle . You may rent a car yourself and possibly be reimbursed or wait for an insurance adjuster to approve a rental car. You do not need to pay for additional insurance on your rental car, because rental cars are covered on your own policy if you have collision coverage.

Also, most insurance companies will not pay for the extra coverage (spot-insurance) and you may be stuck paying for that coverage when you do not need it.

- ◇ **You are entitled to a rental vehicle that is comparable to your damaged vehicle.** This means that if you had a pick-up truck, you do not have to settle for a sub-compact car.
- ◇ **Do not keep a rental car longer than the insurance company has agreed to pay for it,** or you most likely will have to pay the extra charges yourself. If you need more time because your car has not been repaired, get approval from the insurance company before keeping the rental car.
- ◇ **If your vehicle is a total loss,** the insurance company is only required to provide you with a rental car until it has made a reasonable offer for the value of your vehicle.

You should return the rental car or truck as soon as the adjuster tells you to do so.

What if I owe more on the vehicle than the insurance adjuster is offering?

- ◇ Unfortunately, in some cases the fair market value of your vehicle may be less than what you owe to pay off your loan.
- ◇ The insurance company is not required to pay off your loan. The insurer is only required to pay what your car was worth before it was damaged, even if that value is less than what you owe. **It is still your responsibility to pay off the loan.**

Can I get money because my car is now worth less?

- ◇ It is well known that vehicles lose value after being damaged in a collision, companies such as Carfax now make it easy for buyers to discover that your car has been damaged and will usually be willing to pay far less for a vehicle that has been in a wreck.
- ◇ Georgia law allows you to recover money for diminished value, if you are the owner of the vehicle. If you are leasing the car or truck, you are not the “owner” of the vehicle, and **only the owner may collect diminished value.**

Insurance companies only have to pay you the fair market value for the vehicle in your area, so look at comparable cars and trucks in your own city or close to your home.

If your car is a total loss – what is it worth?

- ◇ If your car, truck or motorcycle has been declared a total loss (“totaled”) you are entitled to recover the fair market value of the vehicle.
- ◇ Many insurance companies will declare the vehicle a total loss if the estimated cost to repair the damage exceeds 75% of the fair market value.
- ◇ This means that the pre-accident condition of the vehicle must be considered, such as the year-model, mileage, options and overall condition.

What if I want to keep my car after it has been “totaled” ?

- ◇ You may accept the offer that the insurance company is making minus the amount the insurer would have gotten paid for the salvage value of the vehicle.

How to negotiate a total loss claim with an insurance adjuster:

- ◇ You can negotiate the amount that the insurance company offers, **you need not take the first offer.**
- ◇ You will have to justify why you think the vehicle is worth more than you are being offered.
- ◇ You may do your own research using Auto Trader, local newspapers or classifieds, and independent appraisals to determine the fair market value. This is especially important if it is a rare or valuable vehicle.

How to Negotiate a Diminished Value Claim:

- ◇ Often an insurance company will simply send you a check for diminished value after a collision. ***You do not need to accept this*** amount if you believe that the value of the vehicle has diminished more than what the insurance company has offered or sent you.
- ◇ Georgia law recognizes that diminished value may be established by an estimate provided by an expert appraiser or an estimated value of the vehicle based on a statistical model. You may have an appraisal of the vehicle done and ask to be paid for the amount that the value has been reduced by. Georgia has many independent appraisal companies who will provide a report in return for a small fee. Try searching online for a local appraisal company.
- ◇ You should present the diminished value report to the insurance adjuster and ask to be paid the amount by which your vehicle's value has been diminished.

Note: Not every vehicle qualifies for diminished value. Vehicles that are very old, in poor condition, have minor damage, or have previously been damaged. Newer cars and expensive luxury and sports cars generally diminish more in value than older cars or vehicles in poor condition.

It is recommended to hire an attorney to handle diminished value claims because as of 2012, Georgia Law is unsettled and can be difficult to get the insurance company to pay you a fair amount without an attorney.

You may have to take the insurance company to court.

What if the insurance company refuses to pay for the damage?

- ◇ The law of Georgia, O.C.G.A. 33-4-6 and 33-4-7 allows you to make a claim for bad faith damages if the insurance company delays payment or wrongfully refuses to pay.
- ◇ If you believe an insurance company has wrongfully refused to pay your property damage claim, or is offering less than you believe is reasonable, we recommend that you consult with a lawyer.
- ◇ If you have requested payment of your property damage, and the insurance company refuses “in bad faith” to pay your demand within 60 days, the insurer may be required to pay up to 50 percent of the loss, or \$5,000.00 which ever is greater, plus reasonable attorneys fees.
- ◇ Whether an insurance company has acted “in bad faith” depends on whether it has become reasonably clear that the insurance company owes you money for your property damage and the insurer offers no money or less than the amount reasonably owed under the circumstances.

MEET OUR PARTNERS



J. Stephen Mixon is a

graduate of the University of Georgia School of Law, and earned his undergraduate degree at Emory University. Mr. Mixon has served as legal clerk to the Honorable United States Senator Strom Thurmond, and to the Honorable Superior Court Judge Deborah Benefield. J. Stephen Mixon has also served as in-house counsel for RaceTrac Petroleum, Inc., and, since entering private practice, has represented both local and national companies in a variety of business related civil matters.

Stephen Mixon is a University of Georgia School of Law graduate who began his legal career as a clerk in the U.S. Senate and Georgia Superior Court. Prior to joining the firm, Stephen represented local and national companies in complex business litigation.

J. Stephen Mixon handles business litigation, contract disputes, lawsuits involving large and small businesses, sexual harassment, racial discrimination and general civil litigation. Mr. Mixon also performs incorporations, drafts and reviews contracts, and assists in the purchase and sale of businesses.



Bruce R. Millar has successfully represented hundreds of injured persons throughout the state of Georgia. He handles cases for persons who have been injured through the negligence of others that range from car and truck accidents to dog bite incidents.

Bruce R. Millar is a 1993 graduate of the Emory University School of Law, and earned undergraduate degrees in Economics and Business Management at North Carolina State University. He is a member of the Georgia Bar Association, the American Bar Association, the Georgia Trial Lawyers Association, the American Trial Lawyers Association, the Atlanta Bar Association, and the Clayton County Bar Association. Mr. Millar is admitted to practice in all State and Federal Courts in Georgia, including the Georgia Supreme Court and the Eleventh Circuit Court of Appeals.

Bruce Millar has handled over 90 cases in Federal Courts and more than 200 cases in State Courts. And since 1993 Atlanta attorneys Millar & Mixon have obtained judgments and settlements of over \$60 million for clients. He has been featured in more than two-dozen television news interviews relating to his cases. He has twice appeared on the front page of the Fulton County Daily Report, the largest legal newspaper in Georgia, and has had cases featured on ABC, NBC, and FOX television news. Mr. Millar has also been a guest lecturer at Emory University School of Law and at continuing legal education seminars where he has instructed other lawyers in complex litigation.



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