

By: Dan Baldyga

How the liability system actually works, in the world of insurance claims, is very often a joke because what America's motor vehicle law's are supposed to accomplish has little to do with reality !

DEFINING NEGLIGENCE AND FAULT: Negligence, for the purpose of a motor vehicle insurance claim settlement, can be defined as weather the motorist allegedly held at fault for an accident did that which he should have done (or not have done) resulting in harm or injury to you the claimant.

The concept of "negligence" is based on a various legal doctrine's of "The Law". By those doctrine's, it's held that a "reasonable man" has an obligation to exercise a certain degree of care and diligence and when he fails to uphold that duty (and if it should result in harm or injury to another's body or property) it's a legitimate reason for the harmed or injured party to be "made whole" again. That is, to be compensated with money for his "damages" by the party that caused them. In short, the term "negligence" (as applied to motor vehicle accident claim cases) refers to a level of conduct or behavior that fall's below the acceptable standard established by "The Law" for the protection of others against harm.

Thus, in motor vehicle accident liability situations the determination of whether a given motorist is "negligent" is based on the judging party's assessment of two fundamental questions: THE FIRST IS: Did the given motorist do what a prudent person would have done (and would have been expected to do) in a similar situation as the one at issue? AND THE SECOND: Could a prudent person, acting with due care, have avoided the accident and/or injury that occurred? These may read and sound good but in reality they're pure hogwash !

HOW NEGLIGENCE IS SUPPOSED TO INFLUENCE YOUR ABILITY TO COLLECT: Under prevailing law governing motor vehicle accident matters in most states (with the exception of true no-fault states), the concept of negligence is of critical significance since the amount of your recovery (and/or your entitlement to any in the first place) will depend upon the degree of your contribution to the accident.

An assumption of "The Law" (which governs how much money the injured victim is going to be awarded) is that the accident represents harm done by one person to another. The decision as to whether there had been negligence (who is at fault) should always involve careful consideration of the circumstances of a given accident, and what a normal, prudent person would have done.

There is allegedly a direct connection between the level of your "negligence" and your right to be compensated. The doctrine of negligence or fault, is supposed to be fundamental in motor vehicle accident insurance claims settlements but the gut question is: "HOW DOES THE SYSTEM ACTUALLY OPERATE IN THE REAL WORLD OF DAY-TO-DAY PRACTICE WITHIN THE FRAMEWORK OF THE INSURANCE CLAIMS INDUSTRY"? You can take it from Dan Baldyga who was on that firing line for almost 40 years - - the answer to that one is: "It's rarely a consideration" !

IN SUMMARY: In the real world of claims settlement "compromise" (which has nothing to do with "The Law") is more often then not the order of the day. It's

commonly accepted among claims professionals (because it makes their work life so much easier) is that in any given case of questionable liability there's almost always a possibility of a payment being made !

What this boils down to, in the world of insurance claims, is: Irregardless of "The law", practically no claim is without merit or totally lacking in value (especially if that value is to "get ride of it" - - because it's taking up the time of employees, their filing cabinets, offices, and/or specific areas, of the insurance company). That concept has nothing to do with "The Law".

A tiny payment is more often than not the order of the day, especially in cases of questionable liability, but only if that compromise will position the insurance company so they can steal the claim for less money than it would cost them if an attorney took on your case and it dragged on, for a loooong period of time, right to the bitter end.

But, one way or the other (as to your responsibility for the accident) the fact that you're at fault, weather you are or not, will be heaped on you by the adjuster to reduce his settlement offer of your claim. Unfortunately, he's often very successful in this subterfuge, which is nothing less than legal larceny, and because you (in total and bitter frustration) call it quits, pack it in and give up the chase. Is that "The Law" in action? Hardly!

It's only when faced with a determined claimant, who is willing to wait and haggle and won't go away, that the adjuster handling your case will finally be told, by his immediate supervisor, "Look, I'm sick and tired of seeing this same case come up on diary, crossing my desk again and again, month after month." In other words he's silently telling his adjuster to "Dump it".

Adjusters are normally assigned 50 to 100 new claims a month. That means, just to stay even, they must close that many each month. The Claims Supervisor, to avoid the ever present problem of being buried alive with cases piling up on his desk one on top of the other, finally tells his adjuster, "Get rid of this one". The adjusters supervisor would rather do than have it gathering moth balls, heaping frustration on all those associated with the case and maybe even having you (the claimant who refuses to disappear) to become so agitated and disappointed that the case ends up, one day down the road, in litigation.

This scenario has nothing to do with the theory and philosophy of negligence law. What it comes down to is a mockery of "The Law", by the insurance claims industry, in their effort to manipulate a payment so they can close a case as cheap as humanly possible. More often than not they mumble to themselves, "To hell with the law, I'm gonna get rid of this one and move on"!

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DISCLAIMER: The only purpose of this article, ~ THE TYPICAL MOTOR VEHICLE ACCIDENT ~ SOME "INSIDE" INSURANCE CLAIM SETTLEMENT "INSIGHTS" is to help people understand the motor vehicle accident insurance claim process. Neither Dan Baldyga, Tony Lombardozzi nor ACRS AUTOMOTIVE COLLISION REPAIR NETWORK make any guarantee of any kind whatsoever; NOR do they purport to engage in rendering any professional or legal service, NOR to substitute for a lawyer, an insurance adjuster, or claims consultant, or the like.

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Dan Baldyga's third and latest book, AUTO ACCIDENT PERSONAL INJURY INSURANCE CLAIM (How To Evaluate And Settle Your Loss) can be found on the internet at <http://www.caraccidentclaims.com> or <http://www.autoaccidentclaims.com> . This book reveals "How To" successfully handle your motor vehicle accident claim, so you won't be taken advantage of. It also goes into detail regarding the revolutionary BASE (The Baldygs Auto Accident Settlement Evaluation Formula). THE BASE FORMULA explains how to determine the value of the "Pain and Suffering" you endured - - because of your personal injury !