

Complimentary Copy

**Frequently Asked Questions
About North Carolina
Automobile Accident Related Property
Damage Claims**

By The Law Offices of James Scott Farrin

INTRODUCTION

This informational booklet has been written to help people who have been in a car accident. If you have been hurt in a collision, or if you have had a family member or friend in an accident, then please share this material with them. At the Law Offices of James Scott Farrin, we have helped thousands of injured victims here in North Carolina and across the United States. We handle auto accidents, commercial vehicle accidents, defective drugs, product liability, workers' compensation, wrongful death, and many other circumstances involving injury.



Whatever the size of someone's

personal injury case, we believe they deserve the best representation and service we can provide. This belief inspires us to hire individuals who are dedicated to professionalism in all that they do. Our values of teamwork, integrity, professionalism, quality, and community guide our employees in striving to achieve results for our clients.

When your vehicle is damaged because of the fault of another you have certain rights under North Carolina law and the rules and regulations of the North Carolina Department of Insurance. Throughout this booklet, we will often refer to the North Carolina Administrative Code (NCAC) to help you know where to find supporting legal authority.

In many instances, particularly if it is your vehicle that has been damaged, there are two aspects to the claim: property damage and personal injury. You will almost always deal with the other person's insurance company through its adjuster. An adjuster is the person the insurance company has hired to determine the value

of your overall claim. They may often focus on the bodily injury portion of the claim and may rely on an appraiser to determine the damage to your vehicle. Both the adjuster and the appraiser are professionals employed by the insurance company. Part of their job is to minimize your claim in order to control costs to the company. The purpose of this booklet is to give you the information you need to help make sure you potentially receive a reasonable and appropriate sum for the damage to your vehicle.

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- **STARTING THE PROCESS**



Where Do I Begin?

If your vehicle is damaged in a wreck that is someone else's fault, you should contact the other person's liability insurance company immediately to report the claim. You should also notify your own insurance company of the claim because you may also have coverages that come into play. You will know the name of the other person's liability insurance company from

the “exchange slip” the investigating officer should have provided to you at the scene of the accident. In North Carolina, this is typically a green piece of paper that is a carbon copy of the officer’s original. This slip should include your personal information, your insurance information, and information about the other party(ies) in the accident. This information is also available on the police report for the accident, which generally is not available until at least a day after the accident.

If you do not have the other person’s insurance information for the other person, we can often provide you with a police report. You should contact the liability carrier by phone, and then follow up with a written notice of your claim describing the time and place of the collision along with a description of your vehicle. If you send a written notice to the liability insurance carrier, you can expect a written response. We believe there is no harm in speaking with the adjuster as long as you limit your discussion to property damage only. But if the adjuster asks for a “recorded statement” or wishes to discuss your injuries, it is best to politely refuse and then discuss the matter with an attorney as soon as possible. If you are injured, never discuss your personal injury claim with an adjuster without first speaking with an attorney’s office. If the property damage claim is denied, ask for the denial in writing, and contact an attorney immediately.

I. STARTING THE PROCESS

Can I Handle the Property Damage Myself?

Yes, and in most cases we think people should. The reasons for this are two-fold. The first, and probably most important reason, is that we do not want to unnecessarily delay the property damage aspect of your claim. Secondly, it is rarely cost effective for you to hire an attorney to pursue your property damage claim – you can save time and money by doing it yourself. If we represent you on a bodily injury claim related to the accident we will assist you with your

property damage claim at no additional charge.

If the at-fault insurance company accepts responsibility for your property claim and makes an offer, you should negotiate that amount with the adjuster. If you are satisfied with the offer then you should settle the property claim. Even if you are injured it is completely safe to settle the property claim and leave open the personal injury claim for later settlement. However, do not speak with the adjuster about your personal injury claim, speak with the adjuster about the property damage only. In other words, the liability insurance company is prohibited from forcing you to settle your personal injury claim at the same time you settle the property damage claim.

If you do not agree with the settlement offered by the adjuster, you have the right to request that the adjuster send to you, in writing, the amount of the offer along with the specific policy provisions or legal basis the adjuster is relying on to support the offer. [11 NCAC 04.0117(b).]

II. VEHICLES DAMAGED BEYOND REPAIR

When Is a Vehicle a Total Loss?



A motor vehicle is considered a

total loss if the cost of repairs (and supplemental claims such as projected rental vehicle costs during the repair period) equals or exceeds 75% of the pre-accident cash value, sometimes referred to as the fair market value (FMV). [11 NCAC 04.0418(5).]

The liability insurance carrier is required to pay fair market value for the vehicle. Fair market value is the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts. (I.R.S. Revenue Ruling 59-60). Adjusters generally have a book value (BV) they use to arrive at FMV but they have some wiggle room based on the condition of the vehicle. BV is supposedly FMV, though not always, and this gives both sides some leeway to negotiate. Many insurance companies use the National Automobile Dealers Association (NADA) publication "Official Used Car Guide" which is published monthly. Your finance company or bank should have a current copy you can refer to. It is also available online at: www.nadaguides.com.

Some liability insurance companies have their own valuations. No publication

is completely accurate, and they are indeed only “guides.” Therefore, there can be some basis to negotiate the value of your property damage claim in every case.



II. VEHICLES

DAMAGED BEYOND REPAIR

What Happens if We Can't Agree on a Valuation?

If you and the adjuster are initially unable to reach an agreement as to FMV, then the adjuster is required to base any further settlement offer not only on published regional average values of similar vehicles but also on the value of similar vehicles in the local market. Local FMV must be determined by using either the local market price of a comparable vehicle or, if no comparable vehicle can be found, quotes from at least two qualified dealers within the local market area. If your vehicle was in better than average condition prior to the collision the adjuster is required to give due consideration to this fact in determining value. [11 NCAC 04.0418(1).]

You should require from the adjuster that a written statement accompany the total loss payment. This statement should include estimates, evaluations and

deductions used in calculating the payment as well as the source of these values. [11 NCAC 04.0418(4).]

II. VEHICLES DAMAGED BEYOND REPAIR

What Does "Salvage Value" Mean?

If the vehicle is a total loss, and if you and the adjuster agree on the vehicle's pre-accident FMV and the adjuster is willing to pay the FMV, then the liability insurance company gets the car. In other words, the insurance company is not going to pay you FMV for a car determined to be totaled and let you keep the car. This is because there is usually some residual or leftover value in totally damaged vehicles. At the very least, the vehicle can be stripped and some of the parts sold. The value of what is left of the "total loss" vehicle is referred to as the "salvage value." When the adjuster pays the FMV, then you must sign over the title to the vehicle and turn over possession of it to the insurance company. However, if you wish to keep the vehicle, then you must pay the insurance company the salvage value. You pay the salvage value by accepting a check from the insurance company for the FMV less the salvage value. Prior to settling the property damage claim, you also have the right to ask the liability insurance company to provide, in writing, the names and addresses of the salvage dealers who will purchase the vehicle for the amount claimed as salvage value by the adjuster. [11 NCAC 04.0418(3).]

II. VEHICLES DAMAGED BEYOND REPAIR

Who Gets the Total Loss Check?



If your vehicle is

financed, the liability insurance carrier may determine the pay-off to the finance company, write a check to the finance company for the pay-off, and write you a check for the difference. Sometimes the check from the insurance company may have your name and the name of the finance company on the check.

You would then endorse the check and turn it over to the finance company. The finance company will pay off the loan and refund the difference to you as your equity in the vehicle. If the pay-off on the loan is greater than the check from the insurance company then the finance company gets the entire check and you will still owe the finance company the difference unless you had purchased “gap insurance.” Gap insurance is insurance you purchase, generally when you first purchase the vehicle, to cover the “gap” between the amount financed and the vehicle’s value. Sometimes, it is required by lessors for leased vehicles or provided in financed purchases. Another kind of optional insurance you might have purchased is “repair or replacement” coverage. Repair or replacement coverage obligates your automobile insurance company to pay either the reasonable cost of repairs or the cost of a replacement vehicle,

whichever is less. If your vehicle is not financed, then the insurance company will write you the check and you can decide whether to get the vehicle repaired.

Who Pays for Towing and Storage Charges?

The liability insurance company is responsible for all reasonable towing and storage charges until three days after you and the storage facility are notified in writing that the insurance company will no longer reimburse the owner or storage facility for storage charges. The written notification must contain the name, address and phone number of the facility storing the vehicle. [11 NCAC 04.0418(6).]

II. VEHICLES DAMAGED BEYOND REPAIR

Am I Entitled to a Rental Vehicle When I Have a Total Loss?

If your vehicle is totaled, you are entitled to a rental vehicle from the time of the collision until you receive an offer from the liability insurance carrier. The moment the offer is made (assuming the offer is reasonable) the liability insurance company is not responsible to pay for your rental vehicle. Sometimes, a liability insurance company will allow you a few more days if you have had trouble buying a replacement vehicle. If that occurs, it is voluntary on the insurance company's part.



Generally, you should be

provided with a vehicle comparable to the vehicle that was damaged. Thus, if you were driving a compact car you should be able to rent another compact

car. If you were driving a four door sedan then you should have a comparable four door sedan. Most insurance companies have arrangements with automobile rental companies whereby a call from the liability company to the rental company will produce a vehicle to you at fairly modest cost, which the liability insurance company will pay. Mileage and gas are not paid for by the liability insurance company, just the daily rental cost of the vehicle. This arrangement with rental agencies is among the reasons you should contact the liability insurance company as soon as possible. However, some liability insurance companies will not honor a claim called in by you. Some policies state that there is no claim until its insured calls and reports the claim. In those instances when an insurance company will not provide a vehicle because the insured has not reported the claim, you should rent a vehicle at prevailing market prices. When the liability company adjuster contacts you, ask what to do about continuing with the rental. You probably will be told to turn in the rental and rent a vehicle from the rental agency with which the insurance company regularly contracts. In such a case, the liability insurance company should be liable for the initial rental cost at the prevailing rates until you are placed in a lower-rate vehicle.

III. REPAIRING A VEHICLE

What if My Vehicle Can Be Repaired?

A motor vehicle is repairable if the cost of repairs and supplemental claims are less than 75% of the pre-accident cash value (FMV). [11 NCAC 04.0418(5).]

Must I Use the Drive-In Facility of the Insurance Company?

Many insurance companies have “drive-in” claim service facilities. However, they cannot require you to use their facilities. If you voluntarily utilize their drive-in claim service this will not prejudice your right to obtain independent appraisals and negotiate settlement on the basis of such appraisals. [11 NCAC 04.0417.]

How Many Estimates Should I Get?

You should get two repair estimates. If the adjuster insists that you obtain more

than two, then the insurance company must pay for the others.]11 NCAC 04.0149(1).]

Sometimes adjusters will have you obtain estimates and then make an offer over the phone. If you do not agree with the phone offer, and if the adjuster has never seen the damaged vehicle, you can require that the adjuster or the insurance company's appraiser personally inspect the damaged vehicle. [11 NCAC 04.0419(2).]

If the adjuster accepts liability and advises you to have your vehicle repaired with the understanding that the insurance company will reimburse you, then you should request from the adjuster a statement in writing to that effect along with any all other oral agreements you and the adjuster have agreed on. [11 NCAC 04.0420.]

III. REPAIRING A VEHICLE

Am I Entitled to Depreciation Value?

Depreciation value is the sum of money that accounts for the decrease in your vehicle's fair market value as the direct result of its having been damaged in a collision, even taking into consideration that your vehicle is repairable or is repaired. It is recognition that a vehicle that has been in a collision and is repaired is of less value than a similar vehicle which has never been damaged. In other words, it is a value of loss over and above the repair costs.



Depreciation is a very nebulous and gray

area. The amount of depreciation will also depend on the severity of the damage. If there is minor damage, there probably is no depreciation. On the other hand, the more severe the damage the more likely depreciation is present. When negotiating with the adjuster you should demand that you get depreciation. The fact is that the value of a vehicle can be greatly reduced just because it was in a wreck. Most adjusters will not volunteer depreciation value; therefore, you should raise the issue. On the other hand, some liability carriers will volunteer this information if your vehicle is no more than five years old and damage amounts to 25% or more of the fair market value. There is no computer formula that will account for depreciation, but it might typically run between 10% and 20% of the repair bill for depreciation.

You should be aware that if your vehicle is less than five years old and the damage to the vehicle exceeds 25% of its fair market value, you must disclose that fact to any subsequent buyer. This disclosure will certainly affect the amount anyone would be willing to pay or allow for trade in allowance on the

vehicle.

Do I Have a Choice of Repair Facilities?

Often adjusters will recommend that you use a particular repair service. You are not obligated to use that repair service, and the adjuster is obligated to tell you that. You may use any repair service you choose. [11 NCAC 04.0423(c).]

III. REPAIRING A VEHICLE

Suppose Something Goes Wrong After the Repairs Are Made?

If you sign a release involving a repair to your vehicle, that release does not bar you from later asserting a claim for damage to the vehicle that was unknown to you or the adjuster at the time you signed the release. As long as the discovered damage was caused by the collision, and this damage could not be determined or known by you or your adjuster until the repair or attempted repair of your vehicle, you may file a claim for additional damage. You have 30 days after the repairs to assert the claim for additional damages. [11 NCAC 04.0421(4).]

If you sign a release involving a repair to your vehicle, that release does not bar you from later asserting a claim for diminished value (depreciation) as long as this diminishment was directly caused by the collision. You have up to 30 days after repair to make a claim for diminished value. [11 NCAC 04.0421(5).]

Who Gets the Repair Check?

If your car is financed, the insurance company will write the check in your name and the name of the repair facility. This is because the damage to the vehicle reduces the value of the car, which means the finance company's lien rights are also diminished. Therefore, the finance company will always require that the damaged vehicle be repaired so its interest in the vehicle remains protected. If your vehicle is not financed you get the entire check.

When Am I Entitled to a Rental Vehicle During Repairs?

Whether your vehicle is operable or not, you are entitled to a rental vehicle from the time of the collision until the repairs are finished.

IV. INSURANCE DISPUTE

If Things Don't Work Out, Who Do I Complain to?

If you have a complaint about an insurance company and the way in which it is handling your claim you may call or write the Consumer Insurance Information Division of the North Carolina Department of Insurance.

When a complaint is received the Consumer Services Division will take information from you and then an analyst from the division will request information from the insurance company, agent, or adjuster. If the analyst finds that there is just cause for the complaint, a recommendation will be made to both sides as to how to settle the situation. If this does not resolve the problem, a deputy commissioner may arrange a conference with the insurance company involved to resolve the problem. If the conference does not resolve the disputed issue the deputy commissioner may recommend to the commissioner that appropriate legal action be taken including a public hearing or filing a lawsuit. (The Division will not investigate a complaint that is also the subject matter of a lawsuit. If a lawsuit has not been filed, but you have an attorney, the division will investigate only with the attorney's consent.) [11 NCAC 04.0115.]



V. ABOUT MR. FARRIN

I grew up as the son of an international businessman living in nine foreign countries: Australia, Malaysia, Hong Kong, Philippines, Thailand, Mexico, England, Switzerland, and France. I came to North Carolina to attend law school, where I graduated with honors from the Duke University School of Law in 1990. I began my legal career working as a business litigator for the prominent California firm of Irell & Manella. However prestigious the work and the firm may have been, I found that representing corporate clients was a joyless endeavor for me. I later went to work for the Los Angeles firm of Rucker, Clarkson & McCashin. Where, I found meaning in helping individuals with their legal problems.

In 1995 I decided to return to North Carolina to raise a family and build a law practice. I joined a friend as the managing attorney in a personal injury law firm in Durham for a couple of years and continued to find meaning in helping people. In 1997 I founded the Law Offices of James Scott Farrin. The purpose of the firm was to help as many injured people as possible receive the compensation the law provides, and to provide them with unparalleled service. The firm has since grown from the two employees and 30 clients to more than 150 employees and thousands of clients. We have been involved in several cases that have been covered by the media. We have an active litigation and

trial practice. We have the experience, ability and commitment to take a client's case to court, or wherever necessary, to seek justice on their behalf.

Suffering a personal injury can put you at a serious disadvantage. No one expects to get hurt, and there is no way to plan your response in advance to an unexpected situation. Injured people can't always fight for themselves because of this disadvantage. Insurance companies and other business organizations, however, can and do plan their response to your injury long before it occurs. They have little incentive to offer you fair and just compensation for what has happened to you.

Personal injury lawyers exist to redress the balance of power between the injured and those that have done harm. We have the power of knowledge of the legal system, knowledge of the types of personal injury claims that exist and their value, and experience with insurance companies. We possess the negotiation skills that can potentially help put this power into your hands, and can work to get you a settlement may potentially often better than any compensation you could negotiate on your own. Studies have shown that, on average, car accident victims who hired a personal injury lawyer to represent them received three and a half times more compensation for their loss than they would have on their own (Insurance Research Council, 1999). A personal injury can seriously affect your future as well as your current day-to-day activities. You deserve the counsel and protection of a qualified, experienced personal injury law firm that knows how to deal with these claims. It is highly likely that we have experience with your type of personal injury, and can help you understand the value of your car accident case and how best to proceed. As we have grown, we have tried to stay true to our founding purpose, combining quality representation with exceptional service. Whatever the size of your case, we believe you deserve the best representation and service we can provide. I hope this booklet provides you with helpful information; If you have questions, or if we can help, give us a call at 1-(800)-220-7321.

VI. CONCLUSION AND CONTACT

We hope this booklet has been helpful. Please feel free to share it with others. We want to make sure you are armed with enough information to make the best decisions in your accident claim. Please let us know how we can help.

If you have been injured, you can call us 24/7

1 (800) TEAM-JSF

1 (800) 832-6573

www.farrin.com