



# Pre-party

## Settlement efforts before filing suit are worth the effort



Cooper

BY MILES B. COOPER

The lawyer's phone buzzed. "The new adjuster in the Jane Doe case is on the other line." The lawyer asked that the call get put through. It became apparent the out-of-state adjuster was unaware of California's Vehicle Code section 22517, known in bicycling circles as the dooring law. The lawyer asked, "If I find a law that says your insured should not have opened the car door in front of my cyclist, will that help?"

### Attract flies with honey, not vinegar

Some lawyers say hello with a lawsuit. That can be effective, but also aggressive. Aggressiveness is fine – this is an adversarial process. Yet one must focus on the goal – the best outcome for the client. Enlisting the adjuster as an ally helps.

"Ally?" you say, "that adjuster's a jerk!" Sometimes, yes. Still, be kind. Insurance companies treat everyone poorly – including adjusters. Adjusters earn a modest living writing what they think are ridiculously large checks to people they've been trained to believe are latte-sipping dilettantes with feigned injuries. They live in fear that routine closed-file audits will find they paid too much on insufficiently documented claims, resulting in firing or demotion. That's a shitty existence. Help them document the file. Start right away, make it easy, and ask what else they need.

### Maintain strength

Send the representation letter with a bullet-point injuries list. Include initial medical records and bills. Let them know you'll attempt to resolve the claim without dragging the insured into a lawsuit, but pre-filing negotiations won't occur without policy limit information. Then demand the insured disclose policy limits, umbrella insurance, and whether the insured was working at the time. Give them two weeks. Calendar the due date.

If they don't disclose, hit them again immediately after the due date. Address it to the insured and the adjuster. Let the insured know limits must be disclosed in a lawsuit, that lawsuits as public filings can affect bank loans, reputation, and credit scores. Give them another two weeks. This letter usually works.

If they are particularly stubborn, the third letter includes a ready-for-filing Civil Case Cover Sheet, Summons, and Complaint. Tell them it will be filed on a specific date. If they don't disclose, file it on the date specified. The process may seem silly, but don't take it personally, and don't soak the correspondence in vitriol. It pays to be polite (and jurors may read them later in a bad faith case).

### Communicate while assembling the demand

Authority levels dictate where within an insurance company a file lands. If the claim is perceived as larger than an initial adjuster's authority, it shifts to another adjuster. That's why the

injury list and initial records help. They set reserves and make sure you're working with the right adjuster. That adjuster then gets pressured to resolve the claim. Help set expectations. Tell them how long it will take for the client to heal and to complete the demand.

During the recovery, obtain documentation to support any losses. Try to tell the adjuster an interesting story. They don't want to read this drivel. Good storytelling demonstrates that one can persuade a jury. Make sure every dollar demanded is backed up with documentation. For non-economic damages, this can be imagery – both narrative and visual.

### Run with the bulls

If the case is arguably worth more than the policy, demand the policy using the techniques outlined by Courtney and Nick Rowley in *Running with the Bulls*. Don't balk at the price. It pays for itself with the first demand following its model. The book is a primer on sowing chaos and distrust between the insured and the insurance company, then using the resulting disharmony to obtain outstanding settlements.

### Keep pushing

Sometimes adjusters surprise us. Typically though, they stall well below case value. Keep pushing. Ask them: What's the sticking point? Sometimes they need an expert report to paper the file. Get the report. Sometimes they disagree about liability or damages. Consider a pre-filing mediation, then ask the mediator to provide a case assessment. This outside evaluation gives the adjuster leverage to pay more.

Finally, sending the ready-for-filing complaint with a final demand and a two-week deadline can help squeeze out that last little bit. If the case is worth more than the policy, include a draft Formal Offer to Compromise under C.C.P. § 998. Once the 998 is formally served, refuse any extension request, as long as the pre-filing demand was thorough. They'll either pay, or one's off to the races with an open policy *plus* interest and expert costs. All that's needed is a verdict...

### Outro

Back to our lawyer and the dooring statute. The lawyer sent over a letter with a diagram and Vehicle Code section 22517 language. The lawyer also included links to several bicycle advocacy YouTube videos, buttressing the lawyer's position. The adjuster accepted 100% liability, and a few months later tendered the policy.

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