

**Why cases settle, why they do not  
Why cases are accepted, why others are turned down  
A basic explanation for our clients**

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Clients often cannot understand why some cases, usually someone else's, settle, and why some case, usually theirs, do not. In a related matter, clients do not understand is why lawyers accept some cases, usually someone else's, and why they decline some other cases, usually theirs. This article is not intended to be exhaustive. And it is not intended to be critical of any lawyer, type of defendant, insurance company, or insurance claims adjuster. Rather it will attempt to provide some easily understandable answers to these questions.

A lot of clients, particularly those that have one or more serious problem that affects their case, will say to a lawyer something like this: "I really don't want much. I just want my medical bills paid. I just want my lost earnings paid back.. Why can't you get the insurance company to pay that much? Isn't that what insurance is for?" The answer to this very basic question is this: Insurance company claims people and their lawyers are very intelligent and sophisticated. The insurance company only has to seek a settlement or pay a judgment when the person or company they insure is responsible or may likely be responsible.

For example, many people come to lawyers after an auto accident. The accident was clearly someone else's fault. The person who sees the lawyer is injured. The lawyer explains that, under New York law, a person injured in an auto accident can only successfully proceed if she has a "serious injury," and then explains why the person does not have such an injury. The potential client cannot understand why the lawyer will not take their case. After all, it was "the other guy's fault." The answer is this: even though it was someone else's fault, the case cannot be successfully pursued. The insurance company knows that. They know they can win. Most insurance companies will turn down payment of such a claim. At most, they will offer what is called "nuisance value," a token amount that usually represents some of the cost of defending a case they will likely win.

In a basic way, a case settles because people or companies with competing interests and viewpoints find a way to agree. Some people say that the definition of a good settlement is one in which everyone goes away a little unhappy: the plaintiff and her lawyer think they did not get quite enough money; the defendant and his lawyer or insurance company think they paid a bit too much.

Once lawyers take a case, there are many reasons why a case does not get settled:

- The plaintiff's lawyer is too high in her evaluation of the value of the case.
- The plaintiff's lawyer is not too high in her evaluation of the value of the case, but the plaintiff decides to not follow the recommendation of the lawyer.
- The insurance adjuster is too low in his evaluation of the case.

- The lawyer for the defendant is low in her evaluation of the case, and makes a recommendation to the insurance company.
- The plaintiff's side of the case does not supply the defense side with the information necessary to evaluate the case.
- The defense side of the case does not respond in a timely manner to settlement proposals made by the plaintiff's side
- Either side makes threats and promises it should not have made and paints itself into a corner which is hard to get out of and still save face.
- One side paints the other side into a corner.
- Either side is slow to return phone calls or letters.
- Either side fails to consider the other side's viewpoint.
- During actual settlement discussions, lawyers, adjusters, or clients fail to listen to each other, fail to recognize that the opponent's point of view or arguments may be valid.
- There is an honest disagreement about liability, or who is at fault
- There is an honest disagreement about the extent of the injuries or damages.
- The governing law is unclear or unsettled, and one side wants to clear it up or make new law.
- In certain types of cases, the insured has the right to consent before there can be a settlement, and refuses to do so.

When one or more of the above reasons are present, settlement is not impossible, but is difficult or delayed. The more of these factors that are present, the harder it is to reach a settlement.

It is when these reasons are not present or are overcome that a settlement is normally reached.