

#### Abstract

In an effort to recover monetary losses associated with damages to underground facilities, a claims recovery process that emphasizes negotiation as its most important tool is the key to the perfect claim. The implementation of the negotiation tool requires a two-way communication between the owner and their claims representative and the involved contractor and their insurance representative. Although an owner can undertake a legal action to recover damage expenses, this tactic can add unnecessary expenses. It is the professional belief of many in the industry that settlements can be beneficial to both parties when a process involving cooperation between the two is utilized. Facility owners should consider employing this cooperative damage expense recovery process in an effort to achieve fair and equitable settlements when there is an intrusion on it's facilities. In the following slides, this recovery process methodology is discussed in further detail.



#### Introduction

I was with AT&T for thirty-five years. After AT&T, I was employed by Claims Management Resources (CMR) for four years. Currently, I am the principle owner of Visi Claims Support Services, LLC. I have been associated with the uninsured claims process for over twenty years. During that time, recoveries have included all appropriate direct damages incurred as a result of a facility intrusion and caused by the proven negligence of the damaging party. I have stressed with all my clients, as well as my associates, the need to establish liability first and negotiate with the damaging party second. By employing this method, timely recoveries of the associated expenses to repair client facilities have been made through a process of open communication with the involved contractors, which has proven to be beneficial to both. Clients have a right to pursue restitution when it is damaged. I have found that the most cost effective way to pursue damages is through owner/claims adjuster and damager/insurance representative negotiation.





The five primary elements that constitute a perfect claim are:

1. There is demonstrated proof of damager liability

Who, What, Where, When, and How, are questions that need to be asked to establish proper liability. All photos, documentation, statements, drawings, and damage reports should support the answers to these questions. Without the proper support information, 100% liability can not be achieved.



2. There is verification of incurred repair expenses

All expenses associated with the repair of the damaged facility should be approved and explained for inclusion in the claim billing. Copies of all invoices should be included. In addition, proof of employee time expense should be submitted with the bill.



3. The claim is negotiated by the facility owner or their claim representative and the liable damager or their insurance representative

These are the personnel that have intimate and timely knowledge of the damage event. They, in most cases, have the necessary background knowledge to understand the technical aspects to the damage event and repair. They have the best opportunity to settle the claim for a fair and reasonable dollar amount.



4. There are no attorneys or legal action involved with the negotiation or settlement

With the employment of Attorneys, both owners and contractors incur additional expense beyond the initial expense of the damage repair and original claim amount. Court actions also require additional time and expense to satisfy, attorney meetings and conversations, interrogatories, depositions, and court actions.

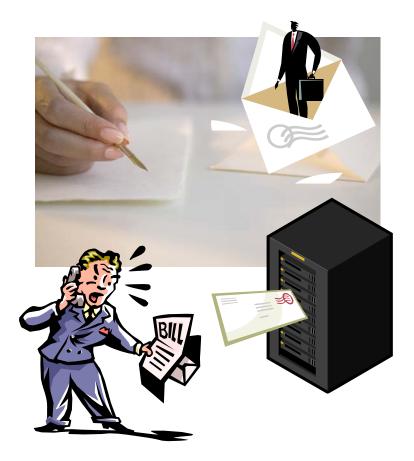


5. The final negotiated monetary settlement is a fair and reasonable amount and satisfies the direct damages incurred to repair the damaged property.

The negotiated settlement amount must compensate the owner for all repair time and expense incurred as a result of proven negligence of the damaging party. It must be a fair and reasonable dollar amount approved by both sides.



When a facility is damaged, the contractor or representative *insurance company will receive a letter of intent to bill from the* facility owner or the owner's representative. This is the first notification to be sent to the contractor or representative insurance company if known. It is important to respond to this letter to establish contact and to make your position on the damage liability known. A complete itemized bill for all temporary expenses, permanent repair costs, claims expenses and loss of use dollars will follow when the facility is made whole and all invoices are paid.



Both the facility owner and the damager should begin a complete and thorough investigation, beginning the day of the damage. The investigation should include photos, damage report information, and information on all persons at the damage site. As part of the investigation, the involved One Call center will be contacted and the One Call ticket obtained and reviewed for accuracy of location. Information regarding the mark-out locations will also be compiled. Conversations about what happened will be held with the facility owner's on-site employees and contractors. It is extremely important for this process to work, that the damaging contractors contact the designated claims adjuster, to discuss the cause of the damage from the contractor's perspective. The actions and cooperation of the involved contractor will ultimately determine how the facility owner or claim representative will respond going forward with the claim.



To accomplish our goal to negotiate a fair settlement with recoveries of all confirmed direct damages, there are two routes or primary methods to take. First is a two-way street that allows for traveling in two directions, which is an excellent way to illustrate the first method. The two-way street symbolizes the critical two-way communication and cooperation between the involved contractor/insurance representative and the respective owner/claims adjuster. The benefits of this two-way communication include continued good business relations for the owner, minimizing additional time and expenses and most importantly, avoidance of costly legal actions. The second method, illustrated by a one-way street, depicts owner/claims adjuster efforts to establish communications without receiving a response from the contractor. If these efforts reach the point where the involved contractor is ignoring all billing letters and attempts to open communication, then the claims adjuster will recommend and assist the owner, in the pursuit of damage expenses, loss of use dollars and all other expenses allowed by state laws through a legal action. This one-way non-cooperative approach will only lead to increased expense payouts for both companies and a hostile business environment for all involved parties.





Negotiations with the contractor and their Insurance representative are the key to successful client settlements. During negotiations, the owner/claims adjuster will take into account the contractor's compliance with the respective one call law, the cooperative nature of the contractor and the contractor's communication with the owner's outside plant representatives at the damage site. It is important to remember that the owner/claims adjuster fully supports the one call process and the National Dig Safely program to prevent damages. When there is a facility damage, the first item that claims adjuster seeks is the one call ticket. Noncompliance with the one call law and proper dig safely practices will support contractor liability. When issues of liability are clear or even questionable, it is important for the contractor to recognize their responsibility to participate in negotiations and present all relevant facts. Both sides have a duty to settle the claim, minimize additional expenses, and continue working within a productive business environment.



Sincere attempts to reduce and ultimately eliminate damages to underground facilities should always be the rule between facility owners and excavators. In order to prove this sincerity, membership and participation in the Common Ground Alliance (CGA) is recommended and all efforts to educate employee, contractor, and client personnel, on establishing correct liability, are essential. Many in the industry have been highly successful in their ability to negotiate out of court settlements on the majority of their own or client's facility damage claims. Negotiation and not legal action is the preferred way to settle facility damage disputes. However, recommendations to file court actions when there is no response from the damaging parties or their representatives or when they refuse to negotiate a settlement, can be made. It is a client's right to initiate the court action to protect their right to pursue damages. Nevertheless, the primary objective to reach a mutual agreement that compensates for the damage expenses incurred to repair its facilities is through negotiation.



When a facility owner refers a claim to a claims agency, it is the responsibility of the assigned claims adjuster to perform the following tasks:

- Investigate the claim
- Compile all pertinent facts and information
- Determine the cause to the damage
- Determine who has liability
- Negotiate a settlement with the damaging party
- Support legal actions when necessary

These adjusters have knowledge of outside plant procedures as well as small business practices. It is their primary responsibility to utilize this experience to obtain a reasonable settlement that fairly compensates their client for all expenses incurred as a result of a damage that demonstrates the obliging accountability of the involved contractor.



Conclusion

To avoid a facility damage situation, it is important that the contractor follow all preventative measures available to insure a successful excavation and no loss of a utility's service. Every contractor should consider the following practices before they dig:

Follow the State One Call Laws Call and communicate before you excavate Cooperate with the client representatives on site Consider negotiations as a tool for claims settlements



It is most important for owners and contractors to keep in mind the illustrations of the one-way and two-ways streets. You cannot turn around on a one-way street without taking a chance on incurring unnecessary expenses. You can on a two-way street! Many facility owners, claims adjusters, contractors, and insurance adjustors have traveled a lot of two-way streets, finding the experience to be a reliable and productive drive and ultimately reaching the perfect claim.







Thank you for your time and attention to

my damage claim presentation of



The Perfect Claim.