

A Message from Attorney David Brauns

Confusing and Often Frustrating...

Those are words I use to best describe Georgia's property damage insurance laws.

In almost every case we handle, the client comes to us already frustrated over the process of getting his car repaired or replaced (called the "property damage" claim). Why? Because he's depending on the other driver's insurance company or his own to do the right thing and to do it quickly—neither of which usually happens in the same sentence with "insurance company."

In Georgia, there are multiple options for handling your car's damage. These options depend on the insurance coverages you and the other driver have, what your immediate needs are, your current financial situation, and the facts of your wreck.

To help you get through this stressful system, my law firm has produced this guide. In it, we explain the technical jargon, and we give you options and explain why one is better than the other depending on your particular claim.

Throughout this guide, we try to give you the benefit of our years of experience in handling injury claims resulting from auto accidents. When you hire our firm, we oversee all of these decisions for you. In helping hundreds of clients each year, we have seen almost every possible situation, and we've gathered a lot of valuable information that we can pass on to you. This information will help you make educated decisions about how to navigate the process of getting your car repaired or replaced. We use the exact same information and advice contained in this guide to handle our clients' car damage.

If you have further questions after you've read this guide, please contact your insurance company representative. To request more copies of this guide, please call my law firm at 1-800-369-5400, or visit our website at BraunsLaw.com.

Sincerely,



Attorney David Brauns
Founding Attorney



Introduction to Property Damage Claims

You can have multiple legal claims when you are involved in a wreck in Georgia. You can have:

1. A Property Damage Claim
2. A Diminished Value Claim
3. A Personal Injury Claim

The claim to fix or replace your car is called a property damage claim by insurance companies and attorneys. Your vehicle and its contents are damaged property.

Georgia law requires all drivers to have at least \$25,000 of property damage liability insurance, meaning you must have at least \$25,000 of coverage to pay for someone else's damaged property. Property damage liability coverage provides for expenses related to the damage of another's property when an accident is your fault.

But your standard liability insurance does not cover repairs to your car unless you have purchased collision or comprehensive insurance in addition to the basic liability insurance. Georgia does not require you to have collision or comprehensive insurance, but you must have one of these coverages if you want your insurance to pay for damage to your car caused by an accident.

Specifically, there are two types (i.e., sources) of coverage that may be available to repair or replace your car:

1. **Property Damage Liability coverage.** This pays the expenses to fix or replace the other driver's car when the accident is your fault. This type of coverage is required coverage in Georgia. If the wreck wasn't your fault, you will always have the option to use the other driver's insurance company to repair or replace your car.
2. **Collision coverage.** This pays your expenses to repair or replace your car regardless of fault—i.e., the wreck is your fault or the wreck is someone else's fault. This type of coverage is optional in Georgia, so you may not have the option of using your insurance company.

Dealing With Insurance Companies and Adjusters

An insurance company, whether it is yours or the at-fault driver's, has only one priority—profit. Like any business, the company's single goal is to make as much money as possible. This means the adjuster you deal with has a duty to his company (think raises, performance bonuses, and job security) to resolve your property damage claim as profitably as possible. The lower the payout/cost of your claim, the more profit the insurance company makes. Remember, this is even true when using your own insurance company.

Your lack of experience and knowledge is a HUGE advantage to the insurance company. This book is going to change that. The more you know about the process and what is supposed to happen, the better chance you have of being treated fairly by the adjuster and insurance company.

Three Big Tips:

- Never discuss your personal injury claim with the adjuster handling your car claim.
- Review PD paperwork to make sure you're not releasing the BI claim.
- Never give a recorded statement to the at-fault driver's insurer if the officer said it wasn't your fault.

Who Should Pay for My Car's Damage?

The first step in getting your car fixed or replaced is to figure out who you want to handle and pay for the claim. In Georgia, you have several options depending on who was at fault.

The Wreck Wasn't Your Fault

You still want to notify your insurer of the wreck, especially if you were injured. That is because an insurance company can deny your claim for untimely notice if you wait too long. When you contact your insurance company, ask them:

1. If you have collision coverage, and if so, the amount of your deductible
2. If you have rental car coverage

If you have property damage collision coverage, you have the option of filing your claim with your insurance company or the at-fault driver's insurance company. There are pros and cons to each.

Using Your Collision Coverage

Most people naturally think they shouldn't use their own insurance coverage because the wreck wasn't their fault. But you should take a minute to really think about whether using your insurance will be easier.

Advantages

- You are a paying customer. Your insurance company wants to keep you happy so you remain a customer. Therefore, customer service may be better with your insurance company.
- You don't have to wait for the at-fault driver's insurance company to finish its investigation to get started. Initial investigations can take from 2-3 days to 2-3 weeks depending on the complexity of the wreck. Usually the more cars that are involved, the longer the investigation takes.

Disadvantages

- **Deductibles.** A deductible means you will have to bring some money to the table to get your car fixed. If your car is getting repaired, you have to be able to pay your deductible amount to the repair shop in order to get your car fixed and returned to you. If your car is a total loss and getting replaced, you will be paid the value of your car minus your deductible. So, you will lose some money on the transaction. But, you may get your deductible reimbursed at a later date when your insurance company gets reimbursed by the at-fault driver's insurance company (see xxxxxx).
- **Rental Cars.** If you don't have rental coverage in addition to collision coverage, you will have to pay for your own rental car during the repair process. You can get reimbursed for the rental at a later date by the at-fault driver's insurance company, but this still requires cash out of your pocket up front to get your car fixed.

Myths

It's a myth that your rates will go up after an accident caused by someone else. You should not be afraid to make a claim with your insurance company because you are fearful the agency will raise your rates. Your insurance company is not allowed to raise your rates unless the accident was partially your fault. The company may, however, raise your premiums for other reasons.

Using the At-Fault Driver's Property Damage Coverage

Advantages

- **No out of pocket.** You don't have to pay anything out of pocket—no deductibles and no rental car expenses.

Disadvantages

- **Waiting.** When you use the other driver's insurance company, you have to wait for it to finish its investigation. This can take two days, or it can take two weeks. It can depend on whether the other driver is cooperating with the insurance company, whether there is a problem with the policy (such as not being paid or being current), and how many cars were involved.
- **Customer service.** You are not the customer of the at-fault driver's insurance company; therefore, that company isn't typically motivated to go above and beyond in providing customer service for you.

The Other Driver Is Uninsured

If the at-fault driver didn't have insurance and you don't have collision coverage, you are stuck in a very tight spot. Your only option is to file a claim in Magistrate Court for the damages/repairs. Once you get a judgment, you'll then have to pursue the other driver in court to collect on the judgment.

The Wreck Was Your Fault

If the wreck was your fault, you won't have the option of using the other driver's insurance for obvious reasons. Therefore, the only option you have is to use your auto policy's coverages. You are going to want to answer the following questions:

1. **Do I have collision coverage?** See p. xx, above. If not, then your insurance company won't help you, and you will pay out of pocket for all repairs to or replacement of the car.
 - a. If you do have collision coverage, what is your deductible? That is the money you must come up with to help pay for the repairs OR what your insurance company will subtract from its offer if your car is a total loss.
2. **Do I have rental car coverage?** If your car is repairable, you'll need a rental while it's in the shop.

Getting Started

Preserving Evidence

It is important to protect and preserve evidence that might be helpful in a personal injury claim should one arise. A destroyed windshield or bent steering wheel may be excellent evidence for an injury claim. Many accident victims overlook this fact when their car is repaired, and the evidence is lost forever. If someone has been seriously injured in the accident, preserving evidence is an important task.

Take Photos of Your Car

Take photos of your car. These photos should capture all of the damage to your car. If the steering wheel is bent, take a picture. If the windshield is broken, take a picture. If your seat is broken, take a picture. If the back end of the car is destroyed, take a picture. Take as many pictures as possible. These photos are important for both the property damage claim and any potential personal injury claim.

Personal Property in Your Car

The contents of your car that are damaged or destroyed in the accident may be covered by your homeowners' insurance policy. It is also possible that some **broad-form** collision coverage policies may cover the contents of your car. Carefully review the specific language of your insurance contract to determine if it covers the contents inside your vehicle. If you are not at fault and using the other driver's insurance company to handle your claim, that company is required to pay for your damaged personal property.

Make a List

Make a list and take photos of the items in your car that were damaged in the accident, including tools, phones, tablets, glasses, baby car seats, or anything else that was destroyed or ruined. The insurance company will want some kind of receipt to determine the value. Most people don't have receipts, so you will have to do the best you can to determine what you paid for the damaged or destroyed items.

Baby Seats

The National Highway Traffic Safety Administration (NHTSA) has recommended that a baby car seat that has been involved in any kind of auto accident be thrown away and replaced. Do not place your child in a baby car seat that has been involved in a car accident. Even if the car seat looks undamaged, you should demand that the insurance company buy a new baby car seat for you. If the insurance company rejects your request, file a complaint with the Georgia Insurance Commissioner.

The Initial Estimate

Whichever insurance company you decide to use, an adjuster will contact you to arrange for an initial estimate. Depending on the insurance company, someone will either come to you or you'll be sent to an authorized inspection station. The estimate is simply to determine whether the insurance company wants to repair the car or total it out and replace it. Don't be upset or worried if the estimate seems low. Estimates almost always are.

Once the estimate is done, the insurance company will contact you to discuss whether they want to repair or replace your car.

Repairing Your Car

If the damage is not severe enough to total your vehicle and replace it, then you are owed whatever amount is necessary to return your vehicle to its pre-wreck condition.

Most vehicles manufactured since 1980 have unibody frame construction. This design is particularly effective at absorbing collision impacts and minimizing injury to vehicle occupants. The ability to absorb collision impact is accomplished by creating “crush zones” in the vehicle that absorb and redirect the impact energy to other areas of the vehicle outside the passenger compartment.

Unibody construction relies on several lightweight, high-strength steel panels and parts, properly welded together, to provide structural strength. Due to the energy-absorbing nature of the design, even accidents that appear relatively minor can result in damage that may affect the structural integrity of your vehicle.

Getting Estimates

Most people think they have to get several repair estimates. This is usually just a waste of your time because the insurance company will ignore your estimates. Instead, the insurance company handling your claim **will almost always require its own estimate**. The company will send a field adjuster out to look at your car and write a rough estimate. This is done to determine whether your car is going to get repaired or totaled out. Companies will total out your car and pay you its replacement value if the car is either not repairable or the repairs exceed the value of your car.

How Payments Work

Insurance companies will either send you a check for the initial estimate amount or wait for you to get the repairs started and pay the repair shop directly.

If they send you the check, you must hold on to it if you are going to get your car repaired. You will have to sign over the check to the repair shop when you go to pick up your car. The insurance company will then send a separate check to the repair shop for any additional parts or labor above and beyond the initial estimate.

If you are using your insurance company to handle your repairs and you have a deductible, then you must be prepared to pay your deductible amount to the body shop to get your car back. If the wreck wasn't your fault, you most likely will get this deductible payment back when your insurance company goes after the at-fault driver's insurance company for reimbursement—a process called “subrogation.”

Selecting a Repair Shop

You have the right to pick the shop that will repair your car. The insurance company may recommend certain facilities, but the final choice is always yours. Georgia law says you are entitled to choose where your car gets repaired:

“No insurer shall require a person making a claim under a motor vehicle insurance policy to use a particular repair facility or particular repair facilities in order to settle a claim if the person making the claim can obtain the repair work on the motor vehicle at the same cost from another source.” O.C.G.A. 33-34-6(b).

Get a Warranty

Find out whether the body shop you are going to use offers a warranty on its work. Repair shops aren't required to give you a warranty, so you need to ask. If the shop offers a warranty, make sure you get it in writing.

Watch Out for Direct Referral Shops

Some insurance companies and repair shops have business relationships where the insurance company gets certain benefits in exchange for steering business to the shop. Sometimes the benefits to the insurance company are merely

administrative, but sometimes the agreement can be harmful to you. Examples include letting the insurance company decide **whether certain repairs....**

**In the past, the Allstate Call Center would “steer” auto accident victims to repair facilities that Allstate had a favorable relationship with. These favored repair facilities were referred to as “Pro Shops.” In the mid-1990s, the Allstate Call Center representative would say, in effect, “Here are five shops close to where you live. Pick one.” Now, Allstate proposes one shop at a time in descending order of Allstate’s preference. Allstate, like most insurance companies, evaluates repair facilities based upon a standard referred to as “Process Compliance.” This standard sets goals for aftermarket parts usage, salvage parts usage, and a ratio of damaged part repair rather than replacement. Basically, Process Compliance measures how well each repair shop complies with the insurance company’s goal of spending the least amount of money possible on your car repair. Remember that you have the right to select the repair shop, not the insurance company.

There is one advantage to using a preferred shop to repair your car. If the repairs weren’t done correctly (door seams don’t line up, paint is mismatched, etc.) the insurer will usually stay involved and make sure its preferred shop fixes the problem. If you take the car to a shop of your choosing and it messes up the repairs, the insurer will most likely not help you. The company will say the problem is between you and the body shop.

Parts

We could write a whole book on just parts and all the games that are played when repairing your car. Remember, parts and labor make up the repair costs that the insurer is paying. So, parts are a big focus on cost-saving measures by the insurance company.

*A study conducted by Campbell & Company and Roush Technologies found that 9 out of 10 professional used-car appraisers selected the vehicle equipped with new genuine GM Parts as having a higher value than the vehicle with imitation parts. Professional appraisers reported an average reduction of \$740 dollars from NADA wholesale prices for the vehicle equipped with imitation parts. Of particular concern are the nearly 20 percent of the study’s consumers who would not buy the vehicle repaired with imitation parts even at a reduced price.

The “Like Kind and Quality” Game

Be sure you understand the repairs to be made and the parts used. Always ask for a copy of the written estimate for the work that will be done on your car. You may see the abbreviation “LKQ,” which stands for “Like Kind and Quality.” Never allow a repair facility to install used safety parts such as an air bag.

Ask the repair shop if the parts it will use to repair your vehicle are original equipment manufacturer (OEM) parts. Any part not produced by the vehicle manufacturer may be of a lesser quality and, if used, may void the manufacturer’s warranty. Before authorizing collision repairs, make sure you inform the repair facility and your insurance company if you only want the repair completed with OEM parts. The use of OEM parts is the preferred approach.

Used Parts

Most experts recognize that used parts have a legitimate place in the repair of your car. But they all agree junk parts have no place in the repairs. LKQ means the insurer can **install** used parts, but this is different from junk parts. If your car door needs to be replaced and has never been damaged before, you should not accept a used car door that requires repairs before being put on your car.

Economy and Crash Parts

Economy parts are replacement body parts that are manufactured by someone other than the original manufacturer of your vehicle. They are generally referred to as “imitation” body parts. They are of inferior quality and pose a potential hazard for future occupants of your repaired vehicle. These parts may be of like “kind” but are certainly not like “quality.” The preferred type of parts are OEM parts. These are the exact same parts used

when your car was originally built. You are not obligated to accept these parts unless your insurance policy gives decision-making authority to the insurance company.

Similar to economy parts, there are also aftermarket crash parts. They are imitation sheet metal, plastic, or lamp components made as knock-offs to original factory components. These parts are considered to be inferior to all other options. In some cases, these parts present a major safety hazard.

**You must inspect your vehicle with an extreme attention to detail. For example, look in the trunk and remove the inner upholstery parts to observe the welding job. Bent frames are heated and bent back into their original configuration, but the frame may be significantly weaker and provide little protection for the driver in another accident.

Hidden Damage

When your car goes in to get repaired, it is very common for the repair shop to find more damage once it starts taking off parts. Peeling off the parts is called the "tear down." This shouldn't worry you. The repair facility will usually contact the insurance company and request a "supplemental" estimate or repairs and get paid the additional costs directly from the insurer.

Put the Car on the Lift

If you own a unibody car and the insurance company wants you to bring your car to its facility for an inspection, it is important that you witness the inspection in order to confirm that a proper inspection was conducted. In this circumstance, a proper inspection will involve raising the car off the ground to provide the inspector an opportunity to walk under it to inspect for damage. Do not settle your car repair claim until you have had your car inspected from this perspective.

Plastic bumpers and crash absorbers frequently mask damage to the underlying structure of the vehicle. This damage is difficult to observe until the car is raised for inspection. If the insurance company adjuster or estimator simply walks around the car, then all of the damage cannot be observed. The estimate will be insufficient to cover the real cost of a complete and proper repair.

Mismatched Paint

It is often difficult for a repair facility to perfectly match the paint on a repaired portion of a vehicle, particularly older vehicles. Even if a large portion of the car is affected, and the difference in color between the old paint and the new is readily apparent, most insurance companies will refuse to paint the entire car.

If problems involving other types of paint work cannot be resolved with the repair facility, then relief may also be available in small claims court.

Repairs Not Done Correctly

It is critical that you conduct a careful inspection of your car before you accept it back from the repair shop. If the repair shop permits you to test drive the car, you should certainly do so. Take the vehicle outside of the garage into the sunlight and inspect the paint very closely. It may help to bring a friend or relative with you for a second, objective opinion.

You should immediately talk to the manager of the repair shop if you find the repairs have not been completed correctly or to your satisfaction. A good repair shop will always be willing to make those repairs. If the manager refuses, then you should immediately contact the insurance company and explain that your vehicle was not fixed to your satisfaction. It is always a good idea to keep the insurance company informed about the status of your repair. If possible, leave the car at the repair facility.

If the insurance company refuses to authorize further repairs and the repair facility refuses to make the repairs unless you pay for them, then you have a problem.

One approach involves taking possession of the vehicle even though it is not repaired to your satisfaction. The repair facility will most likely require you to endorse a check and a release. The release should be for property damage only. Do not sign a release if it references any other damages.

For example, do not sign a release that releases the insurance company or other parties from "any and all damages." Under the circumstances, sign your name to the check and the release but directly under your name, write "endorsed under protest."

Auto Repair Complaints

If you have a problem with the repair shop, your first step should always be to talk to the manager or owner.

Total Losses: When Your Car Is Totaled

Insurance companies will consider your car a "total loss" if they determine there is either an "economic total loss" or a "constructive total loss." When this occurs, you are owed the fair market value of your car for the condition it was in just prior to the wreck.

An economic total loss occurs if the cost of repairs exceeds your car's pre-accident value.

A constructive total loss occurs if your car is too damaged physically to repair or repair in a safe manner.

How Much You Get Paid

Generally speaking, you are owed the amount necessary to replace your car with a comparable used car (plus sales tax, title, and registration fees). This is referred to as the vehicle's Actual Cash Value (ACV). An exception to this rule would be if you had purchased a Replacement Cost Value (RCV) endorsement as part of the Collision and Comprehensive coverage on your own insurance policy. That would raise the maximum collectable to an amount necessary to replace your car with a comparable new vehicle. These amounts would be collectable if your claim were to be resolved on a Total Loss basis.

Diminished Value

It is common sense that your car will be worth less money if it has been in an accident. Its value has been diminished. The loss in value is a separate claim called a Diminished Value (DV) Claim. You are entitled to this money in addition to getting your car fixed.

When you ask your insurance company for "diminished value," it will almost always come back with a low number. People who don't know about diminished value beforehand will usually just accept the offer (insurance companies will normally mail you a check right away) thinking it's found money. What they don't realize is that insurance companies make millions of dollars each year by low-balling Diminished Value Claims.

Figuring Out If You Get Diminished Value

Not every car repair will result in a claim for diminished value. In general, the following specifications must be met:

- Your car was worth at least \$5,000 before it got damaged
- Your car had at least \$1,500 in repairs
- Your car was less than eight years old at the time of the accident and repair
- Your car did not have a salvage title or was never declared a total loss
- You have not missed your state's statute of limitations

But ask for DV even if you don't meet all these requirements. It never hurts to ask for more money. All the insurance company can say is no.

Proving Lost Value

You need evidence to support a DV claim that's higher than what the insurance company is offering you. What you need is an appraisal report from a good DV appraiser. Unfortunately, this is the only evidence the insurance companies will accept as support for a higher DV demand.

2 Different Types of DV Reports

There are generally two different kinds of DV reports. There is a true appraisal, and there is the desk appraisal/assessment.

A true appraisal requires the appraiser to physically inspect your car and examine the quality and extent of repairs. These are more expensive for obvious reasons.

For a desktop appraisal/assessment, an appraiser examines facts about your car (make, model, year, mileage, repair history) and the current repair estimate to come up with a DV amount. Basically, the appraiser is assuming all the repairs were excellent in quality, which gives the insurance company a best-case scenario and the benefit of the doubt on the DV amount. That is how appraisers can give you a DV amount without inspecting the quality of repairs. Instead, the appraiser assumes the repairs were top-notch, and even so, the value of your car has decreased by **X amount**. A physical inspection of your car would only reveal less-than-stellar repairs that would increase your DV amount. This is why insurance companies will accept a DV desktop appraisal as evidence.

Dealing With Diminished Value Appraisers

You need to use caution when it comes to DV appraisers. Most charge anywhere from \$100 to \$200, and the caliber of report they provide varies wildly. It is the wild, wild west out there, and you don't know how the appraiser is coming up with a figure OR whether you are getting your money's worth. When searching out a DV appraiser, look to see if he is:

- Licensed
- A member in professional appraiser associations
- A member in the Better Business Bureau (and check if there are complaints against the appraiser)
- Someone in your state

Which Insurance Company?

In some states, you can make a DV claim against either your insurance company or the other driver's insurance company if the collision was not your fault. These two different claims are called 1st Party and 3rd Party claims.

If you make a claim against your insurance company, it is called a 1st Party Claim. This is a contract claim because you are owed DV under your insurance policy, which is a contract. Interestingly, you can make a 1st Party Claim even if you were at fault because your insurance covers any damage to your car regardless of fault. However, 1st Party Claims are not available in every state. You need to review your insurance policy to see if this is doable.

If you make a claim against the at-fault driver's insurance company, it is called a 3rd Party Claim. This is a tort claim, not a contract claim. You are getting DV from the other insurer because its driver was negligent, just like you are in your personal injury claim.

Rental Cars

One of your most pressing problems after a car accident is getting your car repaired or replaced. This usually involves getting a rental car while your car is repaired or inoperable. One of the most common questions we hear is, "Should I use my car insurance company or the at-fault driver's?" If the other driver was at-fault, you can use either. There are pros and cons to using each.

Getting a Rental Car Using Your Insurance

Rental car coverage is an optional type of coverage for Georgia residents. That means you may not have rental car coverage. Check your policy or call your insurance company to see if you have rental coverage, and if so, find out the daily limit on cost. A lot of rental car coverages will only pay up to a certain dollar amount per day for a rental—such as \$30 per day. You will want to get a car under that limit or face having to pay the difference out of pocket.

Getting a Rental Car Using the at-Fault Driver's Insurance

If the other driver was at fault, you can use his insurance company to provide you with a rental car while your car is being repaired or replaced. You will have to open a claim first. The adjuster will usually reserve a rental car for you and provide you with the reservation number to pick up the car. The only frustrating aspect when using the at-fault driver's insurance company for a rental car is that it may take the company a week to investigate the claim before providing you with a rental. You may be without a car during that time.

Deposit Required

Even though the other driver's insurance company or yours will be paying for the rental, most rental car companies still want you to put a credit card on file with them before allowing you to drive off in their car. They usually insist on charging \$50 to your card, which will be refunded once you return the car.

If you don't have a credit card, you'll need to call the rental company to determine your options. Some will allow you to put the deposit on a debit card, but you'll have to jump through some more hoops such as bringing in several household or utility bills showing your name and address.

Another idea is to find a friend or family member to get the rental for you. You'll need to call the insurance company paying for the rental to see if it's willing to do this for you. The insurer will have to go into the rental car reservation system and add your friend or family member as the primary driver and then list you as a secondary driver. Of course, the person helping you must be willing to let his credit card go on file.

General Rental Car Tips Following a Car Accident

Your rental car should be comparable to your car. If you were driving a mini-van because of your kids, you need a mini-van rental or a large SUV.

If your car is a total loss, you need to be aware that at-fault insurance companies will only let you stay in a rental car for a few days (typically 2-3) after they make you an offer on your car's fair market value. Don't be caught getting the rental car yanked and not having a replacement vehicle lined up.

Don't let the rental car company up-sell you on additional insurance for your rental car. Sometimes the rental agency will lie and say the insurance company will pay for the additional coverage. It won't. You will get charged, and it can go well over \$100 when all is said and done.

Who We Are

We are an Atlanta personal injury firm that dedicates 100 percent of its time and resources to helping people who have been injured in car wrecks. We handle hundreds of cases for Atlanta residents each year. As you are going to find out when you begin reading, this experience has enabled us to provide our clients with the most comprehensive guidance available for handling all the frustrations that come when your car has been wrecked and needs to be repaired or replaced by an insurance company.