7 – Negotiating Claims

# 1 – Styles of Negotiation

**Objective**: Evaluate the suitability of the four different styles of negotiation for use by a claims representative

Negotiation is a par of everyday life. People negotiate when they purchase cars, homes, and major appliances, and friends may negotiate which movie to see or which restaurant to dine. Negotiation also plays a role in resolving claims, and claims representative’s familiarity with the proper techniques could be the difference between a quick resolution for a claim or a date in court.

Whether negotiations are formal or informal, individuals usually develop negotiation styles that reflect their attitudes toward the negotiation and the other parties. Successful claims representatives can adapt their negotiation style to a specific claim, choosing from one of these main four:

* Win-win
* Win – lose
* Lose – win
* Lose – lose

Individuals who have no clear dominant style may typically compromise in negotiations. For example, a negotiator who prefers compromise settlements may suggest that the two parties split the difference or may offer to increase a proposed settlement if the other party decreases the demand. **Compromise is not a style of negotiation; rather, it is the lack of a clear, dominant style.**

## Important Qualities in Negotiation

Effective claims negotiators engage in activities and exhibit traits that demonstrate concern for obtaining the best outcome, and they are skilled in achieving rapport. These qualities are important to claims representatives seeking to obtain the best outcome:

* Thorough knowledge of the claim file
* Persistence
* Firmness, coupled with fairness
* Thorough evaluation of the claim

These qualities contribute to rapport in a claim negotiation:

* Good listening skills
* Humor
* Empathy
* Friendliness

**Most good negotiators have an integrated style of negotiation that simultaneously seeks to obtain the best outcome and build rapport with the other party**. A claims representative may focus on obtaining the best outcome in one phase of the negotiation process and, at another phase, may find that achieving rapport is more important in seeking a successful claim settlement. **The integrated style gives the claims representative flexibility to shift focus depending on the circumstances and the claimant’s needs and reduce the potential for conflict.**

In claims, obtaining the best outcome does not mean taking advantage of the other party, settling for an unusually low amount, or providing an otherwise unfair settlement. Obtaining the **best outcome means arriving at a settlement that is favorable to the insurer but that is considered equitable and fair** by the other party. **Negotiating parties seeking to obtain the best outcome may use a more direct negotiating style and may be less likely to make concessions than when they are working to build rapport**.

Claims representatives may often negotiate with the same parties on different claims; they may be insureds salvage buyers, or lawyers for example. Impressions from prior negotiations can influence the outcome of current negotiations. In this situation, the claims representative may be more concerned with building rapport than with obtaining the best outcome and may, therefore, use a less aggressive, more cooperative style.

With an awareness of the various negotiating styles, claims representatives can select and adapt the style that will contribute most to a successful settlement in each case.

## Win – Win

**A claims representative using the win – wing negotiation style seeks both to obtain the best outcome and to achieve rapport with the other party, resulting in a settlement that is satisfying to all parties. Win – win negotiators are simultaneously assertive and cooperative. They approach disagreements not as destructive or as conflicts but as tools to better understand the other party’s wants and needs**.

These examples show how alternative repair proposals in property claims can be used in win – win negotiations:

An insured scorched her Formica countertop when she placed a hot pan on it. The undamaged part of the 2 year old countertop is in good condition. Matching the Formica for a section repair is impossible because the particular pattern is no longer made. The insured expects that a repair will entail removing all the kitchen countertops and replacing them with similar grade of Formica.

***Win – win solution*** – Because the kitchen counters are otherwise in good condition, the claim representative offers to replace the damaged section of the counter with a built-in cutting board that will also serve as a hot pad for hot items from the stove. The claims representative may even offer to waive the insured’s deductible as an added incentive to proceed with this repair.

Lightning strikes an insured’s business office and damages the 2 year old telephone system, rendering it unusable. Because the telephone system is one of the insured’s primary marketing tools, it must be replaced as soon as possible.

***Win – win solution*** – Noting that it may be hard to locate the same make and model of equipment to replace the phone system, the claims representative offers to replace the system with a readily available model that has the same features, plus some enhancements. The insured will receive the phone system quickly and will benefit from am up-to-date system with additional features. The insurer will save not only the time it would have taken to replace the old system, but also costs because technological advances have resulted in lower prices for phone equipment.

Win – win negotiations can also occur in automobile physical damage claims, as this example illustrates:

The insured is driving her car when she strikes a large rock in the road, cracking the oil pan and causing an oil leak. As she continues to drive, the engine overheats and is damaged beyond repair. The car is four years old and has about 65,000 miles on it. A new engine will cost $9,000. The insured’s personal auto policy, which has a $500 deductible, uses actual cash value (ACV meaning the replacement cost less reasonable depreciation) as the valuation basis for a loss. Assuming the car engine has a useful life span of 130,000 miles, the ACV of the engine would be 50% of the cost of a new engine, or $4,500. Half the engine’s useful life has been used, so the insurer reduces the amount of by 50% to allow for depreciation. With the deductible of $500, the net settlement amount is $4,000, leaving the insured to pay the remaining $5,000 for the new engine.

***Win -win solution*** – The claims representative offers to replace the engine with a used engine of like kind and quality (LKQ) from a local salvage yard. Most repair shops provide a minor warranty on used auto parts. If the insurer has a direct repair program (DRP) and directs the claimant to a specific repair facility, most states’ fair claim regulations require the insurer to guarantee the work. The solution eliminates the depreciation deduction and provides the insured with some warranty on work performed.

Win – win negotiations may also be used in liability or workers compensation claims.

A six-year-old neighbor girl is playing with the insured’s dog when the dog tries to grab a cap from the girl’s head. One of the dog’s teeth scrapes the girl’s forehead, causing a cut that requires twenty stiches. Although the dog is not known to be vicious, a law in the state creates strict liability (meaning liability regardless of negligence or intent) on the par to the dog owners in such cases. About a year after the injury, the scar has healed fairly well and no plastic surgery is anticipated. The claims representative is aware that injury claims involving children with facial scarring usually settle at a high dollar amount.

***Win – win solution*** – During negotiation, the claims representative asks the parents whether they want their daughter to attend college. Both parents say they do but express concerns about their ability to pay for a college education. The claims representative suggest a structured settlement that will pay equal sums to the claimant during her four college years between ages 18 and 21. Such a settlement will have to be approved by a judge, he explains. An advantage of the settlement is that the daughter would be receiving payments in the year she would need them. If, instead, the family were to receive a lump sum payment, they might invest it for their daughter’s education; consequently, they would have to pay taxes on the investment income, if any, and there would be no guarantee that the investment would not be lost. The claims representative may be able to negotiation a settlement that will cost less than a lump-sum settlement, sot the insurer would benefit as well.

Another example of a win – win negotiation is the offer to settle a claim with a release that allows future payments for a claimant who may need additional treatment. The claimant receives immediate funds, and the insurer agrees that, if the claimant decides to have further treatment (such as plastic surgery), the insurer will pay up to a specified amount within a specified time after the claimant completes the treatment.

Although a claimant may decline a win – win offer, the claims representative who seeks a win – win settlement, at the very least, demonstrates an interest in resolving the claim to the claimant’s satisfaction and may help build rapport as negotiations continue.

## Win- Lose

**Negotiators who use a win – lose style see negotiation as a contest between two opposing parties, each seeking to defeat the other**. The parties’ greatest concern is obtaining the best outcome for their side. They have little interest in achieving rapport with the other party. **Negotiations may use this style of negotiation when other avenues of resolution have been exhausted, such as when a lawsuit has been filed and a trial is approaching. At that point, any rapport between parties has eroded because the settlement amount will ultimately be determined by the party that presents the best case to the judge and jury**.

**Claim representatives may use the win – lose style of negotiations in resolving claims that appear to involve fraud. While claims representatives must always act in good faith in all aspects of claim handling, they may be less concerned with achieving rapport with people they suspect of trying to defraud the insurer.**

When fraud is suspected, insurers may require a formal proof of loss from the insured, followed by an examination of the insured under oath. Imposing these requirements does nothing to build rapport; however, this **confrontational win – lose negotiation style can serve the insurer’s need to prove or disprove suspected fraud**.

## Lose – Win

**A negotiator using the lose – win style of negotiation is primarily concerned with achieving rapport with the other party; obtaining the best outcome is a low priority**. This approach **may sometimes result in a more expedient and more cost-effective settlement than other approaches**. **Generally, the lose-win style is best used when it is highly likely that the other party will hire an attorney or other representative** to help resolve the issue. These are example of lose -win negotiation style:

* The claimant is injured in an automobile accident with the insured, and the claimant’s vehicle is not drivable. The claimant had no medical insurance. Assuming the insured is liable, the claims representative may offer to pay the claimant directly for a rental so the claimant does not have to use his own money to rent the car and then submit the bills to the insurer for reimbursement.
* The insured’s home is destroyed by fire, forcing the insured to stay in a hotel. The claims representative may offer the insured advance payment of part of the additional living expense claim while the claim investigation is pending rather than waiting until the entire claim can be resolved.

**While the lose – win style initially meets the needs of the claimant, the insurer often achieves an equitable settlement in the long run because the claims representative began by engaging in rapport-building activities. Such activities may also shorten the amount of time that the claim is open**.

## Lose – Lose

**A negotiator who has little concern either for obtaining the best outcome or for achieving rapport may be using a lose – lose negotiation style. The negotiator may focus on a fast resolution without considering the other party’s specific wants or needs. Used in claims negotiation, this approach can result in inequitable treatment of claimants and insureds. To avoid any inequity and potential bad-faith actions, claims representatives should normally avoid this negotiation style**.

Claims representatives who use a lose-lose style may be trying to avoid confrontational settlement negotiations. They may give in to demanding claimants and settle claims more quickly than they would with less demanding claimants.

Occasionally, the lose – lose negotiation style cannot be avoided in claim settlement. For example, **some claimants offer unrealistic demands in negotiation and may not understand the logic of the claims representative’s offer. Any explanation the claims representative offers only irritates the claimant. As a result, the claimant withdraws from the negotiation process and hires a public adjuster or a lawyer to continue the negotiations. Ultimately, the involvement of a third party will prolong resolution of the claim and result in less money for the claimant**.

Examples:

A small kitchen fire has damaged some of the insured’s personal property and left a smoke residue and a persistent foul odor in the room. The claims representative offers to settle with the insured for the cost to replace the personal property and the curtains and to pay a restoration firm to clean the residue from the ceiling. The insured is satisfied with the payment for the damaged property but demands complete replacement of the ceiling material. The claims representative explains that replacement of the material is more costly than cleaning and suggest that the cleaning be completed, and if it is not satisfactory, then the insurer will replace the ceiling. The insured persists with the demand.

***Lose – lose solution*** – The claims representative withdraws from settlement negotiations to give the insured time to consider the offer. The insured hires a public adjuster to handle the case on his behalf. **The public adjuster charges a fee that, when subtracted from the final settlement amount, would reduce that amount to less than the cost to hire a restoration firm to clean the ceiling. The insured cancels the property policy.** The result is that the insurer pays for the replacement of the ceiling material and the insured pays more of his own money for the repair than he would have had he accepted the initial offer**. Both the insurer and the insured lose from this negotiation**.

# 2 – Claim Negotiation Process

**Objective:** Describe the steps in the claim negotiation process

By being aware of and thoroughly completing each step in the claim negotiation process, claim representatives can work towards more effective negotiations.

**Generally, all negotiators follow a process that breaks down into four (4) steps:**

* **Prepare**
* **Develop and evaluate alternative outcomes**
* **Identify and evaluate each party’s interest**
* **Make concessions and create appropriate resolutions**

## Prepare

Preparation begins long before the negotiation itself begins. For a claim representative, the process begins when the claim is assigned. **The claim representative assembles information about the claimant’s lifestyle, expectations, preferences, and likely behavior; and previous claims handled by the current insurer or other insurers and their outcome; and any information about the claimant’s history that may be useful in the negotiation.**  For a commercial insured, the claim representative may assemble information about the claimant’s business or employment policies, its supply contracts, and even its competitors. During this step, the claim representative also begins establishing a rapport with the claimant.

## Develop and Evaluate Alternative Outcomes

**they consider appropriate and present the reasons why they are appropriate. The party with the greatest number of acceptable alternatives usually has the greatest leverage in the negotiation because the various alternative can be used in making concessions that lead to satisfactory settlements**.

**To develop settlement alternatives, each party must identify the minimum and maximum dollar amounts acceptable for a claim resolution**. Answering the questions in the exhibit can help the negotiation parties establish these amounts.

|  |  |
| --- | --- |
| **Claim Representative** | **Other Party (claimant)** |
| What is the minimum amount I should accept for this claim in good faith? | What is the maximum amount I can demand without appearing outrageous? |
| What is the maximum amount for which I am willing to settle this claim? | What is the maximum amount the other party might pay for this claim? |
| What is the maximum amount the other party might demand for this claim without appearing outrageous? | What is the minimum amount the other party might pay for this claim without appearing outrageous? |
| What is the minimum amount the other party might be willing to accept for this claim? | What is the minimum amount I might be willing to accept for this claim? |
| What amount should I use for my starting offer? |  |

**The values determined through the answers to the minimum and maximum questions can be used to develop a Best Alternative To a Negotiated Agreement (BATNA). A BATNA is a standard against which a negotiator can measure any proposed agreement. It can help a negotiator avoid accepting unfavorable terms and rejecting favorable terms. Stated simply, any offers can then be compared against the cost of the BATNA. If an offer is less costly than the BATNA, the claim representative should seriously consider the offer. IF the offer is greater than the BATNA, the claim representative should reject it. It is the choice a negotiator can make.**

**The claim representative should also consider the claimant’s likely BATNA and should compare the insurer’s offers against it. For example, the claimant’s BATNA may be the net outcome (after legal costs). Likely from litigation. The claim representative should estimate the likelihood that the claimant will file a lawsuit based on the information from the investigation. If the claimant suggests that a lawsuit would render a better settlement, then the claim representative, while acknowledging the claimant’s right to file a lawsuit, should point out the legal costs that would reduce the settlement amount. If the claim representative’s offer for a negotiated settlement is greater than the claimant’s BATNA, then the claimant would be more likely to accept the offer.**

## Identify and Evaluate Each Party’s Interests

The third step of the negotiation process, each party’s interests are identified. **The interests can be based on essential needs, socialization needs, personal needs, or organizational needs.** For example, **an injured person’s needs may include ongoing medical treatment, hospice care, income continuation, rehabilitation, Social interaction, and financial provisions for dependents**. A family’s needs after a property loss can include temporary housing, food, clothing, and personal necessities, toys or other entertainment, and allowance for public transportation of children to school. An organization’s need can relate to its reputation, relationships with its customers, organizational goals, and income.

**Interests can be tangible, such as housing, or intangible, such as reputation, fairness, and socialization needs. Interest can also be subjective, that is, based on the claimant’s perceptions. A claimant’s interests can change intentionally or unintentionally during the claim settlement period**.

## Make Concessions and Create Appropriate Resolutions

**In the final step of the negotiation process, successful negotiator recognizes the need to make concessions to create appropriate resolutions**. Concessions are trade-offs. For example, a claims representative may offer to increase the claim amount by $2,000 if the claimant agrees to concede on $4,000 worth of personal property reported stolen but for which the claimant has not proof of ownership. The settlement then, would pay for 50% of the reported value of the allegedly stolen property.

**Negotiators can assess prospective concessions by considering the best and worst possible claim resolutions for each party. They can examine the effect a concession would have on the resolution, and then they can determine whether the resulting claim resolution would better serve the interests of the claimant and the insurer**. The parties’ perceived value of the concessions may vary, as in this example: An old vehicle is a total loss after an auto accident. The claimant, who repairs auto body damages as a hobby, values the car for sentimental reasons. As a concession, the claim representative offers to allow the insured to keep the damaged vehicle with a salvage title. If the insurer instead were to pay for a replacement vehicle, the claimant would have to pay sales tax on it. The concession can lead to a win – win resolution: the insured wins because he can keep a beloved car, the insurer wins because it pays the value less the salvage to the claimant. The insurer also saves by not having to dispose of the salvage.

In another example of concessions that can lead to win – win resolutions, a tornado shears the roof of a school, and most of the school’s computers are damaged by the building’s sprinkler system or rain. The claim representative offers to replace the mismatched older computers and printers with equipment of similar makes, models, and software configurations, including some refurbished computers and printers, along with refurbished network hardware and software. The insurer benefits from the convenience of getting all the equipment from one source and by receiving discounts for volume purchases and refurbished equipment. The school benefits from new, updated equipment and compatibility to enable better networking capability.

**Successful claim resolution requires reviewing all the needs of both the claimant and the insurer to determine an optimum resolution for both parties. Options such as refurbished equipment, like-kind auto parts, and structured settlements can be negotiating tools for developing mutually satisfying claim resolutions**.

# 3 – Claim Negotiation Variables

**Objective**: Demonstrate how claimant and claims representative variables affect claim negotiations

**Claim negotiation often focuses on the amount of money the insurer will pay for the claim**. For example, if a roof requires replacement because of windstorm damage, an insured and claims representative will negotiate the loss amount. However, like any negotiation, claims are affected by variables such as needs, timing, and setting.

No two claims negotiations are exactly the same. The facts of two different losses may be similar, but the characteristics of the negotiation and the parties, as well as the outcome, can be dramatically affected by the claimant’s and claim representative’s (rep’s) variables.

## Claimants’ Negotiating Variables

The variables the claimant brings into the negotiation influence the rep’s choice of negotiation techniques and strategies. Let’s examine how significant variable affect the rep’s negotiating behaviors and outcome.

### Negotiating Phase

**Claimants experience three phases during the negotiation process:**

* **The crisis phase – claimants primarily concerned with returning to their normal life**
* **The motivation phase – claimants recognize that life will not be normal unless someone pays for the damage; therefore, the claimant files an insurance claim**
* **The bargaining phase – parties share their evaluations of the claim and determine any differences. Disagreements may arise and rapport can disintegrate, but in successful negotiations, the parties resolve their differences and settle the claim**

Understanding these phases can help the rep respond appropriately, resulting in smoother negotiations and contributing to successful claim settlements.

**During the crisis phase**, most claimants are motivated by a **desire for life to be normal** again rather than by the money they might recover through the claim settlement process. **Although the rep does not become involved until later, understanding the claimant’s experiences during this phase can help the rep work with the claimant in the remaining negotiation phases.**

**During the motivation phase** of the negotiation process, the claimant recognizes that **life will not be normal unless someone pays for the damage.** Accordingly, the claimant files an insurance claim to seek payment for the damages. **A quick response by the rep at this stage can establish that rep as an ally, as well as bolster the insurer’s credibility**.

Conversely, if the rep does not respond quickly, the claimant may begin to view the insurer as a hinderance or as unmotivated or indifferent. **When a claimant experiencing a crisis feels ignored by the insurer, he or she may being to approach the relationship with adversarial and act out, sometimes even exhibiting illegal behavior, such as inflating the claim or engaging in other forms of soft fraud**. Because of this, most insurers adopt contact standards that are more stringent than statutory legal requirements (which may allow up to ten days for an insurer to contact a claimant).

During the bargaining phase, disagreements may arise, and any rapport previously built between the parties can disintegrate. In successful negotiations, the parties resolve their differences and settle the claim.

### Financial Needs

**A claimant’s need for money in order to return to normal is a major variable that determines how the rep should approach negotiations.**  For example, the rep can encourage an early and reasonable settlement. However, a claimant who has money or property available to meet temporary needs while damaged property is being repaired or replaced may wish to delay settlement. For example, a claimant who has a rental vehicle for use while his or her primary vehicle is being repaired may be slow to seek repair estimates and complete the necessary repairs, thus postponing the claim negotiation and settlement. In such instances, the rep may need to appeal to another of the claimant’s needs.

**Time Pressures**

Reps should be aware of time pressures on the claimant, such as around bills. Other examples may include the claimant’s desire to repair a damaged home before an approaching holiday, or to repair an auto for a daughter to use at college. With knowledge of such pressures, the rep can combine a reasonable offer with a promise of prompt payment to encourage the claimant to negotiate a settlement.

### Emotional Reaction

**The rep should allow the claimant to express any fears concerns, frustrations, and needs evoked by the loss. Empathizing with the claimant can help establish rapport.**

**Sometimes claimants will direct their emotions at the rep, through angry reactions or criticism. Such reactions should not be considered personal attacks.**

**By maintaining flexibility and professional demeanor, the rep can turn differences with the claimant into opportunities to resolve the claim satisfactorily**. For example, if the claimant express distrust of the insurer or the rep, the rep could regain trust by making a prompt and reasonable offer for an advance payment that would be credited to the ultimate claim settlement.

### Experience With or Knowledge of Insurance Claims

**The claimant’s experience with or knowledge of insurance claims can significantly affect the claim outcome**. Reps should ask claimants whether they have ever filed a claim. Claimants, in turn, may respond with a variety of answers. **Their response provides clue to the Claimant’s Motivation and how the claim will proceed.**

For example, if a claimant asks why the rep wants to know about previous claims, that claimant could be distrustful of the insurer. In such an instance, the rep cold explain that many people do not understand the claims process and then reassure the claimant that any and all information will help the claimant return to normalcy as soon as possible.

In other cases, a claimant’s previous bad claim experience may color his or her feelings about the present claim. To counter this concern, the claim rep can differentiate with the insurer’s claim service from the service the claimant may have previously experienced.

### Personality

**A claimant’s personality can have a significant effect on negotiations**. If the claimant is self-assured and easy-going, the rep may be able to establish rapport and resolve the claim quickly and satisfactorily. On the other hand, **claimants may be insecure or distrustful of businesses, or even arrogant or aggressive. In responding to personality traits that can complicate negotiations, reps can use empathy and patience and strive to establish rapport**.

## Claims Representatives’ Negotiation Variables

Negotiation variables for reps can differ from those of claimants, although the two parties are often affected by common variables.

**Theses are some of the negotiation variables that affect a claims representative (rep):**

* **Knowledge of the claim – the more the rep knows about the loss details, parties, and results of the claim investigation, the better prepared he or she is to negotiate a satisfactory claim settlement**
* **Authority level – before beginning claim negotiations, the rep should be given sufficient authority to settle the claim up to its estimated maximum value. Delegating adequate authority demonstrates the insurer’s good faith.**
* **Time factors – time factors, such as those imposed by a claims manager, department guidelines, the insurer or a reinsurer, insurance regulators and state laws, caseloads, and the reps personal schedule, become negotiation variables for the rep. A rep who faces deadlines in negotiating a settlement may be more flexible in accepting the claimant’s demands and may take less time exploring alternative settlement options than one who has no deadlines**
* **Personality – A rep who is self-assured but not arrogant may influence the claimant to accept a settlement with little or not negotiation**

### Knowledge of the Claim

**The claims representative’s knowledge of the claim ins one of the most significant negotiation variables**. The more the rep knows about the loss details, parties, and results of the claim investigation, the better prepared he or she is to negotiate a satisfactory claim settlement. **Conversely, the rep’s lack of knowledge about the claim can be a severe detriment to the claim negotiation**.

### Authority Level

Before beginning claim negotiations, the claims representative should be given sufficient authority to settle the claim up to its estimated maximum value. If the rep lacks sufficient authority, the claimant is justified in negotiation with the rep’ supervisor or someone with more negotiating authority. **Delegating adequate negotiating authority to a rep demonstrates and insurer’s good faith**.

### Number of Alternatives Available for a Satisfactory Claim Settlement

Before reaching the bargaining phase, the re should apply his or her knowledge of the claim and the claimant to devise as many settlement alternatives as possible. Example; if an insured’s heirloom diamond necklace was stolen, but the matching bracelet and earrings were not, several alternatives may be available for settling this claim, including replacing the entire set with one of like, kind, and value, replacing only the necklace, or paying the insured the value of the necklace.

### Time Factors

Claims work often results in time management challenges. Time factors may be imposed by a claims manager or department guidelines, by the insurer or a reinsurer, or by insurance regulators and state laws. The claims representative’s caseload is also a variable because it determines the amount of time available to devote to any particular claim.

A rep who faces deadlines in negotiating a settlement may be more flexible in accepting the claimant’s demands and may take less time exploring alternatives settlement options than one who has no deadlines. As with claimants, the rep’s personal schedule can also influence the negotiation**. Any factor that prompts the rep to settle the claim more rapidly or to reduce the time devoted to the bargaining step in the negotiation process is a negotiation variable**.

### Claim Negotiation Settings

Many claims are settled entirely by telephone, email, or online communication; the rep and claimant may never meet in person. Although negotiating by telephone and online is efficient for most claim settlements, reps may find that certain claims are better negotiated in person.

**When people communicate in person, words, tone, and body language all contribute to the message. Of theses three, the words used may be the least significant, and the major component of face-to-face communication is body language. When a person’s words, tone, and body language appear in conflict, body language usually conveys the communicator’s true meaning. A potential disadvantage of in-person negotiation is that the claimant can observe the rep’s body language and form an opinion of his or her credibility**.

**Reps should follow some basic rules when conducting in-person negotiation, such as arriving on time, if not early; becoming familiar with the negotiation site; brining only necessary confidential documents; assuring portable electronic devices are secure; and being prepared to deal with a large number of opposing negotiators**. An advantage of in-person negotiation relates to physical evidence. When the claims representative and the claimant see evidence such as photos or diagrams of the accident scene or visible scarring, they may change their opinion of the claim’s value.

For reasons of convenience and efficiency, many claims negotiations are conducted by telephone. **Telephone negotiators must rely on words, tone and active listening skills**. With active listening, the rep periodically paraphrases the other party’s communication. **Telephone negotiations are generally quicker and more convenient than in-person negotiations**. While on the phone, people tend to get to the point more quickly and avoid casual conversation that often occurs in person; however, even in telephone negotiations, claims reps should take the time to develop rapport. They should also be aware that **telephone conversations may be more prone to conflict because people who cannot see one another may say things they would not I they were communicating in person**.

**In telephone negotiations, the party who places the call has the advantage of understanding what he or she wants to accomplish**. A rep who is the receiver of a negotiation call has an immediate disadvantage because the other party has reviewed the facts an planned the call. When caught off guard, a rep may inappropriate yield to demands. Upon receiving an unexpected call from the other negotiating party, a claims rep should postpone the negotiation by offering to review the file and return the call at a mutually agreeable time**. A return call gives the claim representative more control, and when a call is scheduled with the other party, both parties can prepare for a productive negotiation**.

The online setting adds another aspect to the negotiation. Many claims processes begin online when claimants enter their information through an insurer’s online platform or app. Negotiations can also be handled online either by interaction with a live rep or through software that mimics a rep.

Strictly online settlement of claims is usually only appropriate for simple claims, but it can be beneficial by making negotiations less stressful and time consuming and facilitating prompt payment. Insurers should ensure that any interaction with claimants over email or an app is as professional and responsive as a telephone interaction would be.

### Personality

**If a rep is self-assured, this trait will likely be apparent in the negotiation, and the claimant may accept a settlement with little or no negotiation. If the rep is arrogant, the claimant may become defensive.**

**Conversely, if a rep’s personality is insecure or submissive, the claimant may try to convince the rep to accept a settlement that is unsatisfactory to the insurer.** Thorough knowledge of the facts of the claim can help the rep be more confident and less submissive in the negotiation.

# 4 – Overview of Claim Negotiation Techniques

**Objective:** Evaluate the claim negotiation techniques that are: Common to All Parties; Used with Unrepresented Claimants; Used by Claimant’s Representatives

Negotiations tend to use the same techniques repeatedly – particularly strategies ad behaviors that have produced successful outcomes. However, negotiations such as claims representatives can increase their chances of success by using a wider variety of negotiation techniques.

Claim reps should always consider the party with whom they are negotiating. Some techniques work best when negotiating directly with claimants, and some work well with attorneys or public adjusters (also known as “claimants’ representatives).

## Negotiation Techniques Common to All Parties

**Two negotiating techniques that can readily be used by all parties to a negotiation are the principle of yes and choicing**. Reps may use either or both of these techniques to successfully negotiate claim settlements.

### Principle of Yes

**The principle of yes is often used in sales. It is based on the premise that if an individual answers “yes” to a question, he or she is likely to continue to answer “yes” to subsequent questions.**

**To apply this principle, reps should begin negotiations by asking questions that will generate “yes” answers. Such questions may involve basic facts, including the date of accident, the people involved, and the fact that injury or damage has occurred**.

**Points on which the parties disagree should be avoided until all points of agreement are established**. When parties begin a negotiation with items of disagreement, conflict is almost inevitable and may lead to failed negotiation.

**Example of Principle of Yes**

Claim rep: Good morning, this is joe, a claim rep with XYZ insurance Company. I was hoping that we could discuss settlement of your clients claim. Let’s see, this accident happened approximately four months ago, and it is my understanding that our insured struck the rear of your client’s auto, is that correct?

Claimant’s Atty: Yes

Claim Rep: It is also my understanding that the damage to your client’s auto was paid for by your client’s collision insurance coverage, is that correct?

Atty: Yes

Claim Rep: I see that you have sent us three different medical bills. One from the emergency room where your client was taken following the accident, one from an orthopedist, and the third from a physical therapist. Are these all of the medical bills?

Atty: Yes

Claim Rep: So, the only thing left is for us to agree on a settlement value

### Choicing

Choicing is based on the assumption that people feel empowered when given a choice. **To use choicing, the rep first presents the choice the other party will find least desirable. The choice becomes a basis of comparison, making the next choice more appealing.**

For example, a rep could use choicing to present options for replacing an insured’s damaged transmission when the personal auto policy provides actual cash value coverage.

**Example of Choicing**

Claim Rep: I just received the appraisal on your car. The transmission is not repairable and needs to be replaced. We have a couple of options for repairing the car, and the choice is yours.

Choice one: We could pay to put a new transmission in your car. This would cost approximately $4,000, but because your policy provides actual cash value, we will have to depreciate the cost of the transmission. To explain, your car has an anticipated useful life of 120,000 mile and already has 60,000 miles on it, so your transmission is approximately 50% worn. Therefore, we will only pay 50% of the replacement cost, or $2,000 minus the $500 deductible - $1,500 toward the transmission replacement.

Choice Two: Another option, I was able to locate a transmission at one of our salvage yards that has only 58,000 miles on it. This transmission is not an original manufacturer’s part, but instead it is an LKQ (like, kind, quality) transmission. If you agree to this option, you will have to pay only your deductible $500. We will not subtract depreciation from your claim because this transmission is already depreciated. Which option do you prefer?

## Negotiation Techniques for Use With Unrepresented Claimants

When negotiating with unrepresented claimants, reps should keep in mind that making a claim can be stressful, anxiety-producing experience. Many people have little knowledge of insurance coverage, may not trust insurers, and have limited knowledge of reasonable settlement values. Additionally, attorneys and public adjusters know and understand common negotiating practices that unrepresented claimants do not, such as the need to provide appropriate documentation and the sometimes argumentative nature of negotiations. Certain techniques can help smooth negotiations with unrepresented claimants.

### Collecting and Using Extraneous Information

**Claims reps collect and use extraneous information about the claim, the claimant, and the claimant’s wants and needs that help them develop creative settlements. Claims reps can get clues through information provided by claimants about themselves, conversations with claimants that reveal their education level and understanding of the claims process, and observations about the claimant’s lifestyle, hobbies, and other interests**. For example, when speaking with a claimant on the phone, a rep may notice the sound of children in the background. The rep may use this information to develop a settlement that meets family needs. If a meeting can be arranged at a claimant’s home, a claims rep can make additional observations about the claimant’s lifestyle.

Claimants and insureds may reveal personal deadlines for claims resolution. For example**, if a claimant says “I need my car repaired soon because I leave for vacation in 2 weeks”, the rep may propose paying for an upgraded rental vehicle like an SUV during the vacation.** This would meet the claimant’s needs but also allow time for the claim to be accurately negotiated and settled.

### Using Sales Techniques

Much like real estate agents sell houses and automobile dealers sell cars, claims representatives “sell” settlements. The theories and philosophies used in sales apply to claim settlements, and all sales training courses begin with the same promise: **to make a sale, one must first understand the needs and wants of the customer.**

The rep bases the negotiation on an understanding of the claimant’s wants and needs. Lacking that understanding, reps may develop what the believe is an equitable settlement and then attempt to force it on the claimant.

**Another sales technique is mirroring the behavior of the customer**. People tend to like other people who are similar to themselves. A rep who mirrors the behavior of the claimant may develop greater rapport, leading to a better relationship and, ultimately, the sale of the claim settlement.

### Using Needs Analysis

**Many people have heard of Abraham Maslow’s hierarchy of human needs, often represented as a pyramid. The bottom of the pyramid represents basic needs, and the top represents self-actualization needs. According to Maslow, individuals fulfill the most basic needs first and then move to the next need level**.

All people operate at various levels of the hierarchy depending on their current situation. Accordingly, money may not be the most important need for all claimants. So**, it could conceivably be easier to negotiate a claim involving a total-loss house fire than to negotiate on involving a minor burglary**.

In the house-fire claim, having lost most of his or her material possessions, a person is operating on a lower needs level and is motivated to conclude the claim. But in the minor burglary case, the claimant may be motivated by a higher needs level (such as the need for esteem) and prefer to get as much money as possible over replacing the stolen items.

### Making the First Offer

Traditionally, the party in a negotiation who make the first offer is perceived as holding a weaker initial bargaining position, and the party who response with a counteroffer holds the stronger position because he or she is able to react to the initial offer. However, **certain circumstances – such as negotiations with an unrepresented claimant – promote the need to submit an initial offer. This is because unrepresented claimants do not likely know the value of the claim and may suggest an inflated settlement amount**.

**Newer thinking includes the “anchoring” theory, which says that making the first offer is an advantage because it sets expectations. If the rep uses a fair negotiating range, there is no danger of coming in too high with the first offer, because the range should be withing the rep’s professional judgment of what is reasonable**.

## Negotiating Techniques for Use with Claimants’ Representatives

Claims representatives use different techniques to negotiate with attorneys or public adjusters representing claimants because these professionals usually understand the claims process and claim settlement practices. Public adjusters usually negotiate property claims, attorneys can negotiate any type of claim.

### Using Information Obtain From the Evaluation

**A rep’s thorough knowledge of the claim is usually a strength in negotiation**. Having investigated the loss, the rep usually had more detailed knowledge of the claim than an attorney or public adjuster.

For example, **when the claimant’s attorney makes a demand in the negotiation, the rep should avoid an immediate reaction. Instead, the rep should ask the attorney to explain how the settlement demand value was determined and listen carefully to the answer. The answer reflects the extent of knowledge the claimant’s representative has about the claim and the level of thought that was put into the evaluation**.

**Just as with unrepresented claimants, the claims representative should insist that any changes in the settlement offer are justified based on the facts of the case**.

### Establishing Strengths and Weaknesses

In any negotiation situation, there are strengths and weaknesses. For example, if a house if uninhabitable after a fire, a rep can use the insured’s desire to be back in his or her home as a bargaining tool. As another example, **if an insurer and a public adjuster cannot agree on a settlement amount, a rep should suggest an appraisal. The possibility of appraisal may motivate the public adjuster to concede because an adjuster knows that appraisal may result in a lower settlement, which means a lower commission**.

### Using Timing in Negotiations

**For many claims, the best time to settle with a claimant’s attorney is just before the claim becomes a lawsuit**. At that point, the attorney has usually spent only a couple of hours working on the claim.

Claimant attorneys typically receive one-third of a settlement as their fee. **Once the claim becomes a lawsuit, the plaintiff’s attorney must invest much more time in the claim. Even though a higher settlement – and a greater fee – may result from a litigated case, the attorney’s fee per hour of work decrease for each hour devoted to the case**.

Let’s consider an example. A claimant has a bodily injury claim valued at $4,500, and the claimant’s attorney will receive a one-third commission. If the attorney spent two hours interviewing the client, requesting and handling lost wage and treatment reports, and negotiation with the claims representative, the attorney’s fee of $1,500 would break down to $750 per hour. But if the claim becomes a lawsuit, the attorney must conduct pretrial discovery, requiring significant time to file summons, take depositions and more.

Assume the claim settles for $6,000 during the pretrial settlement conference, and the plaintiff’s attorney spent fifteen hours working on it. The attorney would receive $2,000; however, the hourly breakdown for the work would be $133.33 per hour. Compared with the original $750 per hour, the attorney has an incentive to settle the claim before a lawsuit requires a greater time investment.

### The Initial Offer

As discussed, the party making the initial settlement offer sometimes takes a weaker negotiation position. However, **a claimant’s representative might make a demand that is higher than the initial offer the claims representative would have proposed. To entice a reasonable demand, the claims representative may begin the negotiation by asking the attorney or public adjuster what fair settlement value would settle the case that day.**

For example, if the claims representative’s settlement range is $4,000 to $6,500 and the attorney demands $6,500 to settle the claim that day, the rep can respond with a counteroffer that settles the claim, rather than waste time by starting at the low end of the range.

### Making Concession

In a negotiation, the claims representative should make concession only for specific reasons:

* **New information that affect the claim value has become available** – if the facts of the claim change because of new information or because claimant’s condition has changed (usually for the worse), the rep should reevaluate the claim
* **The other party has made a concession** – if the claimant lowers the counteroffer, the rep could choose to concede by increasing the insurer’s offer in order to reach a settlement
* **A concession by the rep would allow the claim to be settled that day** – when there is a compelling reason to settle the claim immediately (such as before the claimant leaves for an extended vacation), the rep may make reasonable concession to accomplish that settlement.

## Negotiation Techniques Used by Claimants’ Representatives

To be prepared for negotiations, claims representatives should be familiar with some techniques commonly used by claimants’ attorneys, public adjusters and other representatives.

* Limited authority negotiations – In some negotiations, one or more parties may have authority to negotiate only up to a limited amount before consulting with some other authority. Car dealers are known for using this technique. With a claim, the claimant’s representative can settle a claim legally and ethically only after speaking to the client – and in most cases the client is not present during the negotiation. This need to contact the claimant leaves the rep waiting, which may induce him or her to offer more money.
* Timing in negotiations – Attorney are not the only ones who benefit from settling claims before they go into litigation; insurers also benefit by avoiding additional court and legal costs. A claimant’s attorney may use that fact to encourage ta rep to accept a higher demand.

# 5 – Claim Negotiation Techniques To Be Avoided

**Objective**: Examine reasons that claims representatives should avoid certain negotiation techniques

Some techniques that work well in general negotiations do not work well in negotiations to settle claims and, in fact, may contribute to the failure of the negotiation.

**Claims representatives should be familiar with and avoid techniques that do not work well in negotiations. In addition to limited authority negotiation, these techniques include using a first and final offer (Boulwarism) and using decreasing or limited offers**.

## Using a first and Final Offer – Boulwarism

**Boulwarism, or making a first and final offer**, **is named after Lemuel Boulware, a former chief executive officer of General Electric Company.** When negotiation union contracts with General Electric’s labor unions, Boulware would make a single offer, telling the unions that it was the final offer and if they chose not to accept, then they should strike.

**This technique is inappropriate for claims representatives. Presented with the first and final offer, the claimant may refuse it, ending the negotiation and possibly resulting in a more costly resolution for the insurer. Boulwarism invites conflict and prevents collaboration. In contrast, other negotiation techniques provide an opportunity for parties to collaborate to achieve a resolution**.

## Using Decreasing or Limited Offers

**Another negotiation technique that claims representatives should avoid is making decreasing or limited offers. A decreasing or limited offer is an offer that changes simply because time passes**. For example, a party to a negotiation may offer $4,000 one day, to decrease by $200 for each day acceptance is delayed. Similarly, a limited offer is withdrawn after the passage of a specified time. For example, the offering party may specify that if the offer is not accepted within forty-eight hours, it will be withdrawn.

**Claims representatives should not use decreasing and limited offers. They invite conflict by placing unreasonable constraints on the other party. Once a claims representative makes an offer in a negotiation, it should stand unless a change is warranted by a change in the facts of the claim**.

# 6 – Common Pitfalls In Claim Negotiation

Objective: Given a claim, identify the common pitfalls in claim negotiation and how to avoid them

Things can go wrong at any point in the negotiation process. Claim representatives, as well as other negotiation parties, can avoid some of these problems and can conduct more successful negotiations by being aware of some common negotiation pitfalls:

## Allowing Personalities to Influence the Settlement

**Claims representatives must sometimes negotiate with parties who are difficult to interact with. Personalities can interfere, and the negotiation process can turn into a clash of egos**. As emotions rise, rational thought diminishes, and negotiations come to a halt. For this reason, **all parties to a claim negotiation should avoid allowing personalities to influence the settlement**.

Claim representatives must maintain their focus on resolving the claim and avoid being swayed by the other party’s personality. They should object to any form of abuse, but good-faith claims handling precludes retaliation to personal attacks. **In response to a personal attack in the negotiation, the claim representative should inform the other party that if the offensive behavior continues, the negotiation will cease until the party is prepared to negotiate in a civil manner. Offensive behavior should never affect the amount of the offer, the claim representative’s willingness to negotiate, or any other factor that could prevent a fair claim settlement**.

## Trading Dollars

**Trading dollars occurs when negotiators barter on the amount in dispute, not considering the facts of the claim**. Claim negotiations should focus on the facts of the claim, and not on the offers and demands**. If the facts of the claim change, the parties should increase or decrease their offers or demands according to the facts, but the settlement amount should be a byproduct of the negotiation.**

**Bidding Against Oneself**

**Parties to negotiation sometimes inadvertently bid against their own offer; that is, they increase their offer for no reason**. For example, a claim representative could say, “we believe that this claim is worth $5,000, but if we settle the claim today, we would increase our offer to $5,500”. In this statement, the claim representative has bid against the insurer’s offer without any concession from the other party. Such an offer could signal that the claim representative lacks confidence in the claim evaluation or is overly eager to settle the claim. **Generally, concessions in a negotiation should be offered only in response to a concession made by the other party and in a good-faith attempt to settle the claim for the appropriate amount**.

## Conceding as Deadlines Approach

**As deadlines approach in negotiations, the number of concessions usually increases**. For example, many union contracts are settled at 11:59 PM on the day of the deadline, and as described previously, many claims settle on the courthouse steps before a trial.

**A party can gain significant power in a negotiation by determining any deadlines that may affect the other party**. **One such deadline for a claim representative to be aware of is the statute of limitations on a claim, which sets the time withing which a claimant must file a lawsuit**. Other deadlines can be determined through conversation and listening to the other party for such information. **Some deadlines, such as impending holidays, may be “soft” deadlines, others, such as tax deadline for a claimant who needs money to pay the taxes, may be “hard” deadlines.**

**Claim representatives also have hard deadlines with which they or the insurer must comply and that may increase their motivation to offer concessions**. For example, **if the insurer fives its claim staff a directive to reduce pending claims by the end of the mon**th, the claim representative may need to settle the claim and report the file closure by that deadline**. As the deadline approaches, the claim representative may offer the highest amount in the settlement range in an effort to close the claim by the end of the month**. Claim representatives should not make such settlement offers. **Instead, their knowledge that the deadline might be imposed should induce them to work more quickly to settle claims sooner and avoid accepting excessive settlements to meet the deadline**.