

Guide for Insurance Claims[©]



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TO: BF&W Business Clients and Individual Clients
FROM: MCW
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YOUR FILE: INSURANCE POLICIES AND DOCUMENTS

When it comes to an insurance claim you have to realize that your objective and the insurance company's objective are not the same. That is: You would prefer they pay the claim and they would prefer not to pay the claim.

This legal memorandum is written primarily to help insurance claimants in the State of Alabama. Any reference to legal standards contained herein are based upon the laws and regulations of Alabama. Readers are reminded insurance laws and regulations vary greatly from State to State and the information contained herein is subject to change based on case law, statutory changes or judicial interpretation. All material herein is protected by State and Federal copyright laws and reproduction of this material for monetary gain is strictly prohibited. BF&W does authorize reproduction *in exemplum omnis* for educational purposes only; that is, readers can copy the entire publication and share it with someone who may find it beneficial but can not copy and share only selected portions. © 2011.

SUMMARY OF INSURANCE CLAIM GUIDE

- I. IMPORTANT THINGS TO KNOW ABOUT INSURANCE CLAIMS
- II. UNDERSTANDING THE TWO BASIC CATEGORIES OF INSURANCE CLAIMS
- III. BASIC TIPS FOR PRESENTING AN INSURANCE CLAIM
- IV. WHAT TO DO IF YOUR CLAIM IS DENIED OR THE BENEFITS OFFERED ARE TOO LOW

INTRODUCTION

Protecting yourself and/or your business with insurance is a wise decision. There are numerous types of insurance policies available to help protect individuals and businesses from a myriad of unpredictable or uncertain losses. At some point in time most individuals or businesses will have to present an insurance claim for a loss. Yet, most people or businesses who find themselves having to present an insurance claim for a loss or incident are often unaware of the actual terms of the policy, the coverages available or how to go about properly documenting and presenting a claim. This can often result in needless delays in receiving benefits or in some cases, even

a denial of a legitimate claim. It is important to realize and understand that insurance companies have access to a vast amount of resources and information to assist them in investigating and adjusting a claim. The simple truth is: they are not using this vast array of resources to help justify paying your claim. Insurance is a business and an insurance company's profit margin is adversely affected by claim payments. The more a claimant knows about the claim process and the legal issues related thereto, the better chance the claimant has of recovering the full value for a covered loss.

What follows is: 1) some basic information about insurance claims, 2) some general information about the two types of insurance claims, 3) some tips and pointers for presenting an insurance claim and, 4) some critical information about what to do if a claim has been denied or seriously undervalued.

A. Burden of Proof: The first and most important thing to remember about any insurance claim is that the person or business making the claim (the claimant) carries the burden of proof related to that claim. The person who is handling the claim on behalf of the insurance company (the adjuster) does not have to “disprove” the legitimacy of the claim. The adjuster's job is simply to determine if the claimant has presented adequate proof of a covered loss with proper supporting documents or material to pay the benefits being claimed. It is important to understand and realize, the adjuster has an obligation to the insurance company to only pay benefits that are legally owed under the policy. The claim files of adjusters are periodically audited to make sure they are not paying more benefits than required by the terms of the policies and that claims are properly documented before making a payment. In some instances, insurance companies even pay bonuses to adjusters and/or agents based upon claim pay-outs, or more specifically, the lack thereof.

B. Adversarial Process: As nice and friendly as you think the insurance company will be to you in the claims process; understand, Alabama law defines the insurance claim process as an “adversarial proceeding.” This does not necessarily mean the insurance company is going to be mean and nasty to you during the claim process, rather it simply means you have to recognize that your objectives and the insurance company's objectives are not the same when it comes to an insurance claim. You would prefer they pay the claim and they would prefer not to pay the claim. Because the claim process is defined by law as an adversarial process, insurance companies are granted a certain amount of latitude in how they handle and adjust an insurance claim, even if it works to the detriment of the claimant. Specifically: 1) there is no obligation for an adjuster to “help” you better present your claim, 2) the adjuster does not have any obligation to tell you about critical time lines or time limitations related to your claim, 3) the adjuster does not have to tell you about other possible coverages available to you for the loss, and 4) the adjuster often can not give you advice or suggestions on how to best coordinate multiple coverages related to a loss. Simply put, because it is an adversarial process, you can not expect the insurance company to tell you how to effectively and timely present your claim or provide you with any

helpful information. Because this process is considered “adversarial” a claimant does not have a right to justifiably rely on anything an adjuster says about the terms and conditions of the policy and/or the merits of the claim! [See, *Apkan v. Farmers Insurance Exchange, Inc.*, 961 So.2d 865 (Ala. Civ. App. 2007): *Insurance adjuster has no duty to help or assist claimant. In fact, adjuster’s duty is to protect the insurance company.* *Southern Bakeries Inc. v. Knipp*, 852 So. 2d 712 (Ala. 2002): *If a party owes no legal duty of disclosure to another, then material facts can be suppressed with out recourse for failure to disclose.*]

C. No Reliance on Agent’s Oral Representations: As difficult as this is for most of us to believe, Alabama law has held that insurance customers do not have a right to justifiably rely on an oral representation made to them by the agent concerning the terms or conditions of the policy. This means if the agent tells you some event or loss will be a “covered loss” and the policy says it is not, the policy language will control and the loss may not be covered despite what the agent may have said. See *Foremost Insurance Company v. Parham*, 693 So.2d 409 (Ala. 1997).

D. Clauses and Exclusions: Another legal reality that insurance customers have a hard time accepting is that Alabama law considers insurance policies to be “mutual contracts.” See *Wolfe v. ALFA*, 880 So. 2d 1163, 1169 (Ala Civ App 2003). What this means is our laws consider the customer and the insurance company to be “equals” in the negotiating process. Because of this legal concept (some call it a legal fairy tale) unfavorable and/or sometimes down right unconscionable clauses that work against the claimant are upheld on the basis that the customer got what he or she “bargained for” when “negotiating” for the purchase of the policy. Some of these type detrimental clauses include “commercial” arbitration clauses, forum and venue selection clauses, appeal protocol and procedure clauses, strict compliance clauses, cooperation clauses, indemnity clauses and many more often buried in the fine print of the policy. This also means well crafted exclusions for covered losses can be included, and upheld as valid, under the guise of a “negotiated” contract. One outrageous example of this is an exclusion for property damage losses currently found in some Alabama issued policies. It is an exclusion for “a loss to a covered property caused, or contributed to, by negligent construction.”

E. Notification of Claim: No matter what type of claim is being presented, it is always the responsibility of the insured individual and/or business and/or claimant to properly notify the insurance company of the claim or even the potential claim. All insurance policies have guidelines and procedures for notification of a claim and/or a “covered loss.” If these procedures are not followed, they can provide the insurance company with a legally recognized excuse to not pay the claim. Upon being notified of a claim or of a potential claim, many insurance companies will send out “claim forms” to the claimant. If the company does not provide “claim forms” it would be wise to verify the notice of claim in writing to verify that “timely notice” of the claim has been provided.

II. UNDERSTANDING THE TWO BASIC CATEGORIES OF INSURANCE CLAIMS

A. Direct Claim or Liability Claim: Insurance claims can be generally classified as falling into one of two types: a “Direct” claim or a “Liability” claim. The most important thing for a claimant to know is the Statute of Limitations for their type of claim. The Statute of Limitations is a prescribed period of time wherein a party can file a civil lawsuit seeking compensation and/or benefits. If a civil lawsuit is not brought by the aggrieved party within the Statute of Limitations prescribed by law, the case will be forever barred.

A direct claim is a claim you present directly to an insurance company from whom you have bought a policy for the covered loss. For individuals this could be a claim under a homeowner policy they purchased for their home. For a business, this could include a theft of property claim, or a business interruption loss claim, or a fidelity claim, etc. against the comprehensive coverages provided to the business. The easiest way to think about it is by “following the premium.” If you or your business paid the premium for the coverage and you are now making a claim against that same coverage paid for by the premium, it would be considered a “direct claim.”

In Alabama the Statute of Limitations for a contract dispute is six years from the date of the breach of contract. An insurance policy is a contract between the customer and the insurance company. This means if there is a dispute as to benefits or coverage for a direct claim, the parties have up to six years to bring a lawsuit related to that matter.

A liability claim is made against another person or entity for causing a loss. The “liable” or “responsible” person then turns the claim over to his general liability carrier to adjust and pay the loss, assuming it is a covered loss. A classic example of a liability claim is if you were to run into the back of the car ahead of you that was stopped in traffic. The person you ran into may have a liability claim against you for the property damage via the liability coverage of your automobile insurance policy. Upon being notified of the claim, your auto-insurance company would assign the claim to an adjuster to determine if you were legally liable for causing the accident and damage. If so, then the adjuster would pay the property damage to the other person. [If your car was also damaged in the collision, you may have a direct claim against your auto-insurance company under the “collision” coverage for your property damage, probably less a deductible.]

Since a liability claim is made against the individual or entity that is legally responsible or liable for the loss, the Statute of Limitations in Alabama for a liability claim is generally two-years from the date of the incident that caused the damages. Depending upon the degree of fault or level of culpability the Statute of Limitations may exceed two years; however, these are rare situations and for practical purposes, you should always assume a liability claim has a two-year statute of limitations.

NOTE: RE STATUTE OF LIMITATIONS. Readers are reminded that the above information is provided as a general guideline. Laws related to the various recognized statute of limitations are subject to being modified by legislation and/or judicial interpretation. If you are uncertain as to the statute of limitations for a specific claim, please consult with an insurance claims attorney.

B. Adjusting a Direct Claim: In a direct claim, it is important for a claimant to remember that the terms and conditions of the insurance policy control all aspects of the claim. Failure to abide by any provision of the policy can be grounds for the insurance company to deny coverage. All policies of insurance contain a duty to cooperate. In the context of a direct claim, this can mean having to sign certain forms to authorize the release of relevant data and information from third parties to the insurance company and even having to submit to an “Examination Under Oath” by the insurance company’s lawyer. If a claim is initially denied, some policies have mandatory requirements for “appealing” the decision that must be complied with before a legal action for wrongful denial of benefits can be brought. Failure to comply with such provisions can result in the claim being closed and leaving the claimant no legal recourse.

C. Adjusting a Liability Claim: When making a liability claim against the responsible party’s insurance company, there is no legal duty to “cooperate” with the adjuster who is handling the claim, but common sense tells us that some degree of cooperation is needed between the claimant and adjuster. However, in the context of a liability claim, the claimant does have a little more latitude to deny or negotiate with the adjuster regarding disclosure of information, signing authorization forms, etc., without jeopardizing coverage. Also, in the context of a liability claim, the claimant does have the power to revoke previously executed authorization forms or stop cooperating with the adjuster and such action will not prevent the claimant from seeking compensation for the damages covered by the liability policy.

Whether a claim is a direct claim or a liability claim, there are certain things you as the claimant can do to help in the claim process. What follows are some basic tips and concepts that will help make the claim process go as smoothly as possible.

III. BASIC TIPS FOR PRESENTING AN INSURANCE CLAIM

We’ve all heard the axiom, the three most important things in real estate are: Location, location and location. In the context of an insurance claim we can say the three most important things are: Documentation, documentation and documentation. As set forth in the first section, the claimant has the burden of proof and this means the claim must always be properly documented before benefits are paid. Gathering documents and material to support a claim can be time consuming and a drain on resources, but the better a claim can be documented and supported, the more chance there is it will be paid and paid in full.

A. Verify the Process. Once the claim has been reported and opened by the insurance company, it will be assigned to an adjuster. If you are uncertain as to what information or documentation the adjuster will need to process and evaluate your claim, please make sure to ask him or her. You also may want to ask the adjuster to give you some basic time frames for completing the evaluation of the claim once all relevant information and documentation has been obtained or submitted. Document this conversation in writing.

B. Use Your Claim Number. Always use and reference your claim number on all documents and correspondence sent to the insurance company and adjuster. Make sure everything is properly dated and always keep a copy for your records.

C. Written Documentation of Conversations. While using the telephone is an easy way to communicate, it does not provide an easy way to document that the conversation occurred or provide an easy way to document the content of the conversation. All substantive communications about a claim should be done in writing or in the very least, important information discussed in a phone conversation with the adjuster, should be confirmed in a follow-up letter. Reference the claim number and date all correspondence and always keep a copy for your records. E-mails are a good way to communicate with the adjuster as long as the e-mails are retained in a digital format or printed in case they are needed in the future.

D. Ask for Copies. Sometimes the adjuster will offer to gather documents and information for the claimant and this may be acceptable in a small claim; however, before you agree to allow the adjuster to do this, ask the adjuster if he or she will provide you with a copy of all documents and information obtained or recovered. Most reputable insurance companies will allow their adjusters to share this information but only if they are asked to do so and some companies require such a request to be in writing.

E. Get a Copy of the Policy. If you are presenting a direct claim to your own insurance carrier, make sure you have a copy of the policy. If you do not have a copy or misplaced your copy, most legitimate insurance companies will send you a certified copy of the policy, but again you must make this request and sometimes companies require the request to be in writing. You will want to have a copy of the policy available during the claim process in case you need to consult it's glossary or definitions of such things as "covered loss", "covered person", "excluded events," etc. You may also want to review the section that outlines or explains your duties during the claim process and any section of the policy that sets forth time lines or deadlines related to the presentation of your claim. Again, it is important to remember that the adjuster has no obligation to help you in this process and under the law, in a direct claim, the claimant is deemed to have read and understood all applicable provisions of the policy!

F. Recorded Statements. It is not unusual for an adjuster to want to take a recorded statement from the claimant concerning the details of the claim and the loss.

Schedule the recorded statement at a date and time convenient for your schedule, don't just answer the phone and agree to give a recorded statement. Make sure you have reviewed all relevant information in advance of the statement. It's OK to make notes to use and reference during the statement. If there are other people who can help verify some aspect of your claim, make sure you know their names and contact information. Finally, make sure the adjuster will provide you a transcript of the recorded statement so you can review it for accuracy. Most legitimate insurance companies will provide you a transcript of the statement but only if you ask for it. Sometimes in a direct claim, an insurance company may require a claimant to submit to an examination under oath. This is where a company lawyer asks the claimant questions and a Court Reporter will place the claimant under oath and make a written transcript of the proceeding. Many legitimate claimants are subject to this rather intimidating process and if the Company requests such an examination, it might be best to consult with an insurance claims attorney in advance of the statement. Pursuant to the case of *Nationwide Insurance Co. v. Nilsen*, 745 So. 2d 264 (Ala.1998), coverage can be denied if a customer refuses to sit for a requested examination under oath and/or fails to comply with any other conditions or requirements under the policy.

G. Verify When the Claim Was Submitted. Verify and confirm the submission of all claim documents or material. e.g., "This e-mail is being sent to confirm that I have now submitted the following documents, material and/or information in support of claim # XYZ-654321: [Itemize a list of all documents and material submitted.]. Also, at the close of this verification and confirmation report, you will want to make sure that you ask the adjuster to notify you immediately if any other document or material is needed for the claim. If the adjuster has given you a time reference for his or her completion of the review of your claim, you may also want to confirm this as well.

IV. WHAT TO DO IF YOUR CLAIM IS DENIED OR THE BENEFITS OFFERED ARE TOO LOW

The National Association of Insurance Commissioners reports that over half of all complaints filed by insurance customers about the claim process involve 1) delays, 2) wrongful denials of benefits and, 3) unsatisfactory offers for the claim. By following the tips set forth above, you can help speed up the process by making sure you have provided all appropriate documentation and information.

A recent report by the Alabama Department of Insurance following the April 2011 tornado outbreak, revealed that 31% of policyholders who filed a complaint against their insurance company did so because they believed the benefits offered by the insurance company were too low.

A. Ask for Specifics. Don't be afraid to ask for clarification or more details about the decision of the adjuster regarding your claim. The reality is adjusters are often overworked and handling hundreds of other claims. This means they sometimes do not provide claimants with a meaningful explanation of their decision or the basis for

their findings. If you disagree with the adjuster's decision or are uncertain as to his or her conclusion, do not be afraid to ask for a written explanation or the reasons for the decision. This request should either be done in writing or confirmed in writing.

B. Appeal or Reconsideration. Find out if the company has an appeal process related to its decision about your claim. Usually, this is not available in a liability claim. **IMPORTANT NOTE:** If it is a direct claim and there is an appeal process provided, please make sure you know and understand the requirements of the appeal process. In extreme situations, failure to properly follow the appeal process can result in severe limitations in the claimant's right to seek further recourse through the Courts.

C. Seek Outside Help. Consider consulting with and/or hiring an insurance claims specialist. These are sometimes known as "Independent Adjusters" but can also include lawyers and law firms who specialize in claim presentation and prosecution for individuals or businesses. Remember most insurance claims involve legal issues and definitions. Often claims center around complex issues such as legal causation or legal responsibility/liability. Adjusters working with the insurance company have access to vast resources, including large legal firms to help them analyze the issues related to a claim. The fact is the larger the amount of the claim, the more a claimant will benefit from have an insurance claims specialist helping with the claim. Many of these specialists offer free consultations and some attorneys in this area of the law work on a contingency fee, a percentage of the recovered benefits.

V. CONCLUSION

Presenting an insurance claim can be stressful, time consuming and a burden on your resources. However, the better the claimant understands the claim process and what to do to make the process go smoother, the less chance there will be of undue or prolonged delays. Also, the better the claimant can document the various aspects of the claim, the better chance there will be that the claim will be paid in full and in a timely manner.

This guide was prepared by Mark Wolfe, Attorney at Law of Boteler, Finley & Wolfe for the purpose of providing general information to the public. It is provided to interested people or parties at no charge and it should not be considered as legal advice for any specific or particular insurance claim. If you have any specific questions or comments about an insurance claim, you can e-mail the author at mark@bfw-lawyers.com. No representation is made that the quality of legal services to be performed are greater than the legal services provided by other lawyers.

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INSURANCE POLICY INFORMATION SHEET

Type of Policy: _____
Company: _____
Policy Number: _____
Agent: _____ Phone: _____

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