

Personal Advantage
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By William M. Shernoff

The Ten Most Commonly Asked Questions about Insurance

For years, William Shernoff, a consumer-rights attorney, has operated a telephone hotline that people anywhere in the country can call for advice about insurance disputes. Here are the questions he most frequently answers.

What can I do on my own, without a lawyer, if my claim is denied? Don't assume that the first "no" you hear is final, and don't underestimate your ability to prevail. As many as 10% of insurance claims are unjustly refused. However, fewer than 1% of claimants bother to protest, and insurance companies profit greatly from this. But among those who do protest, a majority improve their position or recover the full amount they expect.

What to do:

Insist on a written explanation if part or all of your claim is denied. In most states, insurers are required to provide one.

Telephone the adjuster who is assigned to your claim to question any decision you believe is unfair.

Keep careful notes of all conversations regarding your complaint. Reiterate what is said in a follow-up letter, with copies of bills and other supporting documents attached.

If you are not satisfied, refer your claim to the adjuster's supervisor for review, and continue up the ladder of authority as needed.

What help should I expect from my insurance agent? It is a common misconception that it's your "friendly insurance agent" who handles your claim.

Reality: The claims-processing and sales departments are totally separate. But it is your agent's duty to obtain the correct coverage for you and to protect your interests. An agent who is a strong salesperson for the company can be an effective intermediary, so it's a good idea to enlist his/her help.

How can I afford a lawyer to handle my claim if all else fails? If they believe a case has merit, most trial lawyers will work for a contingency fee - a specified percentage that is usually about 33% of the amount recovered. Check with consumer organizations and your insurance agent for referrals, or contact the Association of Trial Lawyers of America, 1050 31 St. NW, Washington, DC 20007, 800-424-2725, for a list of members in your area.

What is "insurance bad-faith law" and how can it benefit me? Bad faith on the part of an insurer is simply "the unreasonable refusal to promptly pay a valid claim." Failure to fully investigate a claim or inadequate payment of a claim can also constitute bad faith. About half the states have bad-faith laws designed to protect consumers from unfair insurance practices. If an insurance company is found to have acted in bad faith, it can be held liable for emotional distress and punitive damages, as well as for the amount due the policyholder. Insurers fear punitive-damage awards because they are based on the company's worth and the egregious level of the behavior, not on the amount of the claim.

How can I tell what is covered and what is not? Read the declaration sheet that states what coverage you are purchasing, and in what amounts. Then read the exclusions section carefully. It tells you what you don't have. And, read the definitions section, which may disguise further exclusions. If you have any questions, call your agent and ask that the reply be put in writing. This will bind the insurer in the event of a later claim. And don't

assume that you're not covered for damages not mentioned.

I think my policy says one thing but my insurer insists that it means something else. The language isn't really clear - what should I do? Stick to your guns. Courts hold that where language in an insurance policy is unclear, the interpretation will be construed against the insurance company. This rule is over 100 years old, and insurers know it - so don't be intimidated. Many states go even further, holding that the reasonable expectations of the policyholder govern the meaning of the policy language. This means that you are entitled to the coverage you expect, as long as your expectations are reasonable.

What is the best way to deal with the adjuster who is handling my claim? It is always best to be cordial and direct. Claims adjusters represent the interests of the insurance company, so they are likely to be sensitive to customer satisfaction, particularly in first-party claims in which you are dealing with your own insurance company. Third-party claims, in which you are trying to collect damages from someone else's insurer, are likely to be more adversarial.

Potential problem: Claims adjusters have been trained to believe insurance fraud is rampant, so many are routinely suspicious. Dispel this predisposition by being cooperative and straightforward. Do not exaggerate your claim.

How adjusters work: First they will look for a reason not to pay a claim. If they don't find one, they pay it. Adjusters make mistakes. So if you disagree with an assessment, chances are you will be able to settle the claim amicably with polite persistence. Even if payment is refused outright, adjusters are under pressure to settle claims, or "close the file." Contesting a denial of a claim will keep the file open and may increase the insurer's motivation to settle.

What is ERISA, and how does it affect me? The Employee Retirement Income Security Act (ERISA) is a federal law enacted in 1974 to protect employee benefit plans. ERISA was intended to safeguard employee rights. But in 1987 the Supreme Court held that ERISA pre-empts state consumer laws, creating a loophole that gives insurance companies immunity from damage suits. The result has been an explosion of bad-faith practices by insurers, particularly in cases of catastrophic illness or injury.

Hopeful: Despite powerful insurance-company lobbies, new bills designed to close the ERISA loophole are before Congress. In fact, the legislation may be folded into the Clinton administration's soon-to-be-proposed health care package.

How can I tell a good insurance company from a bad one? Check the most recent ratings guide published by A.M. Best Company, available at most libraries, or call Weiss Research, 407-684-8100. Avoid companies with poor ratings, since insurers of all sizes have been known to go bankrupt. You may also want to call your state's Department of Insurance to make sure the company is permitted to do business in your state. In addition, many states publish an annual consumer-complaints ratings list.

What happens if I don't fill in my claim form correctly - or don't get it in on time? Your insurance company may use errors on your claim form as an excuse to delay payment. But it cannot refuse to pay a legitimate claim because a policyholder is late in filing, unless it can prove that it has somehow been harmed by the claimant's tardiness.

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Self-defense: If you need help in filing an insurance claim, seek assistance from your doctor's staff, your employee benefits department, union or your agent. Never decide not to file a claim because you think it's too late. If an insurer bounces a form back to you for corrections, keep at it. Persistence is essential when dealing with insurance claims.